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SERVING THE PUBLIC AND DELIVERING ESSENTIAL SERVICES TO STATE GOVERNMENT

March 23, 2023

Re: L.D. 827 – *An Act to Allow Employees to Request Flexible Work Schedules*

Senator Tipping, Representative Roeder, and esteemed members of the Joint Standing Committee on Labor and Housing:

This written testimony is submitted by Breena D. Bissell, Director of the State of Maine Bureau of Human Resources, on behalf of the Administration, which is neither for nor against L.D. 827, yet seeks to provide information to ensure a thorough understanding of the options for flexible schedules and telework already in place in Maine state government.

First a clarification: though L.D. 827 indicates its intent is to allow an employee to request a flexible work schedule, the definition of ‘flexible work schedule’ provided in the language of the bill extends beyond flexing one’s work hours or ‘schedule’ to include allowing an employee to work completely or partially at a location other than the place of employment. Under Maine state government’s definitions, the bill proposes to allow both flexible schedules *and* flexible work locations (i.e. telework). Each is addressed separately in this document.

Flexible Work Schedules

Maine state government has had a Human Resources Memorandum on Alternate Work Schedules in place since 1983, affording employees the ability to request such alternate work schedules as staggered work hours, flexible work schedules or flex-time, and compressed work weeks. The current Human Resources Memorandum 2-08 on Alternate Work Schedules replaced the 1983 version and was updated to include that the employer’s response to a request must be

provided timely and in writing; and to provide an appeal process for reconsideration of an employee's denied request. Additionally, the bargaining agreements between the State and MSEA include language that the parties accept the HR Memorandum on flexible work schedules.

Telework

The executive branch published a Baseline Telework Policy in 2021, and some department specific policies were created from this baseline. These policies afford employees the opportunity to request to telework on a regular or occasional basis at an agreed upon telework site. Employees submit requests electronically; managers approve, modify, or decline requests; and an appeal process is provided. The bargaining agreements between the State and MSEA include the following language in the Telework article:

Telework policies will be adopted or modified in accordance with the Work Rules article of this Agreement. An employee may request to telework by submitting a request in writing, which shall include electronically, in accordance with their agency's telework policy. The requested telework may be approved, denied, or modified consistent with agency policy.

If the employee is not satisfied with the initial determination in response to their telework request, and the agency policy does not expressly provide for an appeal process, then the employee can request reconsideration by the appointing authority or designee by submitting a request for reconsideration in writing, which shall include electronically, within ten (10) workdays of receiving the initial determination. The appointing authority or designee shall review the request for reconsideration and reach their own determination, within thirty (30) workdays, on whether the request can be approved as is, approved in a modified form, or cannot be approved. The appointing authority or designee shall notify the employee in writing, which shall include electronically, as soon as their determination is reached.

The decision of the appointing authority, designee, or the agency representative charged by policy with rendering the decision on appeal, shall be final and not subject to the Grievance Procedure article of this Agreement.

Employees who telework must comply with the provisions of their agency's teleworking policy.

By policy, the State's telework requests are authorized for a year and reviewed annually, which is a less frequent review than the 6 months required by L.D. 827. Also by policy, telework authorization may be adjusted or terminated in response to a request from the employee or by the employer.

The latest data on the State's telework dashboard indicates 31% of employees (3,125 of 11,280) are teleworking an average of 2.98 days per week. Another 1,279 telework requests are pending.

Discipline

L.D. 827 as written states an employer "may not discipline an employee who requests a flexible work schedule." I believe the intent of this sentence is that an employer may not discipline an employee *for submitting* a request for a flexible work schedule and/or telework. Clarification of this language may be necessary to ensure misconduct unrelated to submitting a request for a flexible work schedule and/or telework is appropriately addressed by an employer.

Thank you for your time and consideration. I am happy to provide additional information and be available to you at the work session.