

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

S.P. 553 - L.D. 1575

**An Act To Update the Statutes Governing the Bureau of Labor Standards To
Promote Clarity for Workers and Employers**

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

Sec. 1. 26 MRSA §41, as amended by PL 1995, c. 560, Pt. H, §7 and affected by §17, is further amended to read:

§41. Director; personnel; salaries; expenses

The Bureau of Labor Standards within the Department of Labor, as established and referred to in this Title as the "bureau," is maintained under the direction of an officer whose title is Director of Labor Standards ~~and state factory inspector~~, referred to in this Title, except in chapter 13, as the "director." The director is appointed by the Commissioner of Labor and holds office at the pleasure of the commissioner. The director has an office at the seat of government. The director shall appoint, subject to the Civil Service Law, such employees as may be necessary.

Sec. 2. 26 MRSA §42-B, sub-§1, as enacted by PL 2001, c. 242, §1, is amended to read:

1. Bureau to furnish poster or notice. The bureau shall produce and furnish to employers posters or notices in electronic or printed form outlining state labor laws applicable to those employers and regulating:

- A. Employment of minors;
- B. Time of payment of wages;
- C. Safety and health of employees; ~~and~~
- D. Family medical leave-;
- E. Video display terminal safety as described in section 252, subsection 1; and
- F. Minimum wage and overtime provisions as described in section 664.

The posters or notices may also include such other laws as may be required or useful.

Sec. 3. 26 MRSA §42-B, sub-§3, as enacted by PL 2001, c. 242, §1, is amended to read:

3. Employer to post notice. An employer subject to the laws outlined in the ~~printed~~ poster or notice issued by the bureau pursuant to subsection 1 shall post and keep posted in a place accessible to the employer's employees a copy of the ~~printed~~ poster or notice furnished by the bureau. An employer who violates this section ~~is subject to the penalties set forth in section 704.~~ may be assessed a fine by the department payable to the State as follows:

A. For the first violation, a fine of up to \$25 per day after being notified by the bureau of the violation, not to exceed \$1,000;

B. For a 2nd violation occurring within 3 years of a prior adjudication for a violation of this section, a fine of not less than \$25 per day after being notified by the bureau of the violation or more than \$50 per day, not to exceed \$2,500; or

C. For a 3rd or subsequent violation occurring within 3 years of 2 or more prior adjudications for a violation of this section, a fine of not less than \$25 per day after being notified by the bureau of the violation or more than \$100 per day, not to exceed \$5,000.

Sec. 4. 26 MRSA §44, first ¶, as amended by PL 2015, c. 138, §2, is further amended to read:

The director ~~as state factory inspector~~, and any authorized agent of the bureau, may enter any workplace as defined in section 1, provided by the State or by a state agency, county, municipal corporation, school district or other public corporation or political subdivision when the same are open or in operation, for the purpose of gathering facts and statistics under sections 42 to 44, and may examine the methods of protecting employees from danger, the safety and health of employees and sanitary conditions in and around such buildings and places, and may make a record of such inspection. Upon petition of the director, a Superior Court in the county in which any refusal to permit entry or fact gathering or inspection was alleged to have occurred may order appropriate injunctive relief against any person in charge of the workplace who refuses entry to the director or authorized agent of the bureau.

Sec. 5. 26 MRSA §46, 6th ¶, as amended by PL 1983, c. 296, is further amended to read:

Any employer who willfully or repeatedly violates any standard, rule or order ~~promulgated~~ adopted pursuant to section 565, ~~and if~~ that violation is specifically determined to be a serious violation, ~~shall~~ must, upon ~~conviction~~ determination, be punished by a fine of not more than \$10,000 ~~or by imprisonment for not more than 6 months, or by both,~~ except that if the ~~conviction~~ determination is for a violation committed after a first ~~conviction~~ determination of violation by such person, punishment ~~shall~~ must be by a fine of not more than \$20,000, ~~or by imprisonment for not more than one year, or by both.~~

Sec. 6. 26 MRSA §597, as enacted by PL 1991, c. 366, is amended to read:

§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.

Sec. 7. 26 MRSA §601, as enacted by PL 1985, c. 212, is amended to read:

§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~~ 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 a unpaid mealtime, but only if the employee is completely relieved of duty.

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

B. The nature of the work done by the ~~employees~~ employee allows ~~them~~ the employee frequent paid breaks of a shorter duration during ~~their~~ the employee's work day.

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

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 ~~on demand after that time~~ as if the employee was not absent.

Sec. 9. 26 MRSA §621-A, sub-§2, as enacted by PL 1999, c. 465, §2, is amended to read:

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~~ The interval may not be increased without written notice to the employee at least 30 days in advance of the increase.

Sec. 10. 26 MRSA §622, as repealed and replaced by PL 1999, c. 465, §3, is amended to read:

§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~~ 774 from keeping the records required by that section.

Sec. 11. 26 MRSA §626, first ¶, as amended by PL 1991, c. 162, is further amended to read:

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~~ 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 ~~include or the employer's established practice includes~~ include or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned.

Sec. 12. 26 MRSA §626, last ¶, as enacted by PL 1995, c. 580, §1, is amended to read:

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 or the employer's established practice includes~~ include 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.

Sec. 13. 26 MRSA §663, sub-§3, ¶H is repealed.

Sec. 14. 26 MRSA §663, sub-§9, as enacted by PL 1973, c. 504, is repealed.

Sec. 15. 26 MRSA §664, sub-§3, ¶F, as amended by PL 2011, c. 681, §1, is further amended to read:

F. The canning; processing; preserving; freezing; drying; marketing; storing; packing for shipment; or ~~distribution~~ 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

Sec. 16. 26 MRSA §668, as amended by PL 1971, c. 620, §13, is repealed.

Sec. 17. 26 MRSA c. 7, sub-c. 4, art. 1, as amended, is repealed.

Sec. 18. 26 MRSA §774, sub-§7 is enacted to read:

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.

Sec. 19. 26 MRSA §2105, first ¶, as enacted by PL 1987, c. 356, is amended to read:

The Bureau of Labor Standards shall adopt an inspection procedure for self-contained breathing apparatus. The procedure must include at least the following, as specified in the ~~American National Standards Institute Z88.5~~ manufacturer's operation manual:

Sec. 20. Retroactivity. Notwithstanding the Maine Revised Statutes, Title 1, section 302, the provision of this Act that amends Title 26, section 664, subsection 3, paragraph F applies retroactively to September 29, 1995 but does not apply to cases pending on March 12, 2017.