

AN ACT concerning employment.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Workers' Compensation Act is amended by changing Section 5 as follows:

(820 ILCS 305/5) (from Ch. 48, par. 138.5)

(Text of Section WITHOUT the changes made by P.A. 89-7,  
which has been held unconstitutional)

Sec. 5. (a) No common law or statutory right to recover damages from the employer, his insurer, his broker, any service organization that is wholly owned ~~retained~~ by the employer, his insurer or his broker and that provides ~~to provide~~ safety service, advice or recommendations for the employer or the agents or employees of any of them for injury or death sustained by any employee while engaged in the line of his duty as such employee, other than the compensation herein provided, is available to any employee who is covered by the provisions of this Act, to any one wholly or partially dependent upon him, the legal representatives of his estate, or any one otherwise entitled to recover damages for such injury.

However, in any action now pending or hereafter begun to enforce a common law or statutory right to recover damages for negligently causing the injury or death of any employee it is

not necessary to allege in the complaint that either the employee or the employer or both were not governed by the provisions of this Act or of any similar Act in force in this or any other State.

Any illegally employed minor or his legal representatives shall, except as hereinafter provided, have the right within 6 months after the time of injury or death, or within 6 months after the appointment of a legal representative, whichever shall be later, to file with the Commission a rejection of his right to the benefits under this Act, in which case such illegally employed minor or his legal representatives shall have the right to pursue his or their common law or statutory remedies to recover damages for such injury or death.

No payment of compensation under this Act shall be made to an illegally employed minor, or his legal representatives, unless such payment and the waiver of his right to reject the benefits of this Act has first been approved by the Commission or any member thereof, and if such payment and the waiver of his right of rejection has been so approved such payment is a bar to a subsequent rejection of the provisions of this Act.

(b) Where the injury or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than his employer to pay damages, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay

compensation under this Act. In such case, however, if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act.

Out of any reimbursement received by the employer pursuant to this Section the employer shall pay his pro rata share of all costs and reasonably necessary expenses in connection with such third-party claim, action or suit and where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement.

If the injured employee or his personal representative agrees to receive compensation from the employer or accept from the employer any payment on account of such compensation, or to institute proceedings to recover the same, the employer may have or claim a lien upon any award, judgment or fund out of which such employee might be compensated from such third party.

In such actions brought by the employee or his personal representative, he shall forthwith notify his employer by personal service or registered mail, of such fact and of the name of the court in which the suit is brought, filing proof thereof in the action. The employer may, at any time thereafter join in the action upon his motion so that all orders of court after hearing and judgment shall be made for his protection. No release or settlement of claim for damages by reason of such injury or death, and no satisfaction of judgment in such proceedings shall be valid without the written consent of both employer and employee or his personal representative, except in the case of the employers, such consent is not required where the employer has been fully indemnified or protected by Court order.

In the event the employee or his personal representative fails to institute a proceeding against such third person at any time prior to 3 months before such action would be barred, the employer may in his own name or in the name of the employee, or his personal representative, commence a proceeding against such other person for the recovery of damages on account of such injury or death to the employee, and out of any amount recovered the employer shall pay over to the injured employee or his personal representatives all sums collected from such other person by judgment or otherwise in excess of the amount of such compensation paid or to be paid under this Act, including amounts paid or to be paid pursuant

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to paragraph (a) of Section 8 of this Act, and costs, attorney's fees and reasonable expenses as may be incurred by such employer in making such collection or in enforcing such liability.

(Source: P.A. 79-79.)

Section 99. Effective date. This Act takes effect upon becoming law.