

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 903

H. P. 650 House of Representatives, February 15, 1967
Referred to Committee on Labor. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Conley of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

**AN ACT Clarifying Compensation for Occupational Disease Under Workmen's
Compensation Act.**

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 39, § 51, amended. Section 51 of Title 39 of the Revised Statutes is amended to read as follows:

§ 51. Entitlement to compensation and services generally

If an employee who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and has waived the same, as provided in section 28 receives a personal injury by accident arising out of and in the course of his employment **or is disabled by occupational disease**, he shall be paid compensation and furnished medical and other services by the employer who shall have assented to become subject to this Act.

Sec. 2. R. S., T. 39, § 52, amended. The first sentence of section 52 of Title 39 of the Revised Statutes, as repealed and replaced by section 1 of chapter 408 and as amended by section 4 of chapter 489, both of the public laws of 1965, is further amended to read as follows:

An employee sustaining a personal injury by accident arising out of and in the course of his employment **or is disabled by occupational disease** shall be entitled to reasonable and proper medical, surgical and hospital services, nursing, medicines, and mechanical, surgical aids, as needed, paid for by the employer.

Sec. 3. R. S., T. 39, § 182, amended. The first sentence of section 182 of Title 39 of the Revised Statutes is amended to read as follows:

Except as otherwise specifically provided, incapacity to work or death of an employee arising out of and in the course of the employment, and resulting from an occupational disease ~~as defined~~, shall be treated as the happening of a personal injury by accident arising out of and in the course of the employment, within the meaning of the Workmen's Compensation Act, and all the provisions of that Act shall apply to such occupational diseases.

Sec. 4. R. S., T. 39, § 183, amended. Section 183 of Title 39 of the Revised Statutes is amended to read as follows:

§ 183. Occupational disease defined

Whenever used in this law, the term "occupational disease" shall be construed to mean only a disease ~~set forth in section 193~~ which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process or employment and which arises out of and in the course of employment.

Sec. 5. R. S., T. 39, § 189, repealed and replaced. Section 189 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 189. Compensation limits

Compensation for partial or total incapacity or death from occupational disease shall be payable in the same manner and amounts as provided in sections 54, 55 and 58.

Sec. 6. R. S., T. 39, § 193, repealed and replaced. Section 193 of Title 39 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 193. Occupational loss of hearing

In case of loss of hearing resulting from occupational disease, the following rules shall be applicable in determining eligibility for compensation and the period during which compensation shall be payable:

1. **Definition.** Whenever used in this chapter, "occupational hearing loss" shall mean a sensorineural loss of hearing in one or both ears due to prolonged exposure to injurious noise in employment. Injurious noise means sound capable of producing occupational hearing loss.

2. **Limitations on sound frequencies.** Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000 and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second are not to be considered as constituting disability for hearing.

3. **Determination of hearing loss.** The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness shall be calculated as the average, in decibels, of the thresholds of hearing for the frequencies of 500, 1,000 and 2,000 per second. Hearing levels shall be measured by means of pure-tone ear-conduction audiometric instruments calibrated in accordance with American Standard Z24.5, 1951, American Standards Association, March 21, 1951, and in an area with ambient noise level within the limits specified in American Standards Association Criteria for Background Noise in Audio-

metric Room S3.1, 1960. If the losses of hearing average 15 decibels or less in the 3 frequencies, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 82 decibels or more in the 3 frequencies, then the same shall constitute and be total or 100 percent compensable hearing loss.

4. Compensation payable. There shall be payable as permanent partial disability for total occupational deafness of one ear 17 weeks of compensation, for total occupational deafness of both ears, 100 weeks of compensation, and for partial occupational deafness in one or both ears, compensation shall be paid for such periods as are proportionate to the relation which the hearing loss bears to the amount provided in this subsection for total loss of hearing in one or both ears, as the case may be. The amount of hearing loss shall be reduced by the average amount of hearing loss from nonoccupational causes found in the population at any given age according to the provisions set forth.

5. Measurement of hearing impairment. In measuring hearing impairment, the lowest measured losses in each of the 3 frequencies shall be added together and divided by 3 to determine the average decibel loss. For every decibel of loss exceeding 15 decibels, an allowance of $1\frac{1}{2}\%$ shall be made up to the maximum of 100%, which is reached at 82 decibels.

6. Binaural hearing impairment. In determining the binaural, both ears, percentage of loss, the percentage of impairment in the better ear shall be multiplied by 5. The resulting figure shall be added to the percentage of impairment in the poorer ear, and the sum of the 2 divided by 6. The final percentage shall represent the binaural hearing impairment.

7. Presbycusis. Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes found in the population at any given age, there shall be deducted from the total average decibel loss, $\frac{1}{2}$ decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

8. Filing of claims. No claim for compensation for occupational deafness may be filed until after 6 months' separation from the noisy work for the last employer in whose employment the employee was at any time during such employment exposed to harmful noise, and the last day of such period of separation from the noisy work shall be the date of disability.

9. Employers limit of liability. An employer shall become liable for the entire occupational deafness to which his employment has contributed, but if previous deafness is established by a hearing test or by other competent evidence, whether or not the employee was exposed to noise within 6 months preceding such test, the employer shall not be liable for previous loss so established, nor shall he be liable for any loss for which compensation has previously been paid or awarded.

No employer shall be liable for the payment of compensation for occupational deafness unless the employee claiming benefits shall have worked for such employer in employment exposing the employee to harmful noise for a total period of at least 90 days.

No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

10. Restriction on liability. No compensation shall be payable for temporary disability for loss of hearing due to exposure to injurious noise in employment.

Sec. 7. R. S., T. 39, § 194, amended. The last sentence of section 194 of Title 39 of the Revised Statutes is repealed, as follows :

~~In the event of disability from silicosis the employer shall provide reasonable medical treatment not to exceed \$7,000 in amount.~~

Sec. 8. R. S., T. 39, § 195, amended. Section 195 of Title 39 of the Revised Statutes is amended to read as follows :

§ 195. Disability due to radioactive properties

Notwithstanding any of the provisions of this chapter, the employee need not be exposed to radioactive substances for a period of 60 days or more, as otherwise stated under section 186, and the time for filing claims shall not begin to run in cases of incapacity ~~under section 193, item 18~~ until the person claiming benefits knew, or by exercise of reasonable diligence should have known of the casual relationship between his employment and his incapacity, or after incapacity, whichever is later.

Sec. 9. R. S., T. 39, § 196, repealed. Section 196 of Title 39 of the Revised Statutes is repealed.

Sec. 10. Effective date. This Act shall take effect November 30, 1967.