

**Title 26: LABOR AND INDUSTRY**  
**Chapter 7: EMPLOYMENT PRACTICES**

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**Maine Revised Statutes**  
**Title 26: LABOR AND INDUSTRY**  
**Chapter 7: EMPLOYMENT PRACTICES**

**Subchapter 1: CONDITIONS FOR EMPLOYMENT**

**§591. EXAMINATION; DEFINITIONS**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings: [1985, c. 112, §1 (AMD).]

**1. Employee.** "Employee" means every person who may be permitted, required or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment;

[ 1985, c. 112, §1 (AMD) .]

**2. Employer.** "Employer" means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy and any common carrier by rail, motor, water, air or express company doing business in or operating within the State; and

[ 2011, c. 643, §3 (AMD); 2011, c. 643, §14 (AFF) .]

**3. Independent contractor.** "Independent contractor" means an individual who qualifies as an independent contractor under section 1043, subsection 11, paragraph E.

[ 2011, c. 643, §4 (NEW); 2011, c. 643, §14 (AFF) .]

**SECTION HISTORY**

1985, c. 112, §1 (AMD). 2011, c. 643, §§3, 4 (AMD). 2011, c. 643, §14 (AFF).

**§591-A. EMPLOYEE MISCLASSIFICATION**

An employer that intentionally or knowingly misclassifies an employee as an independent contractor commits a civil violation for which a fine of not less than \$2,000 and not more than \$10,000 per violation may be adjudged. [2011, c. 643, §5 (NEW); 2011, c. 643, §14 (AFF).]

A determination of misclassification of a worker as an independent contractor may result in the assessment of penalties under section 1051, 1082 or 1225 or Title 39-A, section 105-A or 324. [2011, c. 643, §5 (NEW); 2011, c. 643, §14 (AFF).]

**SECTION HISTORY**

2011, c. 643, §5 (NEW). 2011, c. 643, §14 (AFF).

**§592. CHARGE BY EMPLOYER PROHIBITED**

No employer may require any employee or accepted applicant for employment to bear the medical expense of an examination when that examination is ordered or required by the employer. No employer may require any employee or accepted applicant for employment to bear the expense of an eye examination ordered or required by the employer that is performed by a person licensed to perform the examinations, except that if an employer orders or requires the eye examination to be performed by a specific type of eye care provider, or specific provider, the employer must pay for the examination only when performed by that specific type of eye care provider or specific provider. An employer may pay for an examination under this

section directly or through group health insurance coverage of the employee or may pay in another manner, as long as the employee is not required to bear the expense of that examination, including but not limited to any copayments or other out-of-pocket expenses. Any employer who violates this section commits a civil violation for which a forfeiture not to exceed \$50 for each and every violation may be adjudged. It is the duty of the director to enforce this section. Notwithstanding section 591, subsection 2, for the purposes of this section, the term "employer" includes the State, a county, a municipality, a quasi-municipal corporation or any other public employer. For the purposes of this section, the term "accepted applicant" means an applicant who has been offered a job by the employer. [2013, c. 363, §1 (AMD).]

## SECTION HISTORY

1971, c. 620, §13 (AMD). 1985, c. 112, §2 (AMD). 1989, c. 535, (AMD).  
2013, c. 363, §1 (AMD).

**§593. TEXTILE PIECEWORK**

**1. Posting of specifications.** The occupiers or managers of every textile factory shall post in every room where employees work by piece rate, in legible writing or printing, and in sufficient numbers to be easily accessible to such employees, specifications of the character of each kind of work to be done by them and the rate of compensation, whether paid by the pound or by the pick as registered by the pick clock on each loom. Such specifications in the case of weaving rooms must state the intended and maximum length of a cut or piece, the count per inch of reed and the number of picks per inch, width of loom and width of cloth woven in the loom, and each warp must bear a designating ticket or mark of identification.

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**2. Pick clocks.** In mills operating looms engaged in the weaving of cloth or other textiles where weavers are not paid on a per hour or day basis, pick clocks must be placed on each loom in operation, and each weaver must be paid according to the number of picks registered on the pick clock.

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Penalties.** The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not more than \$50 may be adjudged. [2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

B. A person who violates this section after having previously violated this section commits a civil violation for which a fine of not more than \$100 may be adjudged. [2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

C. A person who violates this section after having previously violated this section 2 or more times commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**4. Application.** This section does not apply to so-called gang looms or the weaving of carpets or elastic webbing.

[ 2003, c. 452, Pt. O, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

## SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §01 (RPR).



## §594. CHARGE BY AN EMPLOYER FOR AN APPLICATION FOR EMPLOYMENT

It is unlawful for an employer to assess a fee or charge a prospective employee in any fashion for requesting, submitting, filing or completing an application for employment with that employer. Any employer who violates this section shall be liable to a penalty of not more than \$500 for each violation. It is the duty of the director to enforce this section. [1983, c. 627, (NEW).]

### SECTION HISTORY

1983, c. 627, (NEW).

## §595. HIRING OF WORKERS DURING A LABOR DISPUTE

**1. Legislative findings.** The Legislature finds that:

A. The practice of receiving applicants for employment, conducting interviews of job applicants or performing medical examinations of job applicants at the worksite of an employer who is currently engaged in a labor dispute with his employees tends to incite violence by bringing individuals who may be considered as replacements for workers to the physical focus of the labor dispute and by encouraging a direct confrontation between these individuals and the prior employees; and [1987, c. 558, §1 (NEW).]

B. The presence of persons carrying dangerous weapons near sites where applications for positions with an employer involved in a labor dispute are being accepted or where interviews of those job applicants are being conducted or medical examinations of those applicants are being performed creates an unacceptable risk of violence; and [1987, c. 558, §1 (NEW).]

C. The public safety requires the regulation of these practices to reduce the likelihood of violence. [1987, c. 558, §1 (NEW).]

[ 1987, c. 558, §1 (NEW) .]

**2. Purpose.** The purpose of this section is to reduce the potential for violence during labor disputes by prohibiting certain provocative acts and imposing penalties for failure to obey this section.

[ 1987, c. 558, §1 (NEW) .]

**3. Receiving job applicants at worksite prohibited.** No employer may perform any of the following acts at any of that employer's plants, facilities, places of business or worksites where a labor dispute, strike or lockout involving the employees of that employer is in progress:

A. Receiving persons for the purpose of soliciting or receiving applications for employment with the employer; [1987, c. 558, §1 (NEW).]

B. Conducting or having conducted interviews of applicants for employment with the employer; or [1987, c. 558, §1 (NEW).]

C. Performing or having performed medical examinations of applicants for employment with the employer. [1987, c. 558, §1 (NEW).]

Any employer who violates this subsection is subject to a civil penalty not to exceed \$10,000 for each day the violation continues, payable to the State, to be recovered in a civil action. Upon request, any court of competent jurisdiction shall also enjoin the violation under section 5.

The Attorney General, the Commissioner of Labor or any employee, employees or bargaining agent of employees involved in the labor dispute may file a civil action to enforce this subsection.

[ 1987, c. 558, §1 (NEW) .]

**4. Hiring off-site permitted.** An employer involved in a labor dispute, strike or lockout may perform hiring activities prohibited under subsection 3 at any site other than his customary plants, facilities, places of business or worksites where a labor dispute, strike or lockout involving the employees of that employer is in progress.

A. The employer must notify the law enforcement agencies of the county and municipality in which these activities will be conducted at least 10 days before commencing hiring activities. [1987, c. 558, §1 (NEW).]

B. No employee of the employer conducting hiring activities under this subsection and who is involved in the labor dispute, strike or lockout may picket, congregate or in any way protest the hiring activity of the employer within 200 feet of the building or structure at which such activities are taking place. Violation of this paragraph is a Class E crime. [1987, c. 558, §1 (NEW).]

[ 1987, c. 558, §1 (NEW) .]

**5. Dangerous weapons prohibited.** It is a Class D crime for any person, including, but not limited to, security guards and persons involved in a labor dispute, strike or lockout, to be armed with a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, at a site where applications for employment with an employer involved in a labor dispute, strike or lockout are being received or where interviews of those job applicants are being conducted or where medical examinations of those job applicants are being performed.

A. A person holding a valid permit to carry a concealed handgun is not exempt from this subsection. [2013, c. 424, Pt. A, §14 (AMD).]

B. A security guard is exempt from this subsection to the extent that federal laws or rules required the security guard to be armed with a dangerous weapon at such a site. [1987, c. 558, §1 (NEW).]

C. A public law enforcement officer is exempt from this subsection while on active duty in the public service. [1987, c. 558, §1 (NEW).]

D. A security guard employed by an employer involved in a labor dispute, strike or lockout may be present at the location where applications for employment with the employer will be accepted, interviews of those applicants conducted or medical examinations of those applicants performed to the extent permitted under Title 32, chapter 93. Nothing in this section may be construed to extend or limit in any way the restrictions placed upon the location of private security guards under Title 32, chapter 93. [1987, c. 558, §1 (NEW).]

[ 2013, c. 424, Pt. A, §14 (AMD) .]

#### SECTION HISTORY

1987, c. 558, §1 (NEW). 2013, c. 424, Pt. A, §14 (AMD).

## §596. RECALL PERIOD

An employee who is temporarily laid off by an employer for over 6 weeks and who is placed on a "recall" or "spare" list by that employer for the purpose of being recalled to work shall have 7 days from receiving notice of a recall to work in which to respond to the notice without discrimination on subsequent recalls by the employer. [1989, c. 460, (NEW).]

**1. Effect of exercising option.** No employer may remove an employee from a "recall" or "spare" list solely because the employee chooses to exercise the 7-day option under this section. No employer may discriminate against an employee in subsequent recalls to work solely because the employee chooses to exercise the 7-day option under this section.

[ 1989, c. 460, (NEW) .]

**2. Limitations.** Nothing in this section may be construed to:

A. Prevent an employer from offering recall to another employee on the "recall" or "spare" list in the place of an employee who is contacted earlier but who chooses to exercise the 7-day option under this section; [1989, c. 460, (NEW).]

B. Require an employer to hold a position or an offer of recall open for an employee who exercises the 7-day option under this section; or [1989, c. 460, (NEW).]

C. Require an employee to wait 7 days before returning to work after receiving a recall notice. [1989, c. 460, (NEW).]

[ 1989, c. 460, (NEW) .]

#### SECTION HISTORY

1989, c. 460, (NEW).

## §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 for using tobacco products outside the course of employment as long as the employee complies with any workplace policy concerning use of tobacco. This section does not prohibit an employer or an agent of an employer from offering a voluntary wellness program that offers incentives for the cessation of use of tobacco products in compliance with applicable federal regulations. [2017, c. 219, §6 (AMD).]

#### SECTION HISTORY

1991, c. 366, (NEW). 2017, c. 219, §6 (AMD).

## §598. EMPLOYMENT REFERENCE IMMUNITY

An employer who discloses information about a former employee's job performance or work record to a prospective employer is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for such disclosure or its consequences. Clear and convincing evidence of lack of good faith means evidence that clearly shows the knowing disclosure, with malicious intent, of false or deliberately misleading information. This section is supplemental to and not in derogation of any claims available to the former employee that exist under state law and any protections that are already afforded employers under state law. [1995, c. 335, §1 (NEW).]

#### SECTION HISTORY

1995, c. 335, §1 (NEW).

## §599. BROADCASTING INDUSTRY CONTRACT

**1. Definition.** As used in this section, unless the context otherwise indicates, "broadcasting industry contract" means an employment contract between a person and a legal entity that owns one or more television stations or networks or one or more radio stations or networks.

[ 2003, c. 225, §1 (AMD) .]

**2. Presumed unreasonable.** A broadcasting industry contract provision that requires an employee or prospective employee to refrain from obtaining employment in a specified geographic area for a specified period of time following expiration of the contract or upon termination of employment without fault of the employee is presumed to be unreasonable.

[ 1999, c. 406, §1 (NEW) .]

SECTION HISTORY

1999, c. 406, §1 (NEW). 2003, c. 225, §1 (AMD).

## §600. CONCEALED FIREARMS IN VEHICLES

**1. Firearms in vehicles.** An employer or an agent of an employer may not prohibit an employee who has a valid permit to carry 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 a firearm in a place where carrying a firearm is prohibited by law. 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.

[ 2011, c. 537, §1 (AMD) .]

**2. Immunity from liability.** An employer or an agent of an employer may not be held liable in any civil action for damages, injury or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored pursuant to this section, including, but not limited to, the theft of a firearm from an employee's vehicle, unless the employer or an agent of the employer intentionally solicited or procured the other person's injurious actions. Nothing in this section affects provisions in the Maine Workers' Compensation Act of 1992.

[ 2011, c. 393, §1 (NEW) .]

SECTION HISTORY

2011, c. 393, §1 (NEW). 2011, c. 537, §1 (AMD).

### Subchapter 1-A: HOURS OF EMPLOYMENT

## §601. REST BREAKS

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 the 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 unpaid mealtime, but only if the employee is completely relieved of duty. [2017, c. 219, §7 (AMD).]

**1. Small business.** This section does not apply to any place of employment where:

A. Fewer than 3 employees are on duty at any one time; and [1985, c. 212, (NEW) .]

B. The nature of the work done by the employee allows the employee frequent paid breaks of a shorter duration during the employee's work day. [2017, c. 219, §7 (AMD) .]

[ 2017, c. 219, §7 (AMD) .]

SECTION HISTORY

1985, c. 212, (NEW). 2017, c. 219, §7 (AMD).

## §602. ENFORCEMENT AND PENALTY

The following provisions govern the enforcement of this subchapter. [1985, c. 212, (NEW).]

**1. Violation.** Any employer who violates this subchapter commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 for each violation may be adjudged.

[ 1985, c. 212, (NEW) .]

**2. Discharge or discrimination.** Any employer who discharges or in any other manner discriminates against any employee because the employee makes a complaint to the director, the district attorney or the Attorney General concerning a violation of this subchapter, commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged.

[ 1985, c. 212, (NEW) .]

**3. Injunction.** If any provision of this subchapter is violated, the Attorney General may seek an injunction in the Superior Court to enjoin any further violations or to compel the reinstatement of an employee discharged or discriminated against as described in subsection 2.

[ 1985, c. 212, (NEW) .]

### SECTION HISTORY

1985, c. 212, (NEW).

## §603. LIMITS ON MANDATORY OVERTIME

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

A. "Employer" means all private and public employers, including the State and political subdivisions of the State. [1999, c. 750, §1 (NEW).]

B. "Overtime" means the hours worked in excess of 40 hours in a calendar week. [1999, c. 750, §1 (NEW).]

[ 1999, c. 750, §1 (NEW) .]

**2. Limits on mandatory overtime.** An employer may not require an employee to work more than 80 hours of overtime in any consecutive 2-week period.

[ 1999, c. 750, §1 (NEW) .]

**3. Exceptions.** This section does not apply to:

A. Work performed in response to an emergency declared by the Governor under the laws of the State; [1999, c. 750, §1 (NEW).]

B. An employee who performs essential services for the public. For purposes of this paragraph, "essential services" means those services that are basic or indispensable and are provided to the public as a whole, including, but not limited to, utility service, snowplowing, road maintenance and telecommunications service; [1999, c. 750, §1 (NEW).]

C. An employee whose work is necessary to protect the public health or safety, when the excess overtime is required outside the normal course of business; [1999, c. 750, §1 (NEW).]

D. An individual exempt from the definition of employee in section 663, subsection 3, paragraph A, C, F, G, I or J; [2007, c. 640, §1 (AMD).]

E. A salaried employee who works in a bona fide executive capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage; [1999, c. 750, §1 (NEW).]

F. An employee of a seasonal employer. For purposes of this paragraph, "seasonal employer" means an employer in an industry that operates in a regularly recurring period or periods of less than 26 weeks in a calendar year; [1999, c. 750, §1 (NEW).]

G. A medical intern or resident engaged in a graduate educational program approved by the Accreditation Council on Graduate Medical Education, the American Board of Medical Specialties or the American Osteopathic Association at a health care facility. For purposes of this paragraph, "health care facility" has the same meaning as in Title 22, section 8702, subsection 4; or [1999, c. 750, §1 (NEW).]

H. An employee who works for an employer who shuts down an operation for annual maintenance or work performed in the construction, rebuilding, maintenance or repair of production machinery and equipment, including machine start-ups and shutdowns related to such activity. This exception applies to contractors of the employer that are providing services related to the activities in this paragraph. It does not apply to other operations not involved in the work stated in this paragraph. Notwithstanding this paragraph, a worker may not be required to work beyond the limits prescribed in subsection 2 for more than 4 consecutive weeks. [1999, c. 750, §1 (NEW).]

[ 2007, c. 640, §1 (AMD) .]

**4. Lower limit by agreement.** Employers and employees may agree to limit mandatory overtime to fewer hours than provided for in this section.

[ 1999, c. 750, §1 (NEW) .]

**5. Exception for nurse.** Notwithstanding subsection 2, a nurse may not be disciplined for refusing to work more than 12 consecutive hours. A nurse may be disciplined for refusing mandatory overtime in the case of an unforeseen emergent circumstance when overtime is required as a last resort to ensure patient safety. Any nurse who is mandated to work more than 12 consecutive hours, as permitted by this section, must be allowed at least 10 consecutive hours of off-duty time immediately following the worked overtime.

This subsection does not apply to overtime for performance of services described in subsection 3, paragraph A or C.

[ 2001, c. 401, §1 (NEW) .]

#### SECTION HISTORY

1999, c. 750, §1 (NEW). 2001, c. 401, §1 (AMD). 2007, c. 640, §1 (AMD).

## §604. NURSING MOTHERS IN THE WORKPLACE

An employer, as defined in section 603, subsection 1, paragraph A, shall provide adequate unpaid break time or permit an employee to use paid break time or meal time each day to express breast milk for her nursing child for up to 3 years following childbirth. The employer shall make reasonable efforts to provide a clean room or other location, other than a bathroom, where an employee may express breast milk in privacy. An employer may not discriminate in any way against an employee who chooses to express breast milk in the workplace. [2009, c. 84, §1 (NEW).]

#### SECTION HISTORY

2009, c. 84, §1 (NEW).

## Subchapter 1-B: EMPLOYMENT AGENCIES

### §611. DEFINITIONS

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1985, c. 623, §1 (NEW).]

**1. Employment agency.** "Employment agency" means any person who conducts a full-time or part-time service for the purpose of procuring or attempting to procure permanent or temporary employment or engagement for persons seeking employment or engagement, or for giving information about where employment or engagement may be procured when a fee paid by the employee is charged for that service. Employment agencies do not include teachers' agencies, nurses' associations, charitable institutions, arrangers of employment for seamen and professional or occupational associations which serve only their own membership and which charge only a nominal fee, and persons employed by a public or private nonprofit agency.

[ 1985, c. 623, §1 (NEW) .]

#### SECTION HISTORY

1985, c. 623, §1 (NEW).

### §612. FEES CHARGED TO APPLICANTS FOR EMPLOYMENT; RECEIPT

**1. Placement fee.** The placement fee charged to an applicant for employment by an employment agency shall not exceed the equivalent of the first full week's gross wages. This fee shall be in full compensation for all services of the employment agency. If for any reason employment terminates in less than one month, the fee shall be adjusted so as not to exceed 10% of the wages earned.

[ 1985, c. 623, §1 (NEW) .]

**2. Terms of payment of fee for placement.** If the placement fee charged to an applicant for employment is paid weekly, 1/8 of the fee shall be paid each week for the first 8 weeks of employment; if paid semi-monthly, each payment shall be 1/4 of the total fee; and if paid monthly, each payment shall be 1/2 of the total fee.

[ 1985, c. 623, §1 (NEW) .]

**3. Receipt given to an applicant for employment.** Every employment agency shall give to each applicant for employment, from whom a fee or other consideration is received, a receipt which must show the name of the applicant for employment, the amount of the fee, any balance due, the date, name or nature of the employment or situation procured and the name and address of the employer.

[ 1985, c. 623, §1 (NEW) .]

#### SECTION HISTORY

1985, c. 623, §1 (NEW).

### §612-A. MUNICIPAL LICENSING

This subchapter may not be construed to prevent a municipality from acting under its home rule authority granted by Title 30-A, section 3001 and by the Constitution of Maine, Article VIII, Part Second, to license or regulate the business of employment agencies or to require a bond. [1991, c. 824, Pt. A, §55 (AMD).]

#### SECTION HISTORY

1987, c. 583, §2 (NEW). 1991, c. 824, §A55 (AMD).

## §613. ENFORCEMENT PENALTY

**1. Violation.** Any employment agency which violates this subchapter commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 for each violation may be adjudged.

[ 1985, c. 623, §1 (NEW) .]

**2. Civil action.** An action may be brought by the injured party, the Attorney General, the Department of Labor or any municipality which has issued a license to the employment agency in accordance with section 612-A.

[ 1987, c. 583, §3 (AMD) .]

### SECTION HISTORY

1985, c. 623, §1 (NEW). 1987, c. 583, §3 (AMD).

## Subchapter 1-C: EMPLOYEE SOCIAL MEDIA PRIVACY

## §615. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2015, c. 343, Pt. B, §1 (NEW).]

**1. Applicant.** "Applicant" means an applicant for employment.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**2. Employee.** "Employee" means an individual who provides services or labor for an employer for wages or other remuneration.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**3. Employer.** "Employer" means a person in this State who employs individuals and includes the State and political subdivisions of the State. "Employer" includes a person acting in the interest of an employer directly or indirectly.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**4. Social media account.** "Social media account" means an account with an electronic medium or service through which users create, share and view user-generated content including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant and text messages, e-mail, online service accounts and Internet website profiles and locations. "Social media account" does not include an account opened at an employer's behest or provided by an employer or intended to be used primarily on behalf of an employer.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

### SECTION HISTORY

2015, c. 343, Pt. B, §1 (NEW).

## §616. PROHIBITIONS

An employer may not: [2015, c. 343, Pt. B, §1 (NEW).]



**1. Passwords.** Require or coerce an employee or applicant to disclose, or request that an employee or applicant disclose, the password or any other means for accessing a personal social media account;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**2. Access in presence.** Require or coerce an employee or applicant to access, or request that an employee or applicant access, a personal social media account in the presence of the employer or an agent of the employer;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**3. Information.** Require or coerce an employee or applicant to disclose any personal social media account information;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**4. Contacts.** Require or cause an employee or applicant to add anyone, including the employer or an agent of the employer, to the employee's or applicant's list of contacts associated with a personal social media account;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**5. Settings.** Require or cause an employee or applicant to alter, or request that an employee or applicant alter, settings that affect a 3rd party's ability to view the contents of a personal social media account;

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**6. Employees.** Discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize an employee for the employee's refusal to disclose or provide access to information as specified in subsection 1, 2 or 3 or for refusal to add anyone to the employee's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5; or

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**7. Applicants.** Fail or refuse to hire an applicant as a result of the applicant's refusal to disclose or provide access to information specified in subsection 1, 2 or 3 or refusal to add anyone to the applicant's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2015, c. 343, Pt. B, §1 (NEW).

## §617. EXCEPTIONS

**1. Publicly available information.** This subchapter does not apply to information about an applicant or employee that is publicly available.

[ 2015, c. 343, Pt. B, §1 (NEW) .]

**2. Duty to screen or supervise.** This subchapter does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established by a self-regulatory organization as defined by the federal Securities

Exchange Act of 1934, 15 United States Code, Section 78c(a)(26) or under state or federal law, regulation or rule to the extent necessary to supervise communications of regulated financial institutions or insurance or securities licensees for banking-related, insurance-related or securities-related business purposes.

[ 2015, c. 343, Pt. B, §1 (NEW) . ]

**3. Investigation.** This subchapter does not prohibit or restrict an employer from requiring an employee to disclose personal social media account information that the employer reasonably believes to be relevant to an investigation of allegations of employee misconduct or a workplace-related violation of applicable laws, rules or regulations if requiring the disclosure is not otherwise prohibited by law, as long as the information disclosed is accessed and used solely to the extent necessary for purposes of that investigation or a related proceeding.

[ 2015, c. 343, Pt. B, §1 (NEW) . ]

#### SECTION HISTORY

2015, c. 343, Pt. B, §1 (NEW) .

### §618. WORKPLACE POLICIES

This subchapter does not limit an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement that an employee disclose to the employer the employee's user name, password or other information necessary to access employer-issued electronic devices, including but not limited to cellular telephones and computers, or to access employer-provided software or e-mail accounts. [2015, c. 343, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2015, c. 343, Pt. B, §1 (NEW) .

### §619. PENALTIES FOR VIOLATION

An employer who violates this subchapter is subject to a fine imposed by the Department of Labor of not less than \$100 for the first violation, not less than \$250 for the 2nd violation and not less than \$500 for each subsequent violation. [2015, c. 343, Pt. B, §1 (NEW) .]

#### SECTION HISTORY

2015, c. 343, Pt. B, §1 (NEW) .

## Subchapter 2: WAGES AND MEDIUM OF PAYMENT

### §621. TIME OF PAYMENT

*(REPEALED)*

#### SECTION HISTORY

1983, c. 778, (RPR). 1995, c. 340, §1 (AMD). 1999, c. 465, §1 (RP) .

## §621-A. TIMELY AND FULL PAYMENT OF WAGES

**1. Minimum frequency and full payment.** At regular intervals not to exceed 16 days, every employer must pay in full all wages earned by each employee. Each payment must include all wages earned to within 8 days of the payment date. 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 as if the employee was not absent.

[ 2017, c. 219, §8 (AMD) .]

**2. Regular payment required.** Wages must be paid on an established day or date at regular intervals made known to the employee. The interval may not be increased without written notice to the employee at least 30 days in advance of the increase.

[ 2017, c. 219, §9 (AMD) .]

**3. Compensatory time agreements.** Notwithstanding subsections 1 and 2, public agency employers and employees may enter into compensatory time overtime agreements in accordance with the federal Fair Labor Standards Act, 29 United States Code, Section 207(o). These agreements are governed solely by federal law. For purposes of this subsection, "public agency" has the same meaning as in 29 United States Code, Section 203(x).

[ 1999, c. 790, Pt. P, §1 (NEW); 1999, c. 790, Pt. P, §3 (AFF) .]

**4. School personnel.** Employees of a school administrative unit who work the school year schedule may, upon written agreement between the employees and the school administrative unit, be paid for their work during the school year over 12 months or a shorter period, as provided in the written agreement. For purposes of this subsection, "written agreement" includes but is not limited to a collective bargaining agreement.

[ 2001, c. 156, §1 (AMD) .]

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

[ 2005, c. 103, §1 (AMD) .]

**6. Volunteer firefighters.** Notwithstanding subsection 1, a municipal fire department may make payments owed to a volunteer firefighter at regular intervals not to exceed 6 months. For purposes of this subsection, "municipal fire department" has the same meaning as in Title 30-A, section 3151, subsection 1 and "volunteer firefighter" has the same meaning as in Title 30-A, section 3151, subsection 4.

[ 2005, c. 126, §1 (NEW) .]

### SECTION HISTORY

1999, c. 465, §2 (NEW). 1999, c. 790, §P1 (AMD). 1999, c. 790, §P3 (AFF). 2001, c. 156, §1 (AMD). 2005, c. 18, §1 (AMD). 2005, c. 103, §1 (AMD). 2005, c. 126, §1 (AMD). 2017, c. 219, §§8, 9 (AMD).

## §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 774 from keeping the records required by that section. [2017, c. 219, §10 (AMD).]

### SECTION HISTORY

1975, c. 113, §1 (AMD). 1999, c. 465, §3 (RPR). 2017, c. 219, §10 (AMD).

## §623. EXEMPTIONS

This section and sections 621-A and 622 do not apply to family members and salaried employees as defined in section 663, subsection 3, paragraphs J and K. Sections 621-A and 622 do not apply to an employee of a cooperative corporation or association if the employee is a stockholder of the corporation or association, unless the employee requests the association or corporation to pay that employee in accordance with section 621-A. Except as provided in section 621-A, subsections 3, 4 and 5, a corporation, contractor, person or partnership may not by a special contract with an employee or by any other means exempt itself from this section and sections 621-A and 622. [2005, c. 18, §2 (AMD).]

### SECTION HISTORY

1973, c. 40, (AMD). 1975, c. 113, §2 (AMD). 1999, c. 465, §4 (AMD). 1999, c. 790, §P2 (AMD). 1999, c. 790, §P3 (AFF). 2005, c. 18, §2 (AMD).

## §624. PENALTIES

*(REPEALED)*

### SECTION HISTORY

1975, c. 113, §3 (RP).

## §625. NOTICE OF INTENTION TO QUIT

Any person, firm or corporation engaged in any manufacturing or mechanical business may contract with adult or minor employees to give one week's notice of intention on such employee's part to quit such employment under a penalty of forfeiture of one week's wages. In such case, the employer shall be required to give a like notice of intention to discharge the employee, and on failure, shall pay to such employee a sum equal to one week's wages. No such forfeiture shall be enforced when the leaving or discharge of the employee is for a reasonable cause. The enforcement of the penalty shall not prevent either party from recovering damages for a breach of the contract of hire.

### SECTION HISTORY

1971, c. 452, (AMD). 1973, c. 545, (AMD). 1975, c. 512, §§1,2 (AMD).

## §625-A. SEVERANCE PAY

*(REPEALED)*

## SECTION HISTORY

1975, c. 512, §3 (NEW). 1975, c. 717, §4 (AMD). 1979, c. 663, §156 (RP).

## §625-B. SEVERANCE PAY DUE TO CLOSING, SUBSTANTIAL SHUTDOWN OR RELOCATION OF A COVERED ESTABLISHMENT

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

A. "Covered establishment" means any industrial or commercial facility or part thereof that employs or has employed at any time in the preceding 12-month period 100 or more persons. [2015, c. 417, §1 (AMD).]

A-1. "Closing" means the permanent shutdown of industrial or commercial operations at a covered establishment. A closing may occur due to relocation, termination or consolidation of the employer's business. [2015, c. 417, §1 (NEW).]

B. "Director" means the Director of the Bureau of Labor Standards. [1989, c. 502, Pt. A, §106 (AMD).]

B-1. "Eligible employee" means any employee who:

- (1) Has been continuously employed at the covered establishment at the time of the closing or mass layoff for at least 3 years, including any period when the employee was on a leave of absence;
- (2) Has not been terminated for cause; and
- (3) Has not accepted employment at another or relocated establishment operated by the employer or remains employed at the covered establishment.

"Eligible employee" includes an employee who has voluntarily quit employment at a covered establishment to take a new job within a 30-day period prior to the date set by the employer for a closing or mass layoff in an initial notice provided by the employer under state or federal law. [2015, c. 417, §1 (NEW).]

C. "Employer" means any person who directly or indirectly owns and operates a covered establishment. For purposes of this definition, a parent corporation is considered the indirect owner and operator of any covered establishment that is directly owned and operated by its corporate subsidiary. [1989, c. 667, §1 (AMD); 1989, c. 667, §2 (AFF).]

C-1. "Gross earnings" includes all pay for regular hours, shift differentials, premiums, overtime, floating holidays, holidays, funeral leave, jury duty pay, sick pay and vacation pay earned within the last 12 months prior to the closing or mass layoff. "Gross earnings" does not include payments made under a 3rd-party benefit program, such as disability payments. [2015, c. 417, §1 (NEW).]

C-2. "Mass layoff" means a reduction in workforce, not the result of a closing, that results in an employment loss at a covered establishment for at least 6 months of at least:

- (1) Thirty-three percent of the employees and at least 50 employees; or
- (2) Five hundred employees. [2015, c. 417, §1 (NEW).]

D. "Person" means any individual, group of individuals, partnership, corporation, association or any other entity. [1979, c. 663, §157 (NEW).]

E. "Physical calamity" means any calamity such as fire, flood or other natural disaster. [2009, c. 305, §1 (AMD); 2009, c. 305, §5 (AFF).]

F. "Relocation" means the removal of all or substantially all of industrial or commercial operations in a covered establishment to a new location, within or without the State of Maine, 100 or more miles distant from its original location. [1979, c. 663, §157 (NEW).]

G. [2015, c. 417, §1 (RP).]

H. "Week's pay" means an amount equal to the employee's gross earnings during the 12 months previous to the date of closing or mass layoff as established by the director, divided by the number of weeks in which the employee received gross earnings during that 12-month period. [2015, c. 417, §1 (AMD).]

[2009, c. 305, §§1, 2 (AMD); 2009, c. 305, §5 (AFF); 2015, c. 417, §1 (AMD).]

**2. Severance pay.** Any employer who closes or engages in a mass layoff at a covered establishment is liable to eligible employees of the covered establishment for severance pay at the rate of one week's pay for each year, and partial pay for any partial year, from the last full month of employment by the employee in that establishment. The severance pay to eligible employees is in addition to any final wage payment to the employee and must be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

[2015, c. 417, §1 (AMD).]

**3. Mitigation of severance pay liability.** There is no liability under this section for severance pay to an eligible employee if:

A. Closing of or a mass layoff at a covered establishment is necessitated by a physical calamity or the final order of a federal, state or local government agency; [2015, c. 417, §1 (AMD).]

B. The employee is covered by, and has actually been paid under the terms of, an express contract providing for severance pay that is in an amount that is greater than the severance pay required by this section. An employer must demonstrate, to the satisfaction of the director, that the severance pay provided under the terms of an express contract provides a greater benefit to the employee than provided in this section; or [2015, c. 417, §1 (AMD).]

C. [2015, c. 417, §1 (RP).]

D. The employee has been employed by the employer for less than 3 years. [2015, c. 417, §1 (AMD).]

E. [2015, c. 417, §1 (RP).]

[2015, c. 417, §1 (AMD).]

**3-A. Bankruptcy proceedings.** A covered establishment is not exempt from liability for severance pay under this section solely because it files a voluntary petition for bankruptcy protection under the provisions of Chapter 7 or Chapter 11 of the United States Bankruptcy Code, 11 United States Code, Section 101, et seq., or because an involuntary petition is commenced against it pursuant to 11 United States Code, Section 303.

[2015, c. 417, §1 (NEW).]

**4. Suits by, or on behalf of, employees.** Any employer who violates the provisions of this section is liable to the employee or employees affected in the amount of their unpaid severance pay. Action to recover the liability may be maintained against any employer in any state or federal court of competent jurisdiction by any one or more employees for and on behalf of that employee or those employees and any other employees similarly situated. Any labor organization may also maintain an action on behalf of its members. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and costs of the action.

[2015, c. 417, §1 (AMD).]

**5. Suits by the director.** The director is authorized to supervise the payment of the unpaid severance pay owing to any employee under this section. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay. The right provided by subsection 4 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any pending action brought and maintained under subsection 4, terminates upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. Any sums recovered by the director on behalf of an employee pursuant to this subsection must be held in a special deposit account and must be paid, on order of the director, directly to the employee affected. Any sums thus recovered not paid to an employee because of inability to do so within a period of 3 years must be paid over to the State of Maine.

[ 2015, c. 417, §1 (AMD) . ]

**6. Notice of director.** Any person proposing to relocate or close a covered establishment shall notify the director in writing not less than 60 days prior to the relocation or closing. A person initiating a mass layoff at a covered establishment shall notify the director as far in advance as practicable, and no later than within 7 days of the layoff, and shall report to the director the expected duration of the layoff and whether it is of indefinite or definite duration. The director shall, from time to time, but no less frequently than every 30 days, require the employer to report such facts as the director considers relevant to determine whether the mass layoff constitutes a closing under this section or whether there is a substantial reason to believe the affected employees will be recalled. A notification or report provided to the director pursuant to this subsection must contain all relevant information in the possession of the employer regarding a potential recall, if applicable.

[ 2015, c. 417, §1 (AMD) . ]

**6-A. Notice to employees and municipality.** A person proposing to close a covered establishment shall notify employees and the municipal officers of the municipality where the covered establishment is located in writing not less than 60 days prior to the closing, unless this notice requirement is waived by the director. A person that violates this provision commits a civil violation for which a fine of not more than \$500 may be adjudged, except that a fine may not be adjudged if the closing is necessitated by a physical calamity or the final order of a federal, state or local government agency, or if the failure to give notice is due to unforeseen circumstances. A fine imposed pursuant to this subsection may not be collected by the Department of Labor to the extent such collection prevents the violator from making all payments required under subsection 2.

[ 2015, c. 417, §1 (AMD) . ]

**7. Powers of director.** In any investigation or proceeding under this section, the director has, in addition to all other powers granted by law, the authority to examine books and records of any employer affected by this section as set out in section 665, subsection 1.

[ 2015, c. 417, §1 (AMD) . ]

**8. Rules.** The Department of Labor shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2015, c. 417, §1 (AMD) . ]

**9. Penalties.** A person that violates subsection 2 commits a civil violation for which a fine of not more than \$1,000 per violation may be adjudged. Each employee affected constitutes a separate violation. Any such fine may not be collected by the Department of Labor to the extent such collection prevents the violator from making all payments required under subsection 2.

[ 2007, c. 333, §2 (NEW) . ]

**10. Mass layoff.**

[ 2015, c. 417, §1 (RP) .]

## SECTION HISTORY

1979, c. 663, §157 (NEW). 1981, c. 337, (AMD). 1989, c. 502, §A106 (AMD). 1989, c. 667, §§1,2 (AMD). 1999, c. 55, §1 (AMD). 2001, c. 625, §1 (AMD). 2003, c. 624, §1 (AMD). 2003, c. 624, §2 (AFF). 2007, c. 333, §§1, 2 (AMD). 2009, c. 305, §§1-4 (AMD). 2009, c. 305, §5 (AFF). 2015, c. 417, §1 (AMD).

**§626. CESSATION OF EMPLOYMENT**

An employee leaving employment must be paid in full 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 or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. [2017, c. 219, §11 (AMD).]

For purposes of this section, the term "employee" means any person who performs services for another in return for compensation, but does not include an independent contractor. [1991, c. 162, (NEW).]

For purposes of this subchapter, a reasonable time means the earlier of either the next day on which employees would regularly be paid or a day not more than 2 weeks after the day on which the demand is made. [1991, c. 162, (AMD).]

In any action for unpaid wages brought under this subchapter, the employer may not deduct as a setoff or counterclaim any money allegedly due the employer as compensation for damages caused to the employer's property by the employee, or any money allegedly owed to the employer by the employee, notwithstanding any procedural rules regarding counteractions, provided that 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, and that nothing in this section may be construed to limit or restrict in any way any rights that the employer has to recover, by a separate legal action, any money owed the employer by the employee. [1991, c. 162, (AMD).]

An action for unpaid wages under this section may be brought by the affected employee or employees or by the Department of Labor on behalf of the employee or employees. An employer found in violation of this section is liable for the amount of unpaid wages and, in addition, the judgment rendered in favor of the employee or employees must include a reasonable rate of interest, an additional amount equal to twice the amount of those wages as liquidated damages and costs of suit, including a reasonable attorney's fee. [1991, c. 162, (AMD).]

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 or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. 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. [2017, c. 219, §12 (AMD).]

## SECTION HISTORY

1975, c. 113, §4 (RPR). 1975, c. 623, §§37-A,37-B (AMD). 1983, c. 652, §1 (AMD). 1991, c. 162, (AMD). 1995, c. 580, §1 (AMD). 2017, c. 219, §§11, 12 (AMD).



**§626-A. PENALTIES**

Whoever violates any of the provisions of sections 621-A to 623 or section 626, 628, 629 or 629-B is subject to a forfeiture of not less than \$100 nor more than \$500 for each violation. [1999, c. 465, §5 (AMD).]

Any employer is liable to the employee or employees for the amount of unpaid wages and health benefits. Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages or health benefits under this subchapter, such judgment includes, in addition to the unpaid wages or health benefits adjudged to be due, a reasonable rate of interest, costs of suit including a reasonable attorney's fee, and an additional amount equal to twice the amount of unpaid wages as liquidated damages. [1993, c. 648, §1 (AMD).]

Remedies for unpaid wages do not become available to the employee except as follows. If the wages are clearly due without a bona fide dispute, remedies are available to the employee 8 days after the due date for payment. If there is a bona fide dispute at the time payment is due, remedies become available to the employee 8 days after demand when the wages are, in fact, due and remain unpaid. [1999, c. 465, §5 (NEW).]

The action for unpaid wages or health benefits may be brought by either the affected employee or employees or by the Department of Labor. The Department of Labor is further authorized to supervise the payment of the judgment, collect the judgment on behalf of the employee or employees and collect fines incurred through violation of this subchapter. When the Department of Labor brings an action for unpaid wages or health benefits, this action and an action to collect a civil forfeiture may both be joined in the same proceeding. [1993, c. 648, §1 (AMD).]

**SECTION HISTORY**

1975, c. 113, §5 (NEW). 1975, c. 623, §§37-C (AMD). 1975, c. 770, §114 (AMD). 1983, c. 652, §§2,3 (AMD). 1993, c. 648, §1 (AMD). 1999, c. 465, §5 (AMD).

**§626-B. COLLECTIVE BARGAINING EXCEPTIONS*****(REPEALED)*****SECTION HISTORY**

1975, c. 113, §5 (NEW). 1999, c. 465, §6 (RP).

**§627. ASSIGNMENT OF WAGES**

No assignment of wages is valid against any other person than the parties thereto, unless such assignment is recorded by the clerk in the office of the Secretary of State. No such assignment of wages may be valid against the employer, unless he has actual notice thereof. [1987, c. 184, §24 (AMD).]

An assignment of wages executed in satisfaction of a child support obligation shall have absolute priority over all previously filed orders against earnings entered pursuant to Title 14, section 3127-B and former section 3137, and over any other assignment of wages, which orders and assignments were entered after July 24, 1984. [1987, c. 184, §24 (AMD).]

**SECTION HISTORY**

1983, c. 782, §5 (AMD). 1987, c. 184, §24 (AMD).

**§628. EQUAL PAY**

An employer may not discriminate between employees in the same establishment on the basis of sex by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility. Differentials that are paid pursuant to established seniority systems

or merit increase systems or difference in the shift or time of the day worked that do not discriminate on the basis of sex are not within this prohibition. An employer may not discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this section. An employer may not prohibit an employee from disclosing the employee's own wages or from inquiring about another employee's wages if the purpose of the disclosure or inquiry is to enforce the rights granted by this section. Nothing in this section creates an obligation to disclose wages. [ 2009, c. 29, §1 (AMD) . ]

The Department of Labor shall annually report to the joint standing committee of the Legislature having jurisdiction over labor matters on progress made in the State to comply with this section. The report must be issued annually on Equal Pay Day as designated pursuant to Title 1, section 145. [ 2003, c. 688, Pt. B, §7 (AMD) . ]

#### SECTION HISTORY

1965, c. 150, (AMD). 1983, c. 652, §4 (AMD). 2001, c. 304, §2 (AMD).  
2003, c. 688, §B7 (AMD). 2009, c. 29, §1 (AMD).

## §629. UNFAIR AGREEMENTS

**1. Work without compensation; return of compensation.** A person, firm or corporation may not require or permit any person as a condition of securing or retaining employment to work without monetary compensation or when having an agreement, oral, written or implied, that a part of such compensation should be returned to the person, firm or corporation for any reason other than for the payment of a loan, debt or advance made to the person, or for the payment of any merchandise purchased from the employer or for sick or accident benefits, or life or group insurance premiums, excluding compensation insurance, that an employee has agreed to pay, or for rent, light or water expense of a company-owned house or building. This section does not apply to work performed in agriculture or in or about a private home.

[ 2007, c. 524, §1 (RPR) . ]

**2. Debt.** For purposes of this subchapter, "debt" means a benefit to the employee. "Debt" does not include items incurred by the employee in the course of the employee's work or dealing with customers on the employer's behalf, such as cash shortages, inventory shortages, dishonored checks, dishonored credit cards, damages to the employer's property in any form or any merchandise purchased by a customer. "Debt" does not include uniforms, personal protective equipment or other tools of the trade that are considered to be primarily for the benefit or convenience of the employer. As used in this subsection, "uniforms" means shirts or other items of clothing bearing the company name or logo. The employer may not mandate that an employee pay for the cleaning and maintenance of a uniform, but may have a written agreement whereby the employee chooses to have a payroll deduction for the cost of cleaning and maintenance.

[ 2007, c. 524, §1 (RPR) . ]

**3. Penalty.** An employer is liable to an employee for the amount returned to the employer by that employee as prohibited in this section.

[ 2007, c. 524, §1 (RPR) . ]

**4. Deduction of service fees.** Public employers may deduct service fees owed by an employee to a collective bargaining agent from the employee's pay, without signed authorization from the employee, and remit those fees to the bargaining agent, as long as:

A. The fee obligation arises from a lawfully executed and implemented collective bargaining agreement; and [ 2007, c. 524, §1 (RPR) . ]

B. In the event a fee payor owes any arrears on the payor's fee obligations, the deduction authorized under this subsection may include an installment on a payment plan to reimburse all arrears, but may not exceed in each pay period 10% of the gross pay owed. [2007, c. 524, §1 (RPR).]

[ 2007, c. 524, §1 (RPR) .]

#### SECTION HISTORY

1981, c. 285, (AMD). 1983, c. 652, §5 (AMD). 2007, c. 357, §1 (AMD).  
2007, c. 415, §1 (RPR). 2007, c. 524, §1 (RPR).

## §629-A. FRINGE BENEFITS AS WAGES

Whenever a person ceases to be employed because of the insolvency of his employer, if in claiming from the employer wages earned but not yet paid to him, the term "wages earned" shall include all fringe benefits earned by the employee that were considered in the employment contract, including plans for retirement, insurance, health care and vacations. [1977, c. 448, (NEW) .]

#### SECTION HISTORY

1977, c. 448, (NEW) .

## §629-B. EMPLOYEE HEALTH BENEFIT PLANS

**1. Application.** This section applies to health benefit plans which an employer provides or agrees to provide to his employees. It does not apply to employee health benefit plans separately provided by any employee organization or bargaining agent, regardless of any financial contribution to that plan by the employer.

[ 1985, c. 660, (NEW) .]

**2. Failure to implement a health benefit plan.** If an employer fails to implement a health benefit plan which the employer had agreed to provide to his employees, the employer shall notify the employees of the failure to implement the plan as soon as possible after he knows that he will not implement the plan. The employer is liable for benefits which would have been payable to a covered employee, if the health benefit plan had been in force during the period of time from the date which the employer had agreed to implement the health benefit plan, until the employer gives the employee notice of his failure or inability to provide the health benefit plan.

[ 1985, c. 660, (NEW) .]

**3. Termination or change in carriers of a health benefit plan.** If an employer terminates a health benefit plan for employees, if a health benefit plan for employees is terminated for failure to pay premium or for any other reason or if the insurance carrier administering the health benefit plan is changed, the employer shall notify the covered employees of the termination of their coverage or the change of carriers at least 10 days before the termination or the change of carriers takes effect. The employer is liable for benefits which would have been payable to a covered employee had the health benefit plan remained in force and not been terminated or the carrier changed during the period of time following the termination of or change in carrier of the health benefit plan until the employee is given notice of the termination or the change of carrier.

[ 1985, c. 660, (NEW) .]

**4. Notice.** Whenever notice to an employee is required under this section, the notice must:

A. Be in writing; and [1985, c. 660, (NEW) .]

B. Be delivered:

- (1) In person to the employee;
- (2) To the employee by the same means as and along with wages due the employee; or
- (3) By mailing the notice to the employee's last known address. [1985, c. 660, (NEW).]

[ 1985, c. 660, (NEW) . ]

**5. Wage withholdings.** When an employer makes withholdings from employees' wages for contributions to health benefit plans, the employer shall be the trustee of the funds until they are paid to the health carrier. The employer is liable to an employee for any wages withheld for the purpose of financing an employee health benefit plan and which are not actually used for that purpose.

[ 1985, c. 660, (NEW) . ]

**6. Action; parties.** An action for benefits under this section may be brought by:

- A. The affected employee or employees; or [1985, c. 660, (NEW).]
- B. The Department of Labor on behalf of the employee or employees. [1985, c. 660, (NEW).]

[ 1985, c. 660, (NEW) . ]

**7. Lien.** Whoever loses wages or medical benefits due to an employer's violation of this section shall have a lien against the employer's real estate or personal property for the full amount of the wages wrongfully withheld and the medical benefits for which the employer is liable under this section.

A. The lien shall be created by filing the statement described in this subsection in the appropriate place for filing an execution lien on real property, personal property or motor vehicles under Title 14, section 4651-A. The statement filed must contain:

- (1) A statement of the amount of wages or medical benefits claimed to have been lost;
- (2) The name and address of the employer and the name and address of the person claiming the loss of wages or benefits; and
- (3) A recital that by virtue of the loss a lien is claimed on the real estate or personal property of the employer for the amount of the claim.

The statement must be subscribed and sworn to by the person claiming the lien or by someone on his behalf. Upon the filing of the statement, the amount claimed in the statement shall constitute a lien upon the property for which the statement is filed. [1987, c. 231, (NEW).]

B. A lien created under this subsection is void 20 days after the date on which the statement described in paragraph A was filed unless, within the 20-day period, the person claiming the lien or someone on his behalf notifies the employer, by certified or registered mail sent to the employer's last known address, of the existence of the lien. The notice must contain the following:

- (1) The fact that a lien has been filed;
- (2) The date and place the lien was filed;
- (3) The amount of the claim on which the lien is based;
- (4) The name of the person making the claim and his attorney, if any, including their addresses; and
- (5) The following statement: "To dissolve this lien, please contact (the person making the claim or his attorney). A bond may be given to the claimant to replace the lien." [1987, c. 231, (NEW).]

C. A lien created under this subsection is void 90 days after the date on which the statement described in paragraph A was filed unless, within the 90-day period, an action to enforce the lien is commenced and a clerk's certificate of the commencement of the action is filed in the place where the statement is

filed. Upon the filing of the clerk's certificate, the lien shall continue until a final judgment. Thereafter, extensions of the lien shall be governed by the provisions for extensions of attachments in Title 14, section 4601. [1987, c. 231, (NEW).]

D. An employer may, at any time after he receives notice of a lien under paragraph B, give bond, with sufficient sureties, in the amount of the claim to the person claiming the lien. Within 7 days of receipt of the bond, the person claiming the lien or someone on his behalf shall discharge the lien. [1987, c. 231, (NEW).]

[ 1987, c. 231, (AMD) .]

**8. Exceptions.** The following exceptions apply.

A. An employer is not liable under this section for benefits which would have been payable under an employee health benefit plan if the failure to provide the notice required by subsection 2 or 3 is due to circumstances beyond the control of the employer. [1985, c. 660, (NEW).]

B. This section does not apply to any termination of or failure to implement an employee health benefit plan which results from or occurs during a strike or lockout. Section 634 applies to the termination of any employee health benefit plan during a strike. [1985, c. 660, (NEW).]

[ 1985, c. 660, (NEW) .]

#### SECTION HISTORY

1985, c. 660, (NEW). 1987, c. 231, (AMD).

## **§630. WRITTEN STATEMENT OF REASON FOR TERMINATION OF EMPLOYMENT**

An employer shall, upon written request of the affected employee, give that employee the written reasons for the termination of that person's employment. An employer who fails to satisfy this request within 15 days of receiving it may be subject to a forfeiture of not less than \$50 nor more than \$500. An employee may bring an action in the District Court or the Superior Court for such equitable relief, including an injunction, as the court may consider to be necessary and proper. The employer may also be required to reimburse the employee for the costs of suit, including a reasonable attorney's fee if the employee receives a judgment in the employee's favor. This section does not apply to public employees in proceedings governed by Title 1, section 405. [1997, c. 356, §1 (AMD).]

#### SECTION HISTORY

1975, c. 420, (NEW). 1979, c. 175, (AMD). 1997, c. 356, §1 (AMD).

## **§631. EMPLOYEE RIGHT TO REVIEW PERSONNEL FILE**

The employer shall, upon written request from an employee or former employee, provide the employee, former employee or duly authorized representative with an opportunity to review and copy the employee's personnel file if the employer has a personnel file for that employee. The reviews and copying must take place at the location where the personnel files are maintained and during normal office hours unless, at the employer's discretion, a more convenient time and location for the employee are arranged. In each calendar year, the employer shall provide, at no cost to the employee, one copy of the entire personnel file when requested by the employee or former employee and, when requested by the employee or former employee, one copy of all the material added to the personnel file after the copy of the entire file was provided. The cost of copying any other material requested during that calendar year is paid by the person requesting the copy. For the purpose of this section, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits and nonprivileged medical records or nurses' station notes relating to the employee that the employer has in the employer's possession. Records in a personnel file may be maintained in any form

including paper, microfiche or electronic form. The employer shall take adequate steps to ensure the integrity and confidentiality of these records. An employer maintaining records in a form other than paper shall have available to the employee, former employee or duly authorized representative the equipment necessary to review and copy the personnel file. Any employer who, following a request pursuant to this section, without good cause fails to provide an opportunity for review and copying of a personnel file, within 10 days of receipt of that request, is subject to a civil forfeiture of \$25 for each day that a failure continues. The total forfeiture may not exceed \$500. An employee, former employee or the Department of Labor may bring an action in the District Court or the Superior Court for such equitable relief, including an injunction, as the court may consider to be necessary and proper. The employer may also be required to reimburse the employee, former employee or the Department of Labor for costs of suit including a reasonable attorney's fee if the employee or the department receives a judgment in the employee's or department's favor, respectively. For the purposes of this section, the term "nonprivileged medical records or nurses' station notes" means all those materials that have not been found to be protected from discovery or disclosure in the course of civil litigation under the Maine Rules of Civil Procedure, Rule 26, the Maine Rules of Evidence, Article V or similar rules adopted by the Workers' Compensation Board or other administrative tribunals. [ 2003, c. 58, §1 (AMD) . ]

#### SECTION HISTORY

1975, c. 694, §2 (NEW). 1979, c. 66, §§1,2 (AMD). 1989, c. 178, (AMD). 1991, c. 105, (AMD). 1991, c. 885, §D2 (AMD). 1997, c. 420, §1 (AMD). 1999, c. 235, §1 (AMD). 2003, c. 58, §1 (AMD).

## §632. FUND FOR UNPAID WAGES

**1. Fund established.** There is established a Maine Wage Assurance Fund to be used by the Bureau of Labor Standards within the Department of Labor for the purpose of assuring that all former employees of employers within the State receive payment for wages for a maximum of 2 weeks for the work they have performed. The Legislature intends that payment of earned wages from the fund be limited to those cases when the employer has terminated his business and there are no assets of the employer from which earned wages may be paid, or when the employer has filed under any provision of the Federal Bankruptcy Act. No officer or director in the case of a corporation, no partner in the case of a partnership and no owner in the case of a sole proprietorship may be considered an employee for purposes of this section.

[ 1983, c. 172, (AMD) . ]

**2. Administration.** The fund shall be administered by the Director of the Bureau of Labor Standards. Applications for payment from the fund and disbursements from the fund shall be in accordance with regulations promulgated by the director. The State shall be subrogated to any claims against an employer for unpaid wages by an employee who has received payment from the fund. Subrogation to these claims shall be to the extent of payment from the fund to the employee.

[ 1989, c. 502, Pt. A, §107 (AMD) . ]

**3. Amount in fund.** The Maine Wage Assurance Fund is a nonlapsing, revolving fund limited to a maximum of \$200,000. All money collected from an employer pursuant to a claim for unpaid wages by an employee who has received payment from the fund, or by the State as the employee's subrogee, is credited to the fund.

The fund must be established and augmented periodically as necessary.

Money in the fund not needed currently to meet claims against the fund must be deposited with the Treasurer of State to be credited to the fund and may be invested in such manner as is provided for by statute. Interest received on that investment must be credited to the Maine Wage Assurance Fund.

*§632. Information to be furnished to railroad employees*

*(As enacted by PL 1979, c. 287 is REALLOCATED TO TITLE 26, SECTION 633)*

[ 2009, c. 25, §1 (AMD) .]

SECTION HISTORY

1979, c. 202, §1 (NEW). 1979, c. 287, (NEW). 1979, c. 663, §158 (RAL).  
1983, c. 172, (AMD). 1989, c. 502, §A107 (AMD). 2009, c. 25, §1 (AMD).

**§633. INFORMATION TO BE FURNISHED TO RAILROAD EMPLOYEES**  
*(REALLOCATED FROM TITLE 26, SECTION 632)*

**1. Wage statement.** Every railroad corporation in the State shall furnish each employee of that corporation with a statement with every payment of wages, listing accrued total earnings and taxes to date, and further furnish that employee at the same time with a separate listing of his daily wages and how they were computed.

[ 1979, c. 663, §158 (RAL) .]

**2. Coverage.** Only railroad employees who are operating personnel working on a train are covered under this section.

[ 1979, c. 663, §158 (RAL) .]

**3. Penalty.** Any person, firm or corporation violating this section commits a civil violation for which a forfeiture of not more than \$100 may be adjudged for each offense.

[ 1979, c. 663, §158 (RAL) .]

SECTION HISTORY

1979, c. 663, §158 (RAL).

**§634. CONTINUATION OF HEALTH INSURANCE COVERAGE DURING STRIKE; NOTICE**

**1. Employer's duty.** During a strike, an employer may not cancel any policy of group health insurance issued pursuant to Title 24-A, section 2804 until the employer has first notified insured members that the policy is to be canceled.

[ 1981, c. 354, (NEW) .]

**2. Notice.** The notice requirement contained in subsection 1 is satisfied if:

A. The employee actually receives the written notice; [1981, c. 354, (NEW) .]

B. The notice is mailed to the employee at an address which the employer reasonably believes is current; [1981, c. 354, (NEW) .]

C. The notice is delivered to the employee by the same means as and along with wages due the employee; or [1981, c. 354, (NEW) .]

D. Timely notice is given to the collective bargaining agent of the employee. [1981, c. 354, (NEW) .]

[ 1981, c. 354, (NEW) .]

SECTION HISTORY

1981, c. 354, (NEW).

## §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. [1989, c. 804, (NEW).]

B. "Overcompensation" means any compensation paid to an employee 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. [1989, c. 804, (NEW).]

[ 1989, c. 804, (NEW) .]

**2. Recovery of overcompensation.** An employer who has overcompensated an employee through employer error may not withhold more than 10% 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.

[ 1989, c. 804, (NEW) .]

**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 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.

[ 1989, c. 804, (NEW) .]

**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. [1989, c. 804, (NEW).]

B. If an employee knowingly accepts the overcompensation, this section does not apply. [1989, c. 804, (NEW).]

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. [1989, c. 804, (NEW).]

[ 1989, c. 804, (NEW) .]

### SECTION HISTORY

1989, c. 804, (NEW).



## §636. FAMILY SICK LEAVE

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

A. "Employer" means a public or private employer with 25 or more employees. [ 2005, c. 455, §1 (NEW) . ]

B. "Immediate family member" means an employee's child, spouse or parent. [ 2005, c. 455, §1 (NEW) . ]

C. "Paid leave" means time away from work by an employee for which the employee receives compensation, and is limited to sick time, vacation time, compensatory time and leave that is provided as an aggregate amount for use at the discretion of the employee for any of these same purposes. "Paid leave" does not include paid short-term or long-term disability, catastrophic leave or similar types of benefits. [ 2005, c. 455, §1 (NEW) . ]

[ 2005, c. 455, §1 (NEW) . ]

**2. Use of paid leave.** If an employer, under the terms of a collective bargaining agreement or employment policy, provides paid leave, then the employer shall allow an employee to use the paid leave for the care of an immediate family member who is ill as provided in this section.

[ 2005, c. 455, §1 (NEW) . ]

**3. Election of time; amount; process.** An employer may adopt a policy limiting the number of hours of paid leave taken under this section, but in no case may the number of hours allowed be fewer than 40 hours for a 12-month period. An employee is not entitled under this section to use paid leave until that leave has been earned. An employee who receives more than one type of paid leave may elect which type and the amount of each of those types of paid leave to use, except that the employee's election may be limited by a bona fide employment policy as long as the policy is uniformly applied to all employees at that workplace. An employer may require notice or verification of illness for leave taken pursuant to this section if such notice or verification is required when an employee takes leave because of the employee's own illness. An employer may require an employee to specify that leave is taken pursuant to this section.

[ 2005, c. 455, §1 (NEW) . ]

**4. Relationship to collective bargaining.** This section applies to employees covered by a collective bargaining agreement unless the agreement provides paid leave benefits that are equal to or greater than those provided in this section.

[ 2005, c. 455, §1 (NEW) . ]

**5. Prohibited actions by employer.** An employer may not discharge, demote, suspend, discipline or otherwise discriminate against an employee or threaten to take any of these actions against an employee who exercises rights granted under this section or who files a complaint or testifies or assists in an action brought against the employer for a violation of this section. Nothing in this section prohibits an employer from taking employment action against an employee for taking leave that is not protected by this section or other applicable law.

[ 2005, c. 455, §1 (NEW) . ]

**6. Application of family medical leave requirements.** For purposes of applying family medical leave requirements, the employer shall treat leave under this section in the same manner as the employer treats leave for a sick employee.

[ 2005, c. 455, §1 (NEW) .]

**7. Enforcement; rules.** The Department of Labor shall adopt rules to implement and enforce the provisions of this section, including rules regarding the receipt, investigation and prosecution of complaints brought under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2005, c. 455, §1 (NEW) .]

#### SECTION HISTORY

2005, c. 455, §1 (NEW).

## Subchapter 2-A: EMPLOYMENT STANDARDS IN THE FORESTRY INDUSTRY AND FARMING

### §641. RULE OF CONSTRUCTION

This subchapter must be liberally construed in light of the purposes of the law to ensure a safe working environment and safe transportation for forestry workers and migrant and seasonal farm workers and to prevent unfair competition in the marketplace by businesses whose practices would undermine safety and other employment standards. [2009, c. 201, §1 (AMD).]

#### SECTION HISTORY

2003, c. 616, §1 (NEW). 2009, c. 201, §1 (AMD).

### §642. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2003, c. 616, §1 (NEW).]

**1. Bureau.** "Bureau" means the Department of Labor, Bureau of Labor Standards.

[ 2003, c. 616, §1 (NEW) .]

**2. Code of Federal Regulations.** "Code of Federal Regulations" means the Code of Federal Regulations as of January 1, 2008.

[ 2009, c. 201, §2 (AMD) .]

**3. Employer.** "Employer" means:

A. With regard to a forestry worker, a person or entity that suffers or permits any forestry worker to work; and [2009, c. 201, §2 (NEW).]

B. With regard to a migrant and seasonal farm worker, a farm labor contractor. [2009, c. 201, §2 (NEW).]

[ 2009, c. 201, §2 (AMD) .]

**3-A. Farm labor contractor.** "Farm labor contractor" means a person or entity that employs migrant and seasonal farm workers and that is required to register with the United States Department of Labor under the federal Migrant and Seasonal Agricultural Worker Protection Act.

[ 2009, c. 201, §2 (NEW) . ]

**4. Forestry worker.** "Forestry worker" means a person employed on a temporary or seasonal basis to perform reforestation activities, including, but not limited to, precommercial thinning, tree planting and brush clearing.

[ 2009, c. 201, §2 (AMD) . ]

**5. Migrant and seasonal farm worker.** "Migrant and seasonal farm worker" means a person employed by a farm labor contractor on a temporary or seasonal basis to perform farm labor.

[ 2009, c. 201, §2 (NEW) . ]

**6. Worker.** "Worker" means a forestry worker or migrant and seasonal farm worker.

[ 2009, c. 201, §2 (NEW) . ]

#### SECTION HISTORY

2003, c. 616, §1 (NEW). 2009, c. 201, §2 (AMD).

## §643. TRANSPORTATION OF WORKERS

**1. Requirement.** An employer shall provide safe transportation for workers between the workers' lodgings and work sites each day at no cost to the workers.

A. A vehicle used to transport workers must meet the standards set forth in 29 Code of Federal Regulations, Section 500.105, regardless of the number of miles traveled or the type of vehicle used, and must include a working seat belt for each worker being transported. Any vehicle used to transport workers may not have any apparatus attached to the rear of the vehicle that interferes with the operation of the rear door. Equipment or any other materials that interfere with the operation of any doors or windows may not be attached to or stored in the vehicle. The number of occupants in any vehicle, other than a bus, may not exceed the manufacturer's design specifications except in no instance may it exceed 12 at any time. In the case of a 15-passenger van, compliance with this standard must be achieved by removal of the seating immediately behind the rear axle, resulting in the number of passengers in the vehicle at any one time not exceeding 11. Attachments are not allowed on the roofs of vans for the purpose of carrying gear. [ 2009, c. 201, §3 (AMD) . ]

B. Any person driving a vehicle used to transport workers must meet the driver qualifications and must follow the standards for driving set forth in 29 Code of Federal Regulations, Section 500.105. [ 2003, c. 616, §1 (NEW) . ]

C. Each vehicle used to transport workers must be equipped with a first aid kit consistent with 29 Code of Federal Regulations, section 1910.266, Appendix A and communications equipment capable of providing the most immediate access to emergency medical services. A vehicle equipped with such equipment and a driver must be available at or near the work site at all times during the work day. Emergency action plans, written in easily understandable English and in the language of the worker crews, must be developed and maintained for each job site. Plans must include information on how to transport injured workers to the nearest emergency facility and how to direct emergency workers to the location of an injured worker who can not be moved. [ 2009, c. 201, §3 (AMD) . ]

D. An employer must make reasonable efforts to limit the driving hours of any one driver in a day and to reduce driver fatigue generally. Hours of operation must also comply with the limitations set forth in 29 Code of Federal Regulations, Section 500.105. Except in an emergency, a worker who engages in reforestation or agricultural labor activities may not operate a vehicle more than 2 hours per day.

For purposes of this paragraph, "agricultural labor" has the same meaning as in section 1043, subsection 1. [2009, c. 201, §3 (AMD).]

E. A vehicle used to transport workers must be insured for at least the same minimum liability insurance as is required by the State. [2003, c. 616, §1 (NEW).]

F. Each employer shall provide to each worker and to the Department of Labor a copy of off-road driving safety standards consistent with those promoted in relevant safe driver training courses. [2003, c. 616, §1 (NEW).]

G. Each contract regarding or resulting in the employment of any worker must include a provision requiring the contractor who employs such workers to abide by this subchapter. [2009, c. 201, §3 (AMD).]

[ 2009, c. 201, §3 (AMD) .]

#### SECTION HISTORY

2003, c. 616, §1 (NEW). 2009, c. 201, §3 (AMD).

### §643-A. FIRST AID REQUIREMENTS

An employer must comply with the standards for first aid set forth in 29 Code of Federal Regulations, Section 1910.151 (2008). [2009, c. 201, §4 (NEW).]

#### SECTION HISTORY

2009, c. 201, §4 (NEW).

### §643-B. FARM LABOR CONTRACTOR REGISTRATION

Each farm labor contractor employing migrant and seasonal farm workers shall file a copy of its federal registration under the federal Migrant and Seasonal Agricultural Worker Protection Act with the bureau. The filing must include in-state contact information for the farm labor contractor or the farm labor contractor's representative. [2009, c. 201, §5 (NEW).]

#### SECTION HISTORY

2009, c. 201, §5 (NEW).

### §644. PROHIBITION AGAINST DISCRIMINATION AND RETALIATION

An employer or other person may not intimidate, threaten, restrain, coerce, blacklist, discharge, fail to recruit, fail to rehire or in any manner discriminate or retaliate against a worker because the worker has: [2009, c. 201, §6 (AMD).]

**1. Proceedings.** Made, filed, instituted, caused to be instituted or participated in any way in any proceeding under or related to this subchapter;

[ 2003, c. 616, §1 (NEW) .]

**2. Exercise of rights or protections.** Exercised in any way, on the worker's own behalf or on behalf of others, any right or protection afforded by this subchapter;

[ 2003, c. 616, §1 (NEW) .]

**3. Discussions.** Discussed any matter that is a subject of or is related in any way to this subchapter, or any other lawful matter, with any other person, including, but not limited to, that worker's employer or the employer's agent or employee; or

[ 2009, c. 201, §7 (AMD) .]

**4. Complaints.** Made, filed, instituted, caused to be instituted or participated in any way in any lawful complaint, lawsuit or other proceeding of any kind.

[ 2003, c. 616, §1 (NEW) .]

#### SECTION HISTORY

2003, c. 616, §1 (NEW). 2009, c. 201, §§6, 7 (AMD).

### §645. WAIVER OF RIGHTS PROHIBITED

Any agreement by a worker purporting to waive or modify any of the worker's rights under this subchapter is void as contrary to public policy. [2009, c. 201, §8 (AMD) .]

#### SECTION HISTORY

2003, c. 616, §1 (NEW). 2009, c. 201, §8 (AMD).

### §646. VIOLATIONS; ENFORCEMENT

**1. Joint and several liability.** If more than one person or entity is an employer of the same worker or group of workers, each such person or entity is jointly and severally liable for all violations of this subchapter.

[ 2009, c. 201, §9 (AMD) .]

**2. Enforcement by bureau.** The bureau may inspect vehicles subject to this subchapter and used to transport workers and may enforce compliance with this subchapter in accordance with this section.

A. A duly designated officer of the bureau may enter into any structure or upon any real property in or on which a vehicle subject to this subchapter and used to transport workers is found in accordance with the process established in section 587 in order to determine compliance with this subchapter and any rules adopted to implement this subchapter. [2009, c. 201, §10 (AMD) .]

B. Upon the written request of the bureau, the Department of Transportation and the Department of Public Safety shall provide any technical services that may be required by the bureau to assist with inspections and enforcement of this subchapter. [2003, c. 616, §1 (NEW) .]

[ 2009, c. 201, §10 (AMD) .]

**3. Civil violation.** An employer who violates this subchapter or any of the rules adopted to implement this subchapter commits a civil violation for which a fine of not less than \$100 nor more than \$1,000 for each violation, payable to the State, may be adjudged.

A. Each day that a violation remains uncorrected following notice to the employer may be counted as a separate violation. [2003, c. 616, §1 (NEW) .]

B. The bureau may direct an employer to correct any violations in a manner and within a time frame that the bureau determines appropriate to ensure compliance with this subchapter and with the rules adopted to implement this subchapter or to protect the public health. Failure to correct violations within a time frame established by the bureau constitutes a separate violation subject to fine. [2003, c. 616, §1 (NEW) .]

C. The Attorney General may bring an action to seek fines under this subsection, to enjoin violations of this subchapter and for any other available remedy. [2003, c. 616, §1 (NEW).]

[ 2003, c. 616, §1 (NEW) .]

SECTION HISTORY

2003, c. 616, §1 (NEW). 2009, c. 201, §§9, 10 (AMD).

### Subchapter 3: MINIMUM WAGES

#### §661. DECLARATION OF POLICY

It is the declared public policy of the State of Maine that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.

#### §662. COVERAGE

*(REPEALED)*

SECTION HISTORY

1965, c. 410, §1 (AMD). 1971, c. 525, (RP).

#### §663. DEFINITIONS

Terms used in this subchapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

**1. Director.** "Director," the Director of the Bureau of Labor Standards;

[ 1981, c. 168, §26 (AMD) .]

**2. Employ.** "Employ," to suffer or permit to work;

**3. Employee.** "Employee," any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:

A. Any individual employed in agriculture as defined in the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law, except when that individual performs services for or on a farm with over 300,000 laying birds; [1975, c. 717, §5 (AMD).]

B. [2007, c. 640, §2 (RP).]

C. Those employees whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer; [1967, c. 466, §1 (AMD).]

D. Any individual employed as a taxicab driver;

E. [2007, c. 640, §3 (RP).]

F. Those employees who are counselors or junior counselors or counselors-in-training at organized camps licensed under Title 22, section 2495 and those employees of organized camps and similar seasonal recreation programs not requiring such licensure that are operated as or by nonprofit organizations who are under 18 years of age; [2009, c. 120, §1 (RPR); 2009, c. 211, Pt. B, §22 (RPR).]

F-1. [1967, c. 466, §2 (RP).]

G. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee; [1965, c. 410, §2 (AMD).]

H. [2017, c. 219, §13 (RP).]

I. Any home worker who is not subject to any supervision or control by any person whomsoever, and who buys raw material and makes and completes any article and sells the same to any person, even though it is made according to specifications and the requirements of some single purchaser;

J. Members of the family of the employer who reside with and are dependent upon the employer; [2009, c. 529, §1 (AMD).]

K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's 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; and [2009, c. 529, §2 (AMD).]

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. [2013, c. 133, §20 (AMD).]

[2007, c. 22, §§1, 2 (AMD); 2009, c. 120, §1 (AMD); 2009, c. 529, §§1-3 (AMD); 2017, c. 219, §13 (AMD).]

**4. Occupation.** "Occupation," an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

**5. Wages.** "Wages" paid to any employee includes compensation paid to the employee in the form of legal tender of the United States and checks on banks convertible into cash on demand and includes the reasonable cost to the employer who furnishes the employee board or lodging. "Wages" also includes compensation paid through a direct deposit system, automated teller machine card or other means of electronic transfer as long as the employee either can make an initial withdrawal of the entire net pay without additional cost to the employee or the employee can choose another means of payment that involves no additional cost to the employee;

[2005, c. 89, §1 (AMD).]

#### **6. Resort establishment.**

[1975, c. 623, §38 (RP).]

**7. Minimum wage for firemen.** Members of municipal fire fighting departments, other than volunteer or call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. Firemen's wages may be paid by the municipality based

upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1 1/2 times the hourly rate shall not be paid for all work done over 48 hours under this subsection;

[ 1967, c. 385, (AMD) . ]

**8. Service employee.** "Service employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips.

[ 2011, c. 118, §1 (AMD) . ]

**9. Hotel.**

[ 2017, c. 219, §14 (RP) . ]

**10. Public employees.** "Public employees" are considered employees within the meaning of this section and include any person whose wages are paid by a state or local public employer, including the State, a county, a municipality, the University of Maine System, a school administrative unit and any other political body or its political or administrative subdivision. "Public employee" does not include any officer or official elected by popular vote or appointed to office pursuant to law for a specified term or any person defined in subsection 7.

[ 1985, c. 779, §69 (AMD) . ]

**11. Automobile salesperson.** "Automobile salesperson" means a person who is primarily engaged in selling automobiles or trucks as an employee of an establishment primarily engaged in the business of selling these vehicles to the ultimate purchaser. "Automobile salesperson" includes a person who is primarily engaged in assisting in the financing and providing of insurance products to the ultimate purchaser.

[ 2007, c. 360, §1 (AMD) . ]

**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, except when the employee is paid by the employer on an hourly basis.

[ 2007, c. 360, §2 (AMD) . ]

**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, except when the employee is paid by the employer on an hourly basis.

[ 2007, c. 360, §3 (AMD) . ]

**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 an employee who is paid by the employer on a hourly basis.

[ 2007, c. 360, §4 (NEW) .]

**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 service charge added to a customer's bill in a banquet or private club setting by agreement between the customer and employer.

[ 2011, c. 118, §2 (NEW) .]

#### SECTION HISTORY

1965, c. 399, §§1,2 (AMD). 1965, c. 410, §§2-4 (AMD). 1967, c. 385, (AMD). 1967, c. 466, §§1-4 (AMD). 1971, c. 620, §13 (AMD). 1971, c. 622, §87 (AMD). 1973, c. 504, (AMD). 1975, c. 48, (AMD). 1975, c. 59, §3 (AMD). 1975, c. 92, §3 (AMD). 1975, c. 623, §38 (AMD). 1975, c. 717, §5 (AMD). 1979, c. 516, §§1,2 (AMD). 1981, c. 168, §26 (AMD). 1981, c. 276, (AMD). 1985, c. 76, §1 (AMD). 1985, c. 779, §69 (AMD). 1991, c. 507, §1 (AMD). 1999, c. 465, §7 (AMD). 2005, c. 89, §1 (AMD). 2005, c. 255, §1 (AMD). 2007, c. 22, §§1, 2 (AMD). 2007, c. 360, §§1-4 (AMD). 2007, c. 367, §1 (AMD). 2007, c. 640, §§2, 3 (AMD). 2009, c. 120, §1 (AMD). 2009, c. 211, Pt. B, §22 (AMD). 2009, c. 529, §§1-3 (AMD). 2011, c. 118, §§1, 2 (AMD). 2013, c. 133, §20 (AMD). 2017, c. 219, §§13, 14 (AMD).

## §664. MINIMUM WAGE; OVERTIME RATE

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section. [1995, c. 305, §1 (RPR).]

**1. Minimum wage.** The minimum hourly wage is \$7.50 per hour. Starting January 1, 2017, the minimum hourly wage is \$9.00 per hour; starting January 1, 2018, the minimum hourly wage is \$10.00 per hour; starting January 1, 2019, the minimum hourly wage is \$11.00 per hour; and starting January 1, 2020, the minimum hourly wage is \$12.00 per hour. On January 1, 2021 and each January 1st thereafter, the minimum hourly wage then in effect must be increased by the increase, if any, in the cost of living. The increase in the cost of living must be measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the minimum wage increase rounded to the nearest multiple of 5¢. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, and must be increased in accordance with this section thereafter.

[ 2015, c. 2, §1 (AMD) .]

**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 except that from January 1, 2017 to December 31, 2017, the minimum cash wage paid directly to a tipped service employee may not be less than \$5.00 per hour. An employer who elects to use the tip credit must inform the affected employee in advance, as provided for in this subsection, 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 within the established 7-day workweek. 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. The employer may not deduct any amount from employee tips charged to a credit card, including, but not limited to, service fees assessed to the employer in connection with the credit card transaction.

An employer who elects to use the tip credit must inform the affected employee in advance, either orally or in writing, of the following information:

- A. The amount of the direct wage to be paid by the employer to the tipped employee; [ 2017, c. 272, §1 (NEW) . ]
- B. The amount of tips to be credited as wages toward the minimum wage; [ 2017, c. 272, §1 (NEW) . ]
- C. That the amount of tips to be credited as wages may not exceed the value of the tips actually received by the employee; [ 2017, c. 272, §1 (NEW) . ]
- D. That all tips received by the affected employee must be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips in accordance with subsection 2-A; [ 2017, c. 272, §1 (NEW) . ]
- E. That the tip credit may not apply to any employee who has not been informed by the employer of the provisions for a tip credit; and [ 2017, c. 272, §1 (NEW) . ]
- F. If the employer uses a tip pooling arrangement, any required tip pool contribution amount from the employee. [ 2017, c. 272, §1 (NEW) . ]

[ 2017, c. 272, §1 (AMD) . ]

**2-A. Tip pooling.** This section may not be construed to prohibit an employer from establishing a valid tip pooling arrangement among service employees that is consistent with the federal Fair Labor Standards Act and regulations made pursuant to that Act.

[ 2011, c. 118, §4 (NEW) . ]

**2-B. Service charges.** An employer in a banquet or private club setting that adds a service charge shall notify the customer that the service charge does not represent a tip for service employees. The employer in a banquet or private club setting may use some or all of any service charge to meet its obligation to compensate all employees at the rate required by this section.

[ 2011, c. 118, §4 (NEW) . ]

**3. Overtime rate.** An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of "regular rate" under the Fair Labor Standards Act, 29 United States Code, Section 207(e).

The overtime provision of this section does not apply to:

A. Automobile mechanics, automobile parts clerks, automobile service writers and automobile salespersons as defined in section 663. The interpretation of these terms must be consistent with the interpretation of the same terms under federal overtime law, 29 United States Code, Section 213; [2007, c. 360, §5 (AMD).]

B. [2007, c. 640, §5 (RP).]

C. Mariners; [1995, c. 305, §1 (NEW).]

D. Public employees, except those employed by the executive or judicial branch of the State; [2003, c. 423, §1 (AMD); 2003, c. 423, §5 (AFF).]

E. [2007, c. 640, §6 (RP).]

F. The canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or distributing 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 [2017, c. 219, §15 (AMD).]

G. [2001, c. 628, §3 (NEW); 2001, c. 628, §5 (AFF); T. 26, §664, sub-§3, ¶ G (RP).]

H. [2011, c. 681, §2 (RP).]

I. [2011, c. 681, §2 (RP).]

J. [2011, c. 681, §2 (RP).]

K. A driver or driver's helper who is not paid hourly and is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section, who is governed by the applicable provisions of federal law with respect to payment of overtime.

Nothing in this paragraph may be construed to limit the rights of parties to negotiate rates of pay for drivers and driver's helpers who are represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board or who are employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid a driver or driver's helper. [2011, c. 681, §3 (NEW).]

[ 2017, c. 219, §15 (AMD) .]

**4. Compensatory time.** To the extent permitted under the federal Fair Labor Standards Act of 1938, as amended, 29 United States Code, Section 207(o), the overtime pay requirement applicable to executive or judicial employees as described in subsection 3, paragraph D may be met through compensatory time agreements.

[ 2003, c. 423, §2 (NEW); 2003, c. 423, §5 (AFF) .]

#### SECTION HISTORY

1965, c. 410, §5 (AMD). 1967, c. 333, (AMD). 1967, c. 466, §5 (AMD). 1969, c. 184, (AMD). 1969, c. 356, (AMD). 1969, c. 504, §43 (AMD). 1969, c. 590, §41 (AMD). 1971, c. 78, §1 (AMD). 1971, c. 415, (AMD). 1971, c. 620, §13 (AMD). 1971, c. 622, §88 (AMD). 1973, c. 420, (AMD). 1973, c. 467, (AMD). 1973, c. 625, §171 (AMD). 1973, c. 752, §§1,2 (AMD). 1975, c. 23, (AMD). 1975, c. 352, (AMD). 1979, c. 54, (AMD). 1979, c. 516, §3 (AMD). 1983, c. 857, (AMD). 1985, c. 76, §2 (AMD).

1985, c. 576, (AMD). 1987, c. 738, §§1,2 (AMD). 1991, c. 507, §2 (AMD). 1991, c. 544, §1 (AMD). 1993, c. 233, §1 (AMD). 1993, c. 233, §3 (AFF). 1993, c. 434, §1 (AMD). 1993, c. 434, §8 (AFF). 1995, c. 305, §1 (RPR). 1995, c. 510, §1 (AMD). 1997, c. 136, §1 (AMD). 2001, c. 297, §1 (AMD). 2001, c. 336, §1 (AMD). 2001, c. 628, §§1-3 (AMD). 2001, c. 628, §5 (AFF). 2003, c. 423, §§1,2 (AMD). 2003, c. 423, §5 (AFF). 2003, c. 697, §1 (AMD). 2005, c. 578, §1 (AMD). 2007, c. 360, §5 (AMD). 2007, c. 367, §2 (AMD). 2007, c. 640, §§4-6 (AMD). 2011, c. 118, §§3, 4 (AMD). 2011, c. 681, §§1-3 (AMD). IB 2015, c. 2, §§1, 2 (AMD). 2017, c. 219, §15 (AMD). 2017, c. 272, §1 (AMD).

## §665. POWERS AND DUTIES OF COMMISSIONER

**1. Examination of records, books; copies.** Every employer subject to this subchapter shall keep a true and accurate record of the hours worked by each employee and of the wages paid, such records to be preserved by the employer for a period of at least 3 years, and shall furnish to each employee with each payment of wages a statement that clearly shows the date of the pay period, the hours, total earnings and itemized deductions. An employer making payment by direct deposit or other means of electronic transfer shall provide each employee with an accurate record of the transfer, including the date of the pay period, the hours, total earnings and itemized deductions, when the transfer is made. If the record is provided in an electronic format the employer shall provide a method by which the employee may have ready access to the information and print it without cost to the employee. The director or the director's authorized representative may, and upon written complaint shall have authority to enter the place of business or employment of any employer or employees in the State, as defined in section 663, for the purpose of examining and inspecting such records and copy any or all of such records as the director or the director's authorized representative determines necessary or appropriate. All information received is considered confidential and may not be divulged to any other person or agency, except as may be necessary for the enforcement of this subchapter.

[ 2005, c. 89, §2 (AMD) .]

**2. Rules and regulations.** The director may make and promulgate from time to time, pursuant to Title 5, section 8051 et seq., such rules and regulations, not inconsistent with this subchapter, as he may deem appropriate or necessary for the proper administration and enforcement of this subchapter. The rules and regulations affecting any particular class of employees and employers shall be made and promulgated only after notice and opportunity to be heard to those employees and employers affected.

[ 1977, c. 694, §465 (RPR) .]

### SECTION HISTORY

1965, c. 410, §6 (AMD). 1967, c. 466, §6 (AMD). 1971, c. 620, §13 (AMD). 1977, c. 694, §465 (AMD). 2005, c. 89, §2 (AMD).

## §666. WORKERS WITH DISABILITIES

For any employment to which the minimum wage is applicable, the director may issue to an employer for any person with a disability a special certificate authorizing the employer to pay that person a wage less than the minimum wage, based on the ability of the person to perform the duties required for that employment in comparison to the ability of a person who does not have a disability to perform the same duties. The director may hold hearings and conduct investigations as necessary for the purpose of fixing the special minimum wage for the person. A certificate is valid for 2 years from the date of issue and may be renewed

by the director. The director may issue a certificate to cover several employees with disabilities as long as the employer provides documentation justifying the special minimum wage. [2011, c. 483, §1 (AMD).]

SECTION HISTORY

1971, c. 620, §13 (AMD). 2011, c. 483, §1 (AMD).

**§667. APPRENTICE**

*(REPEALED)*

SECTION HISTORY

1971, c. 620, §13 (AMD). 2013, c. 5, §1 (RP).

**§668. POSTING OF SUMMARY**

*(REPEALED)*

SECTION HISTORY

1971, c. 620, §13 (AMD). 2017, c. 219, §16 (RP).

**§669. ENFORCEMENT**

*(REPEALED)*

SECTION HISTORY

1965, c. 410, §7 (RP).

**§670. EMPLOYEES' REMEDIES**

Any employer shall be liable to the employee or employees for the amount of unpaid minimum wages. Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages under this subchapter, such judgment shall include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as liquidated damages, and costs of suit including a reasonable attorney's fee. [1965, c. 410, §8 (AMD).]

SECTION HISTORY

1965, c. 410, §8 (AMD).

**§670-A. REMEDIES FOR OVERTIME WAGE VIOLATIONS INVOLVING STATE EMPLOYEES**

Notwithstanding section 670, in an action brought to recover unpaid overtime wages for an employee of the executive or judicial branch of the State, the judgment or award is limited to the unpaid overtime compensation adjudged to be due, without liquidated damages or attorney's fees. An action for unpaid overtime wages for an employee of the executive or judicial branch of the State must be brought within 2 years after the cause of action accrued, except that a cause of action arising from a willful violation of the overtime wage payment law must be commenced within 3 years after the cause of action accrued. Overtime wages are recoverable by employees of the executive or judicial branch beginning with the later of the date the cause of action accrued and the date the applicable limitations period began. [2003, c. 423, §3 (NEW); 2003, c. 423, §5 (AFF).]

SECTION HISTORY

2003, c. 423, §3 (NEW). 2003, c. 423, §5 (AFF).

## §671. PENALTIES

Any employer who violates this subchapter shall, upon conviction thereof, be punished by a fine of not less than \$50 nor more than \$200.

Any employer, who discharges or in any other manner discriminates against any employee because such employee makes a complaint to the director or to the county attorney concerning a violation of this subchapter, shall be punished by a fine of not less than \$50 nor more than \$200. [1971, c. 620, §13 (AMD).]

In the event of the violation of any of the provisions of this subchapter, the Attorney General may institute injunction proceedings in the Superior Court to enjoin further violation thereof. [1965, c. 410, §9 (AMD).]

### SECTION HISTORY

1965, c. 410, §9 (AMD). 1971, c. 620, §13 (AMD).

## §672. UNFAIR CONTRACTS

No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter. [1967, c. 466, §7 (NEW).]

### SECTION HISTORY

1967, c. 466, §7 (NEW).

## §673. REPORT

**1. Annual report.** The Department of Labor shall provide a written report to the joint standing committee of the Legislature having jurisdiction over labor matters no later than February 15th of each year. The report must include the following specific information regarding complaints received by the department regarding each violation of the wage and hour laws under this chapter for which the department has taken final action:

- A. Industry; [2017, c. 268, §1 (NEW).]
- B. Fines sought by the department; [2017, c. 268, §1 (NEW).]
- C. Fines collected by the department; and [2017, c. 268, §1 (NEW).]
- D. Length of time between the filing of the complaint and final resolution. [2017, c. 268, §1 (NEW).]

The report must also provide, in regard to violations of the wage and hour laws under this chapter, annual aggregate data on the number of complaints filed, number of resolutions of complaints and total amount of fines collected.

The report required by this subsection need not include information already provided to the committee in another report required by law that is issued to the committee in the same calendar year.

[ 2017, c. 268, §1 (NEW) .]

### SECTION HISTORY

2017, c. 268, §1 (NEW).

## Subchapter 3-A: SUBSTANCE USE TESTING

### §681. PURPOSE; APPLICABILITY

**1. Purpose.** This subchapter is intended to:

A. Protect the privacy rights of individual employees in the State from undue invasion by employers through the use of substance use tests while allowing the use of tests when the employer has a compelling reason to administer a test; [2017, c. 407, Pt. A, §105 (AMD).]

B. Ensure that, when substance use tests are used, proper test procedures are employed to protect the privacy rights of employees and applicants and to achieve reliable and accurate results; [2017, c. 407, Pt. A, §105 (AMD).]

C. Ensure that an employee with substance use disorder receives an opportunity for rehabilitation and treatment of the disease and returns to work as quickly as possible; and [2017, c. 407, Pt. A, §105 (AMD).]

D. Eliminate drug use in the workplace. [1989, c. 832, §1 (NEW).]

[2017, c. 407, Pt. A, §105 (AMD) .]

**2. Employer discretion.** This subchapter does not require or encourage employers to conduct substance use testing of employees or applicants. An employer who chooses to conduct such testing is limited by this subchapter, but may establish policies that are supplemental to and not inconsistent with this subchapter.

[2017, c. 407, Pt. A, §105 (AMD) .]

**3. Collective bargaining agreements.** This subchapter does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this subchapter.

A labor organization with a collective bargaining agreement effective in the State may conduct a program of substance use testing of its members. The program may include testing of new members and periodic testing of all members. It may not include random testing of members. The program may be voluntary. The results may not be used to preclude referral to a job where testing is not required or to otherwise discipline a member. Sample collection and testing must be done in accordance with this subchapter. Approval of the Department of Labor is not required.

[2017, c. 407, Pt. A, §105 (AMD) .]

**4. Home rule authority preempted.** A municipality may not enact any ordinance under its home rule authority regulating an employer's use of substance use tests.

[2017, c. 407, Pt. A, §105 (AMD) .]

**5. Contracts for work out of State.** All employment contracts subject to the laws of this State must include an agreement that this subchapter will apply to any employer who hires employees to work outside the State.

[2017, c. 407, Pt. A, §105 (AMD) .]

**6. Medical examinations.** This subchapter does not prevent an employer from requiring or performing medical examinations of employees or applicants or from conducting medical screenings to monitor exposure to toxic or other harmful substances in the workplace, as long as these examinations are not used to avoid the restrictions of this subchapter. An examination under this subsection may not include the use of any substance use test except in compliance with this subchapter.

[2017, c. 407, Pt. A, §105 (AMD) .]

**7. Other discipline unaffected.** This subchapter does not prevent an employer from establishing rules related to the possession or use of substances by employees, including convictions for substance-related offenses, and taking action based upon a violation of any of those rules, except when a substance use test is required, requested or suggested by the employer or used as the basis for any disciplinary action.

[ 2017, c. 407, Pt. A, §105 (AMD) .]

**8. Nuclear power plants; federal law.** The following limitations apply to the application of this subchapter.

A. This subchapter does not apply to nuclear electrical generating facilities and their employees, including independent contractors and employees of independent contractors who are working at nuclear electrical generating facilities. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 1989, c. 832, §2 (RPR).]

B. [2011, c. 196, §1 (RP).]

C. This subchapter does not apply to any employer subject to a federally mandated substance use testing program, including, but not limited to, testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V, and its employees, including independent contractors and employees of independent contractors who are working for or at the facilities of an employer who is subject to such a federally mandated substance use testing program. [2017, c. 407, Pt. A, §105 (AMD).]

[ 2017, c. 407, Pt. A, §105 (AMD) .]

**9. Board of Licensure of Railroad Personnel; testing restricted.**

[ 1993, c. 428, §3 (RP) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§1-3 (AMD). 1993, c. 428, §3 (AMD). 1995, c. 324, §§1,2 (AMD). 2011, c. 196, §1 (AMD). 2017, c. 407, Pt. A, §105 (AMD).

## §682. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1. Applicant.** "Applicant" means any person seeking employment from an employer. "Applicant" includes any person using an employment agency's services.

[ 2017, c. 407, Pt. A, §106 (AMD) .]

**2. Employee.** "Employee" means a person who is permitted, required or directed by any employer to engage in any employment for consideration of direct gain or profit. A person separated from employment while receiving a mandated benefit, including but not limited to workers' compensation, unemployment compensation and family medical leave, is an employee for the period the person receives the benefit and for a minimum of 30 days beyond the termination of the benefit. A person separated from employment while receiving a nonmandated benefit is an employee for a minimum of 30 days beyond the separation.

A. A full-time employee is an employee who customarily works 30 hours or more each week. [1995, c. 324, §3 (NEW).]

[ 1995, c. 324, §3 (AMD) .]



**3. Employer.** "Employer" means any person, partnership, corporation, association or other legal entity, public or private, that employs one or more employees. "Employer" also includes an employment agency.

[ 2017, c. 407, Pt. A, §106 (AMD) .]

**3-A. Medically disqualified.** "Medically disqualified" means that an employee is prohibited by a federal law or regulation, or any rules adopted by the State's Department of Public Safety that incorporate any federal laws or regulations related to substance use testing for motor carriers, from continuing in the employee's former employment position due to the result of a substance use test conducted under the federal law or regulation or the Department of Public Safety rule.

[ 2017, c. 407, Pt. A, §106 (AMD) .]

**4. Negative test result.** "Negative test result" means a test result that indicates that:

A. A substance is not present in the tested sample; or [2017, c. 407, Pt. A, §106 (AMD).]

B. A substance is present in the tested sample in a concentration below the cutoff level. [2017, c. 407, Pt. A, §106 (AMD).]

[ 2017, c. 407, Pt. A, §106 (AMD) .]

**5. Positive test result.** "Positive test result" means a test result that indicates the presence of a substance in the tested sample above the cutoff level of the test.

A. "Confirmed positive result" means a confirmation test result that indicates the presence of a substance above the cutoff level in the tested sample. [2017, c. 407, Pt. A, §106 (AMD).]

[ 2017, c. 407, Pt. A, §106 (AMD) .]

**6. Probable cause.** "Probable cause" means a reasonable ground for belief in the existence of facts that induce a person to believe that an employee may be under the influence of a substance, provided that the existence of probable cause may not be based exclusively on any of the following:

A. Information received from an anonymous informant; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Any information tending to indicate that an employee may have possessed or used a substance off duty, except when the employee is observed possessing or ingesting any substance either while on the employer's premises or in the proximity of the employer's premises during or immediately before the employee's working hours; or [2017, c. 407, Pt. A, §106 (AMD).]

C. A single work-related accident. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 2017, c. 407, Pt. A, §106 (AMD) .]

**7. Substance use test.** "Substance use test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances. "Substance use test" does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.

A. "Screening test" means an initial substance use test performed through the use of immunoassay technology or a federally recognized substance use test, or a test technology of similar or greater accuracy and reliability approved by the Department of Health and Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of substances.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests. [2017, c. 407, Pt. A, §106 (AMD).]

B. "Confirmation test" means a 2nd substance use test that is used to verify the presence of a substance indicated by an initial positive screening test result and is a federally recognized substance use test or is performed through the use of liquid or gas chromatography-mass spectrometry. [2017, c. 407, Pt. A, §106 (AMD).]

C. "Federally recognized substance use test" means any substance use test recognized by the federal Food and Drug Administration as accurate and reliable through the administration's clearance or approval process. [2017, c. 407, Pt. A, §106 (AMD).]

[2017, c. 407, Pt. A, §106 (AMD) .]

**8. Substance.** "Substance" means any scheduled drug, alcohol or other drug, or any of their metabolites.

A. "Alcohol" has the same meaning as found in Title 28-A, section 2, subsection 2. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. "Drug" has the same meaning as found in Title 32, section 13702-A, subsection 11. [2007, c. 695, Pt. B, §5 (AMD).]

C. "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[2007, c. 695, Pt. B, §5 (AMD); 2017, c. 407, Pt. A, §106 (AMD) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§4,5 (AMD). 1995, c. 324, §3 (AMD). 2001, c. 556, §1 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 695, Pt. B, §5 (AMD). 2017, c. 407, Pt. A, §106 (AMD).

## §683. TESTING PROCEDURES

An employer may not require, request or suggest that any employee or applicant submit to a substance use test except in compliance with this section. All actions taken under a substance use testing program must comply with this subchapter, rules adopted under this subchapter and the employer's written policy approved under section 686. [2017, c. 407, Pt. A, §107 (AMD).]

**1. Employee assistance program required.** Before establishing any substance use testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program.

A. The employer may meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. The employee assistance program must be certified by the Department of Health and Human Services under rules adopted pursuant to section 687. The rules must ensure that the employee assistance programs have the necessary personnel, facilities and procedures to meet minimum standards of professionalism and effectiveness in assisting employees. [2011, c. 657, Pt. AA, §72 (AMD) .]

[2011, c. 657, Pt. AA, §72 (AMD); 2017, c. 407, Pt. A, §107 (AMD) .]

**2. Written policy.** Before establishing any substance use testing program, an employer shall develop or, as required in section 684, subsection 3, paragraph C, appoint an employee committee to develop a written policy in compliance with this subchapter providing for, at a minimum:

- A. The procedure and consequences of an employee's voluntary admission of a substance use problem and any available assistance, including the availability and procedure of the employer's employee assistance program; [2017, c. 407, Pt. A, §107 (AMD).]
- B. When substance use testing may occur. The written policy must describe:
- (1) Which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3. For applicant testing and probable cause testing of employees, an employer may designate that all positions are subject to testing; and
  - (2) The procedure to be followed in selecting employees to be tested on a random or arbitrary basis under section 684, subsection 3; [2017, c. 407, Pt. A, §107 (AMD).]
- C. The collection of samples.
- (1) The collection of any sample for use in a substance use test must be conducted in a medical facility and supervised by a licensed physician or nurse. A medical facility includes a first aid station located at the work site.
  - (2) An employer may not require an employee or applicant to remove any clothing for the purpose of collecting a urine sample, except that:
    - (a) An employer may require that an employee or applicant leave any personal belongings other than clothing and any unnecessary coat, jacket or similar outer garments outside the collection area; or
    - (b) If it is the standard practice of an off-site medical facility to require the removal of clothing when collecting a urine sample for any purpose, the physician or nurse supervising the collection of the sample in that facility may require the employee or applicant to remove their clothing.
  - (3) An employee or applicant may not be required to provide a urine sample while being observed, directly or indirectly, by another individual.
  - (4) The employer may take additional actions necessary to ensure the integrity of a urine sample if the sample collector or testing laboratory determines that the sample may have been substituted, adulterated, diluted or otherwise tampered with in an attempt to influence test results. The Department of Health and Human Services shall adopt rules governing when those additional actions are justified and the scope of those actions. These rules may not permit the direct or indirect observation of the collection of a urine sample. If an employee or applicant is found to have twice substituted, adulterated, diluted or otherwise tampered with the employee's or applicant's urine sample, as determined under the rules adopted by the department, the employee or applicant is deemed to have refused to submit to a substance use test.
  - (5) If the employer proposes to use the type of screening test described in section 682, subsection 7, paragraph A, subparagraph (1), the employer's policy must include:
    - (a) Procedures to ensure the confidentiality of test results as required in section 685, subsection 3; and
    - (b) Procedures for training persons performing the test in the proper manner of collecting samples and reading results, maintaining a proper chain of custody and complying with other applicable provisions of this subchapter; [2017, c. 407, Pt. A, §107 (AMD).]
- D. The storage of samples before testing sufficient to inhibit deterioration of the sample; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

E. The chain of custody of samples sufficient to protect the sample from tampering and to verify the identity of each sample and test result; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

F. The substances to be tested for; [2017, c. 407, Pt. A, §107 (AMD).]

G. The cutoff levels for both screening and confirmation tests at which the presence of a substance in a sample is considered a positive test result.

(1) Cutoff levels for confirmation tests for marijuana may not be lower than 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples.

(2) The Department of Health and Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the Department of Health and Human Services establish a cutoff level for any substance for which the department has not established a cutoff level.

(3) Notwithstanding subparagraphs (1) and (2), if the Department of Health and Human Services does not have established cutoff levels or procedures for any specific federally recognized substance use test, the minimum cutoff levels and procedures that apply are those set forth in the Federal Register, Volume 69, No. 71, sections 3.4 to 3.7 on pages 19697 and 19698; [2017, c. 407, Pt. A, §107 (AMD).]

H. The consequences of a confirmed positive substance use test result; [2017, c. 407, Pt. A, §107 (AMD).]

I. The consequences for refusal to submit to a substance use test; [2017, c. 407, Pt. A, §107 (AMD).]

J. Opportunities and procedures for rehabilitation following a confirmed positive result; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

K. A procedure under which an employee or applicant who receives a confirmed positive result may appeal and contest the accuracy of that result. The policy must include a mechanism that provides an opportunity to appeal at no cost to the appellant; and [1995, c. 324, §4 (AMD).]

L. Any other matters required by rules adopted by the Department of Labor under section 687. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

An employer shall consult with the employer's employees in the development of any portion of a substance use testing policy under this subsection that relates to the employees. The employer is not required to consult with the employees on those portions of a policy that relate only to applicants. The employer shall send a copy of the final written policy to the Department of Labor for review under section 686. The employer may not implement the policy until the Department of Labor approves the policy. The employer shall send a copy of any proposed change in an approved written policy to the Department of Labor for review under section 686. The employer may not implement the change until the Department of Labor approves the change.

[ 2009, c. 133, §2 (AMD); 2017, c. 407, Pt. A, §107 (AMD) .]

**3. Copies to employees and applicants.** The employer shall provide each employee with a copy of the written policy approved by the Department of Labor under section 686 at least 30 days before any portion of the written policy applicable to employees takes effect. The employer shall provide each employee with a copy of any change in a written policy approved by the Department of Labor under section 686 at least 60 days before any portion of the change applicable to employees takes effect. The Department of Labor may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with the law or if, in the judgment of the department, the amendment promotes the purpose of the law and does not lessen the protection of an individual employee. If an employer intends to test

an applicant, the employer shall provide the applicant with a copy of the written policy under subsection 2 before administering a substance use test to the applicant. The 30-day and 60-day notice periods provided for employees under this subsection do not apply to applicants.

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**4. Consent forms prohibited.** An employer may not require, request or suggest that any employee or applicant sign or agree to any form or agreement that attempts to:

A. Absolve the employer from any potential liability arising out of the imposition of the substance use test; or [2017, c. 407, Pt. A, §107 (AMD).]

B. Waive an employee's or applicant's rights or eliminate or diminish an employer's obligations under this subchapter except as provided in subsection 4-A. [2007, c. 339, §1 (AMD).]

Any form or agreement prohibited by this subsection is void.

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**4-A. Waivers for temporary employment.** An employment agency, as defined in section 611, may request a written waiver for a temporary placement from an individual already in its employ or on a roster of eligibility as long as the client company has an approved substance use testing policy and the individual has not been assigned work at the client company in the 30 days previous to the request. The waiver is only to allow a test that might not otherwise be allowed under this subchapter. The test must otherwise comply with the standards of this subchapter and the employment agency's approved policy regarding applicant testing. The agency may not take adverse action against the individual for refusal to sign a waiver.

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**5. Right to obtain other samples.** At the request of the employee or applicant at the time the test sample is taken, the employer shall, at that time:

A. Segregate a portion of the sample for that person's own testing. Within 5 days after notice of the test result is given to the employee or applicant, the employee or applicant shall notify the employer of the testing laboratory selected by the employee or applicant. This laboratory must comply with the requirements of this section related to testing laboratories. When the employer receives notice of the employee or applicant's selection, the employer shall promptly send the segregated portion of the sample to the named testing laboratory, subject to the same chain of custody requirements applicable to testing of the employer's portion of the sample. The employee or applicant shall pay the costs of these tests. Payment for these tests may not be required earlier than when notice of the choice of laboratory is given to the employer; and [1995, c. 324, §6 (AMD).]

B. In the case of an employee, have a blood sample taken from the employee by a licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Health and Human Services to draw blood samples. The employer shall have this sample tested for the presence of alcohol or marijuana metabolites, if those substances are to be tested for under the employer's written policy. If the employee requests that a blood sample be taken as provided in this paragraph, the employer may not test any other sample from the employee for the presence of these substances.

(1) The Department of Health and Human Services may identify, by rules adopted under section 687, other substances for which an employee may request a blood sample be tested instead of a urine sample if the department determines that a sufficient correlation exists between the presence of the substance in an individual's blood and its effect upon the individual's performance.

(2) An employer may not require, request or suggest that any employee or applicant provide a blood sample for substance use testing purposes nor may any employer conduct a substance use test upon a blood sample except as provided in this paragraph.

(3) Applicants do not have the right to require the employer to test a blood sample as provided in this paragraph. [2017, c. 407, Pt. A, §107 (AMD).]

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**5-A. Point of collection screening test.** Except as provided in this subsection, all provisions of this subchapter regulating screening tests apply to noninstrumented point of collection test devices described in section 682, subsection 7, paragraph A, subparagraph (1).

A. A noninstrumented point of collection test described in section 682, subsection 7, paragraph A, subparagraph (1) may be performed at the point of collection rather than in a laboratory. Subsections 6 and 7 and subsection 8, paragraphs A to C do not apply to such screening tests. Subsection 5 applies only to a sample that results in a positive test result. [2001, c. 556, §3 (NEW).]

B. Any sample that results in a negative test result must be destroyed. Any sample that results in a positive test result must be sent to a qualified testing laboratory consistent with subsections 6 to 8 for confirmation testing. [2017, c. 407, Pt. A, §107 (AMD).]

C. A person who performs a point of collection screening test or a confirmation test may release the results of that test only as follows.

(1) For a point of collection screening test that results in a preliminary positive or negative test result, the person performing the test shall release the test result to the employee who is the subject of the test immediately.

(2) For a point of collection screening test that results in a preliminary positive test result, the person performing the test may not release the test result to the employer until after the result of the confirmation test has been determined.

(3) For a point of collection screening test that results in a preliminary negative test result, the person performing the test may not release the test result to the employer until after the result of a confirmation test would have been determined if one had been performed.

(4) For a confirmation test, the person performing the test shall release the result immediately to the employee who is the subject of the test and to the employer. [2005, c. 443, §1 (NEW).]

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**6. Qualified testing laboratories required.** An employer may not perform any substance use test administered to any of that employer's employees. An employer may perform screening tests administered to applicants if the employer's testing facilities comply with the requirements for testing laboratories under this subsection. Except as provided in subsection 5-A, any substance use test administered under this subchapter must be performed in a qualified testing laboratory that complies with this subsection.

A. [1989, c. 832, §8 (RP).]

B. The laboratory must have written testing procedures and procedures to ensure a clear chain of custody. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. The laboratory must demonstrate satisfactory performance in the proficiency testing program of the National Institute on Drug Abuse, the College of American Pathology or the American Association for Clinical Chemistry. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

D. The laboratory must comply with rules adopted by the Department of Health and Human Services under section 687. These rules must ensure that:

(1) The laboratory possesses all licenses or certifications that the department finds necessary or desirable to ensure reliable and accurate test results;

(2) The laboratory follows proper quality control procedures, including, but not limited to:

- (a) The use of internal quality controls during each substance use test conducted under this subchapter, including the use of blind samples and samples of known concentrations that are used to check the performance and calibration of testing equipment;
- (b) The internal review and certification process for test results, including the qualifications of the person who performs that function in the testing laboratory; and
- (c) Security measures implemented by the testing laboratory; and

(3) Other necessary and proper actions are taken to ensure reliable and accurate test results.  
[ 2017, c. 407, Pt. A, §107 (AMD). ]

[ 2017, c. 407, Pt. A, §107 (AMD) . ]

**7. Testing procedure.** A testing laboratory shall perform a screening test on each sample submitted by the employer for only those substances that the employer requests to be identified. If a screening test result is negative, no further test may be conducted on that sample. If a screening test result is positive, a confirmation test must be performed on that sample. A testing laboratory shall retain all confirmed positive samples for one year in a manner that will inhibit deterioration of the samples and allow subsequent retesting. All other samples must be disposed of immediately after testing.

[ 2017, c. 407, Pt. A, §107 (AMD) . ]

**8. Laboratory report of test results.** This subsection governs the reporting of test results.

A. A laboratory report of test results must, at a minimum, state:

- (1) The name of the laboratory that performed the test or tests;
- (2) Any confirmed positive results on any tested sample.
  - (a) Unless the employee or applicant consents, test results may not be reported in numerical or quantitative form but must state only that the test result was positive or negative. This division does not apply if the test or the test results become the subject of any grievance procedure, administrative proceeding or civil action.
  - (b) A testing laboratory and the employer shall ensure that an employee's unconfirmed positive screening test result cannot be determined by the employer in any manner, including, but not limited to, the method of billing the employer for the tests performed by the laboratory and the time within which results are provided to the employer. This division does not apply to test results for applicants;
- (3) The sensitivity or cutoff level of the confirmation test; and
- (4) Any available information concerning the margin of accuracy and precision of the test methods employed.

The report may not disclose the presence or absence of evidence of any physical or mental condition or of any substance other than the specific substances that the employer requested to be identified. A testing laboratory shall retain records of confirmed positive results in a numerical or quantitative form for at least 2 years. [ 2017, c. 407, Pt. A, §107 (AMD). ]

B. The employer shall promptly notify the employee or applicant tested of the test result. Upon request of an employee or applicant, the employer shall promptly provide a legible copy of the laboratory report to the employee or applicant. Within 3 working days after notice of a confirmed positive test result, the employee or applicant may submit information to the employer explaining or contesting the results.  
[ 1989, c. 832, §9 (AMD). ]

C. The testing laboratory shall send test reports for samples segregated at an employee's or applicant's request under subsection 5, paragraph A, to both the employer and the employee or applicant tested.  
[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF). ]

D. Every employer whose policy is approved by the Department of Labor under section 686 shall annually send to the department a compilation of the results of all substance use tests administered by that employer in the previous calendar year. This report must provide separate categories for employees and applicants and must be presented in statistical form so that no person who was tested by that employer can be identified from the report. The report must include a separate category for any tests conducted on a random or arbitrary basis under section 684, subsection 3. [2017, c. 407, Pt. A, §107 (AMD).]

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**9. Costs.** The employer shall pay the costs of all substance use tests that the employer requires, requests or suggests that an employee or applicant submit. Except as provided in paragraph A, the employee or applicant shall pay the costs of any additional substance use tests.

Costs of a substance use test administered at the request of an employee under subsection 5, paragraph B, must be paid:

A. By the employer if the test results are negative for all substances tested for in the sample; and [2017, c. 407, Pt. A, §107 (AMD).]

B. By the employee if the test results in a confirmed positive result for any of the substances tested for in the sample. [2017, c. 407, Pt. A, §107 (AMD).]

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**10. Limitation on use of tests.** An employer may administer substance use tests to employees or applicants only for the purpose of discovering the use of any substance likely to cause impairment of the user or the use of any scheduled drug. An employer may not have substance use tests administered to an employee or applicant for the purpose of discovering any other information.

[ 2017, c. 407, Pt. A, §107 (AMD) .]

**11. Rules.** The Department of Health and Human Services shall adopt any rules under section 687 regulating substance use testing procedures that it finds necessary or desirable to ensure accurate and reliable substance use testing and to protect the privacy rights of employees and applicants.

[ 2017, c. 407, Pt. A, §107 (AMD) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§1-3 (AMD). 1989, c. 832, §§6-9 (AMD). 1995, c. 283, §1 (AMD). 1995, c. 324, §§4-6 (AMD). 1999, c. 199, §1 (AMD). 2001, c. 556, §§2-4 (AMD). 2003, c. 547, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 443, §1 (AMD). 2007, c. 339, §§1, 2 (AMD). 2009, c. 133, §2 (AMD). 2011, c. 657, Pt. AA, §72 (AMD). 2017, c. 407, Pt. A, §107 (AMD).

## §684. IMPOSITION OF TESTS

**1. Testing of applicants.** An employer may require, request or suggest that an applicant submit to a substance use test only if:

A. The applicant has been offered employment with the employer; or [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]



B. The applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. The number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding 6 months. [1989, c. 536, §§1, 2 (NEW); 1989, c. 536, §§2, 3 (AFF).]

The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result.

[ 2017, c. 407, Pt. A, §108 (AMD) .]

**2. Probable cause testing of employees.** An employer may require, request or suggest that an employee submit to a substance use test if the employer has probable cause to test the employee.

A. The employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel must make the determination of probable cause. [2017, c. 407, Pt. A, §108 (AMD).]

B. The supervisor or other person must state, in writing, the facts upon which the determination made under paragraph A is based and provide a copy of the statement to the employee. [2017, c. 407, Pt. A, §108 (AMD).]

[ 2017, c. 407, Pt. A, §108 (AMD) .]

**3. Random or arbitrary testing of employees.** In addition to testing employees on a probable cause basis under subsection 2, an employer may require, request or suggest that an employee submit to a substance use test on a random or arbitrary basis if:

A. The employer and the employee have bargained for provisions in a collective bargaining agreement, either before or after the effective date of this subchapter, that provide for random or arbitrary testing of employees. A random or arbitrary testing program that would result from implementation of an employer's last best offer is not considered a provision bargained for in a collective bargaining agreement for purposes of this section; [2003, c. 547, §2 (AMD).]

B. The employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's coworkers if the employee were under the influence of a substance. It is the intent of the Legislature that the requirements of this paragraph be narrowly construed; or [2017, c. 407, Pt. A, §108 (AMD).]

C. The employer has established a random or arbitrary testing program under this paragraph that applies to all employees, except as provided in subparagraph (4), regardless of position.

(1) An employer may establish a testing program under this paragraph only if the employer has 50 or more employees who are not covered by a collective bargaining agreement.

(2) The written policy required by section 683, subsection 2 with respect to a testing program under this paragraph must be developed by a committee of at least 10 of the employer's employees. The employer shall appoint members to the committee from a cross-section of employees who are eligible to be tested. The committee must include a medical professional who is trained in procedures for testing for substances. If no such person is employed by the employer, the employer shall obtain the services of such a person to serve as a member of the committee created under this subparagraph.

(3) The written policy developed under subparagraph (2) must also require that selection of employees for testing be performed by a person or entity not subject to the employer's influence, such as a medical review officer. Selection must be made from a list, provided by the employer, of all employees subject to testing under this paragraph. The list may not contain information that would identify the employee to the person or entity making the selection.

(4) Employees who are covered by a collective bargaining agreement are not included in testing programs pursuant to this paragraph unless they agree to be included pursuant to a collective bargaining agreement as described under paragraph A.

(5) Before initiating a testing program under this paragraph, the employer shall obtain from the Department of Labor approval of the policy developed by the employee committee, as required in section 686. If the employer does not approve of the written policy developed by the employee committee, the employer may decide not to submit the policy to the department and not to establish the testing program. The employer may not change the written policy without approval of the employee committee.

(6) The employer may not discharge, suspend, demote, discipline or otherwise discriminate with regard to compensation or working conditions against an employee for participating or refusing to participate in an employee committee created pursuant to this paragraph. [2017, c. 407, Pt. A, §108 (AMD).]

[ 2017, c. 407, Pt. A, §108 (AMD) .]

**4. Testing while undergoing rehabilitation or treatment.** While the employee is participating in a substance use rehabilitation program either as a result of voluntary contact with or mandatory referral to the employer's employee assistance program or after a confirmed positive result as provided in section 685, subsection 2, paragraphs B and C, substance use testing may be conducted by the rehabilitation or treatment provider as required, requested or suggested by that provider.

A. Substance use testing conducted as part of such a rehabilitation or treatment program is not subject to the provisions of this subchapter regulating substance use testing. [2017, c. 407, Pt. A, §108 (AMD).]

B. An employer may not require, request or suggest that any substance use test be administered to any employee while the employee is undergoing such rehabilitation or treatment, except as provided in subsections 2 and 3. [2017, c. 407, Pt. A, §108 (AMD).]

C. The results of any substance use test administered to an employee as part of such a rehabilitation or treatment program may not be released to the employer. [2017, c. 407, Pt. A, §108 (AMD).]

[ 2017, c. 407, Pt. A, §108 (AMD) .]

**5. Testing upon return to work.** If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has participated in a rehabilitation program under section 685, subsection 2, the employer may require, request or suggest that the employee submit to a subsequent substance use test anytime between 90 days and one year after the date of the employee's prior test. A test may be administered under this subsection in addition to any tests conducted under subsections 2 and 3. An employer may require, request or suggest that an employee submit to a substance use test during the first 90 days after the date of the employee's prior test only as provided in subsections 2 and 3.

[ 2017, c. 407, Pt. A, §108 (AMD) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§10,11 (AMD). 2001, c. 706, §1 (AMD). 2003, c. 547, §2 (AMD). 2017, c. 407, Pt. A, §108 (AMD).

### §685. ACTION TAKEN ON SUBSTANCE USE TESTS

Action taken by an employer on the basis of a substance use test is limited as provided in this section. [2017, c. 407, Pt. A, §109 (AMD).]

**1. Before receipt of test results.** An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**2. Use of confirmation test results.** This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter.

A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions:

- (1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility;
- (2) Discharge of an employee;
- (3) Discipline of an employee; or
- (4) Change in the employee's work assignment. [1995, c. 324, §7 (AMD) .]

A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy. [1995, c. 324, §8 (NEW) .]

B. Before taking any action described in paragraph A in the case of an employee who receives an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance and to participate in an employee assistance program, if the employer has such a program. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed positive result from a test administered by the employer under this subchapter. [2017, c. 407, Pt. A, §109 (AMD) .]

C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply.

(1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program.

(a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program must be equally divided between the employer and employee if the employer has more than 20 full-time employees. This requirement does not apply to municipalities or other political subdivisions of the State or to any employer when the employee is tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan.

(b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees, a municipality or other political subdivision of the State is not required to pay for any costs of rehabilitation or treatment under any public or private rehabilitation program. An employer is not required to pay for the costs of rehabilitation if the employee was tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V.

(2) An employer may not take any action described in paragraph A while an employee is participating in a rehabilitation program, except as provided in subparagraph (2-A) and except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. Except as provided in subparagraph (2-A), an employee's pay or benefits may not be reduced while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. Reinstatement of the employee may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A.

(a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. A reduction may not be made in the employee's previous benefits or rate of pay while the employee is awaiting reassignment to work or working in a position other than the previous job. The employee must be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part.

(b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the employer is not required to reinstate the employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date. [ 2017, c. 407, Pt. A, §109 (AMD). ]

D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for

an employee with a substance use problem to address the problem through rehabilitation. An employer may offer additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation. [2017, c. 407, Pt. A, §109 (AMD).]

[ 2017, c. 407, Pt. A, §109 (AMD) .]

**3. Confidentiality.** This subsection governs the use of information acquired by an employer in the testing process.

A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent:

- (1) The release of this information when required or permitted by state or federal law, including release under section 683, subsection 8, paragraph D; or
- (2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Notwithstanding any other law, the results of any substance use test required, requested or suggested by any employer may not be used in any criminal proceeding. [2017, c. 407, Pt. A, §109 (AMD).]

[ 2017, c. 407, Pt. A, §109 (AMD) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1989, c. 832, §§12,13 (AMD). 1995, c. 324, §§7,8 (AMD). 1995, c. 344, §1 (AMD). 2003, c. 547, §3 (AMD). 2017, c. 407, Pt. A, §109 (AMD).

## §686. REVIEW OF WRITTEN POLICIES

**1. Review required.** The Department of Labor shall review each written policy or change to an approved policy submitted to the department by an employer under section 683, subsection 2.

A. The department shall determine if the employer's written policy or change complies with this subchapter and shall immediately notify the employer who submitted the policy or change of that determination. If the department finds that the policy or change does not comply with this subchapter, the department shall also notify the employer of the specific areas in which the policy or change is defective. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. The department may request additional information from an employer when necessary to determine whether an employment position meets the requirements of section 684, subsection 3. The department shall not approve any written policy that provides for random or arbitrary testing of any employment position that the employer has failed to demonstrate meets the requirements of section 684, subsection 3. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. The department shall allow for the use of any federally recognized substance use test. [2017, c. 407, Pt. A, §110 (AMD).]

[ 2009, c. 133, §3 (AMD); 2017, c. 407, Pt. A, §110 (AMD) .]

**2. Review procedure.** The Department of Labor shall adopt rules under section 687 governing the procedure for reviews conducted under this section.

A. The rules must provide for notice to be given to the employees of any employer who submits a written policy or amendment applicable to employees to the department for review under this section. The employees may submit written comments to the department challenging any portion of the employer's written policy, including the proposed designation of any position under section 684, subsection 3, paragraph B. [1995, c. 324, §9 (AMD).]

B. Nothing in this section requires a formal hearing to be held concerning the submission and review of an employer's written policy. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

C. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act, Title 5, chapter 375, does not apply to reviews conducted under this section except that all determinations by the Department of Labor under this section may be appealed as provided in Title 5, chapter 375, subchapter VII. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

D. The rules may establish model applicant policies and employee probable cause policies and provide for expedited approval and registration for employers adopting such model policies. The rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [1997, c. 49, §1 (NEW).]

[ 1997, c. 49, §1 (AMD) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1995, c. 324, §9 (AMD). 1997, c. 49, §1 (AMD). 2009, c. 133, §3 (AMD). 2017, c. 407, Pt. A, §110 (AMD).

## §687. RULEMAKING

**1. Department of Health and Human Services.** The Department of Health and Human Services shall adopt rules under the Maine Administrative Procedure Act as provided in this subchapter.

[ 2011, c. 657, Pt. AA, §73 (AMD) .]

**2. Department of Labor.** The Department of Labor shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, as provided in this subchapter.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3. Coordination; deadline.** The Department of Health and Human Services and the Department of Labor shall cooperate to ensure any necessary coordination between the rules of both departments. The Department of Health and Human Services and the Department of Labor shall adopt initial rules before December 1, 1989.

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1995, c. 283, §2 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. AA, §73 (AMD).

## §688. SUBSTANCE USE EDUCATION

All employers shall cooperate fully with the Department of Labor, the Department of Health and Human Services, the Department of Public Safety and any other state agency in programs designed to educate employees about the dangers of substance use and about public and private services available to employees who have substance use disorder. [2017, c. 407, Pt. A, §111 (AMD).]

### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 1995, c. 283, §3 (AMD). 2003, c. 689, §B6 (REV). 2011, c. 657, Pt. AA, §74 (AMD). 2017, c. 407, Pt. A, §111 (AMD).

## §689. VIOLATION AND REMEDIES

This section governs the enforcement of this subchapter. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1. Remedies.** Any employer who violates this subchapter is liable to any employee subjected to discipline or discharge based on that violation for:

- A. An amount equal to 3 times any lost wages; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]
- B. Reinstatement of the employee to the employee's job with full benefits; [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]
- C. Court costs; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]
- D. Reasonable attorney's fees, as set by the court. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**2. Breach of confidentiality.** In addition to the liability imposed under subsection 1, any person who violates section 684, subsection 4, paragraph C, or section 685, subsection 3:

- A. For the first offense, is subject to a civil penalty not to exceed \$1,000, payable to the affected employee, to be recovered in a civil action; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]
- B. For any subsequent offense, is subject to a civil penalty of \$2,000, payable to the affected employee, to be recovered in a civil action. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3. Harassment.** In addition to the liability imposed under subsection 1, any employer who requires or repeatedly attempts to require an employee or applicant to submit to a substance use test under conditions that would not justify the test under this subchapter or who without substantial justification repeatedly requires an employee to submit to a substance use test under section 684, subsection 3:

- A. Is subject to a civil penalty not to exceed \$1,000, payable to the affected employee, to be recovered in a civil action; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. For any subsequent offense against the same employee, is subject to a civil penalty of \$2,000, payable to the affected employee, to be recovered in a civil action. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 2017, c. 407, Pt. A, §112 (AMD) .]

**4. Enforcement.** The Department of Labor or the affected employee or employees may enforce this subchapter. The department may:

A. Collect the judgment on behalf of the employee or employees; and [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

B. Supervise the payment of the judgment and the reinstatement of the employee or employees. [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

#### SECTION HISTORY

1989, c. 536, §§1,2 (NEW). 1989, c. 604, §§2,3 (AMD). 2017, c. 407, Pt. A, §112 (AMD).

## §690. REPORT

The Department of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on March 1, 1990, and annually on that date thereafter. This report shall: [1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF).]

**1. List of employers.** List those employers whose substance use testing policies have been approved by the Department of Labor under section 686;

[ 2017, c. 407, Pt. A, §113 (AMD) .]

**2. Persons tested.** Indicate whether those employers are testing applicants or employees, or both;

[ 1989, c. 536, §§1, 2 (NEW); 1989, c. 604, §§2, 3 (AFF) .]

**3. Random or arbitrary testing.** Indicate those employers whose substance use testing policies permit random or arbitrary testing under section 684, subsection 3, and describe the employment positions subject to such random or arbitrary testing;

[ 2017, c. 407, Pt. A, §113 (AMD) .]

**4. Results.** Provide statistical data relating to the reports received from employers indicating the number of substance use tests administered by those employers in the previous calendar year and the results of those tests; and

[ 2017, c. 407, Pt. A, §113 (AMD) .]

**5. Description.** Briefly describe the general scope and practice of workplace substance use testing in the State.

[ 2017, c. 407, Pt. A, §113 (AMD) .]

#### SECTION HISTORY

1989, c. 536, §§1, 2 (NEW). 1989, c. 604, §§2, 3 (AFF). 2017, c. 407, Pt. A, §113 (AMD).



Subchapter 4: EMPLOYMENT OF WOMEN AND CHILDREN  
Article 1: PROVISIONS COMMON TO FEMALES AND MINORS

**§701. POSTING OF NOTICE OF HOURS OF LABOR**

*(REPEALED)*

SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 701, §11 (RPR). 1989, c. 738, §1 (AMD). 2001, c. 242, §2 (RP).

**§701-A. APPLICATION OF SUBCHAPTER**

*(REPEALED)*

SECTION HISTORY

2003, c. 10, §1 (NEW). 2017, c. 219, §17 (RP).

**§702. RECORD OF WORK HOURS OF MINORS UNDER 18 YEARS OF AGE**

*(REPEALED)*

SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 701, §12 (RPR). 1979, c. 468, §1 (AMD). 1991, c. 544, §2 (AMD). 2001, c. 242, §3 (AMD). RR 2005, c. 1, §11 (COR). 2017, c. 219, §17 (RP).

**§703. EXEMPTIONS FOR PERISHABLE GOODS**

*(REPEALED)*

SECTION HISTORY

1975, c. 701, §13 (RP).

**§704. PENALTY FOR EMPLOYERS**

*(REPEALED)*

SECTION HISTORY

1981, c. 470, §A141 (NEW). 1981, c. 698, §115 (AMD). 1991, c. 544, §3 (RPR). 2001, c. 242, §4 (AMD). 2017, c. 219, §17 (RP).

Article 2: FEMALES

**§731. HOURS OF EMPLOYMENT FOR FEMALES; 9 HOURS A DAY**

*(REPEALED)*

SECTION HISTORY

1975, c. 701, §14 (RP).

**§732. -- SIX AND ONE-HALF HOURS CONTINUOUS MAXIMUM**

*(REPEALED)*

SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 701, §14 (RP).

**§733. -- FIFTY-FOUR HOURS A WEEK***(REPEALED)*

## SECTION HISTORY

1975, c. 701, §14 (RP).

**§734. -- FIFTY HOURS A WEEK IN CERTAIN PLACES***(REPEALED)*

## SECTION HISTORY

1975, c. 701, §14 (RP).

**§735. SEATS FOR FEMALE EMPLOYEES***(REPEALED)*

## SECTION HISTORY

1975, c. 701, §14 (RP).

**§736. APPLICATION OF PROVISIONS***(REPEALED)*

## SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 701, §14 (RP).

**§737. -- WAR AND OTHER EMERGENCIES***(REPEALED)*

## SECTION HISTORY

1971, c. 620, §13 (AMD). 1975, c. 701, §14 (RP).

**§738. PENALTY FOR EMPLOYERS***(REPEALED)*

## SECTION HISTORY

1975, c. 701, §15 (AMD). 1981, c. 407, (AMD). 1981, c. 470, §A142 (RP).  
1981, c. 698, §116 (RP).**Article 3: MINORS****§771. MINORS UNDER 14 YEARS OF AGE**

A minor under 14 years of age may not be employed, permitted or suffered to work in nonagricultural or agricultural employment, except for agricultural employment in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances as long as the employment is in accordance with rules adopted pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570. This section does not apply to any minor under 14 years of age employed in school lunch programs, if limited to serving food and cleaning up dining rooms, or in a business solely owned by the minor's parents. A parent is prohibited from employing the parent's minor child in occupations declared hazardous by the director pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570. [2017, c. 286, §1 (AMD).]

## SECTION HISTORY

1975, c. 238, §1 (AMD). 1979, c. 468, §2 (AMD). 1991, c. 544, §4 (AMD). 2017, c. 286, §1 (AMD).

## §772. MINORS UNDER 18 YEARS OF AGE; HAZARDOUS EMPLOYMENT

**1. Prohibition against certain employment.** A minor under 18 years of age may not be employed in any capacity that the director determines to be hazardous, dangerous to life or limbs or injurious to the minor's health or morals.

[ 2003, c. 59, §1 (NEW) . ]

**2. Rules; list of employment and occupations.** The director shall adopt rules to develop and maintain a list of employment and occupations not suitable for a minor. The rules must conform as far as practicable to the child labor provisions of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and any associated regulations. The rules must also contain provisions prohibiting the employment of minors in places having nude entertainment and in registered dispensaries of marijuana for medical use authorized under Title 22, chapter 558-C and in establishments that cultivate, produce or sell marijuana or products in which marijuana is an ingredient as authorized under Title 28-B, chapter 1.

[ 2017, c. 409, Pt. A, §5 (AMD) . ]

**3. Rules relating to confined spaces and height.** The director shall adopt rules prohibiting a minor under 18 years of age from working in confined spaces or at a designated height when regulations of the federal Occupational Safety and Health Administration, adopted under the general industry standards, 29 Code of Federal Regulations, Part 1910, require special precautions or procedures for such work. The rules must provide exceptions to the prohibition in specific exceptional circumstances, such as work required for public safety.

[ 2003, c. 59, §1 (NEW) . ]

**4. Rules are routine technical.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2003, c. 59, §1 (NEW) . ]

**5. Application.** This section does not apply to minors in public and approved private schools where mechanical equipment is installed and operated primarily for purposes of instruction or minors who are volunteer participants in a career-oriented law enforcement program and perform traffic control duties at civic events pursuant to section 786.

[ 2013, c. 142, §1 (AMD) . ]

### SECTION HISTORY

1971, c. 620, §13 (AMD). 1979, c. 663, §159 (AMD). 1997, c. 597, §1 (AMD). 1999, c. 30, §1 (AMD). 2003, c. 59, §1 (RPR). 2009, c. 631, §47 (AMD). 2009, c. 631, §51 (AFF). 2013, c. 142, §1 (AMD). 2017, c. 286, §2 (AMD). 2017, c. 409, Pt. A, §5 (AMD).

## §773. MINORS UNDER 16; PROHIBITED IN CERTAIN PLACES

*(REPEALED)*

### SECTION HISTORY

1975, c. 238, §2 (AMD). 1987, c. 401, (AMD). 1987, c. 665, §1 (AMD). 1989, c. 520, §1 (AMD). 1993, c. 434, §2 (AMD). 1997, c. 347, §§2,3 (AMD). 1997, c. 353, §§1,2 (AMD). 2001, c. 43, §1 (AMD). 2009, c. 487, Pt. B, §12 (AMD). 2017, c. 286, §3 (RP).

## §773-A. OCCUPATIONS

**1. Minors under 16 years of age.** A minor under 16 years of age may not be employed, permitted or suffered to work in, about or in connection with any manufacturing or mechanical establishment, hotel, rooming house, laundry, except a laundry commonly known as an automatic laundry, dry cleaning establishment, bakery, poolroom or commercial place of amusement, including a traveling show or circus, or in conjunction with an amusement, game or show that allows or conducts betting.

[ 2017, c. 286, §4 (NEW) . ]

**2. Minors 14 and 15 years of age.** The provisions of subsection 1 pertaining to manufacturing establishments do not apply to minors 14 years of age or older and under 16 years of age who are employed in retail establishments where any frozen dairy product or frozen dairy product mix or related food product is produced on the premises for retail sale locally, regardless of trade name or brand or coined name.

The provisions of subsection 1 pertaining to hotels or rooming houses do not apply to minors 14 years of age or older and under 16 years of age who are employed in outdoor occupations on the grounds of a hotel or who are employed in kitchens, dining rooms, recreational areas, lobbies and offices of a hotel. Minors 14 years of age or older and under 16 years of age are expressly prohibited from performing room service, housekeeping and making deliveries to guest rooms.

The provisions of subsection 1 pertaining to bakeries do not apply to minors 14 years of age or older and under 16 years of age who are employed in retail sales, product decorating, customer service operations or office work for these establishments, as long as the retail, decorating, customer service or office areas are in a room separate from any baking operation.

Notwithstanding other provisions of subsection 1, a minor 14 years of age or older and under 16 years of age may be employed at a commercial place of amusement operating at a permanent location, except that the minor may not be employed at games of chance as defined in Title 17, chapter 62 or hazardous occupations as determined by the director.

Subsection 1 does not apply to any minor under 16 years of age employed in a business solely owned by the minor's parents. A parent is prohibited from employing the parent's minor child in occupations declared hazardous by the director pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570.

A minor 14 years of age or older and under 16 years of age may not be employed when the distance between the workplace and the home of the minor, or any other factor, necessitates the minor's remaining away from home overnight.

[ 2017, c. 286, §4 (NEW) . ]

**3. Minors 16 and 17 years of age.** A minor who is 16 years of age or older and under 18 years of age:

A. May perform work in both nonagricultural and agricultural employment not in direct contact with hazardous machinery or hazardous substances in accordance with rules adopted pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570; [2017, c. 286, §4 (NEW) . ]

B. May perform work as a theatrical actor or film actor; [2017, c. 286, §4 (NEW) . ]

C. May be employed by a parent, but a parent is prohibited from employing the parent's minor child who is 16 years of age or older and under 18 years of age in occupations declared hazardous by the director in accordance with rules adopted pursuant to section 772 and in accordance with 29 Code of Federal Regulations, Part 570; [2017, c. 286, §4 (NEW).]

D. Is exempt from section 774, subsection 1, paragraphs A and C when performing work in the taking or catching of lobsters, fish or other marine organisms; and [2017, c. 286, §4 (NEW).]

E. Who has graduated from a vocational, career and technical or cooperative education program approved by the Department of Education and is hired by an employer to work in an occupation for which the minor has been trained and certified by the vocational program may work for that employer in that occupation. [2017, c. 286, §4 (NEW).]

[ 2017, c. 286, §4 (NEW) .]

#### SECTION HISTORY

2017, c. 286, §4 (NEW).

## §774. HOURS OF EMPLOYMENT

**1. Minors 16 and 17 years of age.** A minor 16 years of age or older and under 18 years of age, enrolled in school, may not be employed as follows:

A. More than 50 hours in any week when the minor's school is not in session; [2003, c. 53, §1 (AMD) .]

B. More than 24 hours in any week when the minor's school is in session. In addition, the maximum weekly hours a minor may work is 50 hours during any week that the approved school calendar for the minor's school is less than 3 days or during the first or last week of the school calendar, regardless of how many days the minor's school is in session for the week. If requested, a school must provide verification of its closings to the minor's employer or the Department of Labor; [2011, c. 174, §1 (AMD) .]

C. More than 10 hours in any day when the minor's school is not in session; [2003, c. 53, §1 (AMD) .]

D. More than 6 hours in any day when the minor's school is in session, except that the minor may work up to 8 hours on the last scheduled day of the school week; [2011, c. 174, §2 (AMD) .]

E. More than 6 consecutive days; [1993, c. 434, §3 (AMD) .]

F. After 10:15 p.m. on a day preceding a day on which the minor's school is in session or after 12 midnight on a day that does not precede such a school day; or [2011, c. 174, §3 (AMD) .]

G. Before 7 a.m. on a day on which the minor's school is in session or before 5 a.m. on any other day. [2003, c. 53, §1 (AMD) .]

[ 2011, c. 174, §§1-3 (AMD); 2017, c. 286, §5 (AMD) .]

**2. Minors under 16 years of age.** A minor under 16 years of age may not be employed as follows:

A. More than 40 hours in any week when school is not in session; [1991, c. 544, §5 (NEW) .]

B. More than 18 hours in any week when school is in session; [1991, c. 544, §5 (NEW) .]

C. More than 8 hours in any day when school is not in session; [1991, c. 544, §5 (NEW) .]

D. More than 3 hours in any day when school is in session; [1991, c. 544, §5 (NEW) .]

E. More than 6 consecutive days; or [1991, c. 544, §5 (NEW) .]

F. Between the hours of 7 p.m. and 7 a.m. except during summer vacation, when that minor may not work between the hours of 9 p.m. and 7 a.m. [1993, c. 434, §4 (AMD).]

[ 1993, c. 434, §4 (AMD) .]

**3. Employment during hours school in session.** A minor under 17 years of age may not be employed during the hours that the public schools of the town or city in which the minor resides are in session.

A. This subsection does not apply to:

(1) A minor who has been excused from attendance by school officials in accordance with Title 20-A, section 5001-A, subsection 2 or subsection 3, except that a minor who has been excused in accordance with subsection 3 may not be employed during the hours that the minor's school or approved home instruction program is in session;

(2) A student in an alternative education plan that includes a work experience component;

(3) A student in an approved vocational cooperative education program; or

(4) A student who is granted permission for an early school release by the school principal.

[1991, c. 713, §2 (AMD).]

The hours worked by a student in an alternative education plan or in an approved vocational cooperative education program may not be included in determining the student's total hours of permitted employment under subsection 1 and subsection 2.

[ 1991, c. 713, §2 (AMD) .]

**4. Exemptions.** Work performed in the planting, cultivating or harvesting of field crops or other agricultural employment, including the initial processing of farm crops, not in direct contact with hazardous machinery or hazardous substances, work performed as an employed or in-training theatrical actor or film actor or work performed as a summer camp employee in a youth camp licensed under Title 22, section 2495 is exempt from this section, provided a minor under 16 years of age has been excused by the local superintendent of schools in accordance with the policy established by the Commissioner of Education and the Director of the Bureau of Labor Standards. Work performed in the taking or catching of lobsters, fish or other marine organisms by any methods or means, or in the operating of ferries or excursion boats, is exempt from subsection 1, paragraphs A and C.

[ 2009, c. 211, Pt. B, §23 (AMD) .]

**5. Application.** This section does not apply to a person who holds a high school diploma or a high school equivalency certificate issued pursuant to Title 20-A, section 257 or to a minor emancipated pursuant to Title 15, section 3506-A.

[ 1991, c. 713, §4 (NEW) .]

**6. In session.** School is considered in session if the students are required to be in attendance by the school board pursuant to Title 20-A, chapter 211.

[ 1997, c. 131, §2 (NEW) .]

**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.

[ 2017, c. 219, §18 (NEW) .]

#### SECTION HISTORY

1971, c. 620, §13 (AMD). 1973, c. 571, §59 (AMD). 1975, c. 59, §3 (AMD). 1979, c. 468, §3 (AMD). 1981, c. 310, (AMD). 1989, c. 700, §A102 (AMD). RR 1991, c. 1, §34 (COR). 1991, c. 544, §5 (RPR). 1991, c. 713, §§1-4 (AMD). 1993, c. 434, §§3-5 (AMD). 1997, c. 131, §§1,2 (AMD). 2003, c. 53, §1 (AMD). 2009, c. 211, Pt. B, §23 (AMD). 2011, c. 174, §§1-3 (AMD). 2017, c. 219, §18 (AMD). 2017, c. 286, §5 (AMD).

## §775. WORK PERMITS

**1. Work permit authority.** A minor under 16 years of age may not be employed without a work permit signed by the superintendent of schools of the school administrative unit in which the minor resides and issued to the minor by the bureau. The superintendent may designate a school official to sign a work permit and that official is directly responsible to the superintendent for this activity.

[ 2001, c. 398, Pt. A, §1 (AMD) .]

**2. Conditions for signature.** The superintendent shall sign a permit in the following circumstances:

A. If the school is in session or the minor is attending summer school, the minor must be enrolled in school, not truant, not under suspension and passing a majority of courses during the current grading period. Upon request of the minor, the superintendent may waive the requirements for one grading period if, in the opinion of the superintendent, there are extenuating circumstances or if imposing the requirements would create an undue hardship for the minor; [2011, c. 614, §21 (AMD).]

B. If school is not in session, the minor must furnish to the superintendent a certificate signed by the principal of the school last attended showing that the minor has satisfactorily completed kindergarten to grade 8 in the public schools or their equivalent. If the certificate can not be obtained, the superintendent shall examine the minor to determine whether the minor meets these educational standards; [1991, c. 713, §5 (AMD); 1991, c. 713, §9 (AFF).]

C. If the minor has been granted an exception to compulsory education under Title 20-A, section 5001-A, subsection 2, the minor must only submit proof of age as provided in subsection 3; or [1991, c. 713, §5 (AMD); 1991, c. 713, §9 (AFF).]

D. If school is in session, the superintendent may have signed only one work permit for the minor at any given time. The superintendent may sign 2 work permits for the minor for the summer vacation period. [2001, c. 398, Pt. A, §1 (AMD).]

[ 2011, c. 614, §21 (AMD) .]

**3. Proof of age.** The superintendent may issue a permit only upon receiving and examining satisfactory evidence of the minor's age. Satisfactory evidence consists of a certified copy of the minor's birth certificate or baptismal record, a passport showing the date of birth or other documentary evidence of age satisfactory to the superintendent and approved by the director. The superintendent may require, in doubtful cases, a certificate signed by a physician appointed by the school board, stating that the minor has been examined and, in that physician's opinion, has reached the normal development of a minor of the same age and is in sufficiently sound health and physically able to perform the work the minor intends to do.

[ 2001, c. 398, Pt. A, §1 (AMD) .]

**3-A. Issuance of work permit.** The director or the director's agent shall issue the work permit to the minor upon verification:

A. Of the proper approval by the superintendent or other designated school official; and [ 2001, c. 398, Pt. A, §1 (NEW). ]

B. That the employment conforms with the provisions of this subchapter. [ 2001, c. 398, Pt. A, §1 (NEW). ]

The superintendent's office shall distribute the work permit to the minor. The work permit is valid only for the employer and positions listed on the permit as issued by the bureau.

[ 2001, c. 398, Pt. A, §1 (NEW) . ]

**4. Conditions for revocation.** The superintendent may revoke the work permit issued to a minor by the bureau if the superintendent determines that the minor has not maintained the conditions for issuance of the work permit under subsection 2, paragraph A. The superintendent shall revoke 2nd work permits at the end of the summer vacation in accordance with the limits imposed by subsection 2, paragraph D. The superintendent shall notify the director and the minor's employer in writing upon revoking a minor's work permit. The revocation is effective upon receipt by the employer of the superintendent's notice.

The bureau may revoke the work permit if the director determines the minor has not been employed in accordance with section 771, section 772, section 773-A or section 774 or if the bureau has determined that the permit was improperly signed. The director shall notify the superintendent and the minor's employer in writing upon revoking a minor's work permit.

[ 2017, c. 286, §6 (AMD) . ]

**5. Permit on file.** The employer shall keep all work permits issued for the employer's minor employees on file and accessible to any attendance officer or agent of the director charged with the enforcement of this subchapter.

[ 2017, c. 286, §7 (AMD) . ]

**6. Exception.** This section does not apply to minors engaged in work performed in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances or to minors engaged in household work. Minors who are participants in summer youth employment and training programs funded by the Department of Labor are exempt from obtaining individual permits as long as the program employing the minor has submitted a notice to the director.

[ 2017, c. 286, §8 (AMD) . ]

#### SECTION HISTORY

1965, c. 272, §3 (AMD). 1971, c. 620, §13 (AMD). 1973, c. 571, §60 (AMD). 1975, c. 59, §3 (AMD). 1979, c. 468, §4 (AMD). 1989, c. 700, §A103 (AMD). 1991, c. 544, §5 (RPR). 1991, c. 713, §§5-7 (AMD). 1991, c. 713, §9 (AFF). 1993, c. 527, §1 (AMD). 2001, c. 398, §A1 (AMD). 2011, c. 614, §21 (AMD). 2017, c. 286, §§6-8 (AMD).

## §776. -- PART TIME AND VACATION WORK (REPEALED)

#### SECTION HISTORY

1991, c. 544, §6 (RP).



**§777. PERMIT FORMATS**

The blank work permit required by section 775 must be formulated by the director and furnished by appropriate means by the director to the persons authorized to sign work permits. The forms of the permits must be approved by the Office of the Attorney General. Permit forms may be made available by the bureau and submitted in paper or electronic format as long as the parent's or guardian's signature is submitted to the superintendent. [2017, c. 286, §9 (AMD).]

## SECTION HISTORY

1971, c. 620, §13 (AMD). 1991, c. 544, §7 (AMD). 1993, c. 527, §2 (AMD). 2001, c. 398, §A2 (AMD). 2017, c. 286, §9 (AMD).

**§778. BLANK EMPLOYMENT CERTIFICATES PREPARED; NOTICE WHEN EMPLOYMENT TERMINATED**

*(REPEALED)*

## SECTION HISTORY

1971, c. 620, §13 (AMD). 1991, c. 544, §8 (RP).

**§779. RECORD OF AGE RECEIVED AS EVIDENCE**

Any record of age, as provided under section 775 to determine whether or not a work permit may be issued to any child, shall be received as evidence of the age of such child in any prosecution under this subchapter.

**§780. WORK PERMIT CONCLUSIVE FOR EMPLOYER; DOCUMENTARY EVIDENCE OF AGE**

A work permit in regular form signed by a duly authorized officer, for all minors under 16 years of age, is conclusive evidence of age and educational attainment, in behalf of the employer of any minor, upon any prosecution for violation of the law relating to the employment of minors. An inspector of factories, attendance officer or other officer charged with the enforcement of this subchapter may make demand on any employer in or about whose place or establishment a minor apparently under the age of 16 years is employed, permitted or suffered to work, that such employer shall either furnish the inspector within 10 days documentary evidence of age as specified in section 775, or shall cease to employ, permit or suffer such minor to work in such place or establishment. [1991, c. 544, §9 (AMD).]

## SECTION HISTORY

1991, c. 544, §9 (AMD).

**§781. PENALTIES**

**1. Strict liability.** An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

- A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than \$250 nor more than \$5,000; [1991, c. 544, §10 (NEW).]
- B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than \$500 nor more than \$5,000; or [1991, c. 544, §10 (NEW).]
- C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than \$2,000 nor more than \$10,000. [2009, c. 2, §72 (COR).]

[ 2009, c. 2, §72 (COR) .]

**1-A. De minimis violations of section 774.** Notwithstanding subsection 1, absent a finding that reasonably suggests a pattern of knowing and intentional conduct, the bureau may disregard the following violations of section 774:

A. A violation of the limits on the time that work may begin or end under section 774, subsection 1, paragraph F or G or section 774, subsection 2, paragraph F, as long as the violation is no greater than 10 minutes per day; [2001, c. 1, §39 (COR).]

B. A violation of the number of hours a minor may work in any day under section 774, subsection 1, paragraph B, C or D or section 774, subsection 2, paragraph C or D, as long as the violation is not greater than 10 minutes per day; and [2001, c. 46, §1 (NEW).]

C. A violation of the number of hours worked in a week under section 774, subsection 1, paragraph A or B or section 774, subsection 2, paragraph A or B, as long as the violation is not greater than 50 minutes in a week. [2001, c. 46, §1 (NEW).]

[2001, c. 1, §39 (COR).]

**2. Intentional or knowing violation of section 771, 772 or 773-A.** An employer who intentionally or knowingly employs, permits or suffers any minor to be employed or to work in violation of section 771, 772 or 773-A is subject to the following fines, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a fine of not less than \$500; [2017, c. 286, §10 (AMD).]

B. For a 2nd violation occurring within 3 years of a prior adjudication, a fine of not less than \$5,000 nor more than \$20,000; or [2017, c. 286, §10 (AMD).]

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a fine of not less than \$10,000 nor more than \$50,000. [2017, c. 286, §10 (AMD).]

[2017, c. 286, §10 (AMD).]

**3. Adjudications.** As used in this section, a prior adjudication includes a consent decree that contains an admission of a violation. The dates of prior adjudications for any violation or a combination of violations must precede the commission of the violation being enhanced, although prior adjudications involving a combination may have occurred on the same day. The date of any adjudication is the date the forfeiture or penalty is adjudged or the consent decree allowed, even though an appeal was taken.

[1991, c. 544, §10 (NEW).]

#### SECTION HISTORY

1987, c. 665, §2 (AMD). 1989, c. 415, §33 (AMD). 1991, c. 544, §10 (RPR). RR 2001, c. 1, §39 (COR). 2001, c. 46, §1 (AMD). RR 2009, c. 2, §72 (COR). 2017, c. 286, §10 (AMD).

## §782. PARENT, GUARDIAN OR CUSTODIAN

**1. Permitting or allowing child to work.** A person who has control over a child as parent, guardian, custodian or otherwise may not permit or allow the child to be employed or to work in violation of this subchapter.

[2003, c. 452, Pt. O, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

**2. Work permit containing false information.** A person may not present, or permit or allow a child over which the person has control to present, to an employer, owner or superintendent or an overseer or agent as required under section 775 a work permit containing a false statement as to the date of birth or age of the child, knowing it to be false.

[ 2003, c. 452, Pt. O, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

**3. Penalties.** A person who violates this section commits a civil violation for which a fine of not less than \$10 and not more than \$50 for each offense may be adjudged.

[ 2003, c. 452, Pt. O, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

#### SECTION HISTORY

2003, c. 452, §X2 (AFF). 2003, c. 452, §O2 (RPR).

## §783. -- FAILURE TO PERFORM DUTIES OF OFFICE

Whoever, being authorized to issue a work permit, knowingly fails to perform the duties of his office as required by this subchapter shall be punished by a fine of not less than \$25 nor more than \$50, for each offense.

## §784. -- CERTIFICATION OF FALSE STATEMENTS

Whoever, being authorized to sign the work permit, or whoever, signing any certified copy of a town clerk's record of birth, or certified copy of a child's baptismal record or a physician's certificate, knowingly certifies to any false statement therein shall be punished by a fine of not less than \$25 nor more than \$50, for each offense.

## §785. RULEMAKING

The Director of the Bureau of Labor Standards may adopt rules pursuant to Title 5, chapter 375, subchapter II that are consistent with this subchapter and considered appropriate or necessary for the proper administration and enforcement of this subchapter. [1993, c. 434, §6 (NEW) .]

#### SECTION HISTORY

1993, c. 434, §6 (NEW) .

## §786. TRAFFIC CONTROL DUTIES

**1. Traffic control duties permitted.** Notwithstanding any other provision of this article, a minor who is 14 years of age or older and is a volunteer participant in a career-oriented law enforcement program may perform traffic control duties in accordance with this section.

[ 2013, c. 142, §2 (NEW) .]

**2. Training.** A minor may not perform traffic control duties under this section until the minor has received traffic control training in accordance with the requirements of the supervising law enforcement agency. Proof of the minor's successful completion of the training must be maintained by the law enforcement agency.

[ 2013, c. 142, §2 (NEW) .]

**3. Supervision.** A minor may perform traffic control duties only under direct supervision of a law enforcement officer as part of a career-oriented law enforcement program. This supervision must:

A. Be from a close distance so that the officer does not become distracted or perform other duties; and [2013, c. 142, §2 (NEW).]

B. Include means of radio contact in the event that the minor needs to contact another officer for assistance. [2013, c. 142, §2 (NEW).]

[ 2013, c. 142, §2 (NEW) .]

**4. Limitations on events.** A minor may perform traffic control duties only at civic events, fair parking lots, parades, walks, foot races, car shows and charity events.

[ 2013, c. 142, §2 (NEW) .]

**5. Limitations on locations.** A minor may not:

A. Direct traffic or pedestrians on busy roadways or thoroughfares; [2013, c. 142, §2 (NEW).]

B. Assist in traffic control at places of heightened danger such as traffic stops or roadblocks; [2013, c. 142, §2 (NEW).]

C. Direct traffic in conjunction with crowd control or riot control; [2013, c. 142, §2 (NEW).]

D. Collect donations at a traffic light; [2013, c. 142, §2 (NEW).]

E. Direct traffic at funeral processions; or [2013, c. 142, §2 (NEW).]

F. Direct traffic at the scene of an emergency. [2013, c. 142, §2 (NEW).]

[ 2013, c. 142, §2 (NEW) .]

**6. Night activities prohibited.** A minor may perform the activities authorized under this section only during the period from sunrise to sunset.

[ 2013, c. 142, §2 (NEW) .]

#### SECTION HISTORY

2013, c. 142, §2 (NEW).

## Subchapter 4-A: EMPLOYMENT OF THE HANDICAPPED

### **§791. LEGAL IDENTITY**

*(REPEALED)*

#### SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

### **§792. MEMBERSHIP REPRESENTATION**

*(REPEALED)*

#### SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

### **§793. COMMITTEE TENURES**

*(REPEALED)*

#### SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## **§794. NONPARTISAN STATUS**

*(REPEALED)*

SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## **§795. COMMITTEE OFFICERS**

*(REPEALED)*

SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## **§796. PRIMARY DUTIES**

*(REPEALED)*

SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## **§797. AUTHORIZATION**

*(REPEALED)*

SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## **§798. EXPENSES OF COMMITTEE MEMBERS; PAYMENT; OFFICE**

*(REPEALED)*

SECTION HISTORY

1969, c. 478, §1 (NEW). 1983, c. 176, §A8 (RP).

## **§799. COMMITTEE**

*(REPEALED)*

SECTION HISTORY

1983, c. 176, §A9 (NEW). 1985, c. 295, §38 (AMD). 1989, c. 49, §4 (AMD). 1997, c. 410, §5 (RP).

## **§800. MEMBERSHIP**

*(REPEALED)*

SECTION HISTORY

1983, c. 176, §A9 (NEW). 1983, c. 819, §A57 (AMD). 1993, c. 600, §A20 (AMD). 1997, c. 410, §6 (RP).

## **§801. POWERS AND DUTIES**

*(REPEALED)*

SECTION HISTORY

1983, c. 176, §A9 (NEW). 1989, c. 49, §5 (AMD). 1993, c. 600, §§A21,22 (AMD). 1997, c. 410, §7 (RP).

## §802. ADMINISTRATIVE AUTHORITY

*(REPEALED)*

### SECTION HISTORY

1983, c. 176, §A9 (NEW). 1985, c. 295, §39 (AMD). 1985, c. 785, §B116 (AMD). 1997, c. 410, §8 (RP).

## §803. AUTHORIZATION

*(REPEALED)*

### SECTION HISTORY

1993, c. 600, §A23 (NEW). 1997, c. 683, §D2 (RP).

## Subchapter 4-B: SEXUAL HARASSMENT POLICIES

## §806. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 474, §2 (NEW).]

**1. Commission.** "Commission" means the Maine Human Rights Commission described in Title 5, chapter 337, subchapter II.

[ 1991, c. 474, §2 (NEW) .]

**1-A. Department.** "Department" means the Department of Labor.

[ 2017, c. 162, §1 (NEW) .]

**2. Employee.** "Employee" means any person engaged to work on a steady or regular basis, whether full-time or part-time, by an employer located or doing business in the State.

[ 1991, c. 474, §2 (NEW) .]

**3. Employer.** "Employer" means any person, partnership, firm, association, corporation, employment agency, labor organization, joint apprenticeship committee or other legal entity, public or private, that is located or doing business in the State. The term "employer" includes, but is not limited to:

A. Any person, partnership, firm, association or corporation acting in the interest of any employer, directly or indirectly; and [1991, c. 474, §2 (NEW).]

B. The State in its capacity as an employer. [1991, c. 474, §2 (NEW).]

[ 1991, c. 474, §2 (NEW) .]

**4. Sexual harassment.** "Sexual harassment" has the same meaning as found in rules adopted by the Maine Human Rights Commission under the Maine Human Rights Act, Title 5, section 4572.

[ 1991, c. 474, §2 (NEW) .]

### SECTION HISTORY

1991, c. 474, §2 (NEW). 2017, c. 162, §1 (AMD).

## §807. REQUIREMENTS

In addition to employer responsibilities set forth in rules adopted under Title 5, section 4572, all employers shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements. [1991, c. 474, §2 (NEW).]

**1. Workplace posting.** An employer shall post in a prominent and accessible location in the workplace a poster providing, at a minimum, the following information: the illegality of sexual harassment; a description of sexual harassment, utilizing examples; the complaint process available through the commission; and directions on how to contact the commission. The text of this poster may meet but may not exceed 6th-grade literacy standards. The commission may provide this poster to employers at no charge. This poster must also be available on the department's publicly accessible website and may be reproduced.

[ 2017, c. 162, §2 (AMD) .]

**2. Employee notification.** Employers shall provide annually all employees with individual written notice that includes at a minimum the following information: the illegality of sexual harassment; the definition of sexual harassment under state law; a description of sexual harassment, utilizing examples; the internal complaint process available to the employee; the legal recourse and complaint process available through the commission; directions on how to contact the commission; and the protection against retaliation as provided pursuant to Title 5, section 4553, subsection 10, paragraph D. This notice must be initially provided within 90 days after the effective date of this subchapter. The notice must be delivered in a manner to ensure notice to all employees without exception, such as including the notice with an employee's pay.

[ 1991, c. 474, §2 (NEW) .]

**3. Education and training.** In workplaces with 15 or more employees, employers shall conduct an education and training program for all new employees within one year of commencement of employment. Training provided under this subsection must include the illegality of sexual harassment; the definition of sexual harassment under state and federal laws and federal regulations, including the Maine Human Rights Act and the Civil Rights Act of 1964, 42 United States Code, Title VII, Sections 2000e to 2000e-17; a description of sexual harassment, utilizing examples; the internal complaint process available to the employee; the legal recourse and complaint process available through the commission; directions on how to contact the commission; and the protection against retaliation as provided under Title 5, section 4553, subsection 10, paragraph D. Employers shall conduct additional training for supervisory and managerial employees within one year of commencement of employment that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

Education and training programs conducted under this subsection by the State, a county or a municipality for its public safety personnel, including, but not limited to, law enforcement personnel, corrections personnel and firefighters, may be used to meet training and education requirements mandated by any other law, rule or other official requirement.

[ 2017, c. 162, §2 (AMD) .]

**4. Compliance checklist.** The department shall develop a compliance checklist for employers covering the requirements under subsection 3. The checklist must be made available on the department's publicly accessible website. The commission shall provide a link to the compliance checklist on the commission's publicly accessible website. Employers shall use the checklist to develop a sexual harassment training program and shall keep a record of the training, including a record of employees who have received the required training. Training records must be maintained for at least 3 years and must be made available for department inspection upon request.

[ 2017, c. 162, §2 (NEW) .]

**5. Enforcement.** The department shall enforce the notification requirement under this section and, upon inspection or complaint, shall ensure that employers have provided the training as required by subsection 3. If the department has determined that an employer has complied with the provisions of this subchapter, that determination and all completed department enforcement actions are considered final. Department actions under this subchapter do not limit or affect the authority or jurisdiction of the commission.

The commission may request department enforcement records related to a complaint filed with the commission when the complaint is related to this subsection. Such records are subject to section 3.

[ 2017, c. 162, §2 (NEW) .]

**6. Penalties for violations.** An employer who violates this section may be assessed a fine by the department in accordance with this subsection.

A. An employer who violates the workplace posting requirement in subsection 1 may be assessed:

- (1) For the first violation, a fine of up to \$25 per day, not to exceed \$1,000;
- (2) For a 2nd violation occurring within 3 years of a prior violation, a fine of not less than \$25 per day up to \$50 per day, not to exceed \$2,500; and
- (3) For a 3rd or subsequent violation occurring within 3 years of 2 or more prior violations, a fine of not less than \$25 per day up to \$100 per day, not to exceed \$5,000. [ 2017, c. 162, §2 (NEW) .]

B. An employer who violates the notification, education or training requirements set forth in subsection 2 or 3 may be assessed:

- (1) For the first violation, a fine of \$1,000;
- (2) For a 2nd violation, a fine of \$2,500; and
- (3) For a 3rd or subsequent violation, a fine of \$5,000. [ 2017, c. 162, §2 (NEW) .]

[ 2017, c. 162, §2 (NEW) .]

#### SECTION HISTORY

1991, c. 474, §2 (NEW). 2017, c. 162, §2 (AMD).

### Subchapter 4-C: FIREFIGHTER; ABSENCE FROM WORK

#### §809. ABSENCE FOR EMERGENCY RESPONSE

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

A. "Employer" means any private or public employer, including the State and political subdivisions of the State. [ 2005, c. 296, §1 (NEW) .]

A-1. "Firefighter" has the same meaning as "municipal firefighter" and "volunteer firefighter" in Title 30-A, section 3151, subsections 2 and 4. [ 2013, c. 477, §1 (NEW) .]

B. "Responding to an emergency" means responding to, working at the scene of or returning from a fire call, a hazardous or toxic materials spill and cleanup or any other situation to which the fire department has been dispatched. [ 2005, c. 296, §1 (NEW) .]

C. [ 2013, c. 477, §2 (RP) .]

[ 2013, c. 477, §§1, 2 (AMD) .]



**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 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 firefighter from the 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.

[ 2013, c. 477, §3 (AMD) . ]

**3. Notification; verification.** If time permits, when an employee is responding as a 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 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.

[ 2013, c. 477, §4 (AMD) . ]

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

[ 2005, c. 296, §1 (NEW) . ]

**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 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 [ 2005, c. 296, §1 (NEW) . ]

B. The employee presents a copy of the policy to the employer upon notifying the employer of the employee's status as a firefighter. [ 2013, c. 477, §5 (AMD) . ]

[ 2013, c. 477, §5 (AMD) . ]

**6. Designation as essential.** Upon receiving notice of an employee's 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.

[ 2013, c. 477, §6 (AMD) .]

#### SECTION HISTORY

2005, c. 296, §1 (NEW). 2013, c. 477, §§1-6 (AMD).

## Subchapter 5: LEAVE RELATING TO RESERVE TRAINING OR MILITARY SERVICE

### §811. PRESERVATION OF STATUS

**1. Intent.** The intent of this subchapter is to minimize the disruption to the lives of persons performing service in the National Guard or the Reserves of the United States Armed Forces as well as to their employers, their fellow employees and their communities by providing for the prompt reemployment of these persons upon their satisfactory completion of military service and to prohibit discrimination against these persons because of their military service.

[ 2001, c. 662, §11 (AMD) .]

**2. Military leave of absence.** Any member of the National Guard or the Reserves of the United States Armed Forces is entitled to a military leave of absence from a position with any public or private employer, in response to state or federal military orders. The military member shall:

A. Give prior reasonable notice, if reasonable under the military circumstances, to the member's employer of the anticipated absence for military duty; and [2001, c. 662, §11 (AMD) .]

B. If the employer so requests, obtain a confirmation from the Adjutant General or applicable reserve component headquarters of the anticipated military duty and satisfactory completion of the member's military duties. [2001, c. 662, §11 (AMD) .]

[ 2001, c. 662, §11 (AMD) .]

**3. Reinstatement.** Any person who is in compliance with subsection 2 and is still qualified to perform the duties of such position must be reinstated at the same pay, seniority, benefits and status and receive any other incidences of advantages of employment as if the person had remained continuously employed. The period of absence must be construed as an absence with leave and, within the discretion of the employer, the leave may be with pay. The employer may not require any person returning from a period of military service to report back to work:

A. For periods of military service of 3 days or less, until the completion of the period of service and the expiration of 24 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; [2005, c. 524, §1 (NEW) .]

B. For periods of military service of more than 3 days but not more than 15 days, until the completion of the period of service and the expiration of 48 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; [2005, c. 524, §1 (NEW) .]

C. For periods of military service of more than 15 days but not more than 30 days, until the completion of the period of service and the expiration of 72 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence; [2005, c. 524, §1 (NEW) .]

D. For periods of military service of more than 30 days but not more than 180 days, until the completion of the period of service and the expiration of 14 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or [2005, c. 524, §1 (NEW) .]

E. For periods of military service of more than 180 days, until the completion of the period of service and the expiration of 90 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence. [2005, c. 524, §1 (NEW) .]

[ 2005, c. 524, §1 (AMD) .]

**4. Disability.** A person who is in compliance with subsection 2 but who has a disability incurred in or aggravated during the military service for which that person was absent and who, after reasonable efforts by the employer to accommodate the disability, is not qualified due to that disability to be employed in the position of employment in which the member would have been employed if the member had remained continuously employed must be reinstated without loss of seniority, benefits, status and any other incidences of advantages of employment:

A. To any other position that is equivalent in pay, seniority, benefits, status and any other incidences of advantages of employment, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or [2001, c. 662, §11 (NEW) .]

B. To a position that is the nearest approximation to a position referred to in paragraph A in terms of pay, seniority, benefits, status and any other incidences or advantages of employment consistent with circumstances of the person's case. [2001, c. 662, §11 (NEW) .]

[ 2001, c. 662, §11 (NEW) .]

**5. Employer defined.** As used in this section, "employer" means any person, institution, organization or other entity that pays salary or wages for work performed or that has control over employment opportunities, including a person, institution, organization or other entity to whom the employer has delegated the performance of employment-related responsibilities; the Federal Government; the State and any subdivision or agency of the State; and any successor in interest to a person, institution, organization, or other entity referred to in this subsection.

[ 2001, c. 662, §11 (NEW) .]

#### SECTION HISTORY

1987, c. 285, §1 (RPR). 1987, c. 769, §A105 (AMD). 2001, c. 662, §11 (AMD). 2005, c. 524, §1 (AMD).

## §812. RIGHT TO BENEFITS RETAINED

**1. Benefits accrual.** Absence for military training as described in section 811 does not affect the employee's right to receive normal vacation, sick leave, bonus, advancement and other advantages of employment normally to be anticipated in the employee's particular position.

[ 2001, c. 662, §12 (NEW) .]

**2. Extension of insurance benefits.** Insurance benefits must be extended according to this subsection.

A. A public or private employer shall continue, at no additional cost to the member, the existing health, dental and life insurance benefits for at least the first 30 days of the military duty for any member of the National Guard or the Reserves of the United States Armed Forces if the member takes a military leave of absence from a position with that employer, other than a temporary position, in response to state or federal military orders. [2001, c. 662, §12 (NEW) .]

B. After the expiration of the first 30 days of military leave, the member of the National Guard or the Reserves of the United States Armed Forces has the option of continuing the health, dental and life insurance benefits in effect at the member's own expense by paying the insurance premium at the same rates as paid by the employer. [2001, c. 662, §12 (NEW).]

[ 2001, c. 662, §12 (NEW) . ]

#### SECTION HISTORY

2001, c. 662, §12 (RPR).

## §813. REMEDIES

**1. Action authorized.** If any employer fails to comply with any of the provisions of sections 811 and 812, the Attorney General, Judge Advocates of the Maine National Guard or employee may bring a civil action for damages for such noncompliance or apply to the courts for such equitable relief as may be just and proper under the circumstances.

[ 2001, c. 662, §12 (NEW) . ]

**2. Award of fees; costs.** In any civil action under section 811 or 812, the court in its discretion may award reasonable attorney's fees and costs.

[ 2001, c. 662, §12 (NEW) . ]

#### SECTION HISTORY

2001, c. 662, §12 (RPR).

## §814. FAMILY MILITARY LEAVE

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

A. "Deployed for military service" or "deployment" means active military duty with the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, including the National Guard and Reserves, whether pursuant to orders of the Governor or the President of the United States, when the duty assignment is in a combat theater or in an area where armed conflict is taking place.

[2005, c. 523, §2 (NEW).]

B. "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment and who has been employed by the same employer for at least 12 months and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the employee's family military leave. [2007, c. 388, §1 (AMD).]

C. "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer. [2005, c. 523, §2 (NEW).]

D. "Employer" means:

(1) Any person, partnership, corporation, association or other business entity; and

(2) The State, a county, a municipality or any political subdivision. [2005, c. 523, §2 (NEW).]

E. "Family military leave" means leave requested by an employee who is the spouse, domestic partner or parent of a person who is a resident of the State and is deployed for military service for a period lasting longer than 180 days with the State or United States pursuant to the orders of the Governor or the President of the United States. [2005, c. 523, §2 (NEW).]

[2007, c. 388, §1 (AMD).]

**2. Family military leave requirement.** Subject to the requirements of subsection 3, an employer that employs 15 or more employees shall provide each eligible employee up to 15 days of family military leave per deployment, if requested by the employee. Family military leave under this subsection may be taken only during one or more of the following time frames:

A. The 15 days immediately prior to deployment; [2007, c. 388, §2 (NEW).]

B. Deployment, if the military member is granted leave; or [2007, c. 388, §2 (NEW).]

C. The 15 days immediately following the period of deployment. [2007, c. 388, §2 (NEW).]

Family military leave granted under this section may consist of unpaid leave.

[2007, c. 388, §2 (RPR).]

**3. Notice requirements.** An employee taking family military leave under this section is subject to the following.

A. The employee must give at least 14 days' notice of the intended date upon which the family military leave will commence if leave will consist of 5 or more consecutive work days. [2005, c. 523, §2 (NEW).]

B. An employee taking family military leave for fewer than 5 consecutive work days must give the employer advance notice as is practicable. [2005, c. 523, §2 (NEW).]

C. The employee shall consult with the employer to attempt to schedule the leave so as to not unduly disrupt the operations of the employer. [2005, c. 523, §2 (NEW).]

[2005, c. 523, §2 (NEW).]

**4. Certification.** An employer may require certification from the proper military authority to verify an employee's eligibility for the family military leave requested pursuant to this section.

[2005, c. 523, §2 (NEW).]

**5. Restoration to position.** An employee who exercises the right to family military leave under this section is entitled, upon expiration of the leave, to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this section.

[2005, c. 523, §2 (NEW).]

**6. Employee benefits protection.** An employer shall make it possible for an employee to continue employee benefits at the employee's expense during any family military leave taken under this section. The employer and employee may negotiate for the employer to maintain employee benefits at the employer's expense for the duration of the leave.

A. Taking family military leave under this section does not result in the loss of any employee benefit accrued before the date on which the leave commenced. [2005, c. 523, §2 (NEW).]

B. Nothing in this section may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this section. [2005, c. 523, §2 (NEW).]

C. The family military leave rights provided under this section may not be diminished by any collective bargaining agreement or employee benefit plan. [2005, c. 523, §2 (NEW).]

D. Nothing in this section may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under this section. [2005, c. 523, §2 (NEW).]

[ 2005, c. 523, §2 (NEW) .]

**7. Prohibited acts.** An employer may not:

A. Interfere with, restrain or deny the exercise or the attempt to exercise any right provided under this section; [2005, c. 523, §2 (NEW).]

B. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee who exercises any right provided under this section; or [2005, c. 523, §2 (NEW).]

C. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this section. [2005, c. 523, §2 (NEW).]

[ 2005, c. 523, §2 (NEW) .]

**8. Enforcement.** An employee may bring a civil action in Superior Court to enforce this section. The court may enjoin any act or practice that violates or may violate this section and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this section.

[ 2005, c. 523, §2 (NEW) .]

#### SECTION HISTORY

2005, c. 523, §2 (NEW). 2007, c. 388, §§1, 2 (AMD).

## Subchapter 5-A: LEAVE OF ABSENCE AS LEGISLATOR

### §821. PERSON EMPLOYED IN POSITION OTHER THAN TEMPORARY

Any person, except a person covered under Title 20-A, section 13602, employed in a position other than a temporary position shall be granted a leave of absence to fulfill the duties of a Legislator, provided that the employee gives written notice to his employer of his intent to become a candidate for the Legislature within 10 days after taking action under Title 21-A to place his name on a primary or general election ballot. Following his term of service as a Legislator, the employee, if he is still qualified to perform the duties of the position from which he was granted leave, shall be entitled to be restored to his previous, or a similar, position with the same status, pay and seniority. This leave of absence shall, within the discretion of the employer, be with or without pay and shall be limited to one legislative term of 2 years. [1987, c. 402, Pt. A, §154 (AMD).]

*§821. Short title*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 831)*

#### SECTION HISTORY

1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).  
1985, c. 161, §7 (AMD). 1987, c. 402, §A154 (AMD).

## §822. EXCEPTION FOR EMPLOYER WITH 5 OR FEWER EMPLOYEES

This subchapter is not applicable if the employer employs 5 or fewer persons immediately prior to the first day of the leave of absence. [1983, c. 128, §1 (NEW).]

### *§822. Definitions*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 832)*

#### SECTION HISTORY

1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §823. WAIVER OF RIGHT

An employee who fails to provide the notice to his employer required by section 821 waives any rights to a leave of absence provided by this subchapter. [1983, c. 128, §1 (NEW).]

### *§823. Discharge of, threats to or discrimination against employee for reporting violations of law or refusing to carry out illegal directives*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 833)*

#### SECTION HISTORY

1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §824. APPEAL BY EMPLOYER

**1. Request.** An employer who feels that granting the leave of absence required by this subchapter will cause unreasonable hardship for the employer's business may appeal for relief by filing a written notice of appeal with the chair of the State Board of Arbitration and Conciliation. If the notice of appeal is not filed within 14 days of receipt of the employee's notice requesting a leave of absence, the employer waives the right to appeal. The notice of appeal must state the name of the employee and the reasons for the alleged unreasonable hardship. Payment for the services of a member of the State Board of Arbitration and Conciliation must be shared by the parties in accordance with section 931. This section provides the exclusive remedy for an employer claiming unreasonable hardship as a result of a request for leave of absence.

[ 2005, c. 119, §1 (AMD) .]

**2. Proceedings.** The chairman of the State Board of Arbitration and Conciliation, or any member of the board designated by the chairman, shall serve as an arbitrator of any case appealed under this section. The proceeding shall provide an opportunity for the employee to respond, orally or in writing, to the allegations contained in the appeal. Within 30 days of receipt of the notice of appeal, the arbitrator shall issue an order, binding on both parties, either affirming or denying the claim of unreasonable hardship. If the claim is affirmed, the employee is not entitled to a leave of absence under this subchapter. In reaching his decision, the arbitrator shall consider, but is not limited to, the following factors:

- A. The length of time the employee has been employed by the employer; [1983, c. 128, §1 (NEW) .]
- B. The number of employees in the employer's business; [1983, c. 128, §1 (NEW).]
- C. The nature of the employer's business; [1983, c. 128, §1 (NEW).]
- D. The nature of the position held by the employee and the ease or difficulty and cost of temporarily filling the position during the leave of absence; and [1983, c. 128, §1 (NEW).]
- E. Any agreement entered into between the employee and employer as a condition of employment. [1983, c. 128, §1 (NEW).]

### *§824. Civil actions for injunctive relief or other remedies*

*(As enacted by PL 1983, c. 452 is REALLOCATED TO TITLE 26, SECTION 834)*

[ 1983, c. 128, §1 (NEW) .]

SECTION HISTORY

1983, c. 128, §1 (NEW). 1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).  
2005, c. 119, §1 (AMD).

**§825. REMEDIES ORDERED BY COURT**

*(REALLOCATED TO TITLE 26, SECTION 835)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

**§826. PENALTIES FOR VIOLATIONS**

*(REALLOCATED TO TITLE 26, SECTION 836)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

**§827. COLLECTIVE BARGAINING RIGHTS**

*(REALLOCATED TO TITLE 26, SECTION 837)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

**§828. COMPENSATION FOR EMPLOYEE PARTICIPATION IN INVESTIGATION, HEARING OR INQUIRY**

*(REALLOCATED TO TITLE 26, SECTION 838)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

**§829. NOTICES OF EMPLOYEE PROTECTIONS AND OBLIGATIONS**

*(REALLOCATED TO TITLE 26, SECTION 839)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

**§830. JURY TRIAL; COMMON-LAW RIGHTS**

*(REALLOCATED TO TITLE 26, SECTION 840)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

**Subchapter 5-B: PROTECTION OF EMPLOYEES WHO REPORT OR REFUSE TO COMMIT ILLEGAL ACTS**

**§831. SHORT TITLE**

*(REALLOCATED FROM TITLE 26, SECTION 821)*



This subchapter may be cited as the "Whistleblowers' Protection Act." [1983, c. 583, §15 (RAL).]

#### SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

## §832. DEFINITIONS

*(REALLOCATED FROM TITLE 26, SECTION 822)*

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 583, §15 (RAL).]

**1. Employee.** "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied, but does not include an independent contractor engaged in lobster fishing. "Employee" includes school personnel and a person employed by the State or a political subdivision of the State.

[ 1999, c. 351, §5 (AMD) .]

**2. Employer.** "Employer" means a person who has one or more employees. "Employer" includes an agent of an employer and the State, or a political subdivision of the State. "Employer" also means all schools and local education agencies.

[ 1999, c. 351, §6 (AMD) .]

**3. Person.** "Person" means an individual, sole proprietorship, partnership, corporation, association or any other legal entity.

[ 1983, c. 583, §15 (RAL) .]

**4. Public body.** "Public body" means all of the following:

A. A state officer, employee, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State Government; [1983, c. 583, §15 (RAL) .]

B. An agency, board, commission, council, member or employee of the legislative branch of State Government; [1983, c. 583, §15 (RAL) .]

C. A county, municipal, village, intercounty, intercity or regional governing body, a council, school district or municipal corporation, or a board, department, commission, council, agency or any member or employee thereof; [1983, c. 583, §15 (RAL) .]

D. Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body; [1983, c. 583, §15 (RAL) .]

E. A law enforcement agency or any member or employee of a law enforcement agency; and [1983, c. 583, §15 (RAL) .]

F. The judiciary and any member or employee of the judiciary. [1983, c. 583, §15 (RAL) .]

[ 1983, c. 583, §15 (RAL) .]

#### SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 402, §B21 (AMD). 1999, c. 351, §§5,6 (AMD).

## §833. DISCRIMINATION AGAINST CERTAIN EMPLOYEES PROHIBITED

*(REALLOCATED FROM TITLE 26, SECTION 823)*

**1. Discrimination prohibited.** No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

A. The employee, acting in good faith, or a person acting on behalf of the employee, reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States; [1987, c. 782, §4 (NEW).]

B. The employee, acting in good faith, or a person acting on behalf of the employee, reports to the employer or a public body, orally or in writing, what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual. The protection from discrimination provided in this section specifically includes school personnel who report safety concerns to school officials with regard to a violent or disruptive student; [1999, c. 351, §7 (AMD).]

C. The employee is requested to participate in an investigation, hearing or inquiry held by that public body, or in a court action; [2003, c. 306, §1 (AMD).]

D. The employee acting in good faith has refused to carry out a directive to engage in activity that would be a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer; or [2003, c. 688, Pt. A, §27 (RPR).]

E. The employee, acting in good faith and consistent with state and federal privacy laws, reports to the employer, to the patient involved or to the appropriate licensing, regulating or credentialing authority, orally or in writing, what the employee has reasonable cause to believe is an act or omission that constitutes a deviation from the applicable standard of care for a patient by an employer charged with the care of that patient. For purposes of this paragraph, "employer" means a health care provider, health care practitioner or health care entity as defined in Title 24, section 2502. [2003, c. 306, §2 (NEW).]

[ 2003, c. 688, Pt. A, §27 (AMD) .]

**2. Initial report to employer required; exception.** Subsection 1 does not apply to an employee who has reported or caused to be reported a violation, or unsafe condition or practice to a public body, unless the employee has first brought the alleged violation, condition or practice to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable opportunity to correct that violation, condition or practice.

Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice.

[ 1987, c. 782, §4 (NEW) .]

**3. Reports of suspected abuse.** An employee required to report suspected abuse, neglect or exploitation under Title 22, section 3477 or 4011-A, shall follow the requirements of those sections under those circumstances. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee followed the requirements of those sections.

[ 2001, c. 345, §7 (AMD) .]

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §4 (RPR). 1999, c. 351, §7 (AMD). 2001, c. 345, §7 (AMD). 2003, c. 306, §§1,2 (AMD). 2003, c. 357, §1 (AMD). 2003, c. 688, §A27 (AMD).

**§834. CIVIL ACTIONS FOR INJUNCTIVE RELIEF OR OTHER REMEDIES**

*(REALLOCATED FROM TITLE 26, SECTION 824)*  
*(REPEALED)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1983, c. 816, §A18 (AMD). 1987, c. 782, §5 (RP).

**§834-A. ARBITRATION BEFORE THE MAINE HUMAN RIGHTS COMMISSION**

An employee who alleges a violation of that employee's rights under section 833, and who has complied with the requirements of section 833, subsection 2, may bring a complaint before the Maine Human Rights Commission for action under Title 5, section 4612. [1987, c. 782, §6 (NEW) .]

SECTION HISTORY

1987, c. 782, §6 (NEW) .

**§835. REMEDIES ORDERED BY COURT**

*(REALLOCATED FROM TITLE 26, SECTION 825)*  
*(REPEALED)*

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §7 (RP).

**§836. PENALTIES FOR VIOLATIONS**

*(REALLOCATED FROM TITLE 26, SECTION 826)*

A person who violates section 839 is liable for a civil fine of \$10 for each day of willful violation which shall not be suspended. Any civil fine imposed under this section shall be submitted to the Treasurer of State for deposit to the General Fund. [1983, c. 816, Pt. A, §19 (AMD) .]

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1983, c. 816, §A19 (AMD).

**§837. COLLECTIVE BARGAINING RIGHTS**

*(REALLOCATED FROM TITLE 26, SECTION 827)*

This subchapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement. [1983, c. 583, §15 (RAL) .]

SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL).

### **§838. COMPENSATION FOR EMPLOYEE PARTICIPATION IN INVESTIGATION, HEARING OR INQUIRY**

*(REALLOCATED FROM TITLE 26, SECTION 828)*

This subchapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 833. [1983, c. 816, Pt. A, §20 (AMD).]

#### SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1983, c. 816, §A20 (AMD).

### **§839. NOTICES OF EMPLOYEE PROTECTIONS AND OBLIGATIONS**

*(REALLOCATED FROM TITLE 26, SECTION 829)*

**1. Notice provided; posting.** The Department of Labor shall provide each employer in the State with a notice as provided in this section. Each employer shall prominently post the notice in the employer's place of business so that the employees are informed of their protections and obligations under this subchapter.

[ 1987, c. 782, §8 (NEW) .]

**2. Contents of notice.** The notice provided by the department shall include:

A. A summary of this subchapter written in concise and plain language; [1987, c. 782, §8 (NEW) .]

B. A telephone number at the department that employees may call if they have questions or wish to report a violation, condition or practice; and [1987, c. 782, §8 (NEW) .]

C. A space where the employer shall write in the name of the individual or department to which employees may report violations, unsafe conditions or practices as required by section 833. [1987, c. 782, §8 (NEW) .]

[ 1987, c. 782, §8 (NEW) .]

#### SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §8 (RPR).

### **§840. COMMON-LAW RIGHTS**

*(REALLOCATED FROM TITLE 26, SECTION 830)*

Nothing in this section may be construed to derogate any common-law rights of an employee. [1987, c. 782, §9 (RPR) .]

#### SECTION HISTORY

1983, c. 452, (NEW). 1983, c. 583, §15 (RAL). 1987, c. 782, §9 (RPR).

## Subchapter 6: EMPLOYEE TRUSTS

### **§841. NOT SUBJECT TO RULE AGAINST PERPETUITIES**

A trust of real or personal property, or real and personal property combined, created by an employer as part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in

trust, may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created, and shall not be invalid as violating any rule of law against perpetuities or suspension of the power of alienation of the title to property.

No rule of law against perpetuities or suspension of the power of alienation of the title to property shall operate to invalidate any trust created or attempted to be created, prior to August 20, 1951, by an employer as a part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees earnings or principal, or both earnings and principal, of the fund held in trust, unless the trust is terminated by a court of competent jurisdiction in a civil action instituted within 3 years after August 20, 1951.

## Subchapter 6-A: FAMILY MEDICAL LEAVE REQUIREMENTS

### §843. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 661, (NEW).]

**1. Employee.** "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment but does not include an independent contractor.

[ 1987, c. 661, (NEW) .]

**2. Employee benefits.** "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

[ 1987, c. 661, (NEW) .]

**3. Employer.** "Employer" means:

A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs 15 or more employees at one location in this State; [1999, c. 127, Pt. D, §2 (AMD) .]

B. The State, including the executive, legislative and judicial branches, and any state department or agency that employs any employees; [1987, c. 661, (NEW) .]

C. Any city, town or municipal agency that employs 25 or more employees; and [1987, c. 661, (NEW) .]

D. Any agent of an employer, the State or a political subdivision of the State. [1987, c. 661, (NEW) .]

[ 1999, c. 127, Pt. D, §2 (AMD) .]

**4. Family medical leave.** "Family medical leave" means leave requested by an employee for:

A. Serious health condition of the employee; [1997, c. 546, §1 (AMD) .]

B. The birth of the employee's child or the employee's domestic partner's child; [2007, c. 261, §1 (AMD) .]

C. The placement of a child 16 years of age or less with the employee or with the employee's domestic partner in connection with the adoption of the child by the employee or the employee's domestic partner; [2007, c. 261, §1 (AMD) .]

D. A child, domestic partner's child, parent, domestic partner, sibling or spouse with a serious health condition; [2007, c. 519, §1 (RPR) .]

E. The donation of an organ of that employee for a human organ transplant; or [2007, c. 388, §4 (AMD).]

F. The death or serious health condition of the employee's spouse, domestic partner, parent, sibling or child if the spouse, domestic partner, parent, sibling or child as a member of the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty. [2007, c. 519, §2 (AMD).]

[2007, c. 388, §§3-5 (AMD); 2007, c. 519, §§1, 2 (AMD).]

**4-A. Health care provider.** "Health care provider" means:

A. A doctor of medicine or osteopathy who is licensed to practice medicine or surgery in this State; or [1997, c. 546, §2 (NEW).]

B. Any other person determined by the Secretary of Labor to be capable of providing health care services. [1997, c. 546, §2 (NEW).]

[1997, c. 546, §2 (NEW).]

**4-B. Reduced leave schedule.** "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

[2007, c. 233, §1 (NEW).]

**5. Serious illness.**

[1997, c. 546, §3 (RP).]

**6. Serious health condition.** "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

A. Inpatient care in a hospital, hospice or residential medical care facility; or [1997, c. 546, §2 (NEW).]

B. Continuing treatment by a health care provider. [1997, c. 546, §2 (NEW).]

[1997, c. 546, §2 (NEW).]

**7. Domestic partner.** "Domestic partner" means the partner of an employee who:

A. Is a mentally competent adult as is the employee; [2007, c. 261, §2 (NEW).]

B. Has been legally domiciled with the employee for at least 12 months; [2007, c. 261, §2 (NEW).]

C. Is not legally married to or legally separated from another individual; [2007, c. 261, §2 (NEW).]

D. Is the sole partner of the employee and expects to remain so; [2007, c. 261, §2 (NEW).]

E. Is not a sibling of the employee; and [2007, c. 261, §2 (NEW).]

F. Is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property. [2007, c. 261, §2 (NEW).]

[2007, c. 261, §2 (NEW).]

**8. Sibling.** "Sibling" means a sibling of an employee who is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements and joint financial arrangements.

[ 2007, c. 519, §3 (NEW) .]

#### SECTION HISTORY

1987, c. 661, (NEW). 1997, c. 546, §§1-3 (AMD). 1999, c. 127, §D2 (AMD). 2001, c. 684, §§1-3 (AMD). 2007, c. 233, §1 (AMD). 2007, c. 261, §§1, 2 (AMD). 2007, c. 388, §§3-5 (AMD). 2007, c. 519, §§1-3 (AMD).

## §844. FAMILY MEDICAL LEAVE REQUIREMENT

**1. Family medical leave entitlement.** Every employee who has been employed by the same employer for 12 consecutive months is entitled to up to 10 work weeks of family medical leave in any 2 years unless employed at a permanent work site with fewer than 15 employees. The following conditions apply to family medical leave granted under this subchapter:

A. The employee must give at least 30 days' notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice; [1987, c. 861, §§19, 20 (AMD).]

B. The employer may require certification from a physician to verify the amount of leave requested by the employee, except that an employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, may submit certification from an accredited practitioner of those healing methods; and [1991, c. 277, §1 (AMD).]

C. The employer and employee may negotiate for more or less leave, but both parties must agree. [1987, c. 661, (NEW).]

[ 2007, c. 233, §2 (AMD) .]

**2. Unpaid leave.** Family medical leave granted under this subchapter may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 10 weeks, the additional weeks of leave added to attain the total of 10 weeks required may be unpaid.

[ 1991, c. 277, §1 (AMD) .]

**3. Leave taken intermittently or on reduced leave schedule.** Intermittent or reduced leave schedule family medical leave may be taken subject to the following limitations:

A. Leave for a reason described in section 843, subsection 4, paragraph B or C may not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the employer agree otherwise. Subject to subsection 1, paragraphs A and B, leave for a reason described in section 843, subsection 4, paragraph A, D or E may be taken intermittently or on a reduced leave schedule when medically necessary. The taking of leave intermittently or on a reduced leave schedule pursuant to this paragraph may not result in a reduction in the total amount of leave to which the employee is entitled under subsection 1 beyond the amount of leave actually taken. [2007, c. 233, §3 (NEW).]

B. If an employee requests intermittent leave, or leave on a reduced leave schedule, for a reason described in section 843, subsection 4, paragraph A, D or E that is foreseeable based on planned medical treatment, the employer may require such employee to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that:

(1) Has equivalent pay and benefits; and

(2) Better accommodates recurring periods of leave than the regular employment position of the employee. [2007, c. 233, §3 (NEW).]

[ 2007, c. 233, §3 (NEW) .]

#### SECTION HISTORY

1987, c. 661, (NEW). 1987, c. 861, §§19,20 (AMD). 1991, c. 277, §1 (AMD). 1997, c. 515, §1 (AMD). 2007, c. 233, §§2, 3 (AMD).

## §845. EMPLOYEE BENEFITS PROTECTION

**1. Restoration.** Any employee who exercises the right to family medical leave under this subchapter, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this subchapter.

[ 1987, c. 661, (NEW) .]

**2. Maintenance of employee benefits.** During any family medical leave taken under this subchapter, the employer shall make it possible for employees to continue their employee benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

[ 1991, c. 277, §2 (AMD) .]

#### SECTION HISTORY

1987, c. 661, (NEW). 1991, c. 277, §2 (AMD).

## §846. EFFECT ON EXISTING EMPLOYEE BENEFITS

**1. Benefit accrual.** The taking of family medical leave under this subchapter shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

[ 1987, c. 661, (NEW) .]

**2. Effect on collective bargaining.** Nothing in this subchapter may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater family medical leave rights to employees than the rights provided under this subchapter.

[ 1987, c. 661, (NEW) .]

**3. Rights not diminished.** The family medical leave rights mandated by this subchapter may not be diminished by any collective bargaining agreement or by any employee benefit plan.

[ 1987, c. 661, (NEW) .]

**4. Contract rights.** Nothing in this subchapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this subchapter.

[ 1987, c. 661, (NEW) .]

#### SECTION HISTORY



1987, c. 661, (NEW).

## §847. PROHIBITED ACTS

**1. Unlawful interference or denial of rights.** The employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this subchapter.

[ 1987, c. 661, (NEW) .]

**2. Unlawful discrimination against exercise of rights.** The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for exercising any right provided by this subchapter.

[ 1987, c. 661, (NEW) .]

**3. Unlawful discrimination against opposition.** The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this subchapter.

[ 1987, c. 661, (NEW) .]

### SECTION HISTORY

1987, c. 661, (NEW).

## §848. JUDICIAL ENFORCEMENT

**1. Injunction and damages.** A civil action may be brought in the appropriate court by an employee against any employer to enforce this subchapter. The court may enjoin any act or practice that violates or may violate this subchapter and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this subchapter. The court also may:

A. Award damages equal to the wages, salary, employment benefits or other compensation denied or lost to the employee by reason of the violation; or [ 2005, c. 228, §1 (NEW) .]

B. Order the employer to pay liquidated damages of \$100 to the employee for each day that the violation continued. [ 2005, c. 228, §1 (NEW) .]

[ 2005, c. 228, §1 (NEW) .]

**2. Additional damages.** The court also may order the employer to pay an additional amount as liquidated damages equal to the amount awarded under subsection 1 if the employee proves to the satisfaction of the court that the employer's violation was willful.

[ 2005, c. 228, §1 (NEW) .]

**3. Attorney's fees.** In any action brought pursuant to this section, in addition to any judgment awarded to the employee, the court shall award reasonable attorney's fees and other costs of the action to be paid by the employer.

[ 2005, c. 228, §1 (NEW) .]

### SECTION HISTORY

1987, c. 661, (NEW). 2005, c. 228, §1 (RPR).

**§849. REVIEW; SUNSET***(REPEALED)*

## SECTION HISTORY

1987, c. 661, (NEW). 1989, c. 738, §2 (RP).

## Subchapter 6-B: EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE

**§850. EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE**

**1. Required leave.** An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:

- A. Prepare for and attend court proceedings; [1999, c. 435, §1 (NEW).]
- B. Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or [2001, c. 685, §1 (AMD).]
- C. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. [1999, c. 435, §1 (NEW).]

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 101. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

[ 2001, c. 685, §1 (AMD) .]

**1-A. Definitions.** For purposes of this subchapter, the terms "daughter," "son," "parent" and "spouse" have the same meanings as those terms have under federal regulations adopted pursuant to 29 United States Code, Section 2654, as in effect on January 1, 2002. An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents.

[ 2001, c. 685, §2 (NEW) .]

**2. Exceptions.** Subsection 1 is not violated if:

- A. The employer would sustain undue hardship from the employee's absence; [2001, c. 685, §3 (AMD) .]
- B. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or [1999, c. 435, §1 (NEW) .]
- C. The requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer. [1999, c. 435, §1 (NEW) .]

[ 2001, c. 685, §3 (AMD) .]

**3. Penalties.** If notice of a violation of this section is given to the employer and the Department of Labor within 6 months of the occurrence, the Department of Labor may assess penalties as follows:

- A. For denial of leave in violation of this section, a fine of up to \$1,000 for each violation of this section may be assessed. A fine assessed under this paragraph must be paid to the Treasurer of State. Additionally, the employer shall pay liquidated damages to the affected individual in an amount equal to 3 times the amount of total assessed fines; and [2015, c. 343, Pt. A, §1 (NEW) .]
- B. For termination in connection with an individual exercising a right granted by this section, the affected individual may elect to receive:

- (1) Liquidated damages pursuant to paragraph A; or
- (2) Reemployment with the employer with back wages. [2015, c. 343, Pt. A, §1 (NEW).]

[ 2015, c. 343, Pt. A, §1 (AMD) .]

**4. Application.** This subchapter applies to all public and private employers, including the State and its political subdivisions.

[ 1999, c. 659, §2 (NEW) .]

#### SECTION HISTORY

1999, c. 435, §1 (NEW). 1999, c. 659, §2 (AMD). 2001, c. 685, §§1-3 (AMD). 2015, c. 343, Pt. A, §1 (AMD).

## Subchapter 7: STRIKEBREAKERS

### §851. POLICY

It is declared to be the policy of the State, in the exercise of its police power for the protection of the public safety and for the maintenance of peace and good order and for the promotion of the state's trade, commerce and manufacturing, to assure all persons involved in labor strikes or lockouts, freedom of speech and freedom from bodily harm and to prohibit the occasion of violence and disorder and in furtherance of these policies, to prohibit the recruitment and furnishing of professional strikebreakers to replace the employees involved in labor strikes or lockouts. [1965, c. 189, (NEW).]

#### SECTION HISTORY

1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

### §852. EMPLOYMENT OF REPLACEMENTS PROHIBITED

No person, partnership, union, agency, firm or corporation or officer, employee or agent thereof shall recruit, procure, supply or refer any person for employment who customarily and repeatedly offers himself for employment in place of any employee involved in a labor, strike or lockout in which such person, partnership, union, agency, firm or corporation is not directly involved. [1965, c. 189, (NEW).]

#### SECTION HISTORY

1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

### §853. ARRANGEMENTS

No person, partnership, union, firm or corporation involved in a labor, strike or lockout shall, directly or indirectly, employ in the place of an employee involved in such strike or lockout any person who customarily and repeatedly offers himself for employment in the place of employees involved in a labor strike or lockout, or contract or arrange with any other person, partnership, union, agency, firm or corporation to recruit, procure, supply or refer persons for employment who customarily and repeatedly offers themselves for employment in place of employees involved in such labor, strike or lockout. [1965, c. 189, (NEW).]

#### SECTION HISTORY

1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

**§854. OFFERS**

No person who customarily and repeatedly offers himself for employment in place of employees involved in a labor, strike or lockout shall take or offer to take the place of employment of any employee involved in a labor, strike or lockout. [1965, c. 189, (NEW).]

## SECTION HISTORY

1965, c. 189, (NEW). 1965, c. 394, (NEW). 1965, c. 513, §46 (RP).

**§855. EVIDENCE**

It shall be prima facie evidence that a person customarily and repeatedly offers himself for employment in place of employees involved in a labor, strike or lockout, if such person shall have 2 times before offered to take the place of employment of persons involved in labor, strikes or lockouts. [1965, c. 189, (NEW).]

## SECTION HISTORY

1965, c. 189, (NEW).

**§856. PENALTY**

Any person, partnership, union, agency, firm or corporation or any officer, employee or agent thereof, who or which shall willfully and knowingly violate any provision of this subchapter, for each violation, shall be punished by a fine of not more than \$300 for any such offense, or by imprisonment for not more than 180 days, or by both. [1965, c. 189, (NEW).]

## SECTION HISTORY

1965, c. 189, (NEW).

## Subchapter 8: FAIR EMPLOYMENT PRACTICE ACT

**§861. RIGHT TO FREEDOM FROM DISCRIMINATION IN EMPLOYMENT**

*(REPEALED)*

## SECTION HISTORY

1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

**§862. UNLAWFUL EMPLOYMENT PRACTICES**

*(REPEALED)*

## SECTION HISTORY

1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

**§863. PROCEDURE**

*(REPEALED)*

## SECTION HISTORY

1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

**§864. PENALTY**

*(REPEALED)*

## SECTION HISTORY

1965, c. 513, §47 (NEW). 1971, c. 501, §3 (RP).

## Subchapter 9: FOREIGN LABORERS; LOGGING

### §871. ILLEGAL EMPLOYMENT OF ALIENS

**1. Prohibition.** No employer shall knowingly employ any alien in this State who has not been lawfully admitted to the United States for permanent residence, unless the employment of the alien is authorized by the United States Immigration and Naturalization Service.

[ 1977, c. 116, (NEW) . ]

**1-A. Violation.** Upon conviction of a violation of subsection 1, an employer may not employ aliens granted permission to work temporarily under 8 United States Code, Section 1101(a)(15)(H)(ii)(a) in this State for 2 years.

[ 2009, c. 637, §1 (NEW) . ]

**2. Penalty.** Violation of subsection 1 or 1-A is a Class E crime. It is an affirmative defense to prosecution under subsection 1 that the employer, before employing or referring a person for employment, made a good faith inquiry as to whether that person was a United States citizen or an alien, and if the inquiry reasonably indicated that the person was an alien, the employer made a further good faith inquiry that reasonably indicated that the alien was lawfully admitted to the United States for permanent residence or that the United States Immigration and Naturalization Service had authorized the alien to accept employment in the United States.

A. A good faith inquiry under this subsection must be in writing. An employment application form that requests citizenship data, or an alien registration number if the applicant is an alien, meets the requirement of a good faith inquiry in writing. [ 2009, c. 637, §2 (AMD) . ]

B. A social security account number card is not considered evidence of the United States Immigration and Naturalization Service's authorization for an alien to accept employment in the United States. [ 2009, c. 637, §2 (AMD) . ]

[ 2009, c. 637, §2 (AMD) . ]

**3. Regulations.** The Commissioner of Labor shall promulgate regulations specifying the procedure to be followed by each employer to ensure compliance with subsection 1. These regulations shall include provisions for reporting violations of subsection 1 to the Attorney General and the United States Immigration and Naturalization Service.

[ 1981, c. 168, §25 (AMD) . ]

#### SECTION HISTORY

1977, c. 116, (NEW). 1981, c. 168, §25 (AMD). 2009, c. 637, §§1, 2 (AMD).

### §872. PROOF OF EQUIPMENT OWNERSHIP FOR EMPLOYERS USING FOREIGN LABORERS

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

A. "Bond worker" means a person who has been described under 8 United States Code, Section 1101(a)(15)(H)(ii) and granted permission to work temporarily in the United States. [ 2009, c. 637, §3 (NEW) . ]

B. "Logging equipment" means equipment used directly in the cutting and transporting of logs to the roadside, the production of wood chips in the field, the construction of logging roads and the transporting of logs or other wood products off-site or on roadways. [2009, c. 637, §3 (NEW).]

[2009, c. 637, §3 (RPR) .]

**2. Proof of ownership required.** An employer in this State who applies for a bond worker in a logging occupation shall provide proof of the employer's ownership of any logging equipment used by that worker in the course of employment, including proof of ownership of at least one piece of logging equipment for every 2 bond workers employed by the employer in a logging occupation. The employer shall provide proof of ownership as required by this subsection on a form provided by the Commissioner of Labor. The proof required by this subsection must include, but not be limited to, a receipt for payment for the equipment purchased in a bona fide transaction and documentation of payment of any tax assessed on the equipment pursuant to Title 36, chapter 105 for the year in which the bond worker is employed by the employer. Proof of ownership must be carried in the equipment and, upon request by the department or its designee, the operator of equipment subject to this section shall provide proof of ownership. If proof of ownership is not provided within 30 calendar days of such a request, a fine of not less than \$5,000 and not more than \$25,000 may be assessed against that employer and collected by the Commissioner of Labor. Notwithstanding section 3, information regarding proof of ownership is not confidential and may be disclosed to the public. If the equipment is leased by the employer, the employer shall provide the name, address and telephone number of the leasing company and its affiliates and subsidiaries; the names, addresses and telephone numbers of the leasing company's owner or owners, its agent and members of its board of directors; and a copy of the lease document. A lease is sufficient to meet the ownership requirement of this section only if it is a bona fide lease and:

A. The lease consists of an arm's length transaction between unrelated entities or is a transfer of equipment between affiliated companies; [2009, c. 637, §4 (NEW).]

B. The lease document contains a specific duration and lease amount; [2009, c. 637, §4 (NEW) .]

C. The lessor is not an entity owned or controlled by a bond worker or a bond worker's spouse, parent, child, sibling, aunt, uncle or cousin or person related to a bond worker in the same manner by marriage, or by any combination of a bond worker and the bond worker's family members described in this paragraph; [2011, c. 620, §1 (AMD).]

D. The lessor is a leasing business as evidenced by a lease of logging equipment to at least 3 different, unrelated entities within each of the past 3 years; and [2011, c. 620, §1 (AMD).]

E. The lessor provides proof of payment of personal property tax assessed on the leased equipment. [2011, c. 620, §1 (NEW).]

[2011, c. 620, §1 (AMD) .]

**2-A. Notification.** An employer filing for certification from the United States Department of Labor to hire a bond worker to operate logging equipment shall at the time of filing notify the Maine Department of Labor and provide, for the year in which the bond worker is employed, the number of bond workers requested; a list of each piece of logging equipment, including serial number, a bond worker will operate; receipts for payment for the logging equipment purchased in bona fide transactions; and documentation of payment of any tax assessed on the logging equipment pursuant to Title 36, chapter 105. An employer shall notify the Maine Department of Labor within 30 calendar days of the date on which a bond worker begins work in the State and shall specify the name of the bond worker and the anticipated locations where the bond worker will be conducting work and shall provide a copy of the United States Customs and Border

Protection's entry form for that worker. If the notification is not provided within 30 calendar days of the date on which a bond worker begins work, a fine of not less than \$5,000 and not more than \$25,000 must be assessed against that employer and collected by the Commissioner of Labor.

[ 2013, c. 1, §42 (COR) .]

**2-B. Violation.** Upon an employer's conviction of a violation of subsection 2, the Commissioner of Labor may prohibit the employer from employing bond workers in this State for 2 years.

[ 2011, c. 620, §1 (AMD) .]

**3. Equipment covered by federal prevailing wage exempt.** This section does not apply to equipment for which the United States Department of Labor, Division of Foreign Labor Certification has established a prevailing wage under the federal Service Contract Act of 1965 for persons using that equipment.

[ 2005, c. 461, §1 (NEW) .]

**4. Enforcement; rules.** The Commissioner of Labor may adopt rules to implement and enforce the provisions of this section, including rules regarding the receipt of documentation and the investigation and prosecution of employer proof of ownership of logging equipment. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[ 2011, c. 620, §1 (AMD) .]

**5. Penalty; enforcement.**

[ 2011, c. 620, §1 (RP) .]

**6. Assistance.** The Department of Agriculture, Conservation and Forestry and the Department of Administrative and Financial Services, Bureau of Revenue Services shall provide interagency support and field information to assist the Department of Labor in enforcing this section.

[ 2009, c. 637, §9 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

SECTION HISTORY

2005, c. 461, §1 (NEW). 2009, c. 201, §11 (AMD). 2009, c. 381, §§1-3 (AMD). 2009, c. 637, §§3-9 (AMD). 2011, c. 620, §1 (AMD). 2011, c. 657, Pt. W, §5 (REV). RR 2013, c. 1, §42 (COR).

## §873. RECRUITMENT OF QUALIFIED WORKERS FOR LOGGING OCCUPATIONS

**1. Definitions.**

[ 2011, c. 620, §2 (RP) .]

**2. Employer requirements; clearinghouse and reporting.**

[ 2011, c. 620, §2 (RP) .]

**3. Clearinghouse requirements.**

[ 2011, c. 620, §2 (RP) .]

**4. Department role.**

[ 2011, c. 620, §2 (RP) .]

**4-A. Department role.** The Maine Department of Labor shall:

A. In addition to enforcing federal requirements imposed by 20 Code of Federal Regulations, Part 655, Subpart B, through the Bureau of Employment Services assist members of the forest products industry to ensure logging employment opportunities for Maine workers, match qualified applicants with logging employers and provide such other assistance to logging employers as may be appropriate; [ 2011, c. 620, §2 (NEW) .]

B. With input from representatives of the forest industry, provide educational and training opportunities in order for workers who express an interest in the logging industry to obtain necessary skills; and [ 2011, c. 620, §2 (NEW) .]

C. In conjunction with the Department of Education and representatives of the forest and logging industries, develop an entry-level logger training program with the goal of providing new qualified workers to the logging industry. The training program must include classroom and on-the-job training and must be provided through existing community colleges, technical schools or the University of Maine System whenever practicable. [ 2011, c. 620, §2 (NEW) .]

[ 2011, c. 620, §2 (NEW) .]

**5. Job offer; skills test.** Upon referral of an applicant by the Maine Department of Labor, Bureau of Employment Services, a logging employer may offer employment to that applicant based on the following factors.

A. An employment offer may be conditioned on a skills test, but only if the employer requires the skills test of all new applicants in that job classification. [ 2009, c. 637, §10 (NEW) .]

B. If a skills test under paragraph A is required, it must be conducted at the area of intended employment, a central location designated by the logging employer, the employer's place of employment or another location within reasonable distance from the applicant's residence. [ 2011, c. 620, §2 (AMD) .]

C. [ 2011, c. 620, §2 (RP) .]

D. An applicant who is rejected from employment due to failing a skills test under paragraph A must be given a written statement of the reason for failure of the skills test. The employer shall provide a copy of the written statement to the Maine Department of Labor. [ 2011, c. 620, §2 (AMD) .]

[ 2011, c. 620, §2 (AMD) .]

**6. Contracts with landowners.** A contract for harvesting wood between a logging employer and a landowner must contain a provision that allows the landowner to terminate the contract if the logging employer violates this section or the applicable federal regulations regarding employment of bond workers.

[ 2009, c. 637, §10 (NEW) .]

**7. Penalties.**

[ 2011, c. 620, §2 (RP) .]

**8. Landowner contracts with employers.**

[ 2009, c. 2, §§73, 74 (COR); 2011, c. 620, §2 (RP) .]

## SECTION HISTORY



RR 2009, c. 2, §§73, 74 (COR). 2009, c. 637, §10 (NEW). 2011, c. 620, §2 (AMD).

## §874. FUND ESTABLISHED

*(REPEALED)*

SECTION HISTORY

2009, c. 637, §11 (NEW). 2011, c. 620, §3 (RP).

### Subchapter 10: EMPLOYMENT DURING EXTREME PUBLIC HEALTH EMERGENCY

## §875. EMPLOYMENT LEAVES FOR CAREGIVERS AND PERSONS AFFECTED BY EXTREME PUBLIC HEALTH EMERGENCY

*(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)*

**1. Required leave.** An employer shall grant reasonable and necessary leave from work, with or without pay, for an employee for the following reasons related to an extreme public health emergency:

A. The employee is unable to work because the employee is under individual public health investigation, supervision or treatment related to an extreme public health emergency; [2005, c. 383, §23 (NEW).]

B. The employee is unable to work because the employee is acting in accordance with an extreme public health emergency order; [2005, c. 383, §23 (NEW).]

C. The employee is unable to work because the employee is in quarantine or isolation or is subject to a control measure in accordance with extreme public health emergency information or directions issued to the public, a part of the public or one or more individuals; [2005, c. 383, §23 (NEW).]

D. The employee is unable to work because of a direction given by the employee's employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the extreme public health emergency threat; or [2005, c. 383, §23 (NEW).]

E. (TEXT EFFECTIVE UNTIL 7/1/19) The employee is unable to work because the employee is needed to provide care or assistance to one or more of the following individuals: the employee's spouse or domestic partner as defined under Title 18-A, section 1-201, subsection (10-A); the employee's parent; or the employee's child or child for whom the employee is the legal guardian. [2005, c. 383, §23 (NEW).]

E. (TEXT EFFECTIVE 7/1/19) The employee is unable to work because the employee is needed to provide care or assistance to one or more of the following individuals: the employee's spouse or domestic partner as defined under Title 18-C, section 1-201, subsection 14; the employee's parent; or the employee's child or child for whom the employee is the legal guardian. [2017, c. 402, Pt. C, §80 (AMD); 2017, c. 402, Pt. F, §1 (AFF).]

For purposes of this subsection, "extreme public health emergency" has the same meaning as in Title 22, section 801, subsection 4-A.

[ 2005, c. 383, §23 (NEW); 2017, c. 402, Pt. C, §80 (AMD); 2017, c. 402, Pt. F, §1 (AFF) .]

**2. Exceptions.** An employer who fails to grant a leave under subsection 1 is not in violation of subsection 1 if:

A. The employer would sustain undue hardship from the employee's absence, including the need to downsize for legitimate reasons related to the impact of the extreme public health emergency on the operation of the business; [2005, c. 383, §23 (NEW).]

B. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or [2005, c. 383, §23 (NEW).]

C. The employee to be granted leave under subsection 1, paragraph E is a state, county or municipal employee whose responsibilities are related to services necessary for protecting the public's health and safety in an extreme public health emergency if the employer requires the employee to work, unless there are no other options or persons able to provide care or assist one or more of the individuals listed under subsection 1, paragraph E. [2005, c. 383, §23 (NEW).]

[ 2005, c. 383, §23 (NEW) .]

**3. Duration of leave.** Leave granted under subsection 1 must be for the duration of an extreme public health emergency and for a reasonable and necessary time period following the termination of the extreme public health emergency for diseases or conditions that are contracted or exposures that occurred during the extreme public health emergency.

[ 2005, c. 383, §23 (NEW) .]

**4. Documentation.** Upon the employee's return to work, the employer has the right to request and receive written documentation from a physician or public health official supporting the employee's leave.

[ 2005, c. 383, §23 (NEW) .]

**5. Benefits retained.** The taking of leave under this subchapter may not result in the loss of any employee benefits accrued before the date on which the leave commenced and does not affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees. For any leave that extends beyond the time described in subsection 3, the employer shall allow an employee to continue the employee's benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration or any portion of this extended leave.

[ 2005, c. 383, §23 (NEW) .]

**6. Civil penalties.** The Department of Labor may assess civil penalties of up to \$200 for each violation of this section if notice of the violation is given to the employer and the department within 6 months of the occurrence.

[ 2005, c. 383, §23 (NEW) .]

**7. Application.** This subchapter applies to all public and private employers, including the State and its political subdivisions.

[ 2005, c. 383, §23 (NEW) .]

#### SECTION HISTORY

2005, c. 383, §23 (NEW). 2017, c. 402, Pt. C, §80 (AMD). 2017, c. 402, Pt. F, §1 (AFF).

## Subchapter 11: VETERAN PREFERENCE

**§876. SHORT TITLE**

This subchapter may be known and cited as "the Voluntary Veteran Preference Employment Policy Act." [2013, c. 576, §4 (NEW).]

## SECTION HISTORY

2013, c. 576, §4 (NEW).

**§877. DEFINITIONS**

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 576, §4 (NEW).]

**1. DD Form 214.** "DD Form 214" means an Armed Forces Report of Transfer or Discharge or its predecessor or successor forms.

[ 2013, c. 576, §4 (NEW) .]

**2. Private employer.** "Private employer" means a sole proprietor, corporation, partnership, limited liability company or other entity with one or more employees. "Private employer" does not include the State, a county, a municipality, a township, a school district or a public institution of higher education.

[ 2013, c. 576, §4 (NEW) .]

**3. Veteran.** "Veteran" means a person who has served on active duty in the United States Armed Forces, or has served in the national guard of any state or the Reserves of the United States Armed Forces, and was discharged or released with an honorable discharge.

[ 2013, c. 576, §4 (NEW) .]

**4. Veteran preference employment policy.** "Veteran preference employment policy" means a private employer's preference for hiring, promoting or retaining a veteran over another qualified applicant or employee.

[ 2013, c. 576, §4 (NEW) .]

## SECTION HISTORY

2013, c. 576, §4 (NEW).

**§878. VETERAN PREFERENCE EMPLOYMENT POLICY**

A private employer may have a veteran preference employment policy. The policy must be in writing and must be applied uniformly to employment decisions regarding hiring, promotion or retention during a reduction in workforce. A private employer may require that a veteran submit a DD Form 214 to be eligible for the preference. [2013, c. 576, §4 (NEW).]

## SECTION HISTORY

2013, c. 576, §4 (NEW).

## Subchapter 12: HUMAN TRAFFICKING AWARENESS SIGNS

## §879. HUMAN TRAFFICKING AWARENESS SIGNS

**1. Department provides public awareness signs.** The Department of Labor shall provide the Department of Transportation, the Maine Turnpike Authority and each employer in the State that is a business or employer listed in subsection 3 with public awareness signs that contain a telephone number for a national human trafficking hotline.

[ 2017, c. 416, §4 (NEW) .]

**2. Departments posting public awareness signs.** The Department of Transportation and the Maine Turnpike Authority shall work cooperatively and shall post and keep posted in a conspicuous manner in every transportation center and every highway rest area and welcome center a public awareness sign provided by the Department of Labor pursuant to subsection 1.

[ 2017, c. 416, §4 (NEW) .]

**3. Businesses and employers posting public awareness signs.** The following businesses and employers shall post and keep posted in a conspicuous manner that is clearly visible to the public and to employees within their businesses and places of employment public awareness signs provided by the Department of Labor pursuant to subsection 1:

- A. A Department of Labor career center; [ 2017, c. 416, §4 (NEW) .]
- B. An office that provides services under the Governor's Jobs Initiative Program under section 2031; [ 2017, c. 416, §4 (NEW) .]
- C. A hospital or facility providing emergency medical services that is licensed under Title 22, section 1811; [ 2017, c. 416, §4 (NEW) .]
- D. An eating and lodging place licensed under Title 22, chapter 562; [ 2017, c. 416, §4 (NEW) .]
- E. An adult entertainment nightclub or bar, adult spa, establishment featuring strippers or erotic dancers or other sexually oriented business; [ 2017, c. 416, §4 (NEW) .]
- F. A money transmitter licensed under Title 32, chapter 80, subchapter 1; and [ 2017, c. 416, §4 (NEW) .]
- G. A check cashing business or foreign currency exchange business registered under Title 32, chapter 80, subchapter 2. [ 2017, c. 416, §4 (NEW) .]

[ 2017, c. 416, §4 (NEW) .]

**4. Penalty.** A person who fails to post a sign as required by subsection 3 commits a civil violation for which a fine of \$300 per violation must be adjudged.

[ 2017, c. 416, §4 (NEW) .]

### SECTION HISTORY

2017, c. 416, §4 (NEW) .

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