

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2147

H.P. 1503

House of Representatives, April 5, 1999

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### An Act to Ensure Just Cause Termination in Employment.

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Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BRYANT of Dixfield.  
Cosponsored by Senator CAREY of Kennebec and  
Representatives: DUPLESSIE of Westbrook, GAGNON of Waterville, GERRY of Auburn,  
GOODWIN of Pembroke, HATCH of Skowhegan, JABAR of Waterville, McALEVEY of  
Waterboro, SAMSON of Jay.

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

4 Sec. 1. 26 MRSA c. 7, sub-c. X is enacted to read:

6 **SUBCHAPTER X**

8 **EMPLOYMENT TERMINATION**

10 **§875. Definitions**

12 As used in this section, unless the context otherwise  
14 indicates, the following terms have the following meanings.

16 1. Contract employee. "Contract employee" means a person  
18 hired by an employer pursuant to an express oral or written  
agreement of employment for a specified duration related to the  
completion of a specific task, project, undertaking or assignment.

20 2. Covered employee. "Covered employee" means an employee  
22 who has been employed by an employer for a total period of one  
24 year or more and has worked for that employer for at least 520  
26 hours during the 26 weeks that preceded a termination for just  
28 cause. A layoff or other break in service is not counted in  
30 determining whether an employee's period of employment totals one  
32 year, but the employee is considered to be employed during paid  
34 vacations and other authorized leaves. If an employee is rehired  
36 after a break in service exceeding one year, not counting  
absences due to labor disputes or authorized leaves, the employee  
is considered to be newly hired. The 26-week period under this  
subsection does not include any week during which the employee  
was absent because of layoffs of one year or less, paid  
vacations, authorized leaves or labor disputes. "Covered  
employee" does not include a contract employee who is terminated  
at the expiration of an express oral or written agreement of  
employment.

38 3. Employee. "Employee" means a person who performs a  
40 service for wages or other remuneration under a contract of hire,  
42 written or oral, expressed or implied, but does not include an  
44 independent contractor or a parent, spouse, child or other member  
of the employer's immediate family or the immediate family of a  
person who has a controlling interest in the employer.

46 4. Employer. "Employer" means a person that has employed 5  
48 or more employees for each working day in each of 20 or more  
50 calendar weeks in the 2-year period that precedes a termination  
or an employer's filing of a complaint pursuant to section 876,  
subsection 9. "Employer" does not include the State or any  
political subdivision, agency or instrumentality of the State.

2           5. Fringe benefit. "Fringe benefit" means vacation, leave,  
3           sick leave, medical insurance plan, disability insurance plan,  
4           life insurance plan, pension benefit plan or other benefit of  
5           economic value to the extent the leave, plan or benefit is paid  
6           by the employer.

8           6. Just cause. "Just cause" means a violation of an  
9           employer's rule or order and:

10           A. The employer forewarned an employee of possible  
11           consequences of violating the rule or order;

14           B. The rule or order is reasonably related to the orderly,  
15           efficient and safe operation of the employer's business;

16           C. The employer made a reasonable effort to investigate  
17           whether the employee did in fact violate the rule or order,  
18           and the employer obtained sufficient evidence that the  
19           employee violated the rule or order;

22           D. The employer's investigation was conducted fairly and  
23           objectively;

24           E. The employer has applied the rule, order and any  
25           penalties evenhandedly and without discrimination; and

28           F. The termination is reasonably related to the seriousness  
29           of the violation.

30           7. Terminate. "Terminate" or "termination" means:

32           A. A dismissal, including that resulting from the  
33           elimination of a position, of an employee by an employer;

36           B. A suspension of an employee by an employer for more than  
37           2 consecutive months; or

38           C. A quitting of employment or a retirement by an employee  
39           induced by an act or omission of the employer, after notice  
40           to the employer of the act or omission without appropriate  
41           relief by the employer, so intolerable that, under the  
42           circumstances, a reasonable individual would quit or retire.

44           8. Terminated employee. "Terminated employee" means a  
45           covered employee who has been terminated from employment by an  
46           employer.

48           §876. Employment termination  
49

2 1. Termination for just cause only. Except as provided in  
3 subsection 2, an employer may not terminate a covered employee  
4 unless the termination is for just cause.

6 2. Exceptions. Subsection 1 does not apply to a covered  
7 employee if the employee and employer, in an express written  
8 agreement, mutually waive the requirement of just cause for  
9 termination and the agreement contains a provision that, upon  
10 termination of the employee for any reason other than willful  
11 misconduct, the employer will provide severance pay. The  
12 severance pay in the agreement must be in an amount equal to at  
13 least one month's pay for each period of employment totaling one  
14 year at the employee's rate of pay in effect immediately before  
15 the termination. The employer must make the payment in a lump  
16 sum or in a series of monthly installments, none of which may be  
17 less than one month's pay plus interest on the principal  
18 balance. The lump sum payment must be made or payment of the  
19 monthly installments must begin within 80 days after the  
20 employee's termination. An agreement under this subsection is  
21 deemed a waiver by the employer and the employee of the right to  
22 civil trial, including a trial by jury, concerning disputes over  
23 the nature of the termination and the employee's entitlement to  
24 severance pay.

26 3. Contract employees. If a person is a contract employee  
27 and continues work for an employer after the expiration of an  
28 agreement and the person and employer do not enter into a new  
29 express oral or written agreement, that person must be considered  
30 an employee for the purposes of this subchapter and the period of  
31 employment under an express oral or written agreement counts  
32 toward the minimum periods of employment under section 875,  
33 subsection 2 for qualification as a covered employee.

34 4. Adoption of employment standards and prohibited acts.  
35 An employer and a covered employee may, by express written  
36 agreement, establish business-related standards of performance  
37 that, if not met by the covered employee, constitute just cause  
38 for termination under this section. An employer and a covered  
39 employee may, by express written agreement, establish prohibited  
40 business-related acts that, if committed by the covered employee,  
41 constitute just cause for termination under this section. The  
42 business-related standards of performance and prohibited  
43 business-related acts are effective only if they have been  
44 consistently enforced with covered employees in the business and  
45 have not been applied to a particular covered employee in a  
46 disparate manner without justification. If the agreement  
47 authorizes the employer to make changes in the standards or  
48 prohibitions, the changes must be clearly communicated to the  
49 covered employee.  
50

2        5. Additional rights. An employer may provide substantive  
and procedural rights in addition to those specified under this  
4 section to one or more covered employees by express oral or  
written agreement or to covered employees generally by a written  
6 personnel policy or statement.

8        6. Agreement for person not otherwise covered. An employer  
and a person who is not a covered employee may agree by express  
10 written agreement that the person is considered a covered  
employee.

12        7. Employee claim. A covered employee who is terminated  
may file a complaint with the Superior Court for the county in  
14 which the workplace is located no later than 180 days after the  
effective date of the termination or after the breach of an  
16 agreement for severance pay under subsection 2. The timing for  
filing is suspended while the employee pursues the employer's  
18 internal remedies and has not been notified in writing by the  
employer that the internal procedures have been completed. A  
20 covered employee is not required to pursue an employer's internal  
procedures as a condition for filing a complaint under this  
22 subsection. After receiving the employer's response, the  
Superior Court shall refer the claim and the response to the  
24 Maine Human Rights Commission. The Maine Human Rights Commission  
shall investigate whether the terminated employee's human rights  
26 were violated by the termination. All powers and duties granted  
to the Maine Human Rights Commission under Title 5, chapter 337  
28 apply to claims and employment termination under this section.  
If the Maine Human Rights Commission determines that the  
30 terminated employee's human rights were not violated, the  
Superior Court may proceed to hear the terminated employee's  
32 claim.

34        8. Employer claim. An employer may file a complaint with  
the Superior Court for the county in which the workplace is  
36 located to determine whether just cause exists for the  
termination of a covered employee. The employer shall, at least  
38 15 business days before filing, notify the covered employee of  
the employer's intention to file a complaint and of the factors  
40 alleged to constitute just cause for termination.

42        9. Notice to employee. If an employee is a covered  
employee, the notice of termination required under section 630  
44 must include a copy of this section.

46        10. Procedure. Actions instituted pursuant to this  
subchapter are governed by the Maine Rules of Civil Procedure,  
48 except as otherwise specifically provided.

2           11. Remedies for termination. The Superior Court may make  
3           one or more of the following awards for a termination found not  
4           to be for just cause:

5           A. Reinstatement of the terminated employee to the position  
6           or a comparable position held by the terminated employee at  
7           the time the employee was terminated;

8           B. Payment to the terminated employee of full or partial  
9           back pay and reimbursement for lost fringe benefits, with  
10           interest, reduced by the interim earnings from employment  
11           elsewhere, fringe benefits received and amounts that could  
12           have been received with reasonable diligence;

13           C. Payment to the terminated employee of a lump-sum  
14           severance payment at the employee's rate of pay in effect at  
15           the time the employee was terminated, for a period not to  
16           exceed 86 months, together with the value of fringe benefits  
17           lost during the selected period, reduced by the interim  
18           earnings from employment elsewhere, fringe benefits received  
19           and amounts that could have been received with reasonable  
20           diligence; and

21           D. Reasonable attorney's fees and costs.

22           12. Remedies for breach of severance pay. The Superior  
23           Court may make one or more of the following awards for a breach  
24           of an agreement for severance pay under subsection 2:

25           A. Enforcement of the severance pay and other applicable  
26           provisions of the agreement, with interest; and

27           B. Reasonable attorney's fees and costs.

28           13. Damage awards prohibited. The Superior Court may not  
29           award compensatory damages for pain and suffering, emotional  
30           distress, defamation, fraud or other injury or any other monetary  
31           award, except as provided under subsections 11 and 12.

32           14. Alternative resolution. After the filing of a  
33           complaint under this section, a terminated employee and an  
34           employer may, by express written agreement:

35           A. Settle the claim; or

36           B. Agree to private arbitration or another alternative  
37           dispute-resolution procedure.

2 15. Posting of law. An employer shall post a copy of this  
section in a conspicuous place in the work area.

4 16. Retaliation prohibited. An employer may not terminate  
or otherwise discriminate against an employee because the  
6 employee signed or filed any affidavit, petition or complaint or  
gave any information or testimony pursuant to this section.  
8

10 **SUMMARY**

12 This bill prohibits a private employer from terminating  
14 certain employees unless the employer has just cause for the  
termination. The bill allows an aggrieved employee to seek  
remedies for wrongful termination through a civil action.