§401. Liability of employer

1. Private employers. Every private employer, including an independent contractor who hires and pays employees, is subject to this Act and shall secure the payment of compensation with respect to all employees by purchasing a workers' compensation policy or self-insuring as set forth in section 403. Unless employed by a private employer, a person engaged in harvesting forest products is subject to this Act and shall secure the payment of compensation by purchasing a workers' compensation policy or self-insuring as set forth in section 403 with respect to that person individually if that person is an employee as defined in section 102, subsection 11, paragraph B-1.

A private employer who has not secured the payment of compensation by purchasing a workers' compensation policy or self-insuring as set forth in section 403 is not entitled, in a civil action brought by an employee or the employee's representative for personal injuries or death arising out of and in the course of employment, to the defense set forth in section 103. The employee of any such employer may, instead of bringing a civil action, claim compensation from the employer under this Act.

The following employers are not liable under this section for securing the payment of compensation by purchasing a workers' compensation policy or self-insuring as set forth in section 403 with respect to the employees listed, nor deprived of the defenses listed in section 103:

A. Employers of employees engaged in domestic service; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. Employers of employees engaged in agriculture or aquaculture as seasonal or casual laborers, if the employer maintains coverage by an employer's liability insurance policy with total limits of not less than $25,000 and medical payment coverage of not less than $5,000.

(1) As used in this subsection, "casual" means occasional or incidental. "Seasonal" refers to laborers engaged in agricultural or aquacultural employment beginning at or after the commencement of the planting or seeding season and ending at or before the completion of the harvest season; and [PL 2001, c. 235, §2 (AMD).]

C. Employers of agricultural or aquacultural laborers, if the employer maintains an employer's liability insurance policy with total limits of not less than $100,000 multiplied by the number of full-time equivalent agricultural or aquacultural laborers employed by that employer and medical payment coverage of not less than $5,000, and either:

(1) The employer has 6 or fewer concurrently employed agricultural or aquacultural laborers; or

(2) The employer has more than 6 agricultural or aquacultural laborers but the total number of hours worked by all such laborers in a week does not exceed 240 and has not exceeded 240 at any time during the 52 weeks immediately preceding an injury.

For purposes of this paragraph, seasonal and casual workers, immediate family members of unincorporated employers and immediate family members of bona fide owners of at least 20% of the voting stock of an incorporated employer are not considered agricultural or aquacultural laborers. "Immediate family members" means parents, spouses, brothers, sisters and children and the spouses of parents, brothers, sisters and children. [PL 2013, c. 87, §1 (RPR).]

The burden of proof to establish an exempt status under this subsection is on the employer claiming the exemption.
[PL 2015, c. 469, §4 (AMD).]

2. Governmental bodies. The State and every county, city and town is subject to this Act and shall secure the payment of compensation by purchasing a workers' compensation policy or self-insuring as set forth in section 403.
[PL 2015, c. 469, §5 (AMD).]

3. Failure to conform. The failure of any private employer or of any person engaged in harvesting forest products not exempt under subsection 1 or of any governmental body, as defined in subsection 2, to secure the payment of compensation with respect to all employees by purchasing a workers' compensation policy or self-insuring as set forth in section 403 constitutes failure to secure payment of compensation provided for by this Act within the meaning of section 324, subsection 3, and subjects the employer or a person engaged in harvesting forest products to the penalties prescribed by that section. An employer that purchases a workers' compensation policy or self-insures as set forth in section 403 and misclassifies one or more employees as independent contractors has not complied with the coverage provisions of this Act and is subject to all applicable penalties for failure to secure payment of compensation with respect to all misclassified employees.
[PL 2015, c. 469, §6 (AMD).]

3-A. Cancellation notice requirements. Any person engaged in harvesting forest products not exempt under subsection 1 shall provide within 3 business days of the cancellation written notification to the landowner to whom the person is under contract of a cancellation of that person's workers' compensation insurance policy. That person shall provide identical notice to any employee who was covered by the canceled workers' compensation insurance policy. A person engaged in harvesting forest products not exempt under subsection 1 who is found in noncompliance with these notification requirements is liable for a civil forfeiture of not less than $50 nor more than $100 for each day of noncompliance.
[PL 2001, c. 622, §1 (NEW).]

4. Liability of landowner. A landowner subject to this Act who contracts to have wood harvested from the landowner's property by a contractor who, as an employer, is subject to this Act and who has not complied with the provisions of this section and who does not comply with the provisions of this section prior to the date of an injury or death for which a claim is made is liable to pay to any person employed by the contractor in the execution of the work any compensation under this Act that the landowner would have been liable to pay if that person had been immediately employed by the landowner.

A landowner is not liable for compensation if at the time the landowner enters into the contract with the contractor, the landowner applies for and receives a predetermination of the independent status of the contractor as set forth in subsection 4-A, the landowner requests and receives a certificate of independent status, issued by the board on an annual basis to a contractor, certifying that the contractor harvests forest products in a manner that would not make the contractor an employee of the landowner or the landowner requests and receives a certificate of insurance, issued by the contractor's insurance carrier, certifying that the contractor has obtained the required coverage and indicating the effective dates of the policy, and if the landowner requests and receives at least annually similar certificates indicating continuing coverage during the performance of the work. A landowner who receives a predetermination of the contractor's status as independent contractor or a certificate of independent status is only relieved of liability under this paragraph if the contract for wood harvesting expressly states that the independent contractor will not hire any employees to assist in the wood harvesting without first providing the required certificate of insurance to the landowner.

A predetermination under subsection 4-A related only to a person engaged in harvesting forest products is a conclusive presumption that the determination is correct. Each party involved in or affected by the predetermination must be provided information on the workers' compensation laws and the effect of independent contractor status in relation to those laws. A predetermination under subsection 4-A related to a person engaged in harvesting forest products is effective for one calendar year or the duration of the contract, whichever is shorter.

A landowner required to pay compensation under this section is entitled to be indemnified by the contractor and may recover the amount paid in an action against that contractor. A landowner may demand that the contractor enter into a written agreement to reimburse the landowner for any loss

incurred under this section due to a claim filed for compensation and other benefits. The employee is not entitled to recover at common law against the landowner for any damages arising from such injury if the employee takes compensation from that landowner.

Landowners willfully acting to circumvent the provisions of this section by using coercion, intimidation, deceit or other means to encourage persons who would otherwise be considered employees within the meaning of this Act to pose as contractors for the purpose of evading this section are liable subject to the provisions of section 324, subsection 3. Nothing in this section may be construed to prohibit an employee from becoming a contractor subject to the provisions of section 102, subsection 13-A.
[PL 2023, c. 205, §§8, 9 (AMD).]

4-A. Predetermination of independent contractor status. A landowner and a contractor may submit to the board, on forms approved by the board, a request for predetermination of the status of the contractor as an independent contractor.

A. A request under this subsection is deemed to have been approved if the board does not deny or take other appropriate action on the submission within 30 days. [PL 2023, c. 205, §10 (NEW).]

B. A hearing, if requested by a party within 10 days of the board's decision on a petition, must be conducted under the Maine Administrative Procedure Act. A ruling by the board or administrative law judge under this paragraph is final and not subject to review by the Superior Court. [PL 2023, c. 205, §10 (NEW).]

C. The board shall provide to each party a certified copy of the decision regarding predetermination that is to be used as evidence at a later hearing on benefits. [PL 2023, c. 205, §10 (NEW).]

D. The board is authorized to adopt rules to implement this subsection. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2023, c. 205, §10 (NEW).]
[PL 2023, c. 205, §10 (NEW).]

5. Workplace health and safety training programs. The following workplace health and safety plan requirements apply to all employers in the State required to secure payment of compensation in conformity with this Title.

A. The Commissioner of Labor or the commissioner's designee shall adopt rules regarding workplace health and safety programs. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

B. The Superintendent of Insurance shall communicate to the Department of Labor the names of employers that receive in any policy year an experience rating of 2 or more. The Department of Labor shall notify each employer on that list that the employer is required to undertake a workplace health and safety program and the department shall provide a statistical evaluation of the employer's workplace health and safety experience and enclose a set of workplace health and safety options, including on-site consultation, education and training activities and technical assistance. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

C. The employer shall submit a workplace health and safety plan to the Department of Labor for review and comment, complete the elements of the plan and notify the Department of Labor of its completion. The plan may include attendance at a community college in the State or the Department of Labor workplace health and safety training programs. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF); PL 2003, c. 20, Pt. OO, §2 (AMD); PL 2003, c. 20, Pt. OO, §4 (AFF).]

D. The Department of Labor shall notify the Superintendent of Insurance of any employer that fails to complete the workplace health and safety program as required by this section and the rules

adopted pursuant to paragraph A. The Superintendent of Insurance shall assess a surcharge of 10% on that employer's workers' compensation insurance premium or the imputed premium for self-insurers, which must be paid to the Treasurer of State, who shall credit that amount to the Safety Education and Training Fund, as established by Title 26, section 61. Employers who fail to complete a required workplace health and safety program and who are assessed a surcharge prior to January 1, 1994 must be assessed a surcharge of 5%. Employers who fail to complete a required workplace health and safety program and who are assessed a surcharge after January 1, 1994 must be assessed a surcharge of 10%. [PL 2003, c. 673, Pt. Q, §4 (AMD).]

E. The Commissioner of Labor shall report to the joint standing committee of the Legislature having jurisdiction over banking and insurance matters and the joint standing committee of the Legislature having jurisdiction over labor matters by October 1, 1993 on the rules adopted, performance by employers and any surcharges imposed by the Superintendent of Insurance. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

[PL 2003, c. 673, Pt. Q, §4 (AMD).]

5-A. Working group on data collection and injury prevention. The Department of Labor, Bureau of Labor Standards shall convene a working group beginning not later than October 1, 2003 to evaluate data on work-related injuries and identify ways to reduce the incidence of such injuries. The bureau shall include in the group representatives of the board, labor, employers, occupational health practitioners, safety experts, insurers and others that the bureau considers useful and necessary to the group. The group shall review existing data collection efforts and the structure within State Government for evaluating and improving injury prevention efforts in the workplace. The group shall identify ways to improve data collection, analysis and injury prevention programs in the State. The bureau shall report the recommendations of the group by January 1, 2005 and January 1, 2006 to the Governor and to the joint standing committees of the Legislature having jurisdiction over labor matters and over insurance matters. Those committees are authorized to report out legislation in response to the recommendations to the First Regular Session of the 122nd Legislature and the Second Regular Session of the 122nd Legislature. The bureau may continue the group as long as it considers such a group useful in understanding the causes and promoting prevention of work-related injuries in the State.
[PL 2003, c. 471, §2 (NEW).]

6. Nonresident employers. A nonresident employer whose employees work in the State shall obtain coverage under this Act from an insurer or self-insurer authorized in the State unless exempt under section 113 or unless the employer would be exempt if located in the State.
[PL 1997, c. 366, §1 (NEW).]

SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF). PL 1993, c. 120, §2 (AMD). PL 1997, c. 359, §1 (AMD). PL 1997, c. 366, §1 (AMD). PL 1999, c. 364, §§4-6 (AMD). PL 1999, c. 610, §1 (AMD). PL 2001, c. 235, §§2,3 (AMD). PL 2001, c. 622, §1 (AMD). PL 2003, c. 20, §OO2 (AMD). PL 2003, c. 20, §OO4 (AFF). PL 2003, c. 471, §2 (AMD). PL 2003, c. 673, §Q4 (AMD). PL 2011, c. 643, §§11, 12 (AMD). PL 2011, c. 643, §14 (AFF). PL 2013, c. 87, §1 (AMD). PL 2015, c. 469, §§4-6 (AMD). PL 2023, c. 205, §§8-10 (AMD).