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An Act To Amend the Laws Governing Firefighter Absence from Work for Emergency Response

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the Maine Revised Statutes, Title 26, section 809 pertains to absence for emergency response by members of a volunteer fire department; and

Whereas, many volunteer fire departments are becoming municipal fire departments; and

Whereas, because current law does not apply to municipal fire departments, the members of municipal fire departments are not protected from being discharged or having disciplinary action taken against them by their employers for responding to emergencies; and

Whereas, it is imperative that this legislation take effect immediately so that members of municipal fire departments will have the same protection as members of volunteer fire departments; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 26 MRSA §809, sub-§1, ¶A-1 is enacted to read:

A-1. "Firefighter" has the same meaning as "municipal firefighter" and "volunteer firefighter" in Title 30-A, section 3151, subsections 2 and 4.

Sec. 2. 26 MRSA §809, sub-§1, ¶C, as enacted by PL 2005, c. 296, §1, is repealed.

Sec. 3. 26 MRSA §809, sub-§2, as enacted by PL 2005, c. 296, §1, is amended to read:

2. Prohibition against discharge or disciplinary action. An employer may not discharge or take any other disciplinary action against an employee because of the employee's failure to report for work at the beginning of the employee's regular working hours if the employee failed to do so because the employee was responding to an emergency in the employee's capacity as a ~~volunteer~~ firefighter and the employee reported for work as soon as reasonably possible after being released from the emergency. An employer may charge the lost time against the employee's regular pay or against the employee's available leave time. This subsection does not apply to the absence of a ~~volunteer~~ firefighter from the ~~volunteer~~ firefighter's regular employment as a law enforcement officer, a utility worker or medical personnel when the services of that person are essential to protect public health or safety or if the employee has been designated as essential by the employer pursuant to subsection 6.

Sec. 4. 26 MRSA §809, sub-§3, as enacted by PL 2005, c. 296, §1, is amended to read:

3. Notification; verification. If time permits, when an employee is responding as a ~~volunteer~~ firefighter to an emergency, the employee, the employee's designee or the fire department supervisor shall notify the employer that the employee will not report to work at the appointed time. At the request of an employer, an employee losing work time as provided in subsection 2 shall provide the employer with a statement from the chief of the ~~volunteer~~ fire department or the chief's designee stating that the employee was responding to an emergency call and the time of release from the call.

Sec. 5. 26 MRSA §809, sub-§5, as enacted by PL 2005, c. 296, §1, is amended to read:

5. Impact on individual agreements. This section does not apply if the employer and the employee have entered into a written agreement, signed by the employer and the employee, that governs procedures to be followed when the employee is called to respond to an emergency as a ~~volunteer~~ firefighter. This subsection applies only if:

A. The local official in charge of calling out firefighters has a written policy that:

(1) Specifies the circumstances under which firefighters will be ordered to remain at an emergency; and

(2) Affirms that firefighters will be released as soon as practicable; and

B. The employee presents a copy of the policy to the employer upon notifying the employer of the employee's status as a ~~volunteer~~ firefighter.

Sec. 6. 26 MRSA §809, sub-§6, as enacted by PL 2005, c. 296, §1, is amended to read:

6. Designation as essential. Upon receiving notice of an employee's ~~volunteer~~ firefighter status, an employer may designate the employee essential to the employer's operations when the absence of the employee would cause disruption of the employer's business.

Sec. 7. Maine Revised Statutes headnote amended; revision clause. In the Maine Revised Statutes, Title 26, chapter 7, subchapter 4-C, in the subchapter headnote, the words "volunteer firefighter; absence from work" are amended to read "firefighter; absence from work" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

Current law prohibits an employer from discharging or otherwise disciplining for absence an employee who is a volunteer firefighter and who responds to an emergency in that capacity. The law does not pertain to a person who belongs to a municipal fire department. This bill changes the law to also protect members of municipal fire departments.