



129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 758

H.P. 563

House of Representatives, February 12, 2019

**An Act To Clarify Work Search Requirements for Workers'
Compensation**

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

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative SYLVESTER of Portland.

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

2 **Sec. 1. 39-A MRSA §214, sub-§1, ¶F** is enacted to read:

3 F. If an employee has demonstrated an inability to obtain suitable employment with
4 the previous employer due to the partial incapacity, a rebuttable presumption is
5 created that the employee is entitled to receive a weekly compensation amount under
6 section 213 that is equal to the amount permitted for total incapacity under section
7 212.

8 The previous employer may rebut this presumption by providing evidence of the
9 availability of alternative employment in the employee's community that is within the
10 restrictions of the employee's partial incapacity. The employee may overcome this
11 evidence of suitable alternative employment in the employee's community by
12 demonstrating a lack of employment despite the employee's reasonable efforts to
13 secure employment based on the evidence submitted by the previous employer of
14 available suitable alternative employment in the employee's community.

15 **SUMMARY**

16 Under current law, an injured worker who is only partially incapacitated by a
17 workplace injury may be eligible for so-called 100% partial incapacity benefits if the
18 worker is not working, as long as the worker can demonstrate that the lack of
19 employment is due to the injury and that the worker has not been able to obtain
20 employment, within the restrictions caused by the partial incapacity, despite an adequate
21 work search. The Maine Supreme Judicial Court outlined the factors that must be
22 considered when determining whether a work search by the injured worker is sufficient in
23 the case Monaghan v. Jordan's Meats, 2007 ME 100, 928 A.2d 786.

24 This bill abrogates the current "work search rule" by placing the burden on the
25 previous employer to demonstrate that there is suitable employment available to the
26 injured worker in the worker's local community. If the previous employer has
27 demonstrated suitable available employment, the injured worker may still be eligible for
28 so-called 100% partial incapacity benefits if the worker can demonstrate continued
29 unemployment despite reasonable efforts to secure the alternative employment identified
30 by the previous employer.