

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1385

S.P. 550

In Senate, March 28, 2023

**An Act to Amend the Maine Workers' Compensation Act of 1992
Regarding Employee Liability**

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator LIBBY of Cumberland.
Cosponsored by Representative POMERLEAU of Standish.

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

2 **Sec. 1. 39-A MRSA §104, first ¶**, as amended by PL 2017, c. 402, Pt. C, §109 and
3 affected by PL 2019, c. 417, Pt. B, §14, is further amended to read:

4 An employer who has secured the payment of compensation in conformity with
5 sections 401 to 407 is exempt from civil actions, either at common law or under sections
6 901 to 908; Title 14, sections 8101 to 8118; and Title 18-C, section 2-807, involving
7 personal injuries sustained by an employee arising out of and in the course of employment,
8 or for death resulting from those injuries. An employer that uses a private employment
9 agency for temporary help services is entitled to the same immunity from civil actions by
10 employees of the temporary help service as is granted with respect to the employer's own
11 employees as long as the temporary help service has secured the payment of compensation
12 in conformity with sections 401 to 407. "Temporary help services" means a service where
13 an agency assigns its own employees to a 3rd party to work under the direction and control
14 of the 3rd party to support or supplement the 3rd party's work force in work situations such
15 as employee absences, temporary skill shortages, seasonal work load conditions and special
16 assignments and projects. These Except as provided in section 104-A, these exemptions
17 from liability apply to all employees, supervisors, officers and directors of the employer
18 for any personal injuries arising out of and in the course of employment, or for death
19 resulting from those injuries. These exemptions also apply to occupational diseases
20 sustained by an employee or for death resulting from those diseases. These exemptions do
21 not apply to an illegally employed minor as described in section 408, subsection 2.

22 **Sec. 2. 39-A MRSA §104-A** is enacted to read:

23 **§104-A. Liability of an employee**

24 Notwithstanding section 104, an employee is not exempt from civil actions, either at
25 common law or under Title 14, sections 8101 to 8118 or Title 18-C, section 2-807, if the
26 employee intentionally or with gross negligence or while committing a criminal act causes
27 another employee's injury or death for which compensation or medical benefits are payable
28 under this Act. The injured employee, or the legal representatives of the employee, may,
29 at the employee's option, either claim the compensation and benefits payable under this Act
30 or obtain damages from or proceed at law against the liable employee to recover damages.

31 If the injured employee elects to claim compensation and benefits under this Act, any
32 employer having paid the compensation or benefits or having become liable for
33 compensation or benefits under any compensation payment scheme has a lien for the value
34 of compensation paid on any damages subsequently recovered against the liable employee.
35 If the injured employee or the employee's beneficiary fails to pursue the remedy against the
36 liable employee within 30 days after written demand by the employer, the employer is
37 subrogated to the rights of the injured employee and is entitled to enforce liability in the
38 employer's own name or in the name of the injured party, the accounting for the proceeds
39 to be made on the basis provided in this section.

40 If the injured employee or the employee's beneficiary recovers damages from a liable
41 employee, the injured employee shall repay to the employer, out of the recovery against
42 the liable employee, the benefits paid by the employer under this Act, less the employer's
43 proportionate share of cost of collection, including reasonable attorney's fees.

1 If the employer recovers from the liable employee damages in excess of the
2 compensation and benefits paid or for which the employer has become liable, then any
3 excess must be paid to the injured employee, less a proportionate share of the expenses and
4 cost of actions or collection, including reasonable attorney's fees. Settlement of any such
5 subrogation claims and the distribution of the proceeds therefrom must be approved by the
6 court in which the subrogation action is pending or to which it is returnable; or if not in
7 suit, by the board. When the court in which the subrogation action is pending or to which
8 it is returnable is in vacation, the judge of the court or, if the action is pending in or
9 returnable to the Superior Court, any Justice of the Superior Court may approve the
10 settlement of the action and the distribution of the proceeds. The beneficiary is entitled to
11 reasonable notice and the opportunity to be present in person or by counsel at the approval
12 proceeding.

13 For purposes of this section, "gross negligence" means willful, wanton and reckless
14 conduct affecting the life or property of another.

15 **SUMMARY**

16 This bill amends the Maine Workers' Compensation Act of 1992 to provide that an
17 employee who intentionally or with gross negligence or while committing a criminal act
18 causes another employee's injury or death is not exempt from civil actions, either at
19 common law or under the Maine Revised Statutes, Title 14, sections 8101 to 8118 or Title
20 18-C, section 2-807. This bill allows the injured employee, or the legal representative of
21 that employee, to either claim the compensation and benefits payable under the workers'
22 compensation laws or obtain damages from or proceed at law against the offending
23 employee to recover damages.

24 If the injured employee or the employee's beneficiary recovers damages from an
25 offending employee, the injured employee shall repay to the employer, out of the recovery
26 against the offending employee, the benefits paid by the employer under the workers'
27 compensation laws, less the employer's proportionate share of cost of collection, including
28 reasonable attorney's fees.

29 If the injured employee elects to claim compensation and benefits under the workers'
30 compensation laws, any employer having paid the compensation or benefits or having
31 become liable for compensation or benefits under any compensation payment scheme has
32 a lien for the value of compensation paid on any damages subsequently recovered against
33 the offending employee. If the employee or the employee's beneficiary fails to pursue the
34 remedy against the offending employee within 30 days after written demand by the
35 employer, the employer is subrogated to the rights of the injured employee and is entitled
36 to enforce liability in the employer's own name or in the name of the injured party.

37 If the employer recovers from the offending employee damages in excess of the
38 compensation and benefits paid or for which the employer has become liable, then any
39 excess must be paid to the injured employee less a proportionate share of the expenses and
40 cost of actions or collection, including reasonable attorney's fees.