

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-SIX

—
H.P. 1045 - L.D. 1587

An Act to Clarify the Bureau of Labor Standards' Investigatory and Enforcement Procedures

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

Sec. 1. 26 MRSA §54 is enacted to read:

§54. Investigation; penalties

1. Investigation. Whenever the director believes a person or employer has violated any provision of chapter 7 or 15, the director may conduct an investigation. During the investigation of a person or employer, the director may:

A. Examine or cause to be examined for that purpose any books, records, papers and memoranda of any person or employer of whatever nature relevant to the alleged violation;

B. Issue a subpoena pursuant to subsection 2 or otherwise require the attendance of the person or employer, or of any other person having knowledge of the subject of the investigation, take testimony, administer oaths or take acknowledgement in respect of any book, record, paper or memorandum and may require proof material for that person's or employer's information. Such testimony, administration of oaths or acknowledgement of any book, record, paper or memorandum must be taken in the county where the person or employer resides or has a place of business, or in Kennebec County if the person or employer is a nonresident or has no place of business within the State; and

C. Require production of any record required by law to be kept by the person or employer pursuant to any provision of chapter 7 or 15.

2. Issuance of subpoenas. Subpoenas issued for the purposes of conducting an investigation pursuant to subsection 1 must be issued pursuant to Title 5, section 9060. Service of any notice or subpoena may be made by:

A. Delivering a duly executed copy of the subpoena to the person or employer to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service of process on behalf of that person or employer;

B. Delivering a duly executed copy of the subpoena to the principal place of business in this State of the person or employer to be served; or

C. Mailing by registered or certified mail a duly executed copy of the subpoena addressed to the person or employer to be served at the principal place of business in this State of the person or employer to be served or, if that person or employer does not have a place of business in this State, to the person's or employer's principal office or place of business or publicly identified service address.

3. Penalties for violations. If the director determines a person or employer has violated any provision of chapter 7 or 15, the director may issue a notice of violation and:

A. Order the payment of penalties and other remedies consistent with section 53 and any other penalty or enforcement provision in chapter 7 or 15. Once a penalty or other ordered remedy is final and all administrative and legal appeal rights have been exhausted, the person or employer subject to the penalty or ordered remedy pursuant to this subsection shall make payment within 30 calendar days. Failure to make a timely payment is subject to an additional civil penalty of not more than \$1,000 for each day that the person or employer fails to make payment; or

B. Order the correction of ongoing violations. Any person or employer who fails to correct a violation for which a notice of violation has been issued within the permitted period for its correction is subject to an additional civil penalty of not more than \$1,000 for each day during which the violation is not corrected. The permitted period for correction may not begin to run until the date on which all administrative and legal appeal rights have been exhausted in the case of any appeal proceeding initiated by the person or employer in good faith and not solely for delay or avoidance of penalties.

A person or employer who is ordered to pay wages, liquidated damages or interest to an employee pursuant to this subsection or the provisions of chapter 7 or 15 shall certify that payment was made within 7 calendar days from the date on which all administrative and legal appeal rights have been exhausted in the case of any appeal proceeding initiated by the person or employer in good faith and not solely for delay or avoidance of penalties. Such certification must demonstrate to the satisfaction of the director that payment was made to any employee's last known address or attest to the same under penalty of perjury.

4. Failure to pay; notice of levy. If a person or employer fails to pay any part of the wages, liquidated damages, interest or penalties due to an employee under this section or chapter 7 or 15, the director may notify by mail a 3rd party who has possession or control of property in which the delinquent person or employer may have an interest or who may owe a debt to the delinquent person or employer, other than earnings.

A. A notice of levy under this subsection may be given any time after the amount due under this section becomes delinquent. The notice of levy must state the aggregate amount of contributions, penalties, interest or other amounts due and any additional amount that will accrue by operation of law in a period not to exceed the computation ending date of the month in which the notice of levy is given and, in the case of a credit, bank or savings account or deposit, the notice of levy is effective only up to that amount.

B. The delinquent person's or employer's property subject to levy includes:

(1) A credit, bank or savings account or deposit that is subject to execution pursuant to Title 14, section 4751; or

(2) Any other interest or personal property that is not exempt from attachment or execution pursuant to Title 14, chapter 507, subchapter 2, article 7.

C. A notice of levy is effective:

(1) At the time of delivery against all property, rights to property, credits and debts involving the delinquent person or employer that are not, as of the date of the notice, subject to a preexisting lien, attachment, garnishment or execution issued through a judicial process; and

(2) Against all property, rights to property, credits and debts involving the delinquent person or employer that come into the possession or control of the person or employer served with the notice.

D. A notice of levy sent under this subsection that attempts to prohibit the transfer or disposition of any property possessed or controlled by a bank is effective if it is mailed to the principal or any branch office of the bank, including any office of the bank at which the deposit is carried or the credit or property is held.

E. A person who has received a notice of levy under this subsection and who acts in accordance with the terms of the notice of levy issued by the director is discharged from any obligation or liability to the delinquent person or employer with respect to the affected property, rights to property, credits and debts of the person affected by compliance with the notice of levy.

F. A person who has received a notice of levy under this subsection and who transfers or disposes of any property or debt in a manner that violates this section is liable to the director for the amount of the indebtedness of the delinquent person or employer with respect to whose obligation or liability the notice was given to the extent of the value of that property or debt.

5. Workplace posting. A copy or copies of any notice of violation issued under this section or chapter 7 or 15 must be prominently posted in a conspicuous location in the workplace that is accessible to employees. If no such location exists, a copy or copies of the notice of violation must be delivered to each employee in a reasonable manner.

6. Employee notification. If a notice of violation issued under this section or chapter 7 or 15 covers a defined time period, notice of violation must be provided to all employees employed during that time period. Mail, e-mail and text messages constitute reasonable manners in which to notify employees, as long as the mail, e-mail or text message is in the same language in which the employer typically communicates to the employees receiving the notice of violation.