

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 165

S.P. 79

In Senate, February 3, 1987

Reference to the Committee on Labor suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator COLLINS of Aroostook.
Cosponsored by Representative ZIRNKILTON of Mount Desert.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

AN ACT to Assure Proper Notice of Workers'
Compensation Claims.

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

Sec. 1. 39 MRSA §51-B, sub-§3, as amended by PL 1985, c. 372, Pt. A, §9, is further amended to read:

3. Compensation for incapacity. The first payment of compensation for incapacity under section 54-A or 55-A is due and payable within 14 days after the employer has notice or knowledge of the injury or death as provided in section 63. In cases where the employee did not lose time from work within 5 scheduled work days following the injury, compensation for incapacity under section 54-A or 55-A is due and payable within 14 days of the date the employee asserts

1 ~~he~~ notifies the employer in writing that that lost
2 time is related to the injury. Subsequent incapacity
3 compensation benefit payments shall be made weekly
4 and in a timely fashion.

5 Sec. 2. 39 MRSA §63, as amended by PL 1973, c.
6 788, §227, is further amended to read:

7 §63. Notice of injury within 30 days

8 No proceedings for compensation under this Act,
9 except as provided, ~~shall~~ may be maintained unless a
10 written notice of the injury shall have been given
11 within 30 days after the date thereof. Such notice
12 shall include the time, place and cause, and the na-
13 ture of the injury, together with the name and ad-
14 dress of the person injured. It shall be given by the
15 person injured or by a person in his behalf; or, in
16 the event of his death, by his legal representatives,
17 or by a dependent or by a person in behalf of either.

18 Such notice shall be given to the employer, or to
19 one employer if there are more employers than one;
20 or, if the employer is a corporation, to any official
21 thereof; or to any employee designated by the employ-
22 er as one to whom reports of accidents to employees
23 should be made. It may be given to the general super-
24 intendent or to the foreman in charge of the particu-
25 lar work being done by the employee at the time of
26 the injury. If the employee is self-employed, notice
27 shall be given to the insurance carrier.

28 Sec. 3. 39 MRSA §64, as amended by PL 1973, c.
29 788, §228, is further amended to read:

30 §64. Sufficiency of notice; knowledge of employer;
31 extension of time for notice

32 A notice given under section 63 shall not be held
33 invalid or insufficient by reason of any inaccuracy
34 in stating any of the facts therein required for
35 proper notice, unless it is shown that it was the in-
36 tention to mislead and that the employer was in fact
37 misled thereby. ~~Want of such notice shall not be a~~
38 ~~bar to proceedings under this Act if it be shown that~~
39 ~~the employer or his agent had knowledge of the in-~~

1 ~~jury~~. Any time during which the employee is unable by
2 reason of physical or mental incapacity to give said
3 notice, or fails to do so on account of mistake of
4 fact, shall not be included in the 30-day period
5 specified. In case of the death of the employee with-
6 in said that period, there shall be allowed for giv-
7 ing said notice 3 months after such death.

8

STATEMENT OF FACT

9 The purpose of this bill is to assure that em-
10 ployers and insurance carriers are given adequate no-
11 tice of workers' compensation claims. Timely notice
12 is important to permit the employer and its insurance
13 carrier to determine whether the injury is work re-
14 lated, to take steps to assure prompt medical atten-
15 tion and to conduct early investigation of the cir-
16 cumstances of the injury.

17 Specifically, the bill address 2 problems related
18 to giving notice. First, the bill requires that no-
19 tice of an injury be in writing. Prior to 1984, the
20 fact that the notice of injury could be given orally
21 was less important because the notice did not auto-
22 matically trigger benefits. At that time, benefits
23 were not payable until a formal petition was filed by
24 the employee with the Workers' Compensation Commis-
25 sion. In 1983 the Legislature enacted the Maine Re-
26 vised Statutes, Title 39, section 51-B, which pro-
27 vides that if an employer does not file a "notice of
28 controversy" within 44 days after receiving notice of
29 an injury, the employer "accepts" that the injury is
30 compensable. As a result, a vague or casual comment
31 to a supervisor about a possible injury may start the
32 44-day time period without the employer or its insur-
33 ance carrier ever realizing it until the 44 days have
34 elapsed. As a result, this bill requires that the no-
35 tice be in writing if the employee is physically or
36 mentally able to do so. This should greatly reduce
37 the chance of any misunderstanding.

38 Second, the bill addresses the problem of notice
39 in the case of self-employed persons. In Daigle v.
40 Daigle, 505 A.2d 778 (Me. 1986) the Maine Supreme Ju-
41 dicial Court ruled in a 4 to 2 decision that the

1 Workers' Compensation Act did not require employees
2 who are self employed to give notice of an injury to
3 the insurance carrier. In effect, they are only re-
4 quired to give notice to themselves as employers.
5 This makes it impossible for the insurance carrier to
6 do its job. This bill requires employees who are self
7 insured to give notice of an injury directly to the
8 insurance carrier.

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