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ILLINOIS LAW MANUAL

CHAPTER IV

STATUTORY CAUSES OF ACTION

D. ROAD CONSTRUCTION INJURIES ACT

Although the Road Construction Injuries Act, also known as the Road Work Safety Act (430 ILCS 105/1, et seq.), was repealed on March 9, 1995, by Public Act 897, the Illinois Supreme Court later found the Public Act unconstitutional in its entirety. See Best v. Taylor Machine Works, 179 Ill. 2d 367 (1997). The legislature has taken no further action to repeal the Road Construction Injuries Act, which remains good law.

1. Statutory Language

The purpose of the Road Construction Injuries Act is to protect workmen and the general public from injuries or death during construction or repair of bridges and highways within the State of Illinois. Vegich v. McDougal Hartman Co., 84 Ill. 2d 461 (1981); O'Malley v. McQuaig, 208 Ill. App. 3d 838 (1991). Section 1 of the Act provides the scope and coverage and states as follows:

All construction work upon bridges or highways within the State of Illinois shall be so performed and conducted that two-way traffic will be maintained when such is safe and practical, and when not safe and practical, or when any portion of the highway is obstructed, oneway traffic shall be maintained, unless the authorized agency in charge of said construction directs the road to be closed to all traffic.

430 ILCS 105/1.

Other sections of the Road Construction Injuries Act require a contractor to provide flagmen or traffic signals at construction sites where one-way traffic is utilized. 430 ILCS 105/2. The Act further requires proper signs and barricades when highways or bridges are closed to all traffic. 430 ILCS 105/4.

The Road Construction Injuries Act provides for an action where a contractor violates one of the previously mentioned sections as follows:

Any contractor, subcontractor or his or her authorized agent or driver of any motor vehicle who knowingly or willfully violates any provision of this Act, shall be responsible for any injury to person or property occasioned by such violation, and a right of action shall accrue to any person injured for any damages sustained thereby; and in case of loss of life by reason of such violation, a right of action shall accrue to the surviving spouse of the person so killed, his or her heirs, or to any person or persons who were before such loss of life, dependent for support on the person so killed, for a like recovery of damages sustained by reason of such loss of life.

430 ILCS 105/6.

2. Application of the Act

The Road Construction Injuries Act applies only when a highway is completely closed or when there is only one lane of traffic open to vehicles traveling in opposite directions. Dodson v. Shaw, 113 Ill. App. 3d 1063 (1983); O'Malley, 208 Ill. App. 3d at 838. The Road Construction Injuries Act does not apply where a contractor maintains a two-way flow of traffic through a construction site. O'Malley, 208 Ill. App. 3d at 838; Macrito v. Zaverdas, 186 Ill. App. 3d 562, 563 (1989). For this reason, this statute has very limited application.

3. Burden of Proof

The Road Construction Injuries Act is a strict liability statute. Vegich, 84 Ill. 2d at 461. The legislature intended to create a strict liability action by using the term “willful” in the Road Construction Injuries Act. Id. Thus, as Section 6 of the Act indicates, one must only prove that an improper safety procedure was taking place where one lane of traffic was in use or the road was

closed completely, and liability will be imposed. For example, the Act requires that a contractor provide flagmen or traffic signals at construction sites where one-way traffic is utilized. If a contractor fails to provide a flagman, and a failure to provide the flagman is found to be the proximate cause of the injuries, liability would be imposed upon the contractor.

4. Defenses

The best defense to the Road Construction Injuries Act is its scope and applicability. Generally, if the Act is found to be applicable (i.e., only one lane of traffic exists or the road is completely closed), then liability is imposed if there was an unsafe work practice which proximately causes injury to a workman or to the motoring public. Contributory negligence is not a defense to liability under the Road Construction Injuries Act. Vegich, 84 Ill. 2d at 461.

5. Analysis

The language in the Road Construction Injuries Act is strikingly similar to the Structural Work Act. In fact, courts generally compare the two in terms of their purpose, and in holding that contributory negligence does not apply to an action. Arguably, it may then follow that a defense such as “sole proximate cause” in a Structural Work Act claim may also apply to a Road Construction Injuries Act claim. However, most cases are defended before trial through a motion to dismiss or motion for summary judgment because of the limited scope of the Act.