

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

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Legislative Document

No. 855

S.P. 318

In Senate, March 21, 1989

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator GAUVREAU of Androscoggin.

Cosponsored by Senator MATTHEWS of Kennebec, Representative RUHLIN of Brewer and Representative RAND of Portland.

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STATE OF MAINE

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

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An Act Relating to Notice of Injury for Purposes of Workers' Compensation and Occupational Disease Claims.

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

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

5 **§63-A. Notice of injury for occupational injury claims**

7 An employee or person acting on the employee's behalf shall  
9 give notice of an injury or death in respect of which  
11 compensation may be payable under this Act within 30 days after  
13 the date of that injury or death or 30 days after the employee or  
15 person acting on the employee's behalf is aware or, in the  
17 exercise of reasonable diligence, should have been aware, of a  
19 relationship between the injury or death and the employment.

21 1. Lack of timely notice. Failure to provide notice within  
23 the 30-day period shall not be a bar to a claim for benefits  
25 under this Act, unless the lack of timely notice results in  
27 actual prejudice to the employer.

29 2. Actual prejudice defined. Actual prejudice includes,  
31 but is not limited to:

33 A. A showing that the claimant's injury was aggravated by  
35 the employer's inability to provide early diagnosis and  
37 treatment; and

39 B. A showing that the employer was hampered in  
41 investigation of the claim and preparation of a defense due  
43 to lack of timely notice.

45 3. Burden of proof. The burden of proof on notice rests  
47 with the employee or person acting on the employee's behalf after  
49 the employer has made a preliminary showing that the  
51 notice-of-law requirements were not complied with by the employee  
53 or a person on the employee's behalf.

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

57 **§187-A. Notice of injury for purposes of occupational disease**  
59 **claims**

61 An employee or person acting on the employee's behalf shall  
63 give notice of an occupational disease or death in respect of  
65 which compensation is payable under this Act within 30 days after  
67 the date of that incapacity or death or 30 days after the  
69 employee or person acting on the employee's behalf is aware or,  
71 in the exercise of reasonable diligence, should have been aware,  
73 of a relationship between the occupational disease or death and  
75 the employment.

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

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

9  
10 A. A showing that the claimant's incapacity was aggravated  
11 by the employer's inability to provide early diagnosis and  
12 treatment; and

13  
14 B. A showing that the employer was hampered in  
15 investigation of the claim and preparation of a defense due  
16 to late notice.

17  
18 3. Burden of proof. The burden of proof on notice rests  
19 with the employee or person acting on the employee's behalf after  
20 the employer has made a preliminary showing that the  
21 notice-of-law requirements were not complied with by the employee  
22 or a person on the employee's behalf.

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27 **STATEMENT OF FACT**

28  
29 An employee's claim for workers' compensation and  
30 occupational disease benefits is subject to 2 strict procedural  
31 requirements. The employee must properly notify the employee's  
32 employer of the injury or disease within 30 days after its  
33 occurrence and must file a claim for benefits within 2 years.  
34 This bill pertains solely to the notice provisions of the  
35 workers' compensation and occupational disease laws.

36  
37 Under present law, an employee must establish compliance  
38 with the 30-day notice provision once the employer has raised the  
39 issue of notice as a defense. Occasionally, an otherwise  
40 compensable claim is denied as the result of the employee's  
41 failure to follow the strict notice requirements of the Act, even  
42 though the employer was in no way prejudiced by the delay in  
43 notice. In this situation a basic injustice occurs. The  
44 purposes of the notice requirement are to allow employers an  
45 opportunity to promptly diagnose and treat worker injuries, thus  
46 reducing the severity of the injury and the number of work days  
47 lost; allow the employer to reasonably investigate the worker's  
48 claim and prepare a defense; and allow employers to institute  
49 safety procedures to reduce the likelihood of future similar  
injuries.

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The purposes of the Workers' Compensation Act are not advanced by allowing an employer to insulate itself from liability on the mere technicality of late notice. In such a case the general public, rather than the employer, is required to support the injured worker through welfare benefits, even though the employer was actually responsible for the worker's injury.