

Title 26: LABOR AND INDUSTRY

Chapter 3: BUREAU OF LABOR

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Maine Revised Statutes
Title 26: LABOR AND INDUSTRY
Chapter 3: BUREAU OF LABOR

§41. DIRECTOR; PERSONNEL; SALARIES; EXPENSES

The Bureau of Labor Standards within the Department of Labor, as established and referred to in this Title as the "bureau," is maintained under the direction of an officer whose title is Director of Labor Standards and state factory inspector, referred to in this Title, except in chapter 13, as the "director." The director is appointed by the Commissioner of Labor and holds office at the pleasure of the commissioner. The director has an office at the seat of government. The director shall appoint, subject to the Civil Service Law, such employees as may be necessary. [1995, c. 560, Pt. H, §7 (AMD); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY

1967, c. 476, §20 (AMD). 1969, c. 504, §42 (AMD). 1971, c. 620, §1 (AMD). 1973, c. 715, §1 (AMD). 1975, c. 59, §1 (AMD). 1975, c. 771, §269 (AMD). 1977, c. 674, §23 (RPR). 1977, c. 696, §203 (AMD). 1981, c. 168, §§5,26 (AMD). 1985, c. 785, §B115 (AMD). 1989, c. 410, §24 (AMD). 1995, c. 560, §H7 (AMD). 1995, c. 560, §H17 (AFF).

§42. POWERS AND DUTIES

The bureau shall collect, assort and arrange statistical details relating to all departments of labor and industrial pursuits in the State; to trade unions and other labor organizations and their effect upon labor and capital; to the number and character of industrial accidents and their effect upon the injured, their dependent relatives and upon the general public; to other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions prevailing within the State, including the names of firms, companies or corporations, where located, the kind of goods produced or manufactured, the time operated each year, the number of employees classified according to age and sex and the daily and average wages paid each employee; and the exploitation of such other subjects as will tend to promote the permanent prosperity of the industries of the State. The director is authorized and empowered, subject to the approval of the Governor, to accept from any other agency of government, individual, group or corporation such funds as may be available in carrying out this section, and meet such requirements with respect to the administration of such funds, not inconsistent with this section, as are required as conditions precedent to receiving such funds. An accounting of such funds and a report of the use to which they were put must be included in the biennial report to the Governor. Each agency of government shall cooperate fully with the bureau's efforts to compile labor and industrial statistics. The director shall cause to be enforced all laws regulating the employment of minors; all laws established for the protection of health, lives and limbs of operators in workshops and factories, on railroads and in other places; all laws regulating the payment of wages; and all laws enacted for the protection of the working classes. During an investigation to enforce those laws, the director may request records and other information relating to an employer's compliance with unemployment compensation and workers' compensation laws, including information needed to determine whether the employer has properly classified a worker as an independent contractor, and shall report suspected violations of those laws to the state or federal agency responsible for enforcing them. The director may adopt, in accordance with the Maine Administrative Procedure Act, rules regarding all such laws, except where this authority is granted to a board or commission. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. The director shall, on or before the first day of July, biennially, report to the Governor, and may make such suggestions and recommendations as the director may deem necessary for the information of the Legislature. The director may from time to time cause to be printed and distributed bulletins upon any subject that is of public interest and benefit to the State and may conduct

a program of research, education and promotion to reduce industrial accidents. The director may review various data, such as workers' compensation records, as well as other information relating to any public or private employer's safety experience. When any individual public or private employer's safety experience causes the director to question seriously the safe working environment of that employer, the director may offer any safety education and consultation programs to that employer that may be beneficial in providing a safer work environment. If the employer refuses this assistance or is in serious noncompliance which may lead to injuries, or if serious threats to worker safety continue, then the director shall communicate concerns to appropriate agencies, such as the United States Occupational Safety and Health Administration. As used in this section, the term "noncompliance" means a lack of compliance with any applicable health and safety regulations of the United States Occupational Safety and Health Administration or other federal agencies. The bureau is responsible for the enforcement of indoor air quality and ventilation standards with respect to state-owned buildings and buildings leased by the State. The bureau shall enforce air quality standards in a manner to ensure that corrections to problems found in buildings be made over a reasonable period of time, using consent agreements and other approaches as necessary and reasonable. [1999, c. 649, §1 (AMD).]

The director may enter into reciprocal agreements with other states that maximize compliance with employment standards enforced by the director. [1993, c. 51, §1 (NEW).]

SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 771, §270 (AMD). 1977, c. 615, (AMD). 1987, c. 559, §B5 (AMD). 1987, c. 733, §5 (AMD). 1989, c. 502, §B24 (RPR). 1993, c. 51, §1 (AMD). 1997, c. 377, §1 (AMD). 1999, c. 649, §1 (AMD).

§42-A. SAFETY EDUCATION AND TRAINING PROGRAMS

1. Department to establish programs. The department shall establish and supervise programs for the education and training of employers, owners, employees, educators and students in the recognition, avoidance and prevention of unsafe or unhealthful working conditions in employment. The department shall consult with and advise employers, owners, employees and organizations representing employers, owners and employees as to effective means of preventing occupational injuries and illnesses.

[1985, c. 372, Pt. A, §6 (NEW) .]

2. Safety education and training program functions. The functions of the safety education and training program shall include:

- A. The development and application of a statewide safety education and training program to familiarize employers, supervisors, employees and union leaders with techniques of accident investigation and prevention, including education and training assistance to employers and employees under the chemical substance identification law in sections 1715 and 1720; [1987, c. 559, Pt. B, §6 (AMD).]
- B. The development and utilization of consultative educational techniques to achieve long-range solutions to occupational safety and health problems; [1985, c. 372, Pt. A, §6 (NEW).]
- C. The acquisition, development and distribution of occupational safety and health pamphlets, booklets, brochures and other appropriate safety and health media as may be useful to accomplish the objectives of this section; [1985, c. 372, Pt. A, §6 (NEW).]
- D. The development and administration of a program for employers, with special emphasis on small business employers, providing technical and educational assistance on matters of occupational safety and health; [1985, c. 372, Pt. A, §6 (NEW).]
- E. The development and implementation of a training and education program for department staff engaged in the administration and enforcement of this section; [1987, c. 782, §2 (AMD).]

E-1. The development and administration of programs to educate employers and employees regarding the Whistleblowers' Protection Act, chapter 7, subchapter V-B; [1991, c. 615, Pt. A, §18 (AMD).]

E-2. The support for the development of long-term strategies to improve occupational health and safety professional education and resources. The department may award contracts to public and private nonprofit organizations as seed money to develop programs that will serve this purpose and that will develop other funding sources in the future; and [1991, c. 615, Pt. A, §19 (NEW).]

F. The conduct of other activities as necessary for the implementation of an effective safety education and training program. [1985, c. 372, Pt. A, §6 (NEW).]

[1991, c. 615, Pt. A, §§18, 19 (AMD) .]

3. Programs provided upon request. The department shall provide safety training programs, upon request, for employees and employers. Priority for the development of safety training programs shall be in those occupations which pose the greatest hazard to the safety and health of employees.

[1985, c. 372, Pt. A, §6 (NEW) .]

4. Continuing research. The department may conduct continuing research into methods, means, operations, techniques, processes and practices necessary for improvement of occupational safety and health of employees.

[1985, c. 372, Pt. A, §6 (NEW) .]

5. Consulting services. The department shall, upon request, provide a full range of occupational safety and health consulting services to any employer or employee group. These consulting services may include providing employers or employees with information, advice and recommendations on maintaining safe employment or places of employment, and on applicable occupational safety and health standards, techniques, devices, methods, practices or programs.

[1985, c. 372, Pt. A, §6 (NEW) .]

6. Contract. The department may contract with others to perform these functions.

[1985, c. 372, Pt. A, §6 (NEW) .]

SECTION HISTORY

1985, c. 372, §A6 (NEW). 1987, c. 559, §B6 (AMD). 1987, c. 782, §§2,3 (AMD). 1991, c. 615, §§A18,19 (AMD).

§42-B. BUREAU TO FURNISH POSTER OR NOTICE OUTLINING STATE LABOR LAWS

1. Bureau to furnish poster or notice. The bureau shall produce and furnish to employers posters or notices in printed form outlining state labor laws applicable to those employers and regulating:

A. Employment of minors; [2001, c. 242, §1 (NEW).]

B. Time of payment of wages; [2001, c. 242, §1 (NEW).]

C. Safety and health of employees; and [2001, c. 242, §1 (NEW).]

D. Family medical leave. [2001, c. 242, §1 (NEW).]

The posters or notices may also include such other laws as may be required or useful.

[2001, c. 242, §1 (NEW) .]

2. Notice of cause for termination. The bureau shall include in one of the posters or notices under subsection 1 the following information regarding at-will employment:

Under Maine law, an at-will employee may be terminated for any reason not specifically prohibited by law. In most instances, you are an at-will employee unless you are covered by a collective bargaining agreement or other contract that limits termination. If you have questions about at-will employment, contact your human resources department or the State Department of Labor, Bureau of Labor Standards.

The notice must be printed in bold type of at least 24 points.

[2003, c. 442, §1 (AMD) .]

3. Employer to post notice. An employer subject to the laws outlined in the printed poster or notice shall post and keep posted in a place accessible to the employer's employees a copy of the printed poster or notice furnished by the bureau. An employer who violates this section is subject to the penalties set forth in section 704.

[2001, c. 242, §1 (NEW) .]

SECTION HISTORY

2001, c. 242, §1 (NEW). 2003, c. 442, §1 (AMD).

§43. FACTS AND STATISTICS; SEAL; TESTIMONY; SOURCES CONFIDENTIAL

The director may furnish a written or printed list of interrogatories for the purpose of gathering such facts and statistics as are contemplated, to any person, or the proper officer of any corporation operating within the State, and may require full and complete answers thereto under oath. The director shall have a seal, and may take and preserve testimony, issue subpoenas, administer oaths and examine witnesses under oath in all matters relating to the duties required of the bureau. Such testimony must be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses summoned and testifying before the director must be paid, from any funds at the disposal of the bureau, the same fees as witnesses before the Superior Court. In the report, except safety and health reports, names of individuals, firms or corporations supplying the information called for by this section may not be used unless by written permission, such information being confidential and not for the purpose of disclosing personal affairs. [2013, c. 473, §1 (AMD) .]

SECTION HISTORY

1971, c. 620, §13 (AMD). 2013, c. 473, §1 (AMD).

§44. RIGHT OF ACCESS

The director as state factory inspector, and any authorized agent of the bureau, may enter any workplace as defined in section 1, provided by the State or by a state agency, county, municipal corporation, school district or other public corporation or political subdivision when the same are open or in operation, for the purpose of gathering facts and statistics under sections 42 to 44, and may examine the methods of protecting employees from danger, the safety and health of employees and sanitary conditions in and around such buildings and places, and may make a record of such inspection. Upon petition of the director, a Superior Court in the county in which any refusal to permit entry or fact gathering or inspection was alleged to have occurred may order appropriate injunctive relief against any person in charge of the workplace who refuses entry to the director or authorized agent of the bureau. [2015, c. 138, §2 (AMD) .]

Each employer subject to this section shall make, keep and preserve, and make available to the director or the director's authorized agent, upon request, such records regarding the employer's activities relating to occupational safety and health as the director may prescribe by rule as necessary or appropriate for the enforcement of section 45 or any rule adopted pursuant to section 565 or for developing information regarding the causes and prevention of occupational accidents, diseases and illnesses. Any information obtained by the director must be obtained with a minimum burden upon employers, especially those employing a small work force. [2013, c. 473, §2 (AMD).]

The bureau shall also issue rules requiring that employers through posting of notices or other appropriate means keep their employees informed of their protections and obligations under this chapter and chapter 6, including the provisions of applicable standards. [2013, c. 473, §2 (AMD).]

SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 519, §4 (AMD). 2013, c. 473, §2 (AMD). 2015, c. 138, §2 (AMD).

§44-A. WALKAROUND INSPECTIONS

A representative of the employer and an authorized employee representative shall be given an opportunity to accompany the director or his authorized agent during the physical inspection of the workplace of any employer, subject to this section, for the purpose of aiding such inspection. Where there is no authorized employee representative, the director or his authorized agent shall consult with a reasonable number of employees concerning matters of safety in the workplace. The employee representative shall not lose any privilege or compensation during or because of his attendance in any such inspection. [1975, c. 519, §5 (NEW).]

SECTION HISTORY

1975, c. 519, §5 (NEW).

§45. NOTICE OF IMPROPER CONDITIONS

If, upon inspection, the director or any authorized agent of the bureau finds that an employer has violated a requirement of section 561-A or any rule adopted pursuant to section 565, the director or the authorized agent of the bureau shall immediately issue a citation to the employer. Each citation must be in writing and describe with particularity the nature of the violation, including a reference to the provision of this Title or the rules alleged to have been violated. In addition, the citation must fix a specific time for the abatement of the violation. [2013, c. 473, §3 (AMD).]

Each citation issued under this section, or a copy or copies, must be prominently posted at or near each place where a violation referred to in the citation occurred or existed. In addition, employees must have access to their toxic exposure records or records of employee observation of exposure monitoring and measuring. [2013, c. 473, §3 (AMD).]

SECTION HISTORY

1965, c. 200, §1 (AMD). 1967, c. 494, §21 (AMD). 1969, c. 122, (AMD). 1971, c. 446, §1 (RPR). 1971, c. 620, §13 (AMD). 1975, c. 519, §6 (RPR). 1979, c. 95, §1 (AMD). 2013, c. 473, §3 (AMD).

§45-A. APPLICATION OF SECTIONS 44 AND 45 (REPEALED)

SECTION HISTORY

1965, c. 200, §2 (NEW). 1969, c. 274, §2 (AMD). 1975, c. 519, §7 (AMD). 1979, c. 197, §1 (RP).

§46. FAILURE TO COOPERATE OR COMPLY

Whoever, being duly summoned under section 43, willfully neglects or refuses to attend, or refuses to answer any question propounded to him concerning the subject of such examination as provided in said section 43, or whoever, being furnished by the director with a written or printed list of interrogatories, neglects or refuses to answer and return the same under oath, shall be punished by a fine of not less than \$25 nor more than \$100, or by imprisonment for not more than 30 days, or by both. No witness shall be compelled to go outside the county in which he resides to testify. [1971, c. 620, §13 (AMD).]

Any employer who willfully or repeatedly violates any requirements of section 45 or any standard, rule or order promulgated pursuant to section 565 may be assessed a civil penalty of not more than \$1,000 for each day during which such violation continues. [1975, c. 519, §8 (RPR).]

Any employer who has received a citation for a serious violation of the requirements of section 45 or of any standard, rule or order issued pursuant to section 565, shall be assessed a civil penalty of up to \$1,000 for each such violation. [1975, c. 519, §8 (RPR).]

Any employer who has received a citation for a violation of the requirements of section 45 or of any standard, rule or order issued pursuant to section 565, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to \$1,000 for each such violation. [1975, c. 519, §8 (RPR).]

Any employer who fails to correct a violation for which a citation has been issued under section 45 within the period permitted for its correction, which period shall not begin to run until the date of the final order of the board in the case of any review proceeding initiated by the employer in good faith and not solely for delay or avoidance of penalties, may be assessed a civil penalty of not more than \$1,000 for each day during which such failure or violation continues. [1975, c. 519, §8 (RPR).]

Any employer who willfully or repeatedly violates any standard, rule or order promulgated pursuant to section 565, and that violation is specifically determined to be a serious violation, shall, upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than 6 months, or by both; except that if the conviction is for a violation committed after a first conviction of such person, punishment shall be by a fine of not more than \$20,000, or by imprisonment for not more than one year, or by both. [1983, c. 296, (AMD).]

Any person who gives advance notice of any inspection to be conducted pursuant to this chapter without authority from the director shall, upon conviction, be punished by a penalty of not less than \$500 nor more than \$1,000, or by imprisonment for not more than 6 months, or by both. [1975, c. 519, §8 (RPR).]

Any employer who violates any of the posting requirements, as prescribed in section 45, shall be assessed a penalty of not more than \$1,000 for each violation. [1975, c. 519, §8 (RPR).]

Civil penalties owed under this chapter shall be paid to the director for deposit with the Treasurer of State, and may be recovered in a civil action in the name of the State brought in the Superior Court of the county where the violation is alleged to have occurred or where the employer has its principal office. Interest shall accrue on such penalties at the rate of 1 1/2% per month except that the interest shall be suspended during the pendency of an appeal. [1975, c. 519, §8 (RPR).]

For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists or from one or more practices, means, methods, operations or processes which have been adopted or are in use in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. [1975, c. 519, §8 (RPR).]

SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 519, §8 (AMD). 1983, c. 296, (AMD).

§47. MUNICIPAL OFFICERS TO FURNISH INFORMATION

All state, county, city and town officers are directed to furnish the director, upon his request, such statistical or other information contemplated by sections 42 to 45 as shall be in their possession as such officers. [1971, c. 620, §13 (AMD).]

SECTION HISTORY

1971, c. 620, §13 (AMD).

§48. REPORTS

All reports to the Bureau of Labor Standards involving deaths, injuries and occupational diseases shall be available to the injured employee, his survivors or representatives upon written request and upon payment of reasonable cost for the copies. [1981, c. 168, §6 (AMD).]

SECTION HISTORY

1973, c. 418, (NEW). 1975, c. 59, §2 (AMD). 1981, c. 168, §6 (AMD).

§49. IMMINENT DANGER

A Superior Court in the county in which the imminent danger is alleged to exist shall have jurisdiction, upon petition of the director, to restrain any conditions or practices in any place of employment subject to section 45 which are such that a danger exists which will reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this chapter. [1975, c. 519, §9 (NEW).]

SECTION HISTORY

1975, c. 519, §9 (NEW).

§50. INSPECTIONS IN RESPONSE TO COMPLAINT

Any employee or a representative of an employee of the State, a state agency, county, municipal corporation, school district or other public corporation or political subdivision who believes that a violation of an occupational safety or health standard exists that threatens physical harm or that an imminent danger exists may request an inspection by giving notice to the director or his authorized agent of such violation or danger. Except in cases of imminent danger, any such notice shall be in writing, shall set forth with reasonable particularity the grounds for the notice, shall be signed by the employee or his representative and a copy shall be provided the employer or his agent no later than the time of the inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or upon any record published, released or made available in any other respect. If upon the receipt of such notification, the director or his authorized agent determines that there are reasonable grounds to believe that such violation or danger exists, he shall make a special inspection as soon as practicable to determine if such violation or danger exists. If the director or his authorized agent determines that there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employee or representative of the employee in writing of such determination. [1975, c. 519, §10 (NEW).]

SECTION HISTORY

1975, c. 519, §10 (NEW). 1979, c. 95, §2 (AMD).

§51. COMMISSION ON SAFETY AND HEALTH IN THE MAINE WORKPLACE (REPEALED)

SECTION HISTORY

1987, c. 559, §B7 (NEW). 1991, c. 93, §2 (AMD). 1999, c. 162, §1 (AMD). 2003, c. 673, §Q1 (AMD). 2007, c. 395, §29 (RP).

§52. LIENS

1. Form; effect. Upon the failure of an employer to pay the amount assessed for unpaid wages or severance pay pursuant to chapters 7 and 15, the director may file in the registry of deeds of any county a certificate stating the name of the employer; the employer's address; the amount of unpaid wages or severance pay; and either that the time permitted for an appeal has expired without the appeal having been taken or that delay will jeopardize collection. When the certificate is duly filed and recorded, the amount of the assessment is a lien upon the entire interest of the employer, legal or equitable, in any real or tangible personal property situated within the jurisdiction of the office in which that certificate was filed. A lien obtained in this manner is a lien for unpaid wages or severance pay and the priority of the lien is governed by the laws of this State. The lien is subordinate to any real estate mortgage previously recorded as required by law. A lien for unpaid wages or severance pay is not valid against one who purchases personal property from the employer in the usual course of business, in good faith and without actual notice of the lien. The lien may be enforced against any real or personal property by a civil action in the name of the director. The director shall discharge any such lien upon receiving, from any employer against whose property a lien certificate has been filed, a good and sufficient bond with sureties conditioned upon the payment of the amount of unpaid wages or severance pay as finally determined together with any additional amount that may have become due or may have accrued under this chapter and costs of court, if any.

The remedies in this subsection are in addition to all other remedies.

[1999, c. 28, §1 (NEW) .]

2. Filing lien. Certificates of liens for unpaid wages or severance pay, or certificates discharging the liens prepared in accordance with this section, must be received, recorded and indexed by registrars of deeds in the same manner as similar instruments are recorded and indexed. The fee to be paid by the director for recording each certificate is the usual and customary fee, which need not be prepaid. This recording fee along with all other filing fees is the liability of the employer and must be assessed as part of the lien pursuant to subsection 1.

[1999, c. 28, §1 (NEW) .]

3. Enforcement of lien. After any assessment has become final and rights of appeal exhausted or lost by virtue of failure to exercise those rights, any property, real or personal, upon which a lien has been claimed under this chapter may be sold after due notice in conformity with the laws applicable to sales of real or personal property on executions issued in personal actions. In connection with such sales, the director has the same rights, privileges, duties and responsibilities as one in whose favor an execution is issued.

[1999, c. 28, §1 (NEW) .]

SECTION HISTORY

1999, c. 28, §1 (NEW) .

§53. ADDITIONAL PENALTIES

In addition to any penalties provided in chapter 7, subchapters I to IV, the director may assess a forfeiture against any employer, officer, agent or other person who violates any provision of chapter 7, subchapters I to IV for each violation of those subchapters. The forfeiture may not exceed \$1,000 or the amount provided in law or rule as a penalty for the specific violation, whichever is less. The Attorney General, upon complaint of the director, shall institute a civil action to recover the forfeiture. Any amount recovered must be deposited with the Treasurer of State. The director shall adopt rules to govern the administration of the civil money forfeiture provisions. The rules must include a right of appeal by the employer and a range of monetary assessments with consideration given to the size of the employer's

business, the good faith of the employer, the gravity of the violation and the history of previous violations. The rules adopted pursuant to this section are major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. [1999, c. 181, §1 (NEW).]

SECTION HISTORY

1999, c. 181, §1 (NEW).

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