

IC 22-3-9

Chapter 9. Employer Liability

IC 22-3-9-1

Personal injuries or death; damages

Sec. 1. Any person, firm, limited liability company, or corporation while engaged in business, trade or commerce within this state, and employing in such business, trade or commerce five (5) or more persons shall be liable and respond in damages to any person suffering injury while in the employ of such person, firm, limited liability company, or corporation, or in case of the death of such employee, then to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and if none, then to such employee's parents; and if none, then to the next of kin dependent upon such employee, where such injury or death resulted in whole or in part from the negligence of such employer or his, its or their agents, servants, employees or officers, or by reason of any defect, mismanagement or insufficiency, due to his, its or their carelessness, negligence, fault or omission of duty. *(Formerly: Acts 1911, c.88, s.1.) As amended by P.L.8-1993, SEC.285.*

IC 22-3-9-2

Personal injuries or death; contributory negligence; burden of proof

Sec. 2. In any action prosecuted under the provisions of this chapter the burden of proving that such injured or killed employee did not use due care and diligence at the time of such injury or death shall be upon the defendant, but the same may be proved under the general denial. No such employee who may have been injured or killed shall be held to have been guilty of negligence or contributory negligence by reason of the assumption of the risk thereof in any case where the violation by the employer or his, its, or their agents or employees of any ordinance or statute enacted, or of any rule, regulation, or direction made by any public officer, bureau, or commission, was the cause of the injury or death of such employee. In actions brought against any employer under the provisions of this chapter for the injury or death of any employee, it shall not be a defense that the dangers or hazards inherent or apparent in the employment in which such injured employee was engaged contributed to such injury. No such injured employee shall be held to have been guilty of negligence or contributory negligence where the injury complained of resulted from such employee's obedience or conformity to any order or direction of the employer or of any employee to whose orders or directions he was under obligation to conform or obey, although such order or direction was a deviation from other rules, orders, or directions previously made by such employer. *(Formerly: Acts 1911, c.88, s.2.) As amended by P.L.144-1986, SEC.77.*

IC 22-3-9-3

Personal injuries or death; assumption of risk; safe place to work; defective tools

Sec. 3. In any action brought against any employer under or by virtue of this chapter to recover damages for injuries or the death of any of his, its, or their employees, such employee shall not be held to have assumed the risks of the employment in any case where the violation of such employer or his, its, or their agents or employees of any ordinance or statute enacted, or of any rule, direction, or regulation made by any public officer or commission, contributed to the injury or death of such employee; nor shall such injured employee be held to have assumed the risk of the employment where the injury complained of resulted from his obedience to any order or direction of the employer or of any employee to whose orders or directions he was under obligations to conform or obey although such order or direction was a deviation from other orders or directions or rules previously made by such employer. In any action brought against any employer under the provisions of this chapter to recover damages for injury to or the death of any of his, its, or their employees, such employee shall not be held to have assumed the risk of any defect in the place of work furnished to such employee, or in the tool, implement, or appliance furnished him by such employer, where such defect was, prior to such injury, known to such employer, or by the exercise of ordinary care might have been known to him in time to have repaired the same or to have discontinued the use of such defective working place, tool, implement, or appliance. The burden of proving that such employer did not know of such defect or that he was not chargeable with knowledge thereof in time to have repaired the same or to have discontinued the use of such working place, tool, implement, or appliance shall be on the defendant, but the same may be proved under the general denial.

(Formerly: Acts 1911, c.88, s.3.) As amended by P.L.144-1986, SEC.78.

IC 22-3-9-4

Personal injuries or death; survival of actions

Sec. 4. The damages recoverable under this chapter shall be commensurate with the injuries sustained, and in case death results from such injury the action shall survive; provided, that where any such injured person recovers a judgment under the provisions of this chapter and an appeal is taken from such judgment, and pending such appeal the injured person dies and said judgment be thereafter reversed, or where such injured person dies after said judgment is reversed and before trial, the right of action of such person shall survive to his or her personal representative, and such action may be continued in the name of such personal representative for the benefit of the person entitled under this chapter to receive the same.

(Formerly: Acts 1911, c.88, s.4.) As amended by P.L.144-1986, SEC.79.

IC 22-3-9-5

Contracts; rules and regulations; exemption from liability; setoff

Sec. 5. Any contract, rule, regulation, bylaw, or device whatsoever, the purpose, intent, or effect of which would be to enable any employer to exempt himself or itself from any liability created by this chapter, shall to that extent be void; provided, that in any action brought against any such employer under or by virtue of any of the provisions of this chapter, such employer may set off therein by special plea any sum such employer has contributed or paid to any insurance, relief benefit, or indemnity for and on behalf of such injured employee that may have been paid to him or to the person entitled thereto on account of the injury or death for which said action is brought, but in no event shall the amount of such setoff exceed the amount paid to such employee or other person entitled thereto out of such insurance, relief benefit, or indemnity fund.

(Formerly: Acts 1911, c.88, s.5.) As amended by P.L.144-1986, SEC.80.

IC 22-3-9-6

Wrongful death damages; amount

Sec. 6. Where any action is brought on account of the death of any person under this chapter, the liability of any such employer shall not exceed ten thousand dollars (\$10,000), and the provisions of the law in force as to parties plaintiff shall apply.

(Formerly: Acts 1911, c.88, s.6.) As amended by P.L.144-1986, SEC.81.

IC 22-3-9-7

Assumption of risk; negligence; contributory negligence; questions of fact

Sec. 7. All questions of assumption of risk, negligence or contributory negligence shall be questions of fact for the jury to decide, unless the cause is being tried without a jury, in which case, such questions shall be questions of fact for the court.

(Formerly: Acts 1911, c.88, s.7.)

IC 22-3-9-8

Limitation of actions

Sec. 8. No action shall be maintained under this chapter unless the same is commenced within two (2) years from the date the cause of action accrued.

(Formerly: Acts 1911, c.88, s.8.) As amended by P.L.144-1986, SEC.82.

IC 22-3-9-9

Definitions

Sec. 9. The term "employer", "persons", "firm", "limited liability company", and "corporation" shall include receivers or other persons charged with the duty of managing, conducting or operating business, trade or commerce.

(Formerly: Acts 1911, c.88, s.9.) As amended by P.L.8-1993, SEC.286.

IC 22-3-9-10

Application of law

Sec. 10. This chapter shall not apply to injuries received by any employee before March 2, 1911, nor affect any suit or legal proceedings pending in any court on March 2, 1911.

(Formerly: Acts 1911, c.88, s.10.) As amended by P.L.144-1986, SEC.83.

IC 22-3-9-11

Supplemental remedies; common law rights

Sec. 11. This chapter shall be construed as supplemental to all statutes in force on March 2, 1911, concerning employers and employees and shall repeal only such statutes as are in direct conflict with the provisions of this chapter. Nothing in this chapter shall be held to limit the duty or liability of employers or to impair the rights of their employees under the common law or any other statute existing on March 2, 1911, or to affect the prosecution of any proceeding or right of action pending on March 2, 1911.

(Formerly: Acts 1911, c.88, s.11.) As amended by P.L.144-1986, SEC.84.