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# Selected Laws Governing Workplace Rights Title 26 MRSA, 2000

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**SELECTED LAWS GOVERNING WORKPLACE RIGHTS  
TITLE 26 MRSA**

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<b>Section 601.</b>	<b>Rest breaks</b>
<b>Section 621-A.</b>	<b>Time of payment</b>
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Maine Department of Labor  
Bureau of Labor Standards  
45 State House Station  
Augusta, Maine 04333-0045  
TEL: (207) 624-6400  
FAX: (207) 624-6449  
TTY: 1-800-794-1110

e-mail: [webmaster\\_bls@state.me.us](mailto:webmaster_bls@state.me.us)

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## **26 § 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 he 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 a mealtime. [1985, c. 212 (new).]

**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 employees allows them frequent breaks during their work day. [1985, c. 212 (new).] [1985, c. 212 (new).]

## **26 § 621-A. Timely payment of wages**

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

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

## **26 § 622. Records**

Every employer shall keep a true record showing the date and amount paid to each employee pursuant to section 621-A. Every employer shall keep a daily record of the time worked by each such employee unless the employee is paid a salary that is fixed without regard for the number of hours worked. Records required to be kept by this section must be accessible to any representative of the department at any reasonable hour. Sections 621-A to 623 do not excuse any employer subject to section 702 from keeping the records required by that section. [1999, c. 465, §3 (rpr).]

## **26 § 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. 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. [1999, c. 465, §4 (amd).]

## **26 § 626. Cessation of employment**

An employee leaving employment must be paid in full within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid, provided that any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee. Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. [1991, c. 162 (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 include 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. [1995, c. 580, §1 (new).]

## **26 § 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).]

## **26 § 629. Unfair agreements**

No person, firm or corporation shall require or permit any person as a condition of securing or retaining employment to work without monetary compensation or when having an agreement, verbal, 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, which an employee has agreed to pay, or for rent, light or water expense of a company-owned house or building. This section shall not apply to work performed in agriculture or in or about a private home.

For purposes of this subchapter, the word "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 the customers on his 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. [1981, c. 285 (new).]

An employer shall be liable to the employees for the amount returned to the employer as prohibited in this section. [1981, c. 285 (new).]

## **26 § 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).]

## **26 § 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. The cost of copying 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. [1999, c. 235, §1 (amd).]

## **26 § 663. Definitions (apply only to sections 664 & 665)**

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;
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;
  - B. Any individual employed in domestic service in or about a private home;
  - 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;
  - D. Any individual employed as a taxicab driver;
  - E. Any individual engaged in the activities of a public supported nonprofit organization or an educational nonprofit organization, neither of which is a political body or its political or administrative subdivision.
  - F. Those employees who are counsellors or junior counsellors at summer camps for boys and girls; and employees who are under the age of 19 and are regularly enrolled in an educational institution or are on vacation therefrom, and who are employees of summer camps operated by or belonging to corporations or associations existing under the provisions of Title 13, Part 2; 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;
  - H. Any individual employed as a switchboard operator in a public telephone exchange which has less than 750 stations;
  - 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 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;

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.

**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 such employee in the form of legal tender of the United States, checks on banks convertible into cash on demand, and includes the reasonable cost to the employer who furnishes such employee board or lodging;

**6. Resort establishment.**

**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;

**8. Service employee.** "Service employee", any employee engaged in an occupation in which he customarily and regularly receives more than \$20 a month in tips.

**9. Hotel.** "Hotel," a commercial establishment offering lodging to transients and often having restaurants, public rooms, shops, etc., that are available to the general public; hostelry, hotel, motor hotel, house inn, resort, tourist court, motor court, cottage colony, tavern or any other establishment relating to the innkeeping industry that refers to establishments for the lodging or entertainment of travelers.

**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.

**11. Automobile salesman.** "Automobile salesman" 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.

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

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

## 26 § 664. Minimum wage & overtime rates

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 \$4.25 per hour. If the highest federal minimum wage is increased in excess of \$4.25 per hour, the minimum wage must be increased to the same amount, effective on the same date as the increase in the federal minimum wage, but in no case may the minimum wage exceed \$5.15 per hour.

**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. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

**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 and automobile salesmen as defined in section 663; [1995, c. 305, §1 (new).]
- B. Hotels and motels; [1995, c. 305, §1 (new).]
- C. Mariners; [1995, c. 305, §1 (new).]
- D. Public employees; [1995, c. 305, §1 (new).]
- E. Restaurants and other eating establishments; and [1995, c. 305, §1 (new).]
- F. The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:
  - (1) Agricultural produce;
  - (2) Meat and fish products; and
  - (3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection. [1997, c. 136, §1 (amd).]

## **26 § 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 which shall clearly show the date of the pay period, the hours, total earnings and itemized deductions.

The director or his 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 he or his authorized representative may deem necessary or appropriate. Any and all information so received shall be considered as confidential and shall not be divulged to any other person or agency, except insofar as may be necessary for the enforcement of this subchapter. [1971, c. 620, § 13 (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).]

## **26 § 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 [1999, c. 435, §1 (new).]
- 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 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.

[1999, c. 435, §1 (new).]

**2. Exceptions.** Subsection 1 is not violated if:

- A. The employer would sustain undue hardship from the victim's absence; [1999, c. 435, §1 (new).]
- 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).]

[1999, c. 435, §1 (new).]

**3. 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 was given to the employer and the department within 6 months of the occurrence.