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An Act To Update the Statutes Governing the Bureau of Labor Standards To Promote Clarity for Workers and Employers

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

Sec. 1. 26 MRSA §41, as amended by PL 1995, c. 560, Pt. H, §7 and affected by §17, is further amended to read:

§ 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.

Sec. 2. 26 MRSA §42-B, sub-§1, as enacted by PL 2001, c. 242, §1, is amended to read:

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

- A. Employment of minors;
- B. Time of payment of wages;
- C. Safety and health of employees; ~~and~~
- D. Family medical leave-;
- E. Video display terminal safety as described in section 252, subsection 1; and
- F. Minimum wage and overtime provisions as described in section 664.

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

Sec. 3. 26 MRSA §42-B, sub-§3, as enacted by PL 2001, c. 242, §1, is amended to read:

3. Employer to post notice. An employer subject to the laws outlined in the ~~printed~~ poster or notice issued by the bureau pursuant to subsection 1 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.~~ may be assessed a fine by the department payable to the State as follows:

A. For the first violation, a fine of up to \$25 per day after being notified by the bureau of the violation, not to exceed \$1,000;

B. For a 2nd violation occurring within 3 years of a prior adjudication for a violation of this section, a fine of not less than \$25 per day after being notified by the bureau of the violation or more than \$50 per day, not to exceed \$2,500; or

C. For a 3rd or subsequent violation occurring within 3 years of 2 or more prior adjudications for a violation of this section, a fine of not less than \$25 per day after being notified by the bureau of the violation or more than \$100 per day, not to exceed \$5,000.

Sec. 4. 26 MRSA §44, first ¶, as amended by PL 2015, c. 138, §2, is further amended to read:

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.

Sec. 5. 26 MRSA §46, 6th ¶, as amended by PL 1983, c. 296, is further amended to read:

Any employer who willfully or repeatedly violates any standard, rule or order ~~promulgated~~adopted 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~~ may be assessed a civil penalty of not more than \$10,000.

Sec. 6. 26 MRSA §597, as enacted by PL 1991, c. 366, is amended to read:

§ 597. Conditions of employment

An employer or an agent of an employer may not require, as a condition of employment, that any employee or prospective employee refrain from using tobacco products outside the course of that employment or otherwise discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment, except for life and health insurance and employee benefit plans, for using tobacco products outside the course of employment as long as the employee is 18 years of age or older and complies with any workplace policy concerning use of tobacco. Tobacco use as part of a voluntary wellness program that offers incentives for the cessation of tobacco products is not considered tobacco use for purposes of this section.

Sec. 7. 26 MRSA §600, sub-§1, as amended by PL 2011, c. 537, §1, is further amended to read:

1. Firearms in vehicles. An employer or an agent of an employer may not prohibit an employee ~~who has a valid permit to carry from keeping~~ a concealed firearm under Title 25, chapter 252 ~~from keeping~~ a firearm in the employee's vehicle as long as the vehicle is locked and the firearm is not visible. This subsection applies to the State as an employer when a state employee's vehicle is on property owned or leased by the State. This subsection does not authorize an employee or state employee to carry or possess a firearm in a place where carrying or possessing a firearm is prohibited by law, including worksites not owned by the employer of record. For purposes of this section, "state employee" means an employee of the State within the executive branch, the legislative branch or the judicial branch performing services within the scope of that employee's employment.

Sec. 8. 26 MRSA §601, first ¶, as enacted by PL 1985, c. 212, is amended to read:

In the absence of a collective bargaining agreement or other written employer-employee agreement providing otherwise, an employee, as defined in section 663, may be employed or permitted to work for no more than 6 consecutive hours at one time unless ~~h~~that employee is given the opportunity to take at least 30 consecutive minutes of rest time, except in cases of emergency in which there is danger to property, life, public safety or public health. This rest time may be used by the employee as an unpaid mealtime.

Sec. 9. 26 MRSA §601, sub-§1, ¶B, as enacted by PL 1985, c. 212, is amended to read:

B. The nature of the work done by the employees allows them frequent paid breaks of a shorter duration during their work day.

Sec. 10. 26 MRSA §603, sub-§3, ¶E, as enacted by PL 1999, c. 750, §1, is repealed and the following enacted in its place:

E. A salaried employee:

(1) Who works in a bona fide executive, administrative or professional capacity or satisfies the criteria for the white collar exemption specified by the United States Department of Labor under the federal Fair Labor Standards Act; and

(2) Whose regular compensation meets or exceeds the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act;

Sec. 11. 26 MRSA §621-A, sub-§1, as amended by PL 2005, c. 103, §1, is further amended to read:

1. Minimum frequency and full payment. ~~At~~Employees must be paid at regular intervals not to exceed 16 days, every~~except that a salaried employee, as described in section 663, subsection 3, paragraph K, may be paid at a regular interval not to exceed one month. An employer must pay in full all wages earned by each employee at a time fixed for payment. Each payment must include all wages earned to within 8 days of the payment date during the prior pay period. Payments that fall on a day when the business is regularly closed must be paid no later than the following business day. An employee who is absent from work at a time fixed for payment must be paid on demand after that time as if the employee was not absent.~~

Sec. 12. 26 MRSA §621-A, sub-§2, as enacted by PL 1999, c. 465, §2, is amended to read:

2. Regular payment required. Wages must be paid on an established day or date at regular intervals made known to the employee. ~~When the interval is less than the maximum allowed by subsection 1, the~~The interval may not be increased without written notice to the employee at least 30 days in advance of the increase.

Sec. 13. 26 MRSA §622, as repealed and replaced by PL 1999, c. 465, §3, is amended to read:

§ 622. Records

Every employer shall keep a true record showing the date and amount paid to each employee pursuant to section 621-A. Every employer shall keep a daily record of the time worked by each such employee unless the employee is paid a salary that is fixed without regard for the number of hours worked. Records required to be kept by this section must be accessible to any representative of the department at any reasonable hour. Sections 621-A to 623 do not excuse any employer subject to section ~~702~~774 from keeping the records required by that section. An employer shall preserve the records required by this section for 3 years.

Sec. 14. 26 MRSA §626, first ¶, as amended by PL 1991, c. 162, is further amended to read:

An employee leaving employment must be paid in full ~~within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid, provided that any~~ no later than the employee's next established payday. Any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee. Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned in accordance with the employer's established policy or practice.

Sec. 15. 26 MRSA §626, last ¶, as enacted by PL 1995, c. 580, §1, is amended to read:

Within 2 weeks after the sale of a business, the seller of the business shall pay employees of that business any wages earned while employed by the seller. If the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. Payment of vacation pay is payable only in accordance with the employer's established policy or practice. The seller of a business may comply with the provisions of this paragraph through a specific agreement with the buyer in which the buyer agrees to pay any wages earned by employees through employment with the seller and to honor any paid vacation earned under the seller's vacation policy.

Sec. 16. 26 MRSA §663, sub-§3, ¶H is repealed.

Sec. 17. 26 MRSA §663, sub-§3, ¶K, as amended by PL 2009, c. 529, §2, is repealed and the following enacted in its place:

K. A salaried employee:

(1) Who works in a bona fide executive, administrative or professional capacity, or satisfies the criteria for the white collar exemption specified by the United States Department of Labor under the federal Fair Labor Standards Act; and

(2) Whose regular compensation meets or exceeds the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act;

Sec. 18. 26 MRSA §663, sub-§3, ¶L, as amended by PL 2013, c. 133, §20, is further amended to read:

L. A person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except a prisoner who is:

(1) Employed by a private employer;

(2) Participating in a work release program;

(4) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;

(5) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or

(6) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A.; and

Sec. 19. 26 MRSA §663, sub-§3, ¶M is enacted to read:

M. A domestic service worker employed to provide companionship services for elderly persons or persons with illnesses, injuries or disabilities who require assistance in caring for themselves. In providing companionship services, the provision of care provided in conjunction with the provision of fellowship and protection must not exceed 20% of the total hours worked per person and per workweek to qualify for exemption. As used in this paragraph, "companionship services," "fellowship" and "protection" have the same meaning as in the regulations adopted under the federal Fair Labor Standards Act by the United States Department of Labor, effective January 1, 2015.

Sec. 20. 26 MRSA §663, sub-§9, as enacted by PL 1973, c. 504, is repealed.

Sec. 21. 26 MRSA §663, sub-§12, as amended by PL 2007, c. 360, §2, is further amended to read:

12. Automobile mechanic. "Automobile mechanic" means a person who is primarily engaged in the servicing of automobiles or trucks as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, ~~as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, as described in 29 United States Code, Section 213(b)(10)(A),~~ except when the employee is paid by the employer on an hourly basis.

Sec. 22. 26 MRSA §663, sub-§13, as amended by PL 2007, c. 360, §3, is further amended to read:

13. Automobile parts clerk. "Automobile parts clerk" means a person employed for the purpose of and primarily engaged in requisitioning, stocking and dispensing automobile parts as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, ~~as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, as described in 29 United States Code, Section 213(b)(10)(A),~~ except when the employee is paid by the employer on an hourly basis.

Sec. 23. 26 MRSA §663, sub-§14, as enacted by PL 2007, c. 360, §4, is amended to read:

14. Automobile service writer. "Automobile service writer" means a person employed for the purpose of and primarily engaged in receiving, analyzing and referencing requests for service, repair or analysis of motor vehicles as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, ~~as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except that "automobile service writer" does not include a~~ as described in 29 United States Code, Section 213(b)(10)(A), except when the employee who is paid by the employer on an hourly basis.

Sec. 24. 26 MRSA §663, sub-§15, as enacted by PL 2011, c. 118, §2, is amended to read:

15. Tip. "Tip" means a sum presented by a customer in recognition of services performed by one or more service employees, ~~including a charge automatically included in the customer's bill.~~ "Tip" does not include a compulsory charge for service charge added to a customer's bill ~~in a banquet or private club setting by agreement between the customer and employer.~~

Sec. 25. 26 MRSA §664, sub-§2, as amended by IB 2015, c. 2, §2, is further amended to read:

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. Starting January 1, 2017, the minimum cash wage paid directly to a tipped service employee may not be less than \$5.00 per hour, and the tip credit may not exceed the difference between the minimum cash wage paid directly to a tipped service employee and the minimum hourly wage established under subsection 1. Starting January 1, 2018, and on each January 1st thereafter, the minimum cash wage paid directly to a tipped service employee must be increased by an additional \$1.00 per hour until it reaches the same amount as

the annually adjusted minimum hourly wage established under subsection 1, except that if the minimum cash wage paid directly to a tipped service employee is less than \$1.00 less than the annually adjusted minimum hourly wage, it must be increased by that lesser amount. An employer who elects to use the tip credit, until it is eliminated under this subsection, must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

The tips received by a service employee become the property of the employee and may not be shared with the employer. ~~Tips that are automatically included in the customer's bill or that are charged to a credit card~~ must be treated like tips given to the service employee. A tip that is charged to a credit card must be paid by the employer to the employee by the next regular payday and may not be held while the employer is awaiting reimbursement from a credit card company.

Sec. 26. 26 MRSA §664, sub-§2-B, as enacted by PL 2011, c. 118, §4, is repealed and the following enacted in its place:

2-B. Service charges. A compulsory charge for service is not a tip and is part of the employer's gross receipts. Sums distributed to employees from service charges may not be counted as tips received, but may be used to satisfy the employer's minimum wage and overtime obligations. If an employee receives tips in addition to the compulsory service charge, those tips may be considered in determining whether the employee is a tipped employee and the application of the tip credit.

Sec. 27. 26 MRSA §664, sub-§3, ¶F, as amended by PL 2011, c. 681, §1, is further amended to read:

F. The canning, processing, preserving, freezing, drying, marketing, storing, distribution or packing for shipment ~~or distribution~~ of:

- (1) Agricultural produce;
- (2) Meat and fish products; and
- (3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection; and

Sec. 28. 26 MRSA §668, as amended by PL 1971, c. 620, §13, is repealed.

Sec. 29. 26 MRSA c. 7, sub-c. 4, art. 1, as amended, is repealed.

Sec. 30. 26 MRSA §774, sub-§7 is enacted to read:

7. Record of work hours of minors. Every employer shall keep a time book or record for every minor employed in any occupation, except household work or the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, stating the number of hours worked by each minor on each day of the week. The time book or record must be open at all reasonable hours to the inspection of the director, a deputy of the director or any authorized agent of the bureau. An employer who fails to keep the time book or record required by this subsection or who makes any false entry to the time book or record, refuses to exhibit the time book or record or makes any false statement to the director, a deputy of the director or any authorized agent of the bureau in reply to any question in carrying out this section is liable for a violation of this section and is subject to penalties specified in section 781.

Sec. 31. 26 MRSA §1308, sub-§1, as amended by PL 1997, c. 757, §7, is further amended to read:

1. Determination of wage and benefit rates. The Bureau of Labor Standards shall investigate and determine the prevailing hourly wage and benefits rate paid in the construction industry in this State. The bureau shall conduct a survey every 3 years during the 2nd and 3rd week of September of each year. Prevailing wages and benefits must be determined in September 1999 and become effective upon determination. In determining the prevailing rates, the bureau may ascertain and consider the applicable wage and benefits rates established by collective bargaining agreements, if any, and those rates that are paid generally in the locality where the construction of the public works is to be performed. For purposes of this subsection, "benefits" means health and welfare contributions, pension or individual retirement account contributions and vacation and annuity contributions, per diem in lieu of wages and any other form of payment, except for wages, made to or on behalf of the employee. If a defined contribution amount is not established, the most accurate estimated value of contributions must be included.

Sec. 32. 26 MRSA §1403, as amended by PL 2007, c. 539, Pt. N, §56, is repealed.

Sec. 33. 26 MRSA §2105, first ¶, as enacted by PL 1987, c. 356, is amended to read:

The Bureau of Labor Standards shall adopt an inspection procedure for self-contained breathing apparatus. The procedure must include at least the following, as specified in the American National Standards Institute Z88.5 manufacturer's operation manual:

SUMMARY

This bill makes the following changes to the labor laws.

1. It removes a reference to the Director of Labor Standards as the "state factory inspector" to recognize that the workplaces governed by these statutes are not restricted to factories.

2. It requires posters regarding video display terminal safety and minimum wage and overtime requirements to be posted in the same location as other posters required by the Department of Labor, Bureau of Labor Standards and establishes a penalty structure for violations of the posting requirements within the section of law requiring posting.

3. It removes the requirement that a willful violation of the requirement to cooperate and comply with an investigation by the bureau is punishable as a criminal conviction because the statute does not provide a means to obtain a conviction and instead provides for a civil penalty of up to \$10,000 for a willful violation.

4. It brings the law prohibiting discrimination against tobacco use by employees into compliance with federal law by allowing an employer to discriminate against an employee who uses tobacco when determining health and life insurance premiums and other employee benefit plans but exempts from discrimination an employee's tobacco use that is part of a voluntary wellness program for the cessation of tobacco use.

5. It amends the law regarding the possession of firearms by employees to reflect the repeal of the requirement to obtain a concealed carry permit and clarifies that it does not authorize an employee to carry or possess a firearm where carrying or possessing a firearm is prohibited, including on worksites that are not owned by that employee's employer.

6. It amends the law regarding rest breaks to clarify the differences between paid rest breaks and unpaid lunch breaks.

7. It amends the exemption from rest breaks for those employees who have frequent rest breaks during the work day to specify that the exemption only applies if the rest breaks are paid rest breaks and of shorter duration than the 30 minutes otherwise required.

8. It amends the law regarding the exemption from mandatory overtime pay for salaried workers to specify that the exemption applies to a salaried employee who works in a bona fide executive, administrative or professional capacity who meets the test for a white collar exemption, including a minimum salary level, as established in the final rules adopted by the United States Department of Labor pursuant to the federal Fair Labor Standards Act and allows such employees to be paid on a monthly basis, instead of every 16 days, as for other employees.

9. It amends the law regarding timing of payment of wages to specify that the payment must include all wages earned for the prior pay period, instead of those earned within 8 days of the payment date, and allows such payments to be made on the next business day when the payment date occurs on a day when the business is closed. The bill prohibits an employer from increasing any pay interval without providing notice to its employees.

10. Current law requires an employer to keep a record showing the date and amount paid to each employee and a daily record of time worked by an employee. This bill specifies that those records must be maintained by the employer for 3 years.

11. Current law requires an employee leaving employment to be paid within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid. Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. This bill removes the "reasonable time" requirement and instead specifies that when an employee leaves employment, that employee must be paid on the next established payday. The bill also specifies that payment of vacation is payable only in accordance with the employer's established policy or practice.

12. It repeals the exemption from the minimum wage and overtime laws for an individual employed as a switchboard operator in a public telephone exchange that has less than 750 stations.

13. It amends the definitions of "automobile mechanic," "automobile parts clerk" and "automobile service writer" to reflect provisions in federal law.

14. It changes the definition of "tip" and provisions regarding service charges to conform to the federal Fair Labor Standards Act, or FLSA. Current Maine law creates a wage violation under the FLSA by allowing a charge added to a customer's bill to be treated as a tip, whereas the FLSA treats it as a service charge, which is the employer's property not the service worker's.

15. It clarifies the intent of the Legislature, to conform with federal law, that the distribution of certain products is exempt from the provisions governing overtime pay. It amends the 1995 law by reordering the series of exempt tasks for the purpose of eliminating any perceived ambiguity.

16. It adds the exemption adopted by the United States Department of Labor in 2015 for a domestic service worker employed to provide companionship services. The provision of care provided in conjunction with the provision of fellowship and protection cannot exceed 20% of the total hours worked per person and per workweek to qualify for exemption.

17. It repeals the definition of "hotel" for purposes of the subchapter on minimum wage since the term is not used in that subchapter.

18. It repeals and reallocates the provisions of the Maine Revised Statutes, Title 26, chapter 7, subchapter 4, article 1 regarding the application of the subchapter, record of work hours of minors and penalties.

19. It requires the bureau to conduct a survey every 3 years to determine the prevailing hourly wage and benefits rate in the construction industry. Current law requires the bureau to determine that wage and benefits rate annually.

20. It repeals the provisions of law regarding placement restrictions for a person required to work as a condition of receiving public assistance.

21. It updates the safety standard for inspection of firefighters' breathing apparatus to require that the inspection procedure follow the procedure specified in the manufacturer's operation manual. The document referred to in current law was never finalized for adoption.