**90-351 WORKERS, COMPENSATION BOARD**

**Chapter 9: PROCEDURE FOR COORDINATION OF BENEFITS**

This rule describes the procedures to be followed in calculating and performing the coordination of benefits required under 39-A M.R.S.A. §221.

**§ 1.** Any reduction in weekly workers’ compensation benefits which results from the coordination of benefits described in Title 39-A shall be indicated on the Discontinuance or Modification of Compensation (WCB-4). The employer or insurer shall indicate which type of benefit is the subject of coordination and the mathematical calculations used in determining the new level of weekly compensation benefits.

**§ 2. Coordination of Benefits Pursuant to §221(3)**

1. **Calculation of reduction to employee’s weekly benefits**

1. Except as provided in paragraph (B) of this section, when an employee receives payments pursuant to a plan or policy subject to §221(1)(B) or (C), the amount of the reduction to the employee’s weekly benefits is calculated by converting the weekly payment into an after-tax amount using the tables of average weekly wage and 80% of the after tax average weekly wage published by the Board pursuant to 39-A M.R.S. §102(1) and then multiplying the applicable 80% of the after-tax amount by 1.25.
2. When an employee receives a benefit that is intended to be paid over the employee’s lifetime in a lump sum or a periodic payment for a permanent or lifetime condition paid over a period less than the employee’s life expectancy pursuant to a plan or policy subject to §221(1)(B) or (C), the amount of the reduction to the employee’s weekly benefits is calculated by:

(1) Determining the employee’s life expectancy based on standard actuarial tables in weeks;

(2) Determining a weekly benefit amount by dividing the lump sum amount by the number of weeks of life expectancy determined pursuant to sub-section B paragraph (1) of this section;

(3) Converting the weekly benefit amount determined pursuant to sub-section B paragraph (2) of this section into an after-tax amount using the tables of average weekly wage and 80% of the after tax average weekly wage published by the Board pursuant to 39-A M.R.S. §102(1); and,

(4) Multiplying the applicable 80% of the after-tax amount by 1.25.

1. This regulation applies retroactively to all pending cases including those on appeal.

2. **Coordination of benefits paid pursuant to “paid time off” or equivalent plans**

A. Paid time off or equivalent plan means an employer-paid benefit that covers both sick leave and vacation leave.

B. If a paid time off or equivalent plan designates a specific portion of the benefit as sick leave, an employer/insurer may reduce benefits, as set forth in 39-A M.R.S.A. §221(3)(A)(2).

C. If a paid time off or equivalent plan does not designate a specific portion of the benefit as sick leave, an employer/insurer may reduce benefits, as set forth in 39-A M.R.S.A. §221(3)(A)(2), when the benefit taken is used for the equivalent of sick leave rather than vacation leave.

**§ 3. Notification and Release of Social Security Benefit Information Pursuant to §221(4)**

1. (1) When an employee is receiving either weekly or lump sum payments pursuant to §212 or §213 the employer/insurer shall mail a notice, in a form prescribed by the Board, to the employee of possible eligibility for Social Security benefits and the requirements for establishing proof of those benefits.

(2) Notice must be promptly mailed to the employee after the date the employee reaches his or her full retirement age as defined by the Social Security Administration.

(3) The notice must be mailed to the Workers’ Compensation Board at the same time it is sent to the employee.

1. The notice shall include the following language:

**NOTICE**

(1) Because you have reached your full retirement age as defined by the Social Security Administration, you must, within 30 days after receipt of this notice:

* Apply for Social Security old-age insurance benefits. (You cannot be compelled to apply for early federal old-age insurance benefits.)
  + You may apply at a local Social Security office; or
  + Online at: <http://www.ssa.gov/pgm/retirement.htm> .
  + To understand your rights and responsibilities with respect to your application for and receipt of Social Security benefits, and the Workers’ Compensation Act, you should consider seeking advice from an attorney or other expert in Social Security and Workers’ Compensation laws.
* You must provide proof to us that you have applied for benefits.
  + Proof of application must be mailed to us within 14 days after you submit your application to the Social Security Administration at the following address:

[INSERT EMPLOYER/INSURER ADDRESS]

* + Proof of application includes:

A letter from you, or your attorney or advocate establishing you filed the required application;

* You must complete, sign and return the enclosed authorization form, approved by the Social Security Administration, to release benefit information. Please note, your employer/insurer can only use this form to determine if you are entitled to receive Social Security benefits and, if so, the amount of the benefit you are receiving and the period of time you are or have been receiving Social Security benefits.

(2) Pursuant to 39-A M.R.S.A. §221 your benefits will be reduced by up to 50% of the amount of old-age insurance benefits your employer is entitled to offset and you receive under the Social Security Act.

(3) If you fail to provide proof of application or sign and return the enclosed form, we may, with the approval of the Workers’ Compensation Board, discontinue your compensation benefits until the proof of application and/or the authority for release of information is provided. Compensation benefits withheld must be reimbursed to you when the required proof of application, or the authority for release of information, or both, has been provided.

1. If a new authority for release of benefit information is required, the employer/insurer must send the following notice along with the appropriate Social Security form.

NOTICE

The enclosed release previously signed by you has expired. Pursuant to 39-A M.R.S.A. §221(6), you are required to sign and return the enclosed release within 30 days after receipt of this notice.

If you fail to provide proof of application or sign and return the enclosed form we may, with the approval of the Workers’ Compensation Board, discontinue your compensation benefits until the proof of application and/or the authority for release of information is provided. Compensation benefits withheld must be reimbursed to you when the required proof of application, or the authority for release of information, or both, has been provided.

D. The employer/insurer may notify an employee receiving incapacity benefits, who is near the age of 62, of his or her obligation to inform the employer/insurer of application for and receipt of old age Social Security benefits, the date those benefits begin and the amount of those benefits, so that the appropriate offset can be taken.

STATUTORY AUTHORITY: 39-A M.R.S. §§ 101 *et seq.*

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AMENDED:

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