

# MAINE STATE LEGISLATURE

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SIXTH REVISION

THE  
REVISED STATUTES

OF THE

STATE OF MAINE

PASSED SEPTEMBER 29, 1916, AND TAKING  
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By the Authority of the Legislature

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ine label, trade-mark, device or form of advertisement of any such association or union, in any manner not authorized by such association or union, shall be punished by imprisonment for not more than six months, or by a fine not exceeding one hundred dollars; and, for a second offense, shall be punished by imprisonment for not less than thirty days nor more than one year, or by fine of not less than fifty, nor more than three hundred dollars.

Sec. 43. Punishment for wilful, unauthorized use of name or seal. R. S. c. 40, § 35. Whoever in any way wilfully uses the name or seal of any such association or union, or officer thereof, in and about the sale of goods or otherwise, without the authority of such association or union, shall be punished by imprisonment for not more than six months, or by a fine not exceeding one hundred dollars; and, for a second offense shall be punished by imprisonment for not less than thirty days nor more than one year, or by fine of not less than fifty, nor more than three hundred dollars.

Sec. 44. Prosecution of suits. R. S. c. 40, § 36. In all cases where such association or union is not incorporated, suits and proceedings hereunder may be commenced and prosecuted by an officer or member of such association or union, for and in behalf of and for the benefit of such association or union.

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CHAPTER 50.

## Compensation for Personal Injuries to Employees.

Sections 1-48 The Workmen's Compensation Act.

Sections 49-57 The Employer's Liability Law.

## The Workmen's Compensation Act.

Sec. 1. Title of law. Words and phrases defined. 1915, c. 295, §§ 1, 51. The first forty-eight sections of this chapter shall be known, and may be cited, and referred to in proceedings and agreements thereunder, as "The Workmen's Compensation Act"; the phrase "this act," as used in said sections, refers thereto.

The following words and phrases as used in the first forty-eight sections of this chapter, shall, unless a different meaning is plainly required by the context, have the following meaning:

I. "Employer" shall include corporations, partnerships, natural persons, the state, counties, water districts and all other quasi-municipal corporations of a similar nature, cities and also such towns as vote to accept the provisions of this act, and if employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this act.

II. "Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except: (a) farm laborers; (b) domestic servants; (c) masters of and seamen on

vessels engaged in interstate or foreign commerce; (d) person whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer; (e) officials of the state, counties, cities, towns or water districts and other quasi-municipal corporations of a similar character. Policemen and firemen shall be deemed employees within the meaning of this act. If, however, any policeman or fireman claims compensation under this act, there shall be deducted from such compensation any sum which such policeman, fireman or other person may be entitled to receive for any pension or other benefit fund to which the state or municipal body may contribute. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

III. "Assenting employer" shall include all employers who have complied with the provisions of section six hereof, and to whom a certificate authorized by said section has been issued, but only so long as such certificate remains in force.

IV. "Commissioner" shall mean the commissioner of labor and industry of the State of Maine. "Commission" shall mean the industrial accident commission created by section twenty-nine hereof.

V. "Industrial Accident Insurance Policy" shall mean a policy in such form as the insurance commissioner of the State of Maine approves, issued by any stock or mutual casualty insurance company that may be now or hereafter authorized to do business in this state, which in substance and effect guarantees the payment of the compensation, medical and hospital services, and expense of sickness and burial herein provided for, in such instalments, at such time or times, and to such person or persons and upon such conditions as in this act provided. Whenever a policy or certificate of renewal thereof is filed as herein provided, a copy of such policy certified by the insurance commissioner of the State of Maine or his deputy, shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

VI. "Insurance Company" shall mean any casualty insurance company authorized to do business in the State of Maine, which may issue policies conforming to the provisions of the paragraph next preceding. Whenever in this act relating to procedure the words "Insurance Company" is used, it shall be held to apply only to cases in which the employer has elected to file such policy, instead of furnishing satisfactory proof of his ability to pay compensations and benefits hereinafter provided direct to his employees.

VII. "Representatives" may include executors, administrators, and the dependents of deceased employees. Payments may be made to dependents directly, or to executors or administrators. If payments are made to the latter, they shall forthwith pay the same to the dependents as the same are hereinafter defined.

VIII. "Dependents" shall mean members of the employee's family or next of kin, who are wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons

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shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives, or from whom she was living apart for a justifiable cause, or because he had deserted her or upon whom she is dependent at the time of the accident.

(b) A husband upon a wife with whom he lives, or upon whom he is dependent at the time of the accident.

(c) A child or children, including adopted and step-children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living, or upon whom he is or they are dependent at the time of the death of said parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation shall be divided equally among them.

In all cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly dependent the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is anyone wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States, or of the Dominion of Canada, the compensation paid to any such dependent shall be one-half that hereinafter provided in case of the death of an employee.

IX. "Average weekly wages, earnings or salary," of an injured employee shall be computed as follows:

(a) If the injured employee has worked in the same employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his "average weekly wages" shall be three hundred times the average daily wages, earnings or salary which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two. But where the employee is employed regularly during the ordinary working hours concurrently by two or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings or salary received by him from all such employers were wages, earnings or salary earned in the employment of the employer for whom he was working at the time of the accident.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his "average weekly wages" shall be three hundred times the average daily wages, earnings or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment, in the same or a neighboring place, has earned

in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two.

(c) In cases where the foregoing methods of arriving at the "average weekly wages, earnings or salary" of the injured employee cannot reasonably and fairly be applied, such "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(d) Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings or salary.

(e) The fact that an employee has suffered a previous injury or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the previous provisions of this section.

In the sections of this act relating to notices and procedure, all powers and rights granted to, or duties and obligations imposed upon employers or employees, shall inure to the benefit of and may be exercised by guardians of minors or other incapacitated persons and the legal representatives of deceased persons.

**Sec. 2. Defenses not permitted.** 1915, c. 295, § 2. In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death, resulting from personal injury so sustained, it shall not be a defense (a) that the employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee had assumed the risk of the injury.

**Sec. 3. Section two not applicable to certain employers.** 1915, c. 295, § 3. The provisions of section two shall not apply to employers who employ five or less workmen or operatives regularly in the same business, and in case of the employer being engaged in more than one kind of business, in one of which he employs five or more workmen or operatives regularly, and in another employs five or less workmen or operatives, the fact that he elects to become subject to the provisions of this act shall not bring him within the provisions of it as to any such business in which he employs five or less workmen or operatives, and at the time of electing to become subject to the provisions of this act, if engaged in more than one kind of business, he shall specify the business or businesses in which he is engaged and concerning which he desires to come under the provisions hereof.

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**Sec. 4. Law not applicable to persons engaged in domestic service, agriculture or logging.** 1915, c. 295, § 4. The provisions of this act shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees engaged in domestic service or agriculture, or in the work of cutting, hauling, rafting or driving logs.

**Sec. 5. Section two shall not apply to assenting employers; such employers exempt from other suits.** 1915, c. 295, § 5. The provisions of section two shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees of an employer who has elected to become subject to this act in the manner provided in section six hereof. In the case of personal injury sustained by an employee in the course of his employment or of death resulting from personal injury so sustained, assenting employers shall be exempt from suits either at common law or under section nine of chapter ninety-two, or under sections forty-nine to fifty-six, both inclusive, of this chapter.

**Sec. 6. I. Employer may become assenting employer; approval of classifications of policies of insurance companies assuming risks; may withdraw approval.** 1915, c. 295, § 6. Any employer desiring to become an assenting employer as herein provided, may file with the commission at its office in Augusta, his written assent in such form as the commission approves and also file with said commission a copy of an industrial accident insurance policy in any stock or mutual insurance company or association authorized to do business in the State of Maine, said policy being stamped with the approval of the insurance commissioner of said State of Maine.

Any insurance company issuing policies covering the payment of compensation provided for in this act shall file with the insurance commissioner a copy of the form thereof, and no such policy shall be issued until said insurance commissioner has approved the same. Every such insurance company shall file with the insurance department its classification of risks and premiums relating thereto, and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply. The insurance commissioner may withdraw his approval of any classification of risks or premium rates relating thereto, and he may at any time approve a revised classification of risks and premium rates relating thereto.

**II. Employer desiring to become an assenting employer shall file written assent with the commission, and deposit satisfactory security.** Any employer desiring to become an assenting employer as herein provided, may file with the commission his written assent in such form as said commission approves, after furnishing satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits herein provided, and upon the deposit of cash, satisfactory securities or a bond, as the commission may determine, such bond to run to the treasurer of state, and his successor in office, in such sum as said commission may determine and shall be conditional upon the faithful performance of all the provisions of this act relating to the payment of compensations and

benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the treasurer of state and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. Provided, however, that the commission may at any time in their discretion deny to an assenting employer the right to continue in the exercise of the option granted by this paragraph.

**III. Commissioner shall issue certificate to employer.** Upon the filing of such assent and complying with the provisions of paragraphs I or II of this section, the commissioner shall issue to such employer a certificate stating that such employer has conformed to the provisions of this act and setting forth the date on which the policy filed under paragraph I expires. The certificate thus issued shall remain in full force until the date of the expiration of such policy, or until withdrawn as provided in paragraph II, or until the employer assenting under paragraph II shall notify the commissioner that he withdraws his assent, or files an industrial accident policy in place of the securities so deposited by him.

**IV. Commission may approve system in use January 1, 1915; approval of substitute system.** Subject to the approval of the commission any employer may continue with his employees in lieu of the compensation and insurance provided by this act the system of compensation, benefit or insurance which was used by such employer on the first day of January, nineteen hundred fifteen. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees, unless it confers benefits in addition to those provided under this act at least commensurate with such contributions. Such substitute system may be terminated by the commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

**V. Notice shall be kept posted in place of business.** A notice in such form as the commission approves, stating that the employer has conformed to the provisions of this act and the date of the expiration of the policy filed, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or place of business, conspicuous and accessible to his employees. For wilful failure to post such notices, the employer shall be subject to a penalty of ten dollars per day for every day of such wilful neglect, to be recovered by complaint or indictment. Such failure to so post notices shall not, however, affect the rights or liabilities of the employer or the employee hereunder.

**Sec. 7. Employee subject to this act waives right of action at common law, unless notice is given; requisites of notice.** 1915, c. 295, § 7. An employee of an employer who shall have elected to become subject to the



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provisions of this act as provided in section six of this act shall be held to have waived his right of action at common law to recover damages for personal injuries; also under section nine of chapter ninety-two, or under sections forty-nine to fifty-six, both inclusive, of this chapter, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right. and within ten days thereafter have filed a copy thereof with the commission or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commission within ten days after notice by the employer, as above provided, of such election, and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commissioner a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age illegally permitted under the laws of this state shall be deemed sui juris for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law, or under the statutes above referred to, to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law, or under the statutes above referred to, may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

**Sec. 8. Injury or death caused by wilful intention or intoxication shall not be compensated for. 1915, c. 295, § 8.** No compensation shall be allowed for the injury or death of an employee where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty. This provision as to intoxication shall not apply, if the employer knew or in the exercise of ordinary care might have known that the employee was intoxicated or that he was in the habit of becoming intoxicated while on duty.

**Sec. 9. Employee shall be incapacitated two weeks before compensation. 1915, c. 295, § 9.** No compensation except as provided by section ten of this act shall be paid under this act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but, if such incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

**Sec. 10. Employer shall furnish medical aid during first two weeks.** 1915, c. 295, § 10. During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services, and medicines when they are needed, but the amount of the charge for such services and medicines shall not exceed the sum of thirty dollars, unless in case of major surgical operations being required, and the employer and employee being unable to agree upon the same, the amount to be allowed for such medical services or medicines shall be fixed by the commission upon petition by either party setting forth the facts.

**Sec. 11. Action for injury of employee not having given notice.** 1915, c. 295, § 11. If an employee who has not given notice of his claim of common law or statutory rights or action, or who has given such notice and has waived the same, as provided in section seven of this act, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

**Sec. 12. Employer's liability for death.** 1915, c. 295, § 12. If death results from the injury, the employer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings; or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury; provided, however, that if the dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and step-children, under the age of eighteen years, or over said age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury. Provided, however, that if the deceased leaves no dependents at the time of the injury, the employer shall not be liable to pay compensation under this act except as specifically provided in the following section.

**Sec. 13. Compensation when employee has no dependents.** 1915, c. 295, § 13. If the employee dies as a result of the injury, leaving no dependents at the time of the injury, the employer shall pay, in addition to any com-

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pensation provided for in this act, the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

**Sec. 14. Compensation for total disability; total disability, how determined.** 1915, c. 295, § 14. While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to one-half his average weekly wages, earnings or salary, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury, nor the amount more than three thousand dollars. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity.

**Sec. 15. Compensation for partial disability.** 1915, c. 295, § 15. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to one-half the difference between his average weekly wages, earnings or salary, before the injury and the average weekly wages, earnings or salary which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

**Sec. 16. Schedule of accidents, provided for.** 1915, c. 295, § 16. In cases included in the following schedule the disability in each such case shall be deemed to be total for the period specified and after such specified period, if there be a partial incapacity for work resulting from the injury specified, the employee shall receive compensation while such partial incapacity continues under the provisions of section fifteen, but in no case shall compensation continue more than three hundred weeks after the injury. The compensation to be paid for the injuries hereinafter specified shall be as follows, to wit:

For the loss of a thumb, one-half the average weekly wages during fifty weeks.

For the loss of the first finger, commonly called the index finger, one-half the average weekly wages during thirty weeks.

For the loss of the second finger, one-half the average weekly wages during twenty-five weeks.

For the loss of the third finger, one-half the average weekly wages during eighteen weeks.

For the loss of the fourth finger, commonly called the little finger, one-half the average weekly wages during fifteen weeks.

The loss of the first phalange of the thumb or of any finger, shall be considered to be equal to the loss of one-half of said thumb or finger, and the compensation shall be one-half the amount above specified. The loss of more than one phalange shall be considered as a loss of the entire thumb or finger; provided, however, that in no case shall the amount received

for the loss of more than one finger exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, one-half the average weekly wages during twenty-five weeks.

For the loss of one of the toes other than the great toe, one-half the average weekly wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe and the compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, one-half the average weekly wages during one hundred twenty-five weeks.

For the loss of an arm, or any part above the wrist, one-half the average weekly wages during one hundred fifty weeks.

For the loss of a leg, or any part above the ankle, one-half the average weekly wages during one hundred fifty weeks.

For the loss of a foot, one-half the average weekly wages for one hundred twenty-five weeks.

For the loss of an eye or the reduction of the sight of an eye, with glasses, to one-tenth of the normal vision, one-half the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to the same limitations as to maximum and minimum amounts, that is, of not more than ten and not less than four dollars a week, as provided for total or partial disability.

**Sec. 17. Notice of injury shall be given employer.** 1915, c. 295, § 17. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the accident shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

**Sec. 18. Contents of such notice.** 1915, c. 295, § 18. Such notice shall be in writing and shall state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representatives, or by a dependent, or by a person in behalf of either.

**Sec. 19. Service of such notice.** 1915, c. 295, § 19. Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, or, if the employer is a corporation, upon any officer or agent upon whom process may be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute a completed service.

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**Sec. 20. Notice not void for mere inaccuracy of statement; notice, when unnecessary.** 1915, c. 295, § 20. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake or unforeseen cause.

**Sec. 21. Employee shall submit to examinations by physician, or medical examiner.** 1915, c. 295, § 21. The employee shall after the injury, at all reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of this state, to be selected and paid by the employer. The employee shall have the right to have a physician or surgeon selected and paid by himself, present at such examination of which right the employer shall give him notice when requesting such examination.

The chairman of the commission may at any time after the injury appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner shall be fixed and paid by the commission.

Such medical examiner being first duly sworn to the faithful performance of his duties before any justice of the peace, or any clerk of the supreme judicial court, shall thereupon and as often as the chairman of the commission may direct, examine such injured employee in order to determine the nature, extent and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employee in the office of the commission, and a copy thereof certified by the clerk of said commission may be produced in evidence in any hearing or proceedings to determine the amount of compensation due said employee under the provisions of this act. If such employee refuses to submit himself to examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

**Sec. 22. Savings or insurance shall not be taken into consideration.** 1915, c. 295, § 22. No savings or insurance of the injured employee independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act.

**Sec. 23. Incompetents or minors may have guardian exercise right of claim.** 1915, c. 295, § 23. In case an injured employee is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any right, privilege or election accrues to him or them under this act, his guardian, or next friend may, in his behalf, claim and exercise such right, privilege or election, and no limitation of time in this

act provided shall run so long as such incompetent or minor has no guardian.

**Sec. 24. Waiver of rights to compensation not valid; claims not assignable.** 1915, c. 295, § 24. No agreement by an employee, except as provided in section thirty, to waive his rights to compensation under this act shall be valid. No claims for compensation under this act shall be assignable, or subject to attachment, or liable in any way for debt.

**Sec. 25. Agreement that remedies under this act exclusive, in case of employment out of state; presumption.** 1915, c. 295, § 25. Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement.

**Sec. 26. Liability created in other person than employer; election by employee; subrogation of employer to rights of employee.** 1915, c. 295, § 26. When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act, any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person, provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

**Sec. 27. Claims under this act entitled to preference over unsecured debt.** 1915, c. 295, § 27. The claim for compensation under this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state, but nothing herein shall be construed as impairing any lien which the employee may have acquired.

**Sec. 28. Commutation of payments to lump sum.** 1915, c. 295, § 28. In case payments have continued for not less than six months either party may, upon due notice to the other party, petition the commission for an order commuting the future payments to a lump sum. Such petition shall be considered by the commission and may be summarily granted where it is shown to the satisfaction of the commission that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered, the commission shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their

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present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon payment of such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.

**Sec. 29. Industrial Accident Commission of the State of Maine; appointment of chairman; tenure; removal and appointment of successor; appointment of secretary; appropriation. Authority of commission.** 1915, c. 295, § 29. The Industrial Accident Commission of the State of Maine as heretofore established, shall consist of three members. The insurance commissioner and the commissioner of labor and industry shall be ex officio members thereof. The governor shall appoint a chairman of the commission, who shall be learned in the law and a member of the bar in good standing; he shall hold office for three years from the date of his appointment unless removed as hereinafter provided; and until his successor is appointed and qualified; he shall be sworn, and for inefficiency, wilful neglect of duty or for malfeasance in office, may after notice and hearing be removed from office by the governor and council. In case of vacancy occurring through death, resignation or removal, the governor shall appoint a successor for the whole term of three years, subject to removal as aforesaid. The commission shall have a secretary appointed and removable by it. It shall be allowed the sum of two thousand dollars, or so much thereof as is necessary, for expert and clerical assistance and other expenses in organizing a suitable system of administration. The sum of seven thousand five hundred dollars shall be annually appropriated for the payment of clerical and other assistance, physicians' and witness fees, traveling and other expenses.

The commission shall have a seal bearing the words "Industrial Accident Commission of Maine." It shall have its office and keep its records in the state house in Augusta, but may hold sessions at any place within the state. The commission shall have a general supervision over the administration of this act and shall have the following powers:

I. To make rules and regulations not inconsistent with this act or other laws of the state for the purpose of carrying out the provisions hereof.

II. To issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any questions in dispute before it.

III. The chairman of the commission at any hearing before him under the provisions of this act, may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any matters in dispute before him. Witness fees in all proceedings under this act shall be the same as for witnesses before the supreme judicial court.

**Sec. 30. Memorandum of agreement as to compensation; proceedings upon failure to agree or when agreement is not approved.** 1915, c. 295, § 30. If the employer and the employee reach an agreement in regard to compensation under this act a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If the commis-

sioner finds that such agreement is in conformity with the provisions of this act, he shall approve the same and the clerk of the commission shall record it in a book kept for that purpose. In case the commissioner shall find that any such agreement is not in conformity with the provisions of this act and shall refuse to approve the same, or if the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest, may file in the office of the commission a petition setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the cause, extent and character of the injury and the knowledge of the employer or notice of the occurrence of the injury, and, if an agreement had been reached between the parties which had not been approved by the commissioner, the form of such agreement and such other facts as may be necessary and proper for the determination of the matter in dispute, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

**Sec. 31. Notice on petitions.** 1915, c. 295, § 31. Within four days after the filing of the petition, a copy thereof attested by the clerk of the commission shall be mailed by said clerk, postage prepaid, to the other parties named in the petition, or notice be given in such other manner as the commission may determine.

**Sec. 32. Proceedings as to answers.** 1915, c. 295, § 32. Within ten days after the filing of such petition, all the other parties interested in opposition to the petition shall file an answer to said petition and furnish a copy thereof to the petitioner, which answer shall state the claims of the opponents with reference to the matter in dispute as disclosed by the petition. The chairman of said commission may grant further time for filing answer and allow amendments to said petition and answer at any stage of the proceedings. If any party opposing such petition does not file an answer within the time limited, the hearing shall proceed upon the petition. If any party be an infant or person under disability, either parent or a guardian, or a guardian ad litem for such infant or person under disability may file the petition or answer required by this section.

**Sec. 33. Chairman shall fix time for hearing; place of hearing.** 1915, c. 295, § 33. The whole matter shall then be referred to the chairman of said commission, who shall fix a time for hearing upon the request of either party, upon a three days' notice given to the other party. All hearings shall be held in the town where the accident occurred, unless the claimant shall in writing request that it be held in some other place.

**Sec. 34. Proceedings at hearing; decision; decree by justice of supreme judicial court; appeal; modification of decree.** 1915, c. 295, § 34. If from the petition and answer there appear to be facts in dispute, the chairman of the commission shall then hear such witnesses as may be presented by each party, or by agreement the claims of both parties as to the facts in dispute may be presented by affidavits. From the evidence thus furnished the chairman shall, in a summary manner, decide the merits of the controversy. His decision, together with a statement of the facts submitted, his



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findings of fact and rulings of law, and any other matters pertinent to the questions raised at the hearing, shall be filed in the office of the commission, and a copy thereof certified by the clerk of the commission mailed forthwith to all parties interested. His decision in the absence of fraud, upon all questions of fact shall be final.

Any party in interest may present copies certified by the clerk of said commission of any order or decision of the commission or of its chairman, or of any memorandum of agreements approved by the commissioner, together with all papers in connection therewith, to the clerk of courts for the county in which the injury occurred; whereupon any justice of the supreme judicial court shall render a decree in accordance therewith and notify all parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit in equity duly heard and determined by said court, except there shall be no appeal therefrom upon questions of fact found by said commission or its chairman, or where the decree is based upon a memorandum of agreement approved by the commissioner. Upon any appeal therefrom the proceedings shall be the same as in appeals in equity procedure and the law court may, after consideration, reverse or modify any decree made by a justice, based upon an erroneous ruling or finding of law. There shall be no appeal from a decree based upon any order or decision of the commission or of its chairman, or upon any memorandum of agreement approved by the commissioner, which has not been certified and presented to the court within ten days after the notice of the filing thereof by the commission or its chairman. Upon the presentation to it of a certified copy of any decision of the chairman of the commission terminating, diminishing, increasing or modifying any payments under the provisions of section thirty-six, or under any decision of said chairman or any agreement approved by the commissioner the court shall revoke or modify its decree, if any has been based thereon, to conform to such decision.

Sec. 35. Agreement or decision of chairman shall have same effect as judgment of court. 1915, c. 295, § 35. Any agreement between employer and employee filed with the commission and approved by the commissioner or any decision of the chairman of said commission under the provisions of section thirty-four, shall have the same effect as the judgment of a court, and a copy thereof certified to by the clerk of said commission and filed with the clerk of the court of the county in which either the employer or employee resides, or where the business of the employer is located, shall be enforceable by the supreme judicial court by any suitable process including execution against the goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees in equity may be enforced.

Sec. 36. Agreement, award, findings, or decree may from time to time be reviewed. 1915, c. 295, § 36. At any time before the expiration of two years from the date of the approval of an agreement by the commissioner, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings

or decree may be from time to time reviewed by the chairman of said commission upon the application of either party, after due notice to the other party, upon the ground that the incapacity of the injured employee has subsequently ended, increased or diminished. Upon such review the said chairman may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the said chairman upon such review shall be served on the parties and filed with the clerk of the commission and may be certified to the court in like time and manner and subject to like disposition as in the case of original decrees; provided that an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the commissioner in the same manner as original agreements in regard to compensation are required to be approved by the provisions of section thirty of this act.

**Sec. 37. Commission may prescribe forms and make suitable orders of procedure; construction of act.** 1915, c. 295, §§ 37, 49. The commission may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings under this act; and in interpreting this act it shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act. It may provide blank forms of notices, agreements, and other forms required under this act.

**Sec. 38. Proceedings shall not abate because of death.** 1915, c. 295, § 38. No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

**Sec. 39. Agreement or petition shall be made within two years.** 1915, c. 295, § 39. An employee's claim for compensation under this act shall be barred unless an agreement or a petition, as provided in section thirty shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity.

**Sec. 40. Compulsory upon state, county, cities, and quasi-municipal corporations.** 1915, c. 295, § 40. This act shall be compulsory as to the state, counties, cities, water districts and other quasi-municipal corporations of a similar nature. The provisions of section six of this act shall not apply to the state, counties, cities, water districts and other quasi-municipal corporations of a similar nature or to any towns voting to accept the provisions of this act.

**Sec. 41. Assenting employers shall make reports of accidents; copy of receipt in final settlement filed with commission; penalty for neglect.** 1915, c. 295, § 41. All assenting employers shall make prompt reports to the commission of all accidents to their employees in the course of employment,

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with the average weekly wages or earnings of such employees, together with such other particulars as the commission may require and shall also report whenever the injured employee shall resume his employment and the amount of his wages or earnings.

Whenever any final settlement is made with an injured employee, either by the employer or insurance company, a copy of the receipt or final agreement showing the total amount of money paid to such injured employee, shall be filed with the commission, but shall not be binding without the approval of the commission or of its chairman. Any employer or insurance company that shall wilfully neglect or refuse to make such reports or file any receipts or agreements required to be filed under this act, shall be liable to a forfeiture of ten dollars for each day of such wilful neglect or refusal, to be enforced by the commission in an action of debt in the name of the state. All sums so recovered shall be paid into the state treasury and be credited to the appropriation made for the administration of this act.

**Sec. 42. Insurance companies shall furnish information to insurance commissioner; penalty for refusal.** 1915, c. 295, § 42. Any insurance company insuring employers under this act shall fill out any blanks and answer all questions submitted to them that may relate to policies, premiums, amount of compensations paid, and such other information as the commission or the insurance commissioner may deem important, either for the proper administration of this act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of ten dollars for each day of such refusal, to be enforced by the commission in an action of debt in the name of the state. All money so recovered shall be paid into the state treasury and credited to the appropriation for the administration of this act.

**Sec. 43. Annual report of commission.** 1915, c. 295, § 43. The commission shall make an annual report giving such full statistical information as may be contained in their department in relation to the administration of this act, particularly with reference to the number of employees affected, the number injured, the amount of compensations received and the cost of the same to the employers.

**Sec. 44. Effect upon persons engaged in commerce.** 1915, c. 295, § 44. This act shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

**Sec. 45. Monthly payment to non-residents provided for.** 1915, c. 295, § 45. If an employee receiving a weekly payment under this act shall cease to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the commission upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

**Sec. 46. Unconstitutional parts of act, if any, shall not affect validity of act as a whole.** 1915, c. 295, § 46. If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof, which can be given effect without the part so decided to be unconstitutional or invalid.

**Sec. 47. Penalty for making false statement.** 1915, c. 295, § 47. If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of a misdemeanor and liable to a fine of not exceeding fifty dollars, and he shall forfeit all right to compensation under this act after conviction for such offense.

**Sec. 48. Act not applicable to injuries sustained prior to January 1, 1916.** 1915, c. 295, § 48. The provisions of this act shall not apply to injuries sustained, or accidents which occur prior to the first day of January, A. D., nineteen hundred sixteen.

### The Employer's Liability Law.

**Sec. 49. Employer's liability defined.** 1909, c. 258, § 1. If personal injury is caused to an employee, who, at the time of the injury, is in the exercise of due care, by reason of:

First, a defect in the condition of the ways, works or machinery connected with or used in the business of the employer, which arose from, or had not been discovered or remedied in consequence of, the negligence of the employer or of a person in his service who had been entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or,

Second, the negligence of a person in the service of the employer who was entrusted with and was exercising superintendence and whose sole or principal duty was that of superintendence, or in the absence of such superintendent, of a person acting as superintendent with the authority or consent of such employer;

Third, the negligence of a person in the service of the employer who was in charge or control of a signal, switch, locomotive engine or train upon a railroad;

The employee or his legal representatives, shall, subject to the provisions of the eight following sections, have the same rights to compensation and of action against the employer as if he had not been an employee, nor in the service, nor engaged in the work, of the employer.

A car which is in use by, or which is in possession of, a railroad corporation shall be considered as a part of the ways, works or machinery of the corporation which uses or has it in possession, within the meaning of clause one of this section, whether it is owned by such corporation or by some other company or person. One or more cars which are in motion, whether attached to an engine or not, shall constitute a train within the meaning of clause three of this section, and whoever, as a part of his duty for the time being, physically controls or directs the movements of a signal, switch, locomotive engine or train shall be deemed to be a person in charge or control of a signal, switch, locomotive engine or train within the meaning of said clause.

108 Me. 361; 110 Me. 376.

**Sec. 50. Action for damages for death in addition to those for injury.** 1909, c. 258, § 2. If the injury described in the preceding section results in the death of the employee, and such death is not instantaneous or is

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preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under the provisions of the following section, the legal representatives of said employee may, in the action brought under the provisions of the preceding section, recover damages for the death in addition to those for the injury.

**Sec. 51. Action for damages by widow or next of kin.** 1909, c. 258, § 3. If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under the provisions of section forty-nine, an employee is instantly killed, or dies without conscious suffering, his widow or, if he leaves no widow, his next of kin, who, at the time of his death, were dependent upon his wages for support, shall have a right of action for damages against the employer.

**Sec. 52. Damages for death, how assessed.** 1909, c. 258, § 4. If, under the provisions of either of the two preceding sections, damages are awarded for the death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

The amount of damages which may be awarded in an action under the provisions of section forty-nine for a personal injury to an employee, in which no damages for his death are awarded under the provisions of section fifty, shall not exceed four thousand dollars.

The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section fifty, shall not exceed five thousand dollars for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under the provisions of section fifty-one, to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section fifty-one shall not be less than five hundred nor more than five thousand dollars.

109 Me. 585.

**Sec. 53. Notice of injury in writing within sixty days; action within one year.** 1909, c. 258, § 5. No action for the recovery of damages for injury or death under the provisions of sections forty-nine to fifty-two, both inclusive, shall be maintained unless notice of the time, place and cause of the injury is given to the employer within sixty days and the action is commenced within one year after the accident which causes the injury or death. Such notice shall be in writing, signed by the person injured, or by a person in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within ten days after such incapacity has been removed, and if he dies without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give it, his executor or administrator may give such notice within sixty days after his appointment. A notice given under the provisions of this section shall not be held invalid or insufficient solely by reason of an inaccuracy in stating the time, place or cause of the injury, if it is shown that there

was no intention to mislead, and that the employer was not in fact misled thereby.

If a notice given under this section is claimed by the employer to be insufficient for any reason he shall so notify in writing the person giving it within ten days, stating the insufficiency claimed to exist, and thereupon the person whose duty is to give the notice may, within thirty days, give a new notice with the same effect as if originally given.

**Sec. 54. Liability of employer not barred by entering into contracts with independent contractor.** 1909, c. 258, § 6. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or sub-contract shall not bar the liability of the employer for injuries to the employees of such contractor or sub-contractor, caused by any defect in the condition of the ways, works, machinery or plant, if they are the property of the employer or are furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

**Sec. 55. Employee has no right of action for damages, if he knew of defect or negligence, and failed to give notice.** 1909, c. 258, § 7. An employee or his legal representatives shall not be entitled under the provisions of sections forty-nine to fifty-two, both inclusive, to any right of action for damages against his employer if such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who was entrusted with general superintendence.

**Sec. 56. Application of §§ 49-55 limited.** 1909, c. 258, §§ 8, 9. The provisions of the seven preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow employees, or to those engaged in cutting, hauling or driving logs. Nothing in said sections shall be construed to abridge any common law rights or remedies which the employee may have against his employer, but a judgment recovered under the provisions of said sections, or a settlement of any action commenced or claim made for death or injury, under the provisions thereof, shall be a bar to any claim made or action begun to recover for the same injury or the same death, under the provisions of the common law or under the provisions of any other statute.

110 Me. 376.

**Sec. 57. Special contracts prohibited.** 1909, c. 33. No person shall, by a special contract with his employees, exempt himself or another person from liability which he may be under to them, for injuries suffered by them in his employment and resulting from the negligence of the employer or such other person, or of a person in his employ.