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An Act Regarding Fairness for Families Regarding Workers' Compensation Coverage

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

Sec. 1. 39-A MRSA §102, sub-§11, ¶A, as amended by PL 2003, c. 344, Pt. D, §27 and c. 423, §4 and affected by §5, is further amended to read:

A. "Employee" includes officials of the State and officials of counties, cities, towns, water districts and all other quasi-public corporations of a similar character, every duly elected or appointed executive officer of a private corporation other than a charitable, religious, educational or other nonprofit corporation, and every person in the service of another under any contract of hire, express or implied, oral or written, except:

(1) Persons engaged in maritime employment or in interstate or foreign commerce who are within the exclusive jurisdiction of admiralty law or the laws of the United States, except that this section may not be construed to exempt from the definition of "employee" a person who is employed by the State and is thereby barred by the State's sovereign immunity from bringing a claim against that person's employer under admiralty law or other laws of the United States for claims that are otherwise cognizable under this Act;

(2) Firefighters, including volunteer firefighters who are active members of a volunteer fire association as defined in Title 30-A, section 3151; volunteer emergency medical services persons as defined in Title 32, section 83, subsection 12; and police officers are employees within the meaning of this Act. In computing the average weekly wage of an injured volunteer firefighter or volunteer emergency services person, the average weekly wage must be taken to be the earning capacity of the injured employee in the occupation in which the employee is regularly engaged. Employers who hire workers within this State to work outside the State may agree with these workers that the remedies under this Act are exclusive as regards injuries received outside this State arising out of and in the course of that employment; and all contracts of hiring in this State, unless otherwise specified, are presumed to include such an agreement. Any reference to an employee who has been injured must, when the employee is dead, include the employee's legal representatives, dependents and other persons to whom compensation may be payable;

(3) Notwithstanding any other provisions of this Act, any charitable, religious, educational or other nonprofit corporation that may be or may become an assenting employer under this Act may cause any duly elected or appointed executive officer to be an employee of the corporation by specifically including the executive officer among those to whom the corporation secures payment of compensation in conformity with chapter 5; and the executive officer must remain

an employee of the corporation under this Act while such payment is so secured. With respect to any corporation that secures compensation by making a contract of workers' compensation insurance, specific inclusion of the executive officer in the contract causes the officer to be an employee of the corporation under this Act;

(4) Except for persons engaged in harvesting of forest products, any person who, in a written statement to the board, waives all the benefits and privileges provided by the workers' compensation laws, provided that the board has found that person to be a bona fide owner of at least 20% of the outstanding voting stock of the corporation by which that person is employed or a shareholder of the professional corporation by which that person is employed and that this waiver was not a prerequisite condition to employment. For the purposes of this subparagraph, the term "professional corporation" means a domestic or foreign professional corporation as defined in Title 13, section 723.

Any person may revoke or rescind that person's waiver upon 30 days' written notice to the board and that person's employer. The parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a person who has made a waiver under the previous sentence may state, in writing, that the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment and if the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child is employed by the same corporation that employs the person who has made the first waiver;

(5) Except for persons engaged in harvesting of forest products, the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a sole proprietor who is employed by that sole proprietor or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a partner who is employed by the partnership of that partner or the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child of a member of a limited liability company who is employed by that limited liability company may state, in writing, that the parent, spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1 or child waives all the benefits and privileges provided by the workers' compensation laws if the board finds that the waiver is not a prerequisite condition to employment;

(6) Employees of an agricultural employer when harvesting 150 cords of wood or less each year from farm wood lots, provided that the employer is covered under an employer's liability insurance policy as required in subsection 17;

(7) An independent contractor;

(8) Except as otherwise provided in section 401, if a person employs an independent contractor, any employee of the independent contractor is not considered an employee of that person for the purposes of this Act. The person who employs an independent contractor is not responsible for providing workers' compensation insurance covering the payment of compensation and benefits to the employees of the independent contractor. An insurance company may not charge a premium to any person for any employee excluded by this subparagraph; or

(9) A state or municipal employee while the employee is on assignment as a certified disaster service volunteer for the American Red Cross pursuant to Title 5, section 19-B or Title 30-A, section 2705. Duties performed while on a volunteer disaster relief assignment for the American Red Cross may not be considered a work assignment by a state agency or municipality.

Sec. 2. 39-A MRSA §102, sub-§11, ¶B-1, as amended by PL 2001, c. 490, §1, is further amended to read:

B-1. "Employee" includes any person engaged in harvesting forest products, except the following persons:

(1) A person who contracts directly with the landowner if the person meets the criteria for obtaining a certificate of independent status or a predetermination of independent contractor status and:

(a) Performs all of the wood harvesting alone;

(b) Performs all of the wood harvesting alone or with the assistance of one or more of the following persons whose relationship with the person is that of spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1, parent, sibling, child, niece or nephew;

(c) Performs all of the wood harvesting alone or with the assistance of one or more other persons all covered by workers' compensation insurance; or

(d) Performs all of the wood harvesting alone or with the assistance of a partner when a legal partnership exists and neither partner acts as a supervisor of the other;

(2) A spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1, parent, sibling, child, niece or nephew of a person who contracts directly with the landowner to perform all of the wood harvesting alone or with the assistance of one or more of the following: the person's spouse, domestic partner as defined in Title 24, section 2319-A, subsection 1, parent, sibling, child, niece or nephew; or

(3) A partner of a person who contracts directly with the landowner to perform all of the wood harvesting alone or with the assistance of a partner when a legal partnership exists and neither partner acts as a supervisor of the other.

Unless employed by a private employer, a person considered an employee under this paragraph shall obtain personal coverage in the same manner and under the same provisions as a person described in paragraph B who elects to be covered by this Title.

Effective September 20, 2007