

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out the title and substituting the following:

**'An Act To Amend the Laws Governing Employer
Recovery of Overcompensation Paid to an Employee'**

Amend the bill by striking out everything after the enacting clause and inserting the following:

'**Sec. 1. 26 MRSA §635**, as enacted by PL 1989, c. 804, is amended to read:

§ 635.Overcompensation by employer

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Net amount" means the amount of money due an employee as compensation after any deductions or withholdings other than an employer's withholding for the purpose of recovering any overcompensation.

B. "Overcompensation" means any compensation paid to an employee, including paid leave, that is greater than that to which the employee is entitled under the compensation system established by the employer, but does not include fringe benefits, awards, bonuses, settlements or insurance proceeds in respect to or in lieu of compensation, expense reimbursements, commissions or draws or advances against compensation.

C. "Paid leave" has the same meaning as in section 636, subsection 1, paragraph C.

2. Recovery of overcompensation; limits. An employer who has overcompensated an employee through employer error may not withhold more than ~~10%~~5% of the net amount of any subsequent pay without the employee's written permission, except that, if the employee voluntarily terminates employment, the employer may deduct the full amount of overcompensation from any wages due. An employer who has overcompensated an employee through employer error may not recover more than the amount of overcompensation paid to that employee in the 3 years preceding the date of discovery of the overcompensation.

3. Violation. If an employer with over 25 employees violates this section, that employer forfeits any claim to the overcompensation.

If an employer with 25 or fewer employees knows of the limitation established by subsection 2 and violates this section, that employer forfeits any claim to the overcompensation. Employers of 25 or fewer employees who do not know of the limitation established by subsection 2 and who violate this section ~~shall~~must return all money withheld in excess of that permitted under subsection 2 within 3 days of written or oral demand by the employee, or forfeit any claim to the overcompensation.

4. Application. This section is applied as follows.

A. An employer has the burden of proof, except that, if the overcompensation amounts to less than 15% of the correct net amount of the employee's compensation, the employer must prove by clear and convincing evidence that the employee knowingly accepted the overcompensation.

B. If an employee knowingly accepts the overcompensation, this section does not apply.

C. This section, except for the forfeiture provisions in subsection 3, does not limit or affect an employer's general civil remedies against an employee or an employee's general civil remedies against an employer.'

SUMMARY

This amendment replaces the bill, which is a concept draft. It amends the definition of "overcompensation" by an employer to include compensation in the form of paid leave. It changes the maximum amount an employer can withhold from an employee's pay to recover overcompensation from 10% to 5%. It prohibits an employer from recovering more than the amount of overcompensation paid to an employee in the 3 years preceding the discovery of the overcompensation. The amendment also specifies that the section of law regarding overcompensation by employers that includes these provisions does not limit or affect an employee's general civil remedies against an employer.