

MAINE STATE LEGISLATURE

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10-
R. of S.

L.D. 1947

(Filing No. S-524)

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STATE OF MAINE
SENATE
114TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT " A " to S.P. 743, L.D. 1947, Bill, "An Act Related to Overcompensation"

Amend the bill by striking out all of that part designated "§635." and inserting in its place the following:

§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.

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.

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.

3. Violation. If an employer with over 25 employees violates this section, that employer forfeits any claim to the overcompensation.

COMMITTEE AMENDMENT " A " to S.P. 743, L.D. 1947

2 If an employer with 25 or fewer employees knows of the limitation
 4 established by subsection 2 and violates this section, that
 6 employer forfeits any claim to the overcompensation. Employers
 8 of 25 or fewer employees who do not know of the limitation
 10 established by subsection 2 and who violate this section shall
 12 return all money withheld in excess of that permitted under
 14 subsection 2 within 3 days of written or oral demand by the
 16 employee, or forfeit any claim to the overcompensation.

18 4. Application. An employer is not subject to this section
 20 if the employee knowingly accepted the overcompensation. The
 22 employer has the burden of proving that the employee knowingly
 24 accepted overcompensation. If the overcompensation amounted to
 26 less than 15% of the correct net amount of the employee's
 28 compensation, the employee is rebuttably presumed to have been
 30 unaware of the overcompensation. This presumption applies only
 32 to this section.'

STATEMENT OF FACT

34 This amendment establishes the procedure by which an
 36 employer may reclaim money when an employee has been
 38 overcompensated through an error by the employer. It prohibits
 40 an employer from withholding more than 10% of any subsequent net
 pay due to an employee who has unknowingly accepted any
 overcompensation from the employer. If an employer with over 25
 employees violates this requirement, the employer forfeits any
 right to recover the overcompensation from the employee. If the
 employer has 25 or fewer employees, the employer must knowingly
 violate the restriction on withholding to forfeit the employer's
 right to recover the overcompensation. If such an employer
 unknowingly violates the restriction, the employer must return to
 the employee any amount withheld over 10% within 3 days of the
 employee's request for that money. If the employer fails to do
 so, the employer forfeits any right to recover the
 overcompensation. This restriction does not apply if the
 employee knew that the overcompensation was in error but still
 retained the money. The employer has the burden of proving that
 the employee knew of the overcompensation.

Reported by Senator Esty for the Committee on Labor.
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 (2/23/90) (Filing No. S-524)