

# MAINE STATE LEGISLATURE

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# STATE OF MAINE

Inter-Departmental Memorandum Date December 12, 1974

To John V. Keaney, Chairman

Dept. Industrial Accident Commission

From Leon V. Walker, Jr., Assistant

Dept. Attorney General

Subject Agricultural Employers

You ask whether or not agricultural employers of other than seasonal or casual workers fall within the compulsory provisions of 39 M.R.S.A. § 21. The answer is yes, except as noted below.

39 M.R.S.A. § 3 covers instances where, in an action at law to recover damages for personal injuries sustained by an employee by accident compensable under the Workmen's Compensation Act, the employer may not use as a defense, (1) that the employee was negligent; (2) that the injury was caused by the negligence of a fellow-employee; (3) that the employee has assumed the risk.

39 M.R.S.A. § 4 provides as follows:

"Section 3 shall not apply to actions to recover damages for the injuries aforesaid . . . sustained by farm laborers of an employer who is covered by an employer's liability insurance policy

. . ."

Section 21 of the Act, which contains the compulsory provisions of the law, provides:

"Every private employer shall be subject to this Act and shall secure the payment of compensation in conformity with sections 21 to 27 with respect to employees other than one engaged in domestic service or in agriculture as seasonal or casual farm laborers, subject to the provisions hereinafter stated.

"Any employer who has not secured the payment of compensation under sections 21 to 17 shall, in a civil action brought by the employee other than one engaged in domestic service or in agriculture as a seasonal or casual farm laborer to recover for personal injuries for injuries or death arising out of and in the course of his employment, not be entitled to the defenses set forth in section 3. . . ."

Section 21 has two separate provisions.

The compulsory language appears in the first paragraph of section 21. It is forcefully specific in stating that all employers, other than those specified, shall be subject to this Act. This includes employers of employees in agriculture other than casual or seasonal workers.

However, the last sentence of section 4 provides:

"Section 3 shall not apply to actions to recover damages for the injuries aforesaid, or for death resulting from such injuries sustained by the farm laborers of an employer who is covered by an employer's liability insurance policy . . . ."

The law does not favor repeal of a part of a statute by implication, if that portion can be construed to operate in harmony with a provision enacted at a later date. With this principle in mind, it does no unacceptable violence to either paragraph of section 21 to read into its mandatory provisions an exception created by section 4 for an employer "who is covered by an employer's liability insurance policy with total limits not less than \$25,000 and medical payment coverage of not less than \$1,000."

LVWJr/mf