

MAINE STATE LEGISLATURE

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(NEW DRAFT OF H.P. 1473, L.D. 1984)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 2534

H.P. 1851 House of Representatives, March 16, 1988
Reported by the Majority from the Committee on Labor and
printed under Joint Rule 2.

EDWIN H. PERT, Clerk

Original bill sponsored by Representative CLARK of
Brunswick. Cosponsored by Speaker MARTIN of Eagle Lake,
Senator CLARK of Cumberland, and Representative ZIRNKILTON of
Mount Desert.

STATE OF MAINE

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

1 AN ACT to Ensure Family Medical Leave in the
2 State.
3

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

6 26 MRSA c. 7, sub-c. VI-A is enacted to read:

7 SUBCHAPTER VI-A

1 FAMILY MEDICAL LEAVE REQUIREMENTS

2 §843. Definitions

3 As used in this subchapter, unless the context
4 otherwise indicates, the following terms have the
5 following meanings.

6 1. Employee. "Employee" means any person who may
7 be permitted, required or directed by an employer in
8 consideration of direct or indirect gain or profit to
9 engage in any employment but does not include an
10 independent contractor.

11 2. Employee benefits. "Employee benefits" means
12 all benefits, other than salary and wages, provided or
13 made available to employees by an employer and
14 includes group life insurance, health insurance,
15 disability insurance and pensions, regardless of
16 whether benefits are provided by a policy or practice
17 of an employer.

18 3. Employer. "Employer" means:

19 A. Any person, sole proprietorship, partnership,
20 corporation, association or other business entity
21 that employs 25 or more employees in this State;

22 B. The State, including the executive,
23 legislative and judicial branches, and any state
24 department or agency that employs any employees;

25 C. Any city, town or municipal agency that
26 employs 25 or more employees; and

27 D. Any agent of an employer, the State or a
28 political subdivision of the State.

29 4. Family medical leave. "Family medical leave"
30 means leave requested by an employee for:

31 A. Serious illness of the employee;

32 B. The birth of the employee's child;

1 C. The placement of a child 16 years of age or
2 less with the employee in connection with the
3 adoption of the child by the employee; or

4 D. A child, parent or spouse with a serious
5 illness.

6 5. Serious illness. "Serious illness" means an
7 accident, disease or condition that:

8 A. Poses imminent danger of death;

9 B. Requires hospitalization involving an organ
10 transplant, limb amputation or other procedure of
11 similar severity; or

12 C. Any mental or physical condition that requires
13 constant in-home care.

14 §844. Family medical leave requirement

15 1. Family medical leave entitlement. Every
16 employee who has been employed by the same employer
17 for 12 consecutive months is entitled to up to 8
18 consecutive work weeks of family medical leave in any
19 2 years. The following conditions apply to family
20 medical leave granted under this subchapter:

21 A. The employee must give at least 30 days notice
22 of the intended date upon which family medical
23 leave will commence and terminate, unless
24 prevented by medical emergency from giving that
25 notice;

26 B. The employer may require certification from a
27 physician to verify the amount of leave requested
28 by the employee; and

29 C. The employer and employee may negotiate for
30 more or less leave, but both parties must agree.

31 2. Unpaid leave. Family medical leave granted
32 under this subchapter may consist of unpaid leave. If
33 an employer provides paid family medical leave for

1 fewer than 8 weeks, the additional weeks of leave
2 added to attain the total of 8 weeks required may be
3 unpaid.

4 §845. Employee benefits protection

5 1. Restoration. Any employee who exercises the
6 right to family medical leave under this subchapter,
7 upon expiration of the leave, is entitled to be
8 restored by the employer to the position held by the
9 employee when the leave commenced or to a position
10 with equivalent seniority status, employee benefits,
11 pay and other terms and conditions of employment.
12 This subsection does not apply if the employer proves
13 that the employee was not restored as provided in this
14 subsection because of conditions unrelated to the
15 employee's exercise of rights under this subchapter.

16 2. Maintenance of employee benefits. During any
17 family medical leave taken under this subchapter, the
18 employer shall make it possible for employees to
19 continue their employee benefits at the employee's
20 expense.

21 §846. Effect on existing employee benefits

22 1. Benefit accrual. The taking of family medical
23 leave under this subchapter shall not result in the
24 loss of any employee benefit accrued before the date
25 on which the leave commenced.

26 2. Effect on collective bargaining. Nothing in
27 this subchapter may be construed to affect an
28 employer's obligation to comply with any collective
29 bargaining agreement or employee benefit plan that
30 provides greater family medical leave rights to
31 employees than the rights provided under this
32 subchapter.

33 3. Rights not diminished. The family medical
34 leave rights mandated by this subchapter may not be
35 diminished by any collective bargaining agreement or
36 by any employee benefit plan.

37 4. Contract rights. Nothing in this subchapter

1 may be construed to affect or diminish the contract
2 rights or seniority status of any other employee of
3 any employer covered by this subchapter.

4 §847. Prohibited acts

5 1. Unlawful interference or denial of rights.
6 The employer may not interfere with, restrain or deny
7 the exercise of or the attempt to exercise any right
8 provided by this subchapter.

9 2. Unlawful discrimination against exercise of
10 rights. The employer may not discharge, fine,
11 suspend, expel, discipline or in any other manner
12 discriminate against any employee for exercising any
13 right provided by this subchapter.

14 3. Unlawful discrimination against opposition.
15 The employer may not discharge, fine, suspend, expel,
16 discipline or in any other manner discriminate against
17 any employee for opposing any practice made unlawful
18 by this subchapter.

19 §848 Judicial enforcement

20 A civil action may be brought in the appropriate
21 court by an employee against any employer to enforce
22 this subchapter. The court may enjoin any act or
23 practice that violates or may violate this subchapter
24 and may order any other equitable relief that is
25 necessary and appropriate to redress the violation or
26 to enforce this subchapter. The court may also order
27 the employer to pay as liquidated damages \$100 to the
28 employee for each day the violation continues.

29 §849 Review; sunset

30 The joint standing committee of the Legislature
31 having jurisdiction over labor shall review the
32 provisions and effectiveness of this subchapter before
33 March 15, 1990. This subchapter is repealed July 1,
34 1990.

1 STATEMENT OF FACT

2 Today's workforce consists of people working under
3 a new set of working conditions. The tremendous
4 increase of women, single parents and double income
5 families in today's workforce suggests the need for
6 social policies that are responsive to the needs of
7 families. This new draft directly addresses the
8 problems of working parents and children who care for
9 their parents.

10 The purpose of this new draft is to provide job
11 protection for workers during periods when they must
12 be with their families. It allows for up to 8 weeks
13 of unpaid leave to employees who have been employed by
14 the same employer for 12 consecutive months. The
15 unpaid leave may be used in the event of childbirth,
16 adoption or to care for an ill child, parent or spouse.

17 The new draft differs from the original bill in
18 that it reduces the amount of leave from 18 weeks to 8
19 weeks, removes the provision for the employer to pay
20 for employee benefits while the employee is out on
21 leave and allows the employee to pay for important
22 benefits rather than lose them. This new draft also
23 increases the size of employers covered by these
24 provisions from those employing 10 people to those
25 employing 25.

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