

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 444

H. P. 401

House of Representatives, January 26, 1981

On Motion of Representative Beaulieu of Portland referred to the Committee on Labor. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Tuttle of Sanford.

Cosponsors: Representative Murphy of Kennebunk, Senator Carpenter of Aroostook and Representative Pearson of Old Town.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Increase Job Security for Employees Elected to the Legislature, Excluding Employees Covered under Provisions Dealing with Teachers.

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

26 MRSA c. 7, sub-c. V-A is enacted to read:

SUBCHAPTER V-A

LEAVE OF ABSENCE AS LEGISLATOR

§ 821. Person employed in position other than temporary

Any person, except a person covered under Title 20, section 2001, employed in a position other than a temporary position shall be granted a leave of absence to fulfill the duties of a State Legislator, provided that the employee gives written notice to his employer of his intent to become a candidate for the Legislature within 10 days after taking action under Title 21 to place his name on a primary or general election ballot. Following his term of service as a State Legislator, the employee, if he is still qualified to perform the duties of the position from which he was granted leave, shall be entitled to be restored to his previous, or a similar, position with the same status, pay and seniority. This leave of absence shall, within the discretion of the employer, be with or without pay.

§ 822. Absence for service in Legislature not to affect employee's rights

Absence for service in the Legislature shall not affect an employee's right to receive normal vacation, sick leave, bonus, advancement and other advantages of his employment normally to be anticipated in his particular position.

§ 823. Waiver of right

An employee who fails to provide the notice to his employer required by section 821 waives any rights to a leave of absence provided by this subchapter.

§ 824. Appeal by employer

1. **Request.** An employer who feels that granting the leave of absence required by this subchapter will cause unreasonable hardship for his business may appeal for relief by a written notice of appeal to the chairman of the State Board of Arbitration and Conciliation. If the notice of appeal is not filed within 14 days of receipt of the employee's notice requesting a leave of absence, the employer waives his right to appeal. The notice of appeal shall state the name of the employee and the reasons for the alleged unreasonable hardship. This section provides the exclusive remedy for an employer claiming unreasonable hardship as a result of a request for leave of absence.

2. **Proceedings.** The chairman of the State Board of Arbitration and Conciliation, or any member of the board designated by the chairman, shall serve as an arbitrator of any case appealed under this section. The proceeding shall provide an opportunity for the employee to respond, orally or in writing, to the allegations contained in the appeal. Within 30 days of receipt of the notice of appeal, the arbitrator shall issue an order, binding on both parties, either affirming or denying the claim of unreasonable hardship. If the claim is affirmed the employee is not entitled to a leave of absence under this subchapter. In reaching his decision, the arbitrator shall consider, but is not limited to, the following factors:

- A. The length of time the employee has been employed by the employer;
- B. The number of employees in the employer's business;
- C. The nature of the employer's business;
- D. The nature of the position held by the employee and the ease or difficulty and cost of temporarily filling the position during the leave of absence; and
- E. Any agreement entered into between the employee and employer as a condition of employment.

3. **Exception.** This section is not applicable if the employer employs 5 or fewer persons immediately prior to the first day of the leave of absence.

STATEMENT OF FACT

The purpose of this bill is to provide that any employee other than an employee covered under Title 20, section 2001, who serves as a State Legislator shall be granted a leave of absence from his employment during his term of office. This bill will prevent economic discrimination and give persons from all walks of economic life a chance to serve in the Legislature.

This bill requires the employee to give written notice of his request to the employer. An employer who feels that an unreasonable hardship will result, can appeal to the State Board of Arbitration and Conciliation. The arbitrator would make a binding decision in the matter.