



131st MAINE LEGISLATURE

FIRST REGULAR SESSION-2023

Legislative Document

No. 1112

H.P. 708

House of Representatives, March 9, 2023

**An Act to Provide Workers' Compensation for Temporary
Employees**

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

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative ADAMS of Lebanon.

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

2 **Sec. 1. 39-A MRSA §102, sub-§13-A**, as enacted by PL 2011, c. 643, §8 and
3 affected by §14, is amended to read:

4 **13-A. Independent contractor.** A person who performs services for remuneration is
5 presumed to be an employee unless the employing unit proves that the person is free from
6 the essential direction and control of the employing unit, both under the person's contract
7 of service and in fact and the person meets specific criteria. A temporary employment
8 agency employee is an employee of the temporary employment agency and is not an
9 independent contractor. In order for a person other than a temporary employment agency
10 employee to be an independent contractor:

11 A. The following criteria must be met:

12 (1) The person has the essential right to control the means and progress of the
13 work except as to final results;

14 (2) The person is customarily engaged in an independently established trade,
15 occupation, profession or business;

16 (3) The person has the opportunity for profit and loss as a result of the services
17 being performed for the other individual or entity;

18 (4) The person hires and pays the person's assistants, if any, and, to the extent such
19 assistants are employees, supervises the details of the assistants' work; and

20 (5) The person makes the person's services available to some client or customer
21 community even if the person's right to do so is voluntarily not exercised or is
22 temporarily restricted; and

23 B. At least 3 of the following criteria must be met:

24 (1) The person has a substantive investment in the facilities, tools, instruments,
25 materials and knowledge used by the person to complete the work;

26 (2) The person is not required to work exclusively for the other individual or entity;

27 (3) The person is responsible for satisfactory completion of the work and may be
28 held contractually responsible for failure to complete the work;

29 (4) The parties have a contract that defines the relationship and gives contractual
30 rights in the event the contract is terminated by the other individual or entity prior
31 to completion of the work;

32 (5) Payment to the person is based on factors directly related to the work
33 performed and not solely on the amount of time expended by the person;

34 (6) The work is outside the usual course of business for which the service is
35 performed; or

36 (7) The person has been determined to be an independent contractor by the federal
37 Internal Revenue Service.

38 **Sec. 2. 39-A MRSA §102, sub-§18-A** is enacted to read:

39 **18-A. Temporary employment agency.** "Temporary employment agency" means an
40 entity that contracts with an employer to provide on a project or temporary basis a person

1 to perform services for the employer normally provided by an employee of the employer
2 and remunerates the person for the services provided.

3 **Sec. 3. 39-A MRSA §102, sub-§18-B** is enacted to read:

4 **18-B. Temporary employment agency employee.** "Temporary employment agency
5 employee" means a person who provides services on a project or temporary basis for an
6 employer pursuant to a contract with a temporary employment agency under which the
7 person is remunerated by the temporary employment agency for the services performed.

8 **SUMMARY**

9 This bill provides that, for the purposes of the Maine Workers' Compensation Act of
10 1992, a person who works on a project or temporary basis for an employer pursuant to a
11 contract with a temporary employment agency is an employee of the temporary
12 employment agency and not an independent contractor.