

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 369

S.P. 110

In Senate, January 24, 2019

**An Act To Support Healthy Workplaces and Healthy Families by
Providing Earned Paid Sick Leave to Certain Employees**

Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MILLETT of Cumberland.
Cosponsored by Representative FECTION of Biddeford and
Senators: BELLOWS of Kennebec, President JACKSON of Aroostook, SANBORN, H. of
Cumberland, SANBORN, L. of Cumberland, VITELLI of Sagadahoc, Representatives:
CUDDY of Winterport, DOORE of Augusta, MOONEN of Portland.

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

2 **Sec. 1. 26 MRSA §626, first ¶**, as amended by PL 2017, c. 219, §11, is further
3 amended to read:

4 An employee leaving employment must be paid in full no later than the employee's
5 next established payday. Any overcompensation may be withheld if authorized under
6 section 635 and any loan or advance against future earnings or wages may be deducted if
7 evidenced by a statement in writing signed by the employee. Whenever the terms of
8 employment or the employer's established practice includes provisions for paid vacations,
9 vacation pay on cessation of employment has the same status as wages earned. Sick
10 leave accrued pursuant to section 637 or section 638 does not have the same status as
11 wages earned.

12 **Sec. 2. 26 MRSA §636, sub-§2**, as enacted by PL 2005, c. 455, §1, is amended to
13 read:

14 **2. Use of paid leave and paid sick leave.** If an employer, under the terms of a
15 collective bargaining agreement or employment policy or as required by section 637,
16 provides paid leave, then the employer shall allow an employee to use the paid leave for
17 the care of an immediate family member who is ill as provided in this section.

18 **Sec. 3. 26 MRSA §§637 and 638** are enacted to read:

19 **§637. Earned paid sick leave**

20 An employer that employs more than 5 employees shall provide to each employee
21 earned paid sick leave as provided by this section.

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

24 A. "Department" means the Department of Labor.

25 B. "Family member" means:

26 (1) The employee's, and the employee's spouse's or domestic partner's, biological
27 child, adopted child, foster child, stepchild or legal ward, a child to whom the
28 employee or the employee's spouse or domestic partner stands in loco parentis or
29 an individual to whom the employee or the employee's spouse or domestic
30 partner stood in loco parentis when the individual was a minor;

31 (2) The employee's, and the employee's spouse's or domestic partner's, biological
32 parent, foster parent, stepparent, adoptive parent or legal guardian or a person
33 who stood in loco parentis when the employee was a minor child;

34 (3) A person to whom the employee is legally married under the laws of any
35 state or a domestic partner of the employee;

36 (4) The employee's, and the employee's spouse's or domestic partner's, biological
37 grandparent, foster grandparent, adoptive grandparent or stepgrandparent;

1 (5) The employee's, and the employee's spouse's or domestic partner's, biological
2 sibling, foster sibling, adoptive sibling or stepsibling; and

3 (6) Any other individual related by blood or affinity whose close association
4 with the employee is the equivalent of a family relationship.

5 **2. Accrual.** An employee entitled to earned paid sick leave under this section
6 accrues the leave at a rate of no less than one hour of earned paid sick leave for every 30
7 hours worked. Accrual begins at the start of employment, but the employer is not
8 required to permit use of the leave before an employee has been employed for 90 days.
9 The employer shall permit an employee to carry forward at least 40 hours of accrued
10 earned paid sick leave to the following year, but an employer is not required to allow the
11 use of more than 40 hours of earned paid sick leave in one year. An employer may
12 provide all earned paid sick leave the employee is expected to earn in a year at the
13 beginning of the year.

14 **3. Use of accrued earned paid sick leave.** Accrued earned paid sick leave may be
15 used for the following:

16 A. An employee's:

17 (1) Mental or physical illness, injury or health condition;

18 (2) Medical diagnosis, care or treatment of the employee's mental or physical
19 illness, injury or health condition; or

20 (3) Preventative medical care;

21 B. A family member's:

22 (1) Mental or physical illness, injury or health condition;

23 (2) Medical diagnosis, care or treatment of the family member's mental or
24 physical illness, injury or health condition; or

25 (3) Preventative medical care; and

26 C. If an employee or a family member is a victim of domestic violence or sexual
27 assault:

28 (1) Medical care or psychological or other counseling for physical or
29 psychological injury or disability;

30 (2) Obtaining services from a victim services organization;

31 (3) Relocating due to domestic violence or sexual assault;

32 (4) Obtaining legal services or participating in any civil or criminal proceedings
33 related to or resulting from the domestic violence or sexual assault; or

34 (5) Meetings at a child's school or place of care related to the child's health or
35 disability or to the effects of domestic violence or sexual assault on the child.

36 Earned paid sick leave may be used in the smallest increment that the employer's payroll
37 system uses to account for absences or use of other time. An employee is not required to
38 secure a substitute when that employee uses earned paid sick leave.

1 **4. Notice requirements.** Accrued earned paid sick leave must be provided upon the
2 request of an employee, pursuant to the following requirements.

3 A. The request may be made orally, in writing, by electronic means or by any other
4 means acceptable to the employer. When possible, the request must include the
5 expected duration of the absence.

6 B. When the use of earned paid sick leave is foreseeable, the employee shall make a
7 good faith effort to provide notice of the need for the earned paid sick leave to the
8 employer in advance of the use of the earned paid sick leave and shall make a
9 reasonable effort to schedule the use of earned paid sick leave in a manner that does
10 not unduly disrupt the operations of the employer.

11 C. An employer that requires notice of the need to use earned paid sick leave when
12 the need is not foreseeable shall provide a written policy that contains procedures for
13 the employee to provide notice. An employer that has not provided to an employee a
14 copy of its written policy for providing notice under this paragraph may not deny
15 earned paid sick leave to the employee based on noncompliance with the policy.

16 **5. Combined paid leave.** An employer may meet the requirements of this section
17 by providing paid leave that may be used by the employee interchangeably as either sick
18 leave or vacation time, as long as this paid leave is in accordance with the accrual of
19 earned paid sick leave in subsection 2.

20 **6. Supporting documentation.** For use of accrued earned paid sick leave for more
21 than 3 consecutive days, an employer may require reasonable documentation from the
22 employee in order to verify that the accrued earned paid sick leave has been used for a
23 purpose described in subsection 3.

24 A. Upon the employer's request, the employee must provide the documentation to the
25 employer in a timely manner. The employer may not delay the employee's use of
26 accrued earned paid sick leave on the basis that the employer has not yet received
27 documentation.

28 B. For use of accrued earned paid sick leave pursuant to subsection 3, paragraph A
29 or B, reasonable documentation for purposes of this subsection includes, but is not
30 limited to, a signed written statement from the employee or documentation signed by
31 a health care professional indicating that the employee's or family member's use of
32 accrued earned paid sick leave was based on one or more of the circumstances
33 described in subsection 3, paragraph A or B. An employer may not require that the
34 documentation explain the nature of the illness.

35 C. For use of earned paid sick leave pursuant to subsection 3, paragraph C,
36 reasonable documentation is:

37 (1) A police report indicating that the employee or family member was a victim
38 of domestic violence or sexual assault;

39 (2) A signed statement from a victim witness advocate affirming that the
40 employee or family member is receiving services from a victim services
41 organization;

1 (3) A court document indicating that the employee or family member is involved
2 in legal action related to domestic violence or sexual assault; or

3 (4) A signed written statement from the employee.

4 An employer may not require that the documentation explain the details of the
5 violence or assault.

6 D. If an employer chooses to require documentation from the employee in order to
7 verify that the accrued earned paid sick leave has been used for a permissible
8 purpose, and the employer does not offer health insurance, the employer is
9 responsible for paying all out-of-pocket expenses the employee incurs in obtaining
10 the documentation. If the employer does offer health insurance, the employer is
11 responsible for paying any costs charged to the employee by the health care
12 professional for providing the specific documentation required by the employer.

13 E. An employer may not require disclosure of details relating to domestic violence or
14 sexual assault or the details of an employee's or a family member's medical condition
15 as a condition of providing earned paid sick leave under this section. If an employer
16 possesses health information or information pertaining to domestic violence or sexual
17 assault about an employee or a family member, the employer shall treat that
18 information as confidential and may not disclose that information except to the
19 affected employee or as approved by the affected employee.

20 **7. Notice of policies; posting.** The following provisions govern notice and posting
21 requirements.

22 A. An employer shall give employees written notice of the following at the
23 commencement of employment or by January 1, 2021, whichever is later:

24 (1) Employees are entitled to earned paid sick leave;

25 (2) The accrual and amount of earned paid sick leave provided under this
26 section;

27 (3) The terms of use for earned paid sick leave guaranteed under this section;

28 (4) That retaliatory personnel action against employees who request or use
29 earned paid sick leave is prohibited by law;

30 (5) That each employee has the right to file a complaint or bring a civil action if
31 earned paid sick leave as required by this section is denied by the employer or the
32 employee is subjected to retaliatory personnel action for requesting or taking
33 earned paid sick leave; and

34 (6) The contact information for the department from which questions about
35 rights and responsibilities under this section can be answered.

36 This notice must be in English and any language that is the first language spoken by
37 at least 10% of the employer's workforce, as long as the notice has been provided by
38 the department pursuant to paragraph D.

39 B. An employer shall record on the employee's regular pay stub, or an attachment to
40 the pay stub, an accounting of the amount of earned paid sick leave available to the

1 employee, the amount of earned paid sick leave taken by the employee to date in the
2 year and the amount of pay the employee has received as earned paid sick leave.

3 C. An employer shall display a poster that contains the information required in
4 paragraph A in a conspicuous and accessible place in each establishment where
5 employees are employed. The poster displayed must be in English and any language
6 that is the first language spoken by at least 10% of the employer's workforce, as long
7 as the poster has been provided by the department pursuant to paragraph D.

8 D. The department shall create and make available to employers, in all languages
9 spoken by at least 10% of the State's workforce and any other language determined to
10 be appropriate by the department, model notices and posters that contain the
11 information required for employers' use in complying with paragraphs A and C.

12 **8. Record keeping.** An employer shall retain records for a period of 3 years
13 documenting hours worked by employees and earned paid sick leave taken by employees,
14 and shall allow the department access to such records, with appropriate notice and at a
15 mutually agreeable time, to monitor compliance with the requirements of this section.
16 When a dispute arises as to an employee's entitlement to earned paid sick leave under this
17 section, if the employer has not maintained adequate records documenting hours worked
18 by the employee and earned paid sick leave taken by the employee, or does not allow the
19 department reasonable access to such records, there is a presumption that the employer
20 has violated this section, absent clear and convincing evidence to the contrary.

21 **9. Exercise of rights protected; retaliation prohibited.** An employee has the right
22 to use earned paid sick leave pursuant to this section, the right to file a complaint or
23 inform any person about any employer's alleged violation of this section, the right to
24 cooperate with the department in its investigations of alleged violations of this section
25 and the right to inform any person of that person's rights under this section. An employer
26 or any other person may not interfere with, restrain or deny the exercise of, or the attempt
27 to exercise, any of these rights.

28 An employer may not take retaliatory personnel action or otherwise discriminate against
29 an employee because the employee has exercised a right protected under this section. An
30 employer's absence control policy may not treat earned paid sick leave taken under this
31 section as an absence that may lead to or result in retaliatory personnel action. The
32 protections in this section apply to any person who mistakenly, but in good faith, alleges
33 a violation of this section.

34 **10. Violation; rebuttable presumption.** There is a rebuttable presumption of a
35 violation of this section if an employer takes adverse personnel action against an
36 employee within 90 days after that employee does any of the following:

37 A. Files a complaint with the department or a court alleging a violation of this
38 section;

39 B. Informs any person about an employer's alleged violation of this section;

40 C. Cooperates with the department or another person in the investigation or
41 prosecution of any alleged violation of this section;

42 D. Opposes any policy, practice or act that is prohibited under this section; or

1 E. Informs any person of that person's rights under this section.

2 **11. Complaints and investigation.** The department shall enforce the provisions of
3 this section. The department shall establish a system that allows for multiple methods of
4 communication by which it may receive complaints regarding any alleged violations of
5 this section. Any person alleging a violation of this section may file a complaint with the
6 department. To the maximum extent permitted by law, the name and other identifying
7 information of the person reporting the alleged violation is confidential and may not be
8 disclosed except that, with the authorization of the person reporting the alleged violation,
9 the department may disclose the person's name and other identifying information as
10 determined to be necessary to enforce this section or for other appropriate purposes.
11 Filing a complaint with the department is neither a prerequisite nor a bar to bringing a
12 civil action.

13 Upon receiving a complaint alleging a violation of this chapter, the department shall
14 investigate the complaint in a timely manner and shall attempt to resolve the complaint
15 through mediation between the complainant and the subject of the complaint or through
16 other means. The department shall keep a complainant notified regarding the status of the
17 complaint and any resultant investigation. If the department determines that a violation
18 of this section has occurred, it shall issue to the person or entity it has determined has
19 violated this section a notice of violation describing the relief required of the person or
20 entity. The department shall prescribe the form and wording of such notices of violation
21 and any method of appealing the decision of the department.

22 **12. Civil violation.** An employer that fails to provide earned paid sick leave in
23 violation of this section or who takes retaliatory personnel action against an employee or
24 former employee commits a civil violation for which a fine of not more than \$1,000 may
25 be adjudged.

26 An employer that willfully violates the notice or posting requirements in subsection 7
27 commits a civil violation for which a fine of not more than \$100 may adjudged.

28 **13. Private right of action.** An employer that violates this section is liable to the
29 individual affected by the violation for appropriate relief collectible in a civil action,
30 including, but not limited, to the following relief:

- 31 A. Payment for unpaid leave taken that should have been earned paid sick leave;
- 32 B. Payment of back wages;
- 33 C. An amount equal to the sum of the amounts under paragraphs A, B and D, if
34 applicable, as liquidated damages;
- 35 D. Costs and reasonable attorney's fees, at the discretion of the court;
- 36 E. Rehiring or reinstatement to the individual's previous position with the employer;
37 and
- 38 F. Reestablishment of employee benefits to which the individual otherwise would
39 have been eligible if the individual had not been subjected to retaliatory personnel
40 action or discrimination.

1 An affected individual may bring a civil action to collect appropriate relief. An action
2 taken by an affected individual under this subsection may be brought not later than 3
3 years after the date of the last event constituting the alleged violation for which the action
4 is brought or the date when the individual knew of the violation, whichever is later. The
5 right to bring an action provided by this subsection terminates on the filing of a complaint
6 by the Attorney General in an action under subsection 14 in which a recovery is sought
7 related to the same violation or violations of an employer relating to the affected
8 individual.

9 **14. Civil action by the department.** The department may impose penalties and
10 may grant an employee or individual all appropriate relief, including, but not limited to,
11 payment of all earned paid sick leave improperly withheld, all damages incurred by the
12 complainant as the result of violation of this section, back pay and reinstatement in the
13 case of job loss.

14 If the director determines that there is reasonable cause to believe that an employer
15 violated this section and the department is subsequently unable to obtain voluntary
16 compliance by the employer within a reasonable time, the department shall bring a civil
17 action through the Attorney General on behalf of an affected individual or individuals as
18 provided in subsection 13, except that a civil action may not be brought on behalf of an
19 individual has filed an action under subsection 13 related to the same violation or
20 violations of this section.

21 A civil action brought under this subsection may be joined with a civil action to collect
22 finances under subsection 12.

23 **15. Effect on collective bargaining.** Except for a collective bargaining agreement
24 as described in subsection 16, paragraph A, a contract or agreement between the
25 employer and the employee or any acceptance by the employee of a paid leave policy that
26 provides fewer rights or benefits than provided by this section is void and unenforceable.

27 **16. Application; construction; successor employer; reinstatement.** This section
28 applies subject to the following.

29 A. This section does not apply to an employee covered by a collective bargaining
30 agreement during the period between January 1, 2021 and the expiration of the
31 agreement. This section does apply to employees covered by a collective bargaining
32 agreement entered into and in effect on or after January 1, 2021, unless the collective
33 bargaining agreement expressly waives the requirements of this section in clear and
34 unambiguous terms.

35 B. This section does not apply to an individual employed by the individual's parent,
36 spouse or child.

37 C. Nothing in this section may be construed to require financial or other
38 reimbursement to an employee from an employer upon the employee's termination,
39 resignation, retirement or other separation from employment for accrued earned paid
40 sick leave that has not been used.

41 D. A successor employer, or an employer over which there is substantial common
42 ownership, management or control between the successor and predecessor employer,

