

MAINE STATE LEGISLATURE

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Report A
R.O.S.

L.D. 2054

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REPORT A
LABOR

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
120TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1551, L.D. 2054, Bill, "An Act Regarding the Payment of Severance Pay"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

Sec. 1. 26 MRSA §625-B, sub-§1, ¶¶E and H, as enacted by PL 1979, c. 663, §157, are amended to read:

E. "Physical calamity" means any calamity such as fire, flood or other natural disaster, or the final order of any federal, state or local governmental agency including adjudicated--bankruptcy. Bankruptcy is not a physical calamity.

H. "Week's pay" means an amount equal to 1/52nd part of the gross wages paid to an employee during the last 12 months prior to relocation or termination of employment of that employee with the employer.

Sec. 2. 26 MRSA §625-B, sub-§2, as enacted by PL 1979, c. 663, §157, is amended to read:

2. **Severance pay.** Any employer who relocates or terminates a covered establishment shall be is liable to his its eligible employees for severance pay at the rate of one week's pay for each year of employment by the employee was employed in that establishment. ~~The severance pay to eligible employees shall be~~

~~in addition to any final wage payment to the employee and shall be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.~~

A. Severance pay is due from an employer only if that employer has owned and operated the covered establishment for at least 3 years.

B. Severance pay to an eligible employee is in addition to any final wage payment to the employee and must be paid within one regular pay period after the employee's last full day of work.

C. If the direct owner and operator of a covered establishment petitions for bankruptcy, the parent corporation or other indirect owner and operator, if any, is liable for severance pay as if the parent or other indirect owner and operator were the direct owner and operator.

D. If the direct owner and operator of a covered establishment is unable to make the required severance payments for any reason other than bankruptcy, the parent corporation or other indirect owner and operator of the covered establishment is liable for severance pay as if the parent or other indirect owner and operator were the direct owner and operator.

Sec. 3. 26 MRSA §625-B, sub-§3, ¶B, as amended by PL 1999, c. 55, §1, is further amended to read:

B. The employee is covered by an express contract providing for severance pay that is equal to or greater than the severance pay required by this section and the employer is bound by that contract. This paragraph applies to all contracts whether entered into before or after September 18, 1999;

Sec. 4. 26 MRSA §625-B, sub-§4, as enacted by PL 1979, c. 663, §157, is repealed.

Sec. 5. 26 MRSA §625-B, sub-§4-A is enacted to read:

4-A. Action to enforce severance pay obligations. An action may be maintained in any state or federal court of competent jurisdiction against an employer who violates this section.

A. Action may be brought by an employee or group of employees affected by a violation on behalf of that employee or those employees and on behalf of other employees

2 similarly situated, by a labor organization on behalf of its
3 members or by the director on behalf of affected employees.

4 B. A court shall award the following to a plaintiff who
5 prevails in an action brought under this subsection:

6 (1) The amount of unpaid severance pay due;

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8 (2) Interest on the unpaid amount, calculated from the
9 date the payment became due, at the rate equal to the
10 weekly average one-year constant maturity Treasury
11 yield, as published by the Board of Governors of the
12 Federal Reserve System, for the first calendar week of
13 the month prior to the date from which the interest is
14 calculated, plus 7%; and

15 (3) Reasonable attorney's fees and costs for the
16 action.

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19 C. In addition to the recovery under paragraph B, in an
20 action brought by the director, the court may impose a
21 forfeiture of up to \$250 per affected employee on the
22 employer who violates this section.

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24 D. Any sum recovered by the director on behalf of an
25 employee pursuant to this subsection must be held in a
26 special deposit account and paid, on order of the director,
27 directly to the employee affected. Any sum recovered by the
28 director and not paid to an employee within 3 years because
29 of an inability to do so must be paid over to the State.

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31 **Sec. 6. 26 MRSA §625-B, sub-§5,** as enacted by PL 1979, c. 663,
32 **§157, is repealed.**

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34 **Sec. 7. 26 MRSA §625-B, sub-§6,** as enacted by PL 1979, c. 663,
35 **§157, is amended to read:**

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37 **6. Notice.** Any person proposing to relocate or terminate a
38 covered establishment shall ~~notify~~ give written notice of the
39 relocation or termination to its employees, the director in
40 writing and the municipal officers of the municipality where the
41 covered establishment is located not less than 60 days prior to
42 the relocation or termination. Any person violating this
43 subsection commits a civil violation for which a forfeiture of
44 not more than \$500 may be adjudged, except that a forfeiture may
45 not be adjudged if the relocation or termination is necessitated
46 by a physical calamity or if the failure to give notice is due to
47 unforeseen circumstances.

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49 **Sec. 8. 26 MRSA §625-B, sub-§6-A,** as enacted by PL 1981, c.

337, is repealed.

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Sec. 9. 26 MRSA §625-B, sub-§7, as enacted by PL 1979, c. 663, §157, is amended to read:

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7. Powers of director. In any investigation or proceeding under this section, the director shall have has, in addition to all other powers granted by law, the authority to examine books and records of any employer affected by this section as set out in section 665, subsection 1. The director may commence an investigation under this section upon receiving notice from the employer or upon receiving information from another source that the director considers reliable.

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Sec. 10. Retroactivity. The section of this Act that amends the Maine Revised Statutes, Title 26, section 625-B, subsection 2, with the exception of paragraph D, applies retroactively to October 1, 1975.'

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Further amend the bill by inserting at the end before the summary the following:

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FISCAL NOTE

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The additional workload and administrative costs associated with the minimal number of new cases filed in the court system can be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may increase General Fund revenue by minor amounts.

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Authorizing fines collected and other funds recovered through court awards to be held in a special deposit account and paid to affected employees will increase dedicated revenue to the Department of Labor. The amount can not be determined at this time.

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The requirement that all funds recovered through court awards but not paid to an affected employee because of the inability to do so within a period of 3 years be paid to the State will increase General Fund revenue in future years. The amount can not be determined at this time.'

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SUMMARY

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This amendment is the majority report of the Joint Standing Committee on Labor. It replaces the bill and makes the following changes in the severance pay laws.

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1. It clarifies that an employer must have owned a covered establishment for at least 3 years before the employer is required to pay severance pay in the event of a relocation or termination of operations. The amendment also clarifies that the amount due an employee for severance pay is based on the total number of years the employee worked at the establishment, including years worked before the employer owned the establishment.

2. The amendment eliminates bankruptcy as an excuse from paying severance pay. It does this by deleting bankruptcy from the definition of "physical calamity."

3. The amendment clarifies that contractual severance pay supersedes the statute only if the employer is bound by the contract.

4. The amendment clarifies the legislative intent that parent corporations are liable for severance pay of a subsidiary when the subsidiary's covered establishment is terminated or relocated. This legislative intent was incorrectly construed by federal courts in Carrier v. JPB Enterprises and Russell v. Allied Textile Company, LLC. This clarification is made retroactive to October 1, 1975.

5. The amendment deletes language allowing the Director of the Bureau of Labor Standards within the Department of Labor to extinguish employee actions for unpaid severance pay.

6. The amendment requires the court to order the payment of interest on unpaid severance pay, calculated from the date the payment should have been made, and attorney's fees and costs.

7. The amendment allows the Director of the Bureau of Labor Standards within the Department of Labor to seek a forfeiture for failure to pay severance pay of up to \$250 per affected employee.

8. The amendment requires that the same notice of relocation or termination be provided to affected employees and municipalities as is provided to the department and provides for the same forfeiture for all notice violations.

9. It also adds a fiscal note to the bill.