

**COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
SIXTIETH CONGRESS:
COMPENSATION TO
GOVERNMENT EMPLOYEES**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649320592

Committee on the judiciary, House of representatives, sixtieth congress: Compensation to Government Employees by Various

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Cover @ 2017

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COMMITTEE ON THE JUDICIARY
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COMPENSATION TO GOVERNMENT
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WASHINGTON
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COMPENSATION TO GOVERNMENT EMPLOYEES FOR INJURIES.

COMMITTEE ON THE JUDICIARY,
Monday, March 23, 1908.

Committee met at 11 a. m., Hon. John J. Jenkins in the chair.

STATEMENT OF HON. FREDERIC H. GILLETT, A REPRESENTATIVE FROM THE STATE OF MASSACHUSETTS.

Mr. GILLETT. Mr. Chairman and gentlemen, I will briefly state the purpose of the bill which I have introduced, which is that this committee should adopt some measure that will allow employees of the Government who are injured in the course of their employment, in some way, to get compensation for their injuries. I do not think it is necessary to argue with the committee as to the merits of that proposition, as you know quite as well as I do that any employee working for anybody else can recover damages, while an employee of the Government can not, no matter how exclusively the responsibility of the Government is for the injury.

The CHAIRMAN. I have not yet had an opportunity to look over the several bills that have been introduced. Is there any difference between them?

Mr. GILLETT. There are three bills before the committee covering this proposition. The number of the bill that I introduced is H. R. 6284. I first introduced the bill in the Fifty-sixth Congress, six or eight years ago, and have introduced it ever since. I will not pretend that I was actuated entirely by public motives, but the reason it came to my attention was because in the city of Springfield, in my district, there is a large Government establishment, known as the arsenal, where they employ about 1,500 men, and this matter has been brought quite constantly to my attention. Secondly, I have given it a good deal of thought, and drew a law modeled somewhat on the Massachusetts law, which is much more conservative than that in most of the States. I introduced the bill at that time and have introduced it ever since, and, so far as I know, mine was the first measure introduced on the subject. Of course, what I desire is to have some law passed, and while I have no particular pride of opinion, yet of course all of us like to get what credit we can, and as I was the first one to start the project I should be very much pleased if something along the lines of my bill could be adopted.

Mr. BRANTLEY. What kind of a law have you in Massachusetts?

Mr. GILLETT. I will not take time to read this bill, but I will say in the first place that my bill covers persons employed as artisans or laborers in the manufacturing establishments of the Government, and in that respect it differs from the other bills introduced, which apply to all employees of the Government. I thought, taking the

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conservative side, that the men who are engaged in the manufacturing establishments should be protected, and not necessarily the clerks and those in offices.

Mr. CLAYTON. That is, that there is no extra hazard as to clerks?

Mr. GILLETT. Not at all.

Mr. CLAYTON. And you wanted to reach the class who are subject to this extra hazard?

Mr. GILLETT. Exactly so, and limit it to that. Of course you may think that it ought to be broader. My bill provides that when a person is injured in a manufacturing establishment, and that his own negligence did not contribute to the injury, and the injury was caused, first, by reason of the negligence of his employer or, second, by reason of any defect in the ways, works, machinery, or plant connected with or used in the business of the employer, which defective condition arose from or had not been discovered or remedied owing to the negligence of the employer or of any person in the service of the employer entrusted with the duty of seeing that such ways, works, machinery, or plant were in proper condition; or, third, by reason of the negligence of any person in the service of the employer who is entrusted with the duty of superintendence or oversight, or in the absence of such a superior of any person acting as superintendent or foreman, with the authority or consent of such employer; or, fourth, by reason of the negligence of any person in the service of the employer to whose orders or directions the injured employee at the time of his injury was bound to conform and did conform, where such injury resulted in his having so conformed; so you see it is limited to those things. It is, as you see, very narrow as compared with most of the States, but what I wanted to do was to cover the persons in whom I was interested, and I also drew it in conformity with the conservative law of our State.

I suppose you would like to know something about the difference between the bills that have been introduced. Mr. Roberts has introduced a bill which applies to all employees, and which follows the Massachusetts law very much as mine does. The compensation recoverable under his bill would not exceed the sum of \$5,000. That is the method in Massachusetts.

Mr. ROBERTS. That is, in case of death.

Mr. GILLETT. No; in case of either death or injury.

Mr. ROBERTS. It is \$5,000 in case of death and no limit in case of injury.

Mr. GILLETT. But I put in a limit in all cases.

Mr. ALEXANDER. Mr. Roberts, does your bill follow the Massachusetts law and pay \$5,000 in case of injury—

Mr. ROBERTS. It does not follow the Massachusetts law in its limitation. There is no limit in the case of injury.

Mr. GILLETT. My bill also provides: "That no action shall be brought under this act unless written notice that an injury has been sustained is given to the representative of the United States in charge of the establishment or navy-yard by or on behalf of the employee within sixty days after the injury is received, and the action is commenced within one year after the injury."

That practically is all there is to the bill. In other words, it limits the persons who can bring an action to those employed in the manufacturing establishments and their recovery to \$5,000; it prohibits

an action in contributory negligence, and it specifies what kind of negligence the Government must be guilty of in order that the employee may recover.

The CHAIRMAN. Does your bill include those who are working for contractors of the Government?

Mr. GILLETT. No; those working directly for the Government and employed by the Government.

The CHAIRMAN. For myself, I am perfectly willing to tell you that I have no sympathy with this doctrine of contributory negligence so far as these cases are concerned. Supposing a man is injured, and at the same time, under the law, he is guilty of contributory negligence, but he is doing something for the Government, in aid of the Government, is performing his work, and yet at the same time he discovers after the injury that he was simply violating a law that he did not know anything about.

Mr. GILLETT. As I say, I leave that to the committee.

Mr. ALEXANDER. But that does not come into your bill at all?

Mr. GILLETT. I exclude contributory negligence.

Mr. ALEXANDER. But this measuring by contributory negligence as between employer and employee does not enter into your bill?

Mr. GILLETT. No; I do not make any provision as to that. In other words, my bill is drawn upon the statute of a very conservative State, and if the committee wishes to liberalize and to give more rights to employees, I am perfectly content; that I rest with the committee.

Now, as Mr. Sterling is not here, I want to call attention to the main principle of his bill, because it differs so radically from mine.

Mr. BRANTLEY. In what courts do you provide that suits shall be entered?

Mr. GILLETT. In the United States circuit or district courts.

Mr. BRANTLEY. Suppose the action is in excess of \$2,000, what do you say as to that?

Mr. GILLETT. Simply say that the employees shall have the right of action against the United States, to be brought in the United States circuit or district court in whose jurisdiction the injury occurred.

Mr. CLAYTON. That means regardless of the amount involved, and whatever they may claim?

Mr. GILLETT. Yes.

Mr. BRANTLEY. Would not that repeal the statute as to the amount that I have named?

The CHAIRMAN. If an employee was injured here, would he not have to go outside of the city into either Virginia or Maryland to institute his suit?

Mr. ALEXANDER. You could put in the Court of Claims there, or something of that kind.

Mr. GILLETT. I had not thought of that, and it seems to be a fair suggestion.

Mr. ALEXANDER. Or you could make it the supreme court of the District of Columbia.

Mr. GILLETT. Yes; that could be inserted.

Now, I think it would be well for you to have in mind the difference in principle between my bill and the bill of Mr. Sterling. His does not give a right of action in the courts at all. His bill provides that when anyone is injured, not only in the case of the employee in a manufacturing establishment but any employee of the Govern-

ment, that employee shall go before the Secretary of Commerce and Labor and that the Secretary shall have the right to award damages. It leaves it to him. He determines the damage, not in so many dollars, but according to the amount of the wages paid, the wage that the man receives, and I think it provides that in case of death the family shall receive ten times the average yearly wage of the employee for the last ten years. If, as between the two principles, you may think it better to leave it to the Secretary of Commerce and Labor instead of to the courts, I do not care to express any opinion upon that. I simply wished to make my position clear, that I would be glad to have any act passed which will give this class of employees a right of recovery, no matter whether you think it wise to go to the courts or to the Secretary of Commerce and Labor.

Mr. BRANTLEY. It is simply the broad proposition of authorizing any artisan or mechanic to sue the Government in case of injury, and in case of death the suit may be brought by his survivors?

Mr. GILLET. That is all.

Mr. REID. It is a common-law liability—that is, it would be the same as though the Government was an individual or a corporation at common law?

Mr. GILLET. No; I specify that he can not be guilty of contributory negligence, and then I specify certain negligence on the part of the Government that might contribute to his injury.

Mr. BRANTLEY. In Massachusetts does the State have to give permission before anybody can bring suit?

Mr. GILLET. Certainly.

Mr. BRANTLEY. And in all such cases you do give permission under the statute, do you not?

Mr. GILLET. I do not think we do, but I do not know of any manufacturing establishment belonging to the Commonwealth of Massachusetts.

Mr. ROBERTS. Excepting those in the prisons.

Mr. GILLET. But there is no right of action there. But the United States has a great many manufacturing establishments, the one at Springfield employing 1,500 men—although the men who are here representing them can tell you more about that than I can—but the facts in the case and the large number of men that are engaged in this work, it seems to me, makes it unquestionable that they ought to have some right of action. I think the only reason that they have not been given this right is the inertia that protects us all, and we have not come up yet to the idea of putting it through.

The CHAIRMAN. It seems to me that a part of Mr. Sterling's bill is worthy of consideration. Supposing that an employee meets with an accident, and the liability of the Government is immediately established. Under your bill he can not settle with the Government, can he?

Mr. GILLET. He would have to bring suit.

The CHAIRMAN. He has to bring his action in damages, and must go on with his suit, when really the Government would be glad to make an adjustment of the matter. I am merely making a suggestion in regard to the bills, and it is possible you may be able to get together and present a bill that will meet the approval of the committee and do substantial justice to all of these people.

Mr. GILLETT. Mr. Roberts has in his bill a clause providing that the head of each Department may compromise with the employee, which practically would accomplish the same end you speak of. But of course, practically, that could be accomplished under this bill—that is, a man could settle with the Government, but he would have to enter suit, and the Government would have to agree to a certain amount of damages and have judgment entered.

The CHAIRMAN. We, as lawyers, all know the difficulties. The Government official would think it his duty to reduce the amount of damages as much as possible, the case might be prolonged, and before final judgment is entered it might be necessary for the employee to come to Congress to get satisfaction. It would seem to me that, in the meantime, there could be some arrangement made whereby a settlement could be brought about.

Mr. GILLETT. Yes; there is a clause in Mr. Roberts's bill which allows each Department to settle. But under my bill, if the Department wished to settle, of course that could be brought about. The judgment would be entered up, but it would be a simple matter to adjust that.

The CHAIRMAN. The only objection in that, to my mind, would be that he would have to hire a lawyer, increasing the expense, and diminishing the recovery, while under some other arrangement he might be able to get the benefit of the entire amount.

Mr. GILLETT. Yes, I recognize that; and Mr. Roberts has a bill with a clause in it providing for that.

STATEMENT OF MR. E. L. ADAMS, OF WASHINGTON, D. C., REPRESENTING THE MACHINISTS EMPLOYED BY THE GOVERNMENT.

Mr. ADAMS. I do not know that there is a great deal I can say upon the proposed measures being considered by this committee, but I will say this, that I have taken occasion to forward the bills that have been presented to Congress to our several organizations in localities where there are Government plants, including the Springfield Arsenal, which is in Mr. Gillett's district, and they have seen fit to indorse the Sterling bill. It was our purpose at one time to propose a measure here, and in that measure we were to provide for a suit by the injured person to recover damages, but it was brought to our attention that there was some opposition existing in Congress, some antipathy, against litigation of that kind. It seemed to be unwise to some to place the Government in the attitude of being called upon constantly to defend itself against suits that might be of a trifling character, and for that reason it was thought best that if we could find some measure that would relieve the employee of embarrassment and delay incident to litigation, that it would be far more beneficial in its effect to the employees.

Mr. ALEXANDER. Do you indorse the principle of Mr. Sterling's bill?

Mr. ADAMS. Yes, sir. The Sterling bill we have gone over very carefully and we believe it is reasonable in its provisions and at the same time it embraces every employee of the Government whose probable earnings are less than \$2,500 per year. The feature of the bill alluded to by Mr. Gillett, that the compensation granted is