

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 631

S.P. 237

In Senate, March 9, 1987

Reference to the Committee on Labor suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate.  
Presented by Senator GAUVREAU of Androscoggin.

Cosponsored by Representative GREENLAW of Standish,  
Senator ANDREWS of Cumberland.

STATE OF MAINE

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

AN ACT Relating to Notice of Injury for  
Purposes of Workers' Compensation and  
Occupational Disease Claims.

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

Sec. 1. 39 MRSA §63-A is enacted to read:

§63-A. Notice of injury for occupational injury claims

A person shall give notice of an injury or death in respect of which compensation may be payable under this Act within 30 days after the date of that injury or death or 30 days after the employee is aware or, in the exercise of reasonable diligence, should have been aware of a relationship between the injury or death and the employment.

1           1. Lack of timely notice. Failure of the em-  
2 ployee to provide notice within the 30-day period  
3 shall not be a bar to a claim for benefits under this  
4 Act, unless the lack of timely notice results in ac-  
5 tual prejudice to the employer.

6           2. Actual prejudice defined. Actual prejudice  
7 includes, but is not limited to:

8           A. A showing that the claimant's injury was ag-  
9 gravated by the employer's inability to provide  
10 early diagnosis and treatment; and

11           B. A showing that the employer was hampered in  
12 his investigation of the claim and preparation of  
13 a defense due to lack of timely notice.

14           3. Burden of proof. The burden of proof on no-  
15 tice rests with the employee after the employer has  
16 made a preliminary showing the notice of law require-  
17 ments were not complied with by the employee.

18           Sec. 2. 39 MRSA §187-A is enacted to read:

19           §187-A. Notice of injury for purposes of occupation-  
20 al disease claims

21           A person shall give notice of an occupational  
22 disease or death in respect of which compensation is  
23 payable under this Act within 30 days after the date  
24 of that incapacity or death or 30 days after the em-  
25 ployee is aware or, in the exercise of reasonable  
26 diligence, should have been aware of a relationship  
27 between the occupational disease or death and the em-  
28 ployment.

29           1. Lack of timely notice. Failure of the em-  
30 ployee to provide notice within the 30-day period  
31 shall not be a bar to a claim for benefits under the  
32 Act, unless the lack of timely notice results in ac-  
33 tual prejudice to the employer.

34           2. Actual prejudice defined. Actual prejudice  
35 includes, but is not limited to:

36           A. A showing that the claimant's incapacity was  
37 aggravated by the employer's inability to provide  
38 early diagnosis and treatment; and



1           This bill resolves this unfairness by permitting  
2 an employer to defend on the basis of late notice on-  
3 ly if actual prejudice to the employer has occurred.  
4 The bill modifies the burden of proof requirement on  
5 the notice issue. Present law places the burden of  
6 proof on the employee once the employer raises the  
7 issue in its formal pleadings before the Worker's  
8 Compensation Commission. Employers frequently raise  
9 the issue of notice in cases where notice was clearly  
10 provided in order to get into evidence employee  
11 statements which would otherwise be inadmissible.

12           This bill places the initial burden of proof on  
13 the employer on the issue of notice. Once the em-  
14 ployer makes a preliminary showing, the employee  
15 failed to comply with the statutory notice require-  
16 ments, the burden of proof on the notice issue shifts  
17 to the employee.

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