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Legislative Document

No. 1319

H.P. 954

House of Representatives, March 19, 2019

**An Act To Prohibit Employer Disciplinary Action against
Firefighters and Emergency Medical Services Persons Responding
to an Emergency**

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative GROHOSKI of Ellsworth.
Cosponsored by Senator LUCHINI of Hancock and
Representatives: ALLEY of Beals, GRIFFIN of Levant, JAVNER of Chester, PEBWORTH of
Blue Hill, SCHNECK of Bangor.

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

2 **Sec. 1. 26 MRSA §809**, as amended by PL 2013, c. 477, §§1 to 6, is further
3 amended to read:

4 **§809. Absence for emergency response**

5 **1. Definitions.** As used in this subchapter, unless the context otherwise indicates,
6 the following terms have the following meanings.

7 A. "Employer" means any private or public employer, including the State and
8 political subdivisions of the State.

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

11 A-2. "Emergency medical services person" has the same meaning as in Title 32,
12 section 83, subsection 12 and includes a volunteer emergency medical services
13 person.

14 B. "Responding to an emergency" means responding to, working at the scene of or
15 returning from a fire or emergency medical services call, a hazardous or toxic
16 materials spill and cleanup or any other situation to which the fire department or
17 emergency medical services provider has been dispatched.

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

32 **3. Notification; verification.** ~~If time permits, when an employee is responding as a~~
33 ~~firefighter to an emergency, the~~ An employee responding to an emergency under
34 subsection 2 shall make every effort to immediately notify the employer that the
35 employee may be late arriving to work or absent from work as a result of responding to
36 an emergency prior to or during the employee's regular working hours. Notification may
37 be provided by the employee, the employee's designee or the fire department supervisor
38 ~~shall notify the employer that the employee will not report to work at the appointed time~~
39 or the emergency medical services provider. At the request of an employer, an employee
40 losing work time as provided in subsection 2 shall provide the employer with a statement
41 from the chief of the fire department or emergency medical services provider or the

1 chief's designee ~~stating that the employee was responding to an emergency call and the~~
2 ~~time of release from the call~~ verifying that the employee was responding to an emergency
3 and specifying the date, time and duration of the response.

4 **4. Enforcement; penalty for violation.** If an employer has violated subsection 2,
5 the employee may bring an action in Superior Court in the county in which the employee
6 resides or in the county in which the employer's place of business is located. The action
7 must be brought within one year of the date of the alleged violation. If the court finds
8 that the employer violated subsection 2, and if the employee so requests, the court shall
9 order the employer to reinstate the employee in the employee's former position without
10 reduction of pay, seniority or other benefits. The court also shall order any other
11 appropriate remedy necessary to return the employee to the position the employee would
12 have been in had the employer not violated subsection 2, including payment of back pay
13 and reinstatement of any other benefits lost during the period in which the discharge or
14 disciplinary action was in effect.

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

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

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

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

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

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

29 **7. Information to be filed by employee with employer.** This section applies only
30 if:

31 A. The chief of the fire department or emergency medical services provider has a
32 written policy that:

33 (1) Specifies the circumstances under which firefighters or emergency medical
34 services persons are needed to respond to an emergency; and

35 (2) Affirms that firefighters or emergency medical services persons will be
36 released as soon as practicable; and

37 B. The employee presents a copy of the policy described in paragraph A to the
38 employer upon notifying the employer of the employee's status as a firefighter or
39 emergency medical services person within 30 days of employment or within 180 days
40 of the effective date of this subsection.

1 An employee shall notify the employer of any change to the employee's status as a
2 firefighter or emergency medical services person, including the termination of that status,
3 within 30 days of the change.

4 **Sec. 2. Maine Revised Statutes headnote amended; revision clause.** In the
5 Maine Revised Statutes, Title 26, chapter 7, subchapter 4-C, in the subchapter headnote,
6 the words "firefighter; absence from work" are amended to read "firefighter or emergency
7 medical services person; absence from work" and the Revisor of Statutes shall implement
8 this revision when updating, publishing or republishing the statutes.

9 **SUMMARY**

10 Current law protects a firefighter from disciplinary action by an employer when the
11 firefighter is absent from work at the beginning of the work day because the firefighter is
12 responding to an emergency. This bill extends the protection to a firefighter who leaves
13 work during regular working hours to respond to an emergency and provides the same
14 protections to an emergency medical services person. The bill revises provisions
15 regarding employer notification regarding absences and employee status as a firefighter
16 or emergency medical services person and removes an employer's ability to designate an
17 employee as essential.