

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 362

S.P. 150

In Senate, February 5, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GAUVREAU of Androscoggin
Cosponsored by Senator ESTY of Cumberland, Speaker MARTIN of Eagle Lake and
Representative McKEEN of Windham.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act Relating to Notice of Injury under the Workers' Compensation
Act.



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

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

6 §63-A. Late notice; standard for barring claim

8 This section and section 64 govern the validity of an
10 employee's notice of injury provided after the expiration of the
12 30-day period specified in section 63.

14 1. Exception to bar. Failure to provide notice within the
16 30-day period is not a bar to proceedings under this Act if:

18 A. The employee provides notice otherwise in accordance
20 with this Act to the employer after the 30-day period
22 expires;

24 B. The employee had good cause not to provide timely notice
26 or the failure to provide timely notice was due to excusable
28 neglect on the part of the employee; and

30 C. The lack of timely notice does not result in actual
32 prejudice to the employer.

34 2. Actual prejudice defined. For purposes of this section,
36 "actual prejudice" includes, but is not limited to:

38 A. A showing that the claimant's incapacity or impairment
40 was aggravated by the employer's inability to provide early
42 diagnosis and treatment due to the lack of timely notice; or

44 B. A showing that the employer was hampered in
46 investigating the claim and preparing a defense due to the
48 lack of timely notice.

50 The employer has the burden of demonstrating the existence of
52 actual prejudice.

54 **Sec. 2. Application.** This Act applies to any employee injured
56 on or after the effective date of this Act and to any employee
58 who was injured before the effective date of this Act and whose
60 claim under the Workers' Compensation Act has not been barred as
62 of the effective date of this Act for failure to provide notice
64 to the employer.

66 **STATEMENT OF FACT**

68 Currently, in order to qualify for workers' compensation
70 benefits, an injured employee must provide notice of the injury
72 to the employer within 30 days after its occurrence. If an

2 employee fails to provide adequate notice within this time
period, the employee's claim is barred.

4 This bill creates an exception to the requirement that
notice be provided to an employer within 30 days. It permits
6 claims to proceed even if notice has been given after the 30-day
period expires if the employee can demonstrate that the employee
8 had good cause for failing to meet the 30-day deadline or the
failure to provide timely notice was due to the employee's
10 excusable neglect. These exceptions allow an employee's claim to
proceed if the failure to provide notice was due to a valid good
12 faith reason. In addition to requiring a showing of good cause
or excusable neglect, the bill requires that the lack of timely
14 notice must not result in actual prejudice to the employer.
Actual prejudice is defined to include a showing that, due to the
16 late notice, the employee's injury was aggravated or the employer
was hampered in investigating the claim and preparing a defense.
18 The employer bears the burden of proving the existence of actual
prejudice since the employer is in the best position to obtain
20 evidence regarding this issue. These requirements ensure that
the purposes served by the 30-day notice requirement are not
22 harmed by the bill.