

# MAINE STATE LEGISLATURE

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(New Draft of H.P. 407, L.D. 541)  
(New Title)  
FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1668

H.P. 1223 House of Representatives, May 26, 1987  
Reported by Representative ZIRNKILTON from the Committee  
on Labor and printed under Joint Rule 2.

EDWIN H. PERT, Clerk  
Original bill sponsored by Representative BEGLEY of  
Waldoboro. Cosponsored by Senator COLLINS of Aroostook and  
Representative ZIRNKILTON of Mount Desert.

STATE OF MAINE

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

1 AN ACT Concerning Mental Stress Claims Under  
2 the Workers' Compensation Act.  
3

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

6 39 MRSA §51, sub-§3 is enacted to read:

7 3. Mental injury caused by mental stress. Men-  
8 tal injury resulting from work-related stress does  
9 not arise out of and in the course of employment un-  
10 less it is demonstrated by clear and convincing evi-  
11 dence that:

12 A. The work stress was extraordinary and unusual  
13 in comparison to pressures and tensions experi-  
14 enced by the average employee; and

1           B. The work stress, and not some other source of  
2           stress, was the predominant cause of the mental  
3           injury.

4           The amount of work stress shall be measured by objec-  
5           tive standards and actual events rather than any  
6           misperceptions by the employee.

7           A mental injury is not considered to arise out of and  
8           in the course of employment if it results from any  
9           disciplinary action, work evaluation, job transfer,  
10           layoff, demotion, termination or any similar action,  
11           taken in good faith by the employer.

12                                 STATEMENT OF FACT

13           This new draft sets a higher standard of proof  
14           for workers' compensation claims of psychological in-  
15           jury caused by mental stress, the so-called  
16           "mental-mental" stress claims. The purpose of this  
17           new draft is to establish the type of such a psycho-  
18           logical injury claim which can be considered  
19           work-related in a just sense. The standards and lan-  
20           guage of the new draft are derived from laws and ju-  
21           dicial decisions in Maine and other states.

22           In 1972, the Law Court in Townsend v. Dept. of  
23           Public Safety, 404 A.2d 1014 (Me. 1979). adopted al-  
24           ternative standards of proof for such "mental-mental"  
25           stress claims. The court held that a claimant would  
26           have to demonstrate either:

27           1. That he was subjected to greater pressures  
28           and tensions than those experienced by the aver-  
29           age employee; or

30           2. Alternatively, by clear and convincing evi-  
31           dence, show that the ordinary and usual  
32           work-related pressures predominated in producing  
33           the injury.

34           This new draft completely eliminates Townsend's  
35           2nd alternative because the standard is vague and  
36           subjective and permits compensation to be awarded for  
37           mental injuries caused by everyday occurrences. The

1 new draft restricts the availability of compensation  
2 under the Workers' Compensation Act to cases which  
3 involve extraordinary and unusual work-related stress  
4 and further heightens the standard of proof necessary  
5 to justify an award of compensation.

6 The new draft requires that the injury be caused  
7 by extraordinary and unusual work stress for mental  
8 injury claims. This is the standard in many states,  
9 including Arizona. See Sloss v. Industrial  
10 Commission, 588 P.2d 303 (Ariz. 1979). The new draft  
11 also clarifies that the measurement of this  
12 work-related stress is not to be based on the  
13 employee's subjective misperceptions, even if honest,  
14 but on objective standards. This is the majority  
15 rule among the states. The language is patterned on  
16 a Michigan law and case law from Oregon, New Jersey  
17 and Pennsylvania.

18 The new draft requires that the work stress must  
19 predominate in causing the psychological injury. No  
20 compensation may be awarded for injuries which are  
21 not primarily caused by the work stress. Finally,  
22 all of the requirements necessary to prove a  
23 "mental-mental" claim must be demonstrated by the  
24 high evidentiary standard of clear and convincing ev-  
25 idence. This strong evidentiary standard is neces-  
26 sary because of the subjective and intangible nature  
27 of psychiatric and psychological evidence. The new  
28 draft excepts from causation of mental stress normal  
29 employment decisions made in good faith by the em-  
30 ployer.

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