

## CHAPTER 19

### EMPLOYER'S LIABILITY

#### **§901. Definition of employer's liability; rights of employee**

An employer is liable under this Part 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: [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

**1. Defects in ways, works or machinery.** 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 the employer's service who had been entrusted by the employer with the duty of seeing that the ways, works or machinery were in proper condition; [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

**2. Negligence of employee in superintending capacity.** 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 a superintendent, of a person acting as superintendent with the authority or consent of the employer; or [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

**3. Negligence of employee in charge of railroad equipment.** 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 on a railroad. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

The employee or the employer's legal representatives, subject to sections 902 to 909, have the same rights to compensation and of action against the employer as if the employee had not been an employee, nor in the service, nor engaged in the work of the employer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

A car that is in use by, or that is in possession of, a railroad corporation is deemed a part of the ways, works or machinery of the corporation that uses it or has it in possession, within the meaning of subsection 1, whether it is owned by the railroad corporation or by some other company or person. One or more cars in motion, whether attached to an engine or not, constitute a train within the meaning of subsection 3, and whoever, as a part of the person's duty for the time being, physically controls or directs the movements of a signal, switch, locomotive engine or train is deemed to be a person in charge or control of a signal, switch, locomotive engine or train within the meaning of said subsection. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §A9-11 (AFF).

#### **§902. Actions for damages for death in addition to those for injury**

If the injury described in section 901 results in the death of the employee, and the death is not instantaneous or is preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under section 903, the legal representatives of the employee may, in the action brought under section 901, recover damages for the death in addition to those for the injury. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

**§903. Surviving spouse or next of kin; actions by**

If, as the result of the negligence of an employer, or of a person for whose negligence an employer is liable under section 901, an employee is instantly killed or dies without conscious suffering, the surviving spouse or, if the employee leaves no surviving spouse, the next of kin, who, at the time of the employee's death, were dependent upon the wages of the employee for support, have a right of action for damages against the employer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

**SECTION HISTORY**

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

**§904. Measure of damages in event of death**

If, under either section 902 or 903, damages are awarded for the death, they must be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

The amount of damages that may be awarded in an action under section 901 for a personal injury to an employee, in which no damages for the death of the employee are awarded under section 902, may not exceed \$4,000. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

The amount of damages that may be awarded in an action under section 901, if damages for the death of the employee are awarded under section 902, may not exceed \$5,000 for both the injury and the death, and must be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under section 903, to bring an action for the death of the employee if it had been instantaneous or without conscious suffering. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

The amount of damages that may be awarded in an action brought under section 903 may not be less than \$500 or more than \$5,000. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

**SECTION HISTORY**

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

**§905. Notice of injury; requisites; sufficiency; limitation of actions**

An action for the recovery of damages for injury or death under sections 901 to 904 may not be maintained unless notice of the time, place and cause of the injury is given to the employer within 60 days and the action is commenced within one year after the accident that causes the injury or death. The notice must be in writing, signed by the person injured or by a person in behalf of the person. If it is impossible from physical or mental incapacity for the person injured to give the notice within the time provided in this section, the person may give it within 10 days after the incapacity has been removed, and if the person dies without having given the notice and without having been for 10 days at any time after the injury of sufficient capacity to give it, the person's executor or administrator may give such notice within 60 days after appointment. A notice given under this section is not 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 by the inaccuracy. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

If a notice given under this section is claimed by the employer to be insufficient for any reason, the employer shall notify in writing the person giving it within 10 days, stating the insufficiency claimed to exist, and the person whose duty it is to give the notice may, within 30 days, give a new notice with

the same effect as if originally given. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

#### **§906. Liability not barred by contracts with independent contractors**

If an employer enters into a contract, written or verbal, with an independent contractor to do part of the employer's work, or if an independent contractor enters into a contract with a subcontractor to do all or any part of the work comprised in the contractor's contract with the employer, the contract or subcontract does not bar the liability of the employer for injuries to the employees of the contractor or subcontractor, 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 the employer and if the defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person entrusted by the employer with the duty of seeing that they were in proper condition. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

#### **§907. Employee's knowledge of defect or negligence**

An employee or the employee's legal representatives are not entitled under sections 901 to 904 to any right of action for damages against the employer if the employee knew of the defect or negligence that caused the injury and failed within a reasonable time to give, or cause to be given, information about the defect to the employer or to some person superior to the employee in the service of the employer who was entrusted with general superintendence. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

#### **§908. Scope of sections 901 to 907; effect of judgment or settlement**

Sections 901 to 907 do 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 sections 901 to 907 may be construed to abridge any common-law rights or remedies which the employee may have against the employer, but a judgment recovered under sections 901 to 907 or a settlement of any action commenced or claim made for death or injury under the provisions of those sections is a bar to any claim made or action begun to recover for the same injury or the same death, under the common law or under any other statute. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

#### **§909. Contracts for exemption**

A person may not, by a special contract with the employer's employees, exempt the employer or another person from liability under which the employer may be to them for injuries suffered by them in the employment of the employer and resulting from the negligence of the employer or the other person, or of a person in the employ of the employer. [PL 1991, c. 885, Pt. A, §8 (NEW); PL 1991, c. 885, Pt. A, §§9-11 (AFF).]

#### SECTION HISTORY

PL 1991, c. 885, §A8 (NEW). PL 1991, c. 885, §§A9-11 (AFF).

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