

# MAINE STATE LEGISLATURE

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Workmen's Comp. Jones Act /  
Workmen's Comp. Admiralty

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November 16, 1978

Lawrence P. Greenlaw, Jr.  
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Re: Inquiries Relating to Maine Workmen's Compensation Act

Dear Representative Greenlaw:

I have responded to your questions in the order which they were presented in your letter to Attorney General Joseph E. Brennan.

1. Does the Jones Act liability requirements supercede state workmen's compensation law?

Response: The Jones Act, at 46 U.S.C. §688, provides a cause of action in federal courts for any seaman who suffers personal injury in the course of his employment resulting from negligence by his employer. It also provides a cause of action for the personal representative of such a seaman, if the seaman dies as the result of such personal injuries. If an injured employee satisfies the requirements of the Jones Act, i.e. he was a seaman and was injured in the course of his employment due to negligence of his employer, he may choose to sue under the Jones Act and is excluded from coverage under the Longshoreman and Harborworkers Act, 33 U.S.C. §901 et seq., or under the Maine Workmen's Compensation Act, 39 M.R.S.A. §1 et seq.

The Longshoreman and Harborworkers Act specifically excludes from coverage a master or a member of the crew of any vessel. There has been substantial litigation on the definition of these terms. In general, it may be said that the terms apply to those

individuals whose duties pertain specifically to the welfare and operation of a vessel. See Benedict on Admiralty, V. IA, Chapter II.

The Maine Workmen's Compensation statute, 39 M.R.S.A. §1 et seq., excludes from the definition of employee in §2, "Persons engaged in maritime employment, or in interstate or foreign commerce, who are within the exclusive jurisdiction of admiralty law or the laws of the United States...." This exclusion is unclear in that the possibility exists that an injury could occur to a person engaged in maritime employment which would not be in the exclusive jurisdiction of the admiralty laws. Hence, this exclusion is applicable to a class of injuries rather than to a class of persons. The exclusion leaves to litigation in each case whether the particular injury is "under exclusive jurisdiction of admiralty law."

With the above background, it may be said in response to your question, that in those circumstances where the person injured meets the requirements of the Jones Act and chooses to pursue that remedy, that act would supercede state workmen's compensation law.

2. Does such liability extend to injury incurred on land in the conduct of fishing related activities (such as working on nets, traps, etc.)?

Response: If an individual is a seaman and is injured in the course of his employment, his injury may be subject to a Jones Act suit even if it occurs on land. The United States Supreme Court made it clear in O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36 (1943), that the location at which an injury occurs is not the controlling factor in determining Jones Act liability. The Court stated that: "...the admiralty jurisdiction over the suit depends not on the place where the injury is inflicted but on the nature of the service and its relationship to the operation of the vessel plying in navigable waters." at 42, 43. It should be noted that the determination whether an injured employee is a seaman will be based upon the facts of each particular case and the extent of an employee's land-based activities will have a direct bearing on that determination.

3. If crew members are independent contractors for tax purposes, must the owner of the vessel carry workmen's compensation insurance?

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Response: The designation of crew members as independent contractors for tax purposes would not control the definition of employee under the Maine Workmen's Compensation Act. If a class of individuals is not specifically excluded from coverage under the Maine Workmen's Compensation Act, any employer in the state who does not carry insurance or does not provide state workmen's compensation benefits to his employees does so at his peril.

4. If an injury is incurred on the water and coverage is in effect, will the Industrial Accident Commission continue to rule as they have in some cases that they have no jurisdiction to rule on the claim?


Response: It is impossible to predict how the Industrial Accident Commission will rule on a particular claim. If the Jones Act applied in a particular case and the injured employee chose to proceed under it, the state workmen's compensation law would be superceded. If an injured employee sought state workmen's compensation coverage, a determination would have to be made as to whether his injury was under the exclusive jurisdiction of admiralty law or the laws of the United States. In light of the factual nature of these determinations, the extent of jurisdiction in a particular case is uncertain.

5. Based on the answers to the above four questions, should the Legislature enact a law to exempt fishermen from the provisions of our state workmen's compensation law on land or on sea?

Response: If the Legislature determines that it is appropriate to exempt fishermen from coverage under the state workmen's compensation law, it should do so as explicitly as possible. The present exclusion in the Maine Workmen's Compensation Law suggests an intent to exclude all those engaged in maritime employment who have a remedy for a particular injury under federal law of any sort. It would clarify the statute to state that in the exclusion.

If you have any further questions, I would be pleased to discuss them.

Very truly yours,



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cc: ✓ Donald Alexander