

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 380

H.P. 302

House of Representatives, January 30, 2001

An Act to Restore an Injured Employee's Right to Sue an Employer for Damages.

Reference to the Committee on Labor suggested and ordered printed.

Millicent M. MacFarland

MILLICENT M. MacFARLAND, Clerk

Presented by Representative PINEAU of Jay.
Cosponsored by Representatives: BRYANT of Dixfield, DUNLAP of Old Town,
MATTHEWS of Winslow, STANLEY of Medway, Senator: CATHCART of Penobscot.

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

2
4 **Sec. 1. 39-A MRSA §104, first ¶**, as amended by PL 1995, c. 297, §1, is further amended to read:

6 An employer who has secured the payment of compensation in
8 conformity with sections 401 to 407 is exempt from civil actions,
10 either at common law or under sections 901 to 908; Title 14,
12 sections 8101 to 8118; and Title 18-A, section 2-804, involving
14 personal injuries sustained by an employee arising out of and in
16 the course of employment, or for death resulting from those
18 injuries. An employer that uses a private employment agency for
20 temporary help services is entitled to the same immunity from
22 civil actions by employees of the temporary help service as is
24 granted with respect to the employer's own employees as long as
26 the temporary help service has secured the payment of
28 compensation in conformity with sections 401 to 407. "Temporary
30 help services" means a service where an agency assigns its own
32 employees to a 3rd party to work under the direction and control
of the 3rd party to support or supplement the 3rd party's work
force in work situations such as employee absences, temporary
skill shortages, seasonal work load conditions and special
assignments and projects. These exemptions from liability apply
to all employees, supervisors, officers and directors of the
employer for any personal injuries arising out of and in the
course of employment, or for death resulting from those
injuries. These exemptions also apply to occupational diseases
sustained by an employee or for death resulting from those
diseases. These exemptions do not apply to an illegally employed
minor as described in section 408, subsection 2 or in cases when
the employee's injury is due to the gross negligence or illegal
acts of an employer as described in section 408, subsection 3.

34 **Sec. 2. 39-A MRSA §408, first ¶**, as enacted by PL 1991, c. 885,
Pt. A, §8 and affected by §§9 to 11, is amended to read:

36 Except as provided in subsection subsections 2 and 3, an
38 employee of an employer who has secured the payment of
40 compensation as provided in sections 401 to 407 is deemed to have
42 waived the employee's right of action at common law and under
section 104 to recover damages for the injuries sustained by the
employee.

44 **Sec. 3. 39-A MRSA §408, sub-§3** is enacted to read:

46 **3. Injuries due to gross negligence or illegal acts of**
48 **employer. An employee injured due to the gross negligence or**
illegal act of the employee's employer is not considered to have
waived the employee's right of action at common law and under
50 **section 104. Any right of action available under this subsection**

2 is in addition to any right to compensation and benefits the
3 injured employee has under this Act and may not be waived or
4 modified by the employee or the employer.

6
8
SUMMARY

10 This bill restores to an injured employee the right to sue
11 the employer for damages if the injury is due to the gross
12 negligence or illegal act of the employer. Any recovery is in
13 addition to that available to the employee under the Maine
14 Workers' Compensation Act of 1992. Under this bill, the
employee's right to sue may not be waived or modified.