

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 351

H.P. 260

House of Representatives, February 5, 1991

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Ed Pert".

EDWIN H. PERT, Clerk

Presented by Representative McHENRY of Madawaska.

Cosponsored by Representative RAND of Portland, Senator ESTY of Cumberland and Representative PINEAU of Jay.

STATE OF MAINE

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

An Act to Regulate Employee Dismissals.



2 B. For the same employer for an average of 20 hours per
4 week during the 6 months preceding the termination of that
 individual's employment.

6 "Employee" does not include an independent contractor.

8 4. Employer. "Employer" means a person who employs 20 or
10 more individuals but does not include the State, any political
 subdivision of the State or other governmental agency.

12 5. Fringe benefits. "Fringe benefits" means any vacation
14 leave, sick leave, medical insurance plan, disability insurance
16 plan, life insurance plan or pension benefit plan paid by the
 employer and in force on the date of the termination or any other
 compensatory economic benefit other than wages and salary.

18 6. Good cause. "Good cause" means:

20 A. A reasonable basis for the termination relative to the
22 employee's duties and responsibilities and the employee's
 conduct and performance record; or

24 B. A basis for the termination relative to the legitimate
 economic needs of the employer in:

26 (1) Exercising good faith management in organizing or
28 reorganizing operations;

30 (2) Setting reasonable performance standards for
32 individuals in the work force, with appropriate
34 allowance for the difficulty of evaluating objectively
 the performance of particular individuals such as those
 in supervisory or management positions; or

36 (3) Making decisions about the size and composition of
 the work force.

38 7. Person. "Person" means an individual, partnership,
40 corporation, business or other legal or commercial entity.

42 8. Termination. "Termination" means:

44 A. A dismissal of an individual by an employer including,
46 but not limited to, a dismissal resulting from the
 elimination of a position;

48 B. A layoff or suspension of an individual by an employer
 for more than 6 months;

50 C. A failure to recall to employment or to rehire an
52 individual;

2 D. An involuntary retirement; or

4 E. A quitting of employment by an individual because of an
6 act or omission of the employer that, under the
 circumstances, a reasonable person would find so intolerable
 as to cause that person to quit.

8 §874. Prohibited terminations

10 1. Termination; good cause required. Except as provided in
12 subsections 2 and 3 and section 873, an employer may not
 terminate the employment of an employee without good cause.

14 2. One year employment required. An employer may terminate
16 an employee's employment without good cause if the employee has
 less than one year of employment with that employer. Periods of
18 unemployment are not counted in determining whether the period of
 employment totals at least one year. An employee who is rehired
20 after not being employed by that employer for more than one year
 is deemed to be a new hire.

22 3. Contract employees. An employer may terminate the
24 employment of an employee without good cause at the expiration of
 a contract having a specified duration. If the employment is not
26 terminated at the expiration of the contract, the continuing
 employment of the employee is governed by the other provisions of
 this section.

28 4. Prohibited terminations. An employer may not terminate
30 the employment of any employee if the termination is in
 retaliation for the individual's compliance with or refusal to
32 violate public policy derived from constitutional or statutory
 law:

- 34 A. Existing at the time of the compliance or refusal or the
36 termination; and
- 38 B. Conferring rights or imposing duties on persons in the
40 State.

42 5. Waivers invalid. An employer or employee may not waive
 a right conferred or avoid a duty imposed by this subchapter
44 except by an agreement in compliance with section 873.

46 §875. Agreements between employer and employee

48 1. Job performance standards. A written agreement of
 employment signed by an employer and an employee may prescribe
50 reasonable standards of performance or specify other good cause
 for termination.

52 2. Termination without good cause; severance pay. A
 written agreement of employment signed by an employer and

2 employee may authorize the employer to terminate the employee's
3 employment without good cause if severance payments at the rate
4 paid immediately preceding termination are provided in at least
5 the following amounts:

6 A. For employees with at least one but less than 3 years of
7 employment, one month's pay;

8
9 B. For employees with at least 3 but less than 5 years of
10 employment, 3 months' pay; or

11 C. For employees with at least 5 years of employment, one
12 month's pay for each full year of employment.

13
14 3. Duty of good faith. An agreement under this section
15 imposes on the parties a duty of good faith in the enforcement of
16 that agreement.

17
18 **§876. Procedure and limitations**

19
20 1. Complaint. An individual whose employment is terminated
21 may file with the board and the individual's former employer a
22 complaint and request arbitration under this subchapter within
23 180 days after the effective date of the individual's
24 termination. This time period is extended for up to 60
25 additional days for any time during which the individual is
26 pursuing internal remedies provided by the employer. Utilizing
27 an employer's internal procedures is optional with the individual.

28
29 2. Statement of reasons. Upon termination, other than a
30 quitting of employment by an employee, the employer shall furnish
31 the employee with a written statement of the reasons for the
32 termination.

33
34 3. Answer. Within 21 days after a complaint is filed with
35 the employer, the employer shall file an answer with the board
36 including a copy of the statement of the reasons for the
37 termination that has been furnished to the individual.

38
39 4. Deposit. Within 10 days after the employer's answer is
40 filed each party must deposit \$500 with the board as an advance
41 toward the costs of the arbitration. Upon a showing of
42 indigency, or for other good cause, the director may waive the
43 requirement to make a deposit or may reduce the amount of the
44 deposit.

45
46 **§877. Arbitration**

47
48 1. Uniform Arbitration Act; rules. Except as otherwise
49 provided in this subchapter, the Uniform Arbitration Act, Title
50 14, chapter 706, applies to proceedings under this subchapter as

2 if there were a written arbitration agreement between the
4 parties. The board shall adopt rules, subject to the Maine
6 Administrative Procedure Act, related to the procedure to be
8 followed under this subchapter. Except as it applies to rules
10 adopted under this subchapter, the Maine Administrative Procedure
12 Act does not apply to proceedings under this subchapter.

14 2. Selection of arbitrator. The board shall adopt rules
16 specifying the qualifications of arbitrators and furnish the
18 parties with an arbitration panel of nominees from a list the
20 board maintains of qualified arbitrators active in the State. If
22 the parties can not agree on an arbitrator, the director shall
24 choose the arbitrator. The parties shall pay an equal share of
26 the fee and necessary expenses of the arbitrator unless the
28 arbitrator determines otherwise.

30 3. Powers of arbitrator. An arbitrator may make all
32 substantive and procedural rulings necessary to resolve the issue
34 of whether the termination violates this subchapter and, if a
36 violation has occurred, grant a remedy. The arbitrator may
38 administer oaths and issue subpoenas for the attendance of
40 witnesses and for the production of documents and other evidence
42 at the hearing. Subject to rules of the board all forms of
44 discovery are available at the discretion of the arbitrator who
46 shall avoid undue delay, expense or inconvenience.

48 4. Proceedings. An arbitration proceeding is informal.
50 The rules of evidence applicable in the courts do not apply. An
52 arbitrator may not grant or deny a complaint on the default of
54 one party but shall require the other party to submit evidence to
56 support an award. Either party, if willing to pay the costs, may
58 request that a transcript or tape recording be prepared as the
60 official record of the proceedings. If a transcript or tape
62 recording is prepared as the official record, a copy of the
64 transcript or tape recording must be made available to the
66 arbitrator and the other party must be allowed to inspect the
68 transcript or tape recording. If a transcript or tape recording
70 is not prepared, the official record of the proceedings is the
72 arbitrator's opinion and award. An individual may be represented
74 in arbitration by any person including, but not limited to, an
76 attorney, labor organization official or fellow worker.

78 5. Burden of proof. An individual alleging a termination
80 in violation of this subchapter has the burden of proof on all
82 issues.

84 §878. Award and remedies

86 1. Decision. Within 30 days after the close of a hearing
88 or after the submission of any post-hearing briefs, or within any
90 extended time agreed on by the parties, the arbitrator shall
92 issue an award sustaining or dismissing the complaint in whole or

2 in part. The award must include an opinion unless both parties
4 request otherwise. An opinion must contain the critical facts as
6 determined by the arbitrator and the principal reasons for the
8 arbitrator's decision.

10 2. Remedies. An arbitrator may provide any of the
12 following remedies for a violation of this subchapter:

14 A. Reinstate the employee;

16 B. If reinstatement is not granted, award a severance
18 payment equal to a continuation of the employee's
20 pretermination pay including the value of any fringe
22 benefits at the rate paid immediately before the termination
24 of employment for a period not to exceed 2 years beyond the
26 date of the award;

28 C. Award full or partial back pay to the employee,
30 including the value of any fringe benefits with interest and
32 deduction of interim earnings or amounts earnable with
34 reasonable diligence;

36 D. If the arbitrator finds that the termination of
38 employment was a willful violation of this subchapter and
40 lacking in good faith, award additional damages in an amount
42 not greater than the back pay awarded;

44 E. Award reasonable attorney's or representative's fees and
46 costs to a prevailing employee;

48 F. Award reasonable attorney's or representative's fees and
50 costs to a prevailing employer, if the arbitrator finds the
52 complaint was frivolous, unreasonable and without foundation;

G. Award the full amount of the arbitrator's fees and
expenses, if the arbitrator finds that resorting to
arbitration lacked good faith; and

H. Award punitive damages if the arbitrator finds that the
termination of employment was a malicious violation of the
public policy protections of section 874, subsection 4.

3. Damages limited. For termination of employment under
this subchapter, there is no right to damages for pain and
suffering, emotional distress, defamation, fraud or other injury
under the common law and no right to compensatory damages,
punitive damages or any other form of damages except as provided
in subsection 2.

4. Award final. An arbitrator's award is final and binding
subject to court review under subsection 5.

2 or unless a written agreement between the employer and employee
permits dismissal without good cause. If such a written
4 agreement exists, the employer must guarantee the payment of
severance pay to the discharged employee under a graduated scale
6 based on the employee's longevity with the employer. Employees
are also protected from discharge for reasons that violate public
8 policy in statutory or constitutional law. Good cause is defined
in the bill to include circumstances related to an employee's job
10 performance and also legitimate economic decisions made by an
employer. The elements constituting good cause may be further
12 specified in a written agreement between the employer and
employee.

14 To avoid lengthy and costly court actions, the bill provides
for all disputes concerning employment terminations to be
16 submitted to binding arbitration at the parties' expense. The
arbitrator decides whether a violation has occurred and has
18 discretion in determining the scope of appropriate remedies.
Remedies available to an employee include reinstatement to the
20 employee's former position or severance pay and the payment of
back pay, attorney's fees and costs, arbitration costs and
22 punitive damages if the discharge was an extreme departure from
public policy established by statutory or constitutional law. If
24 the arbitrator finds that the employee's complaint was frivolous,
attorney's fees and costs and the cost of arbitration may be
26 awarded to the employer. The arbitrator's decision is subject to
judicial review in the same manner as other arbitration awards.