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H.P. 1064

House of Representatives, April 11, 2011

An Act To Enforce Wage Laws

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative RUSSELL of Portland.
Cosponsored by Representatives: BERRY of Bowdoinham, GILBERT of Jay, GOODE of Bangor, INNES of Yarmouth.

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

2 **Sec. 1. 26 MRSA §620** is enacted to read:

3 **§620. Definitions**

4 As used in this subchapter, unless the context otherwise indicates, the following
5 terms have the following meanings.

6 **1. Employee.** "Employee" means an individual who is employed in this State by an
7 employer, including an individual who is in receipt of or is entitled to any compensation
8 for labor performed for an employer. "Employee" also includes a commission salesperson
9 who takes orders from or performs services on behalf of a principal and who is paid on
10 the basis of commissions, but does not include individuals who purchase for their own
11 account for resale. "Employee" does not include an independent contractor.

12 **2. Employer.** "Employer" means an individual, firm or corporation, agent, manager,
13 representative, contractor, subcontractor or principal or a person acting directly or
14 indirectly in the interest of an employer to suffer or permit an employee to work.

15 **3. Independent contractor.** "Independent contractor" means an individual who:

16 A. Provides services free from direction and control over the means and manner of
17 providing the services, subject only to the right of the person or entity for whom
18 services are provided to specify the desired result, and furnishes the tools and
19 equipment necessary to provide the services;

20 B. Operates a business that is considered inseparable from the individual for
21 purposes of taxes, profits and liabilities:

22 (1) In which the individual:

23 (a) Owns all of the assets and profits of the business; and

24 (b) Has sole, unlimited personal liability for all of the debts and liabilities of
25 the business, unless the business is organized as a corporate entity to which
26 sole, unlimited personal liability does not apply; and

27 (2) For which:

28 (a) The individual does not pay taxes separately but reports business income
29 and losses on the individual's personal tax return; and

30 (b) If the business is organized as a corporate entity and the individual
31 otherwise qualifies as an independent contractor under this subsection, the
32 individual files a separate federal informational tax return as required by law;
33 and

34 C. Exercises complete control over the management and operations of the business
35 under paragraph B and exercises the right and opportunity on a continuing basis to
36 perform the services of the business for multiple entities at the individual's sole
37 choice and discretion.

1 **Sec. 2. 26 MRSA §621-A, sub-§1**, as amended by PL 2005, c. 103, §1, is further
2 amended to read:

3 **1. Minimum frequency and full payment.** At regular intervals not to exceed 16
4 days, every employer ~~must~~ shall pay in full all wages earned by each employee. Each
5 payment must include all wages earned to within 8 days of the payment date. An
6 employee who is absent from work at a time fixed for payment must be paid on demand
7 after that time.

8 **Sec. 3. 26 MRSA §621-A, sub-§5**, as amended by PL 2005, c. 103, §1, is further
9 amended to read:

10 **5. Change in rate of pay.** Notwithstanding the provision of section 623 exempting
11 salaried employees as defined in section 663, subsection 3, paragraph K, payment of
12 wages or salary must be made at the rate previously established by the employer, except
13 that the employer may decrease the rate of pay, effective the next ~~working day~~ pay
14 period, if the employer gives notice to all affected employees one pay period prior to the
15 change. When an employer has temporarily increased an employee's wage rate to comply
16 with the prevailing wage requirements of chapter 15; the federal Davis-Bacon Act, 40
17 United States Code, Section 276a et seq.; or other applicable federal or state law, an
18 employer need not provide advance notice prior to returning the employee to the
19 employee's regular wage rate, as long as the employer is in compliance with all posting
20 and notice provisions of the applicable law. Changes of rates of pay made under a
21 collective bargaining agreement are exempt from this requirement. All notices must
22 either be in writing or posted at a place where employee notices are routinely posted.

23 **Sec. 4. 26 MRSA §621-A, sub-§7** is enacted to read:

24 **7. Notification.** An employer shall notify its employees in writing at the time of
25 hiring of the wages and regular paydays that are designated by the employer.

26 **Sec. 5. 26 MRSA §622**, as repealed and replaced by PL 1999, c. 465, §3, is
27 repealed and the following enacted in its place:

28 **§622. Notification; records**

29 **1. Notification.** An employer shall make available to its employees, upon written
30 request, a written statement enumerating employment agreements and policies with
31 regard to vacation pay, sick leave, reimbursement for expenses, retirement benefits,
32 severance pay or other matters with respect to wages. Notice of the availability of the
33 agreements and policies must be given to each employee in writing or by a notice posted
34 at a place where employee notices are routinely posted.

35 **2. Records.** An employer shall:

36 A. Within 10 working days of a request by an employee, furnish to the employee a
37 written, itemized statement or access to a written, itemized statement listing the
38 earnings and deductions made from the employee's wages for each pay period in

1 which the deductions were made together with an explanation of how the wages and
2 deductions were computed;

3 B. On each regular payday, send to each employee by mail or provide at the
4 employee's normal place of employment during normal employment hours a
5 statement showing the hours the employee worked, the wages earned by the
6 employee and deductions made for the employee;

7 C. Establish, maintain and preserve for 3 calendar years the payroll records showing
8 the hours worked, wages earned and deductions made for each employee and any
9 employment agreement entered into between the employer and employee. Failure to
10 maintain these records raises a rebuttable presumption that the employer did not pay
11 the required minimum wage rate; and

12 D. Make available records required to be kept by this section to any representative of
13 the Department of Labor at any reasonable hour. This section and sections 621-A
14 and 623 do not excuse any employer subject to section 702 from keeping the records
15 required by that section. A representative of the department may, consistent with due
16 process of law, enter any place of employment to inspect records concerning wages
17 and payrolls, question the employer and employees and investigate such facts,
18 conditions or matters as are considered appropriate in determining whether any
19 person has violated the provisions of this subchapter. The name of any employee
20 identified in a complaint to the department must be kept confidential as long as
21 possible. When the department determines that an employee's name must be
22 disclosed in order to investigate the complaint further, it may do so only with the
23 employee's consent. The Commissioner of Labor shall adopt any rules necessary to
24 carry out the provisions of this subchapter. Rules adopted pursuant to this paragraph
25 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

26 **Sec. 6. 26 MRSA §623**, as amended by PL 2005, c. 18, §2, is further amended to
27 read:

28 **§623. Exemptions**

29 This section and ~~sections section~~ section 621-A and 622 do not apply to family members and
30 salaried employees as defined in section 663, subsection 3, paragraphs J and K. ~~Sections~~
31 Section 621-A and 622 do does not apply to an employee of a cooperative corporation or
32 association if the employee is a stockholder of the corporation or association, unless the
33 employee requests the association or corporation to pay that employee in accordance with
34 section 621-A. Except as provided in section 621-A, subsections 3, 4 and 5, a
35 corporation, contractor, person or partnership may not by a special contract with an
36 employee or by any other means exempt itself from this section and sections 621-A and
37 622.

38 **Sec. 7. 26 MRSA §626, 2nd ¶**, as enacted by PL 1991, c. 162, is repealed.

39 **Sec. 8. 26 MRSA §626-A**, as amended by PL 1999, c. 465, §5, is further amended
40 to read:

1 **§626-A. Penalties**

2 Whoever violates any of the provisions of sections 621-A to 623 or section 626,
3 626-C, 628, 629 or 629-B is subject to a ~~forfeiture~~ fine of not less than \$100 nor more
4 than \$500 for each violation.

5 Any employer is liable to the employee or employees for the amount of unpaid wages
6 and health benefits. Upon a judgment being rendered in favor of any employee or
7 employees, in any action brought to recover unpaid wages or health benefits under this
8 subchapter, such judgment includes, in addition to the unpaid wages or health benefits
9 adjudged to be due, a reasonable rate of interest, costs of suit including a reasonable
10 attorney's fee, and an additional amount equal to twice the amount of unpaid wages as
11 liquidated damages.

12 The 10 largest shareholders, as determined by the fair value of their beneficial
13 interest as of the beginning of the period during which the unpaid services referred to in
14 this subchapter are performed, of a corporation that does not have shares listed on a
15 national securities exchange or regularly quoted on an over-the-counter market by one or
16 more members of a national or an affiliated securities association are jointly and severally
17 personally liable for all debts, wages or salaries due and owing to any of the corporation's
18 employees for services performed by them for that corporation. Civil action may be
19 brought against a shareholder liable for wages due under this subchapter instead of and in
20 addition to the employer. For the purposes of this paragraph, "corporation" does not
21 include an investment company registered as such under the federal Investment Company
22 Act of 1940, 15 United States Code, Sections 80a-1 to 80a-64.

23 Remedies for unpaid wages do not become available to the employee except as
24 follows. If the wages are clearly due without a bona fide dispute, remedies are available
25 to the employee 8 days after the due date for payment. If there is a bona fide dispute at
26 the time payment is due, remedies become available to the employee 8 days after demand
27 when the wages are, in fact, due and remain unpaid.

28 The action for unpaid wages or health benefits may be brought by either the affected
29 employee or employees or by the Department of Labor. The Department of Labor is
30 further authorized to supervise the payment of the judgment, collect the judgment on
31 behalf of the employee or employees and collect fines incurred through violation of this
32 subchapter. The Department of Labor shall retain any penalties, except those penalties
33 due employees, in a nonlapsing account to be used for enforcement of this subchapter.
34 When the Department of Labor brings an action for unpaid wages or health benefits, this
35 action and an action to collect a civil ~~forfeiture~~ fine may both be joined in the same
36 proceeding.

37 For purposes of calculating penalties pursuant to this section, each violation of this
38 subchapter that occurs during a separate week, including discriminatory or retaliatory
39 practices, is considered a separate violation.

40 **Sec. 9. 26 MRSA §626-C** is enacted to read:

