MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 871

H.P. 611

House of Representatives, February 27, 1991

Reference to the Committee on Labor suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative CLARK of Millinocket.
Cosponsored by Representative McHENRY of Madawaska, Representative TRACY of Rome and Senator CONLEY of Cumberland.

STATE OF MAINE

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

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
	An employee or person acting on the employee's behalf shall give notice to an employer of an injury or death, for which
	compensation may be payable under this Act, within 30 days after the date of that injury or death or within 30 days after the
	employee or person acting on the employee's behalf 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. Lack of timely notice. Failure to provide notice within
	the 30-day period does not bar a claim for benefits under this Act, unless the lack of timely notice results in actual prejudice
	to the employer.
	2. Actual prejudice defined. Actual prejudice includes,
	but is not limited to a showing that:
	A. The claimant's injury was aggravated by the employer's
	inability to provide early diagnosis and treatment; and
	B. The employer was hampered in investigation of the claim
	and preparation of a defense due to lack of timely notice.
	3. Burden of proof. The burden of proof regarding notice
	rests with the employee or person acting on the employee's behalf after the employer has made a preliminary showing that the notice
	requirements were not complied with by the employee or a person
,	on the employee's behalf.
	Sec. 2. 39 MRSA §187-A is enacted to read:
	\$187-A. Notice of injury for purposes of occupational disease
	<u>claims</u>
	An employee or person acting on the employee's behalf shall
	give notice of an occupational disease or death, for which compensation may be payable under this Act, within 30 days after
	the date of that incapacity or death or within 30 days after the
	employee or person acting on the employee's behalf is aware or, in the exercise of reasonable diligence, should have been aware,
	of a relationship between the occupational disease or death and
	the employment.

Act, unless the lack of timely notice results in actual prejudice

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6	employer's inability to provide early diagnosis and
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8	
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10	and preparation of a defense due to lack of timely notice.
12	3. Burden of proof. The burden of proof regarding notice
	rests with the employee or person acting on the employee's behalf
14	after the employer has made a preliminary showing that the notice
7.7	
1.0	requirements were not complied with by the employee or a person
16	on the employee's behalf.
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	STATEMENT OF FACT
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	Currently, an employee's claim for workers' compensation and
22	occupational disease benefits is subject to 2 strict procedural
	requirements. The employee must properly notify the employee's
24	employer of the injury or disease within 30 days after its
	occurrence and must file a claim for benefits within 2 years.
26	This bill pertains solely to the notice provisions of the
	workers' compensation and occupational disease laws.
2.8	workers compensacion and occupacional disease laws.
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	Under current law, an employee must establish compliance
30	with the 30-day notice provision once the employer has raised the
	issue of notice as a defense. Occasionally, an otherwise
32	compensable claim is denied as the result of the employee's
	failure to follow the strict notice requirements of the Workers'
34	Compensation Act, even though the employer was in no way
	prejudiced by the delay in notice. In this situation, a basic
36	injustice occurs. The purposes of the notice requirement are to
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allow employers an opportunity to diagnose and treat worker

injuries promptly, thus reducing the severity of the injury and the number of work days lost; allow the employer to investigate

reasonably the worker's claim and prepare a defense; and allow employers to institute safety procedures to reduce the likelihood

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of future similar injuries.