

MAINE STATE LEGISLATURE

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L.D. 855
(Filing No. S- 295)

STATE OF MAINE
SENATE
114TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 318, L.D. 855, Bill, "An Act Relating to Notice of Injury for Purposes of Workers' Compensation and Occupational Disease Claims"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 39 MRSA §64, as amended by PL 1973, c. 788, §228, is further amended to read:

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

A notice given under section 63 shall not be held invalid or insufficient by reason of any inaccuracy in stating any of the facts therein required for proper notice, unless it is shown that it was the intention to mislead and that the employer was in fact misled thereby. Want of such notice shall not be a bar to proceedings under this Act if it be shown that the employer or his the employer's agent had knowledge of the injury. Any time during which the employee is unable by reason of physical or mental incapacity to give said the notice, or fails to do so on account of mistake of fact, shall not be included in the 30-day period specified; nor shall any time during which the employee failed to provide notice due to excusable neglect, up to 180 days from the date of the employee's injury, be included in the 30-day period. In case of the death of the employee within said that period, there shall be allowed for giving said the notice 3 months after such death.

Sec. 2. Application. This Act applies to all employees injured on or after the effective date of this Act and to all employees who are injured before the effective date of this Act and whose claims under the Workers' Compensation Act have not been barred as of the effective date of this Act for failure to provide notice to an employer.'

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STATEMENT OF FACT

This amendment completely replaces the bill and provides an exception to the workers' compensation notice requirement for an employee whose failure to provide timely notice was due to excusable neglect. Current law, with certain limited exceptions, requires an employee to notify an employer of a work-related injury within 30 days after the injury occurs. Failure to provide timely notice results in the automatic dismissal of the employee's workers' compensation claim, even if the injury is indisputably work-related. The amendment delays the start of this 30-day period for any time in which the failure to provide timely notice was due to "excusable neglect" on the part of the employee. This "excusable neglect" exception is limited to 180 days following the employee's injury.

The "excusable neglect" exception created by the amendment uses the same standard currently applicable to employers who fail to file a notice of controversy within the time periods prescribed by the Maine Revised Statutes, Title 39, section 51-B. The "excusable neglect" standard is derived from a similar exception provided to civil litigants under the Maine Rules of Civil Procedure, Rule 6(b)(2). To fall within the exception, an employee must demonstrate a valid good faith reason for failing to provide timely notice and must also demonstrate the absence of prejudice to the employer in preparing or presenting a defense to the employee's claim.

Finally, the amendment adds an application section.

Reported by the Majority for the Committee on Labor.
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