

MAINE STATE LEGISLATURE

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L.D. 2054

DATE: 3-18-02

(Filing No. H-930)

REPORT
LABOR

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

COMMITTEE AMENDMENT "B" 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, ¶B-1 is enacted to read:

B-1. "Eligible employee" means a person who:

(1) Is working and receiving wages or is on paid or unpaid vacation or sick leave, approved family medical leave, disability leave or workers' compensation;

(2) Has been employed at a covered establishment that is being relocated or terminated for at least 3 consecutive years, regardless of ownership of the establishment; and

(3) Has not accepted employment at the new location of the covered establishment.

Sec. 2. 26 MRSA §625-B, sub-§1, ¶¶E and H, as enacted by PL 1979, c. 663, §157, are amended to read:

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2 E. "Physical calamity" means any calamity such as fire,
3 flood or other natural disaster, or the final order of any
4 federal, state or local governmental agency including
5 adjudicated bankruptcy or an order for relief under 11
6 United States Code.

8 H. "Week's pay" means an amount equal to 1/52nd part of the
9 gross wages paid to an employee during the 12 months prior
10 to relocation or termination. Payment for earned leave,
11 such as vacation and sick leave, is included in gross wages,
12 but disability, workers' compensation and other similar
13 payments are not included in gross wages for purposes of
14 calculating severance pay.

16 **Sec. 3. 26 MRSA §625-B, sub-§2,** as enacted by PL 1979, c. 663,
17 §157, is amended to read:

18 **2. Severance pay.** Any employer who relocates or terminates
19 a covered establishment shall ~~be~~ is liable to his its eligible
20 employees for severance pay at the rate of one week's pay for
21 each year ~~of employment~~ by the employee was employed in that
22 establishment. ~~The severance pay to eligible employees shall be~~
23 ~~in addition to any final wage payment to the employee and shall~~
24 ~~be paid within one regular pay period after the employee's last~~
25 ~~full day of work, notwithstanding any other provisions of law.~~

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

29 B. Severance pay to an eligible employee is in addition to
30 any final wage payment to the employee and must be paid
31 within one regular pay period after the employee's last full
32 day of work, unless the employee agrees to be paid in a
33 different manner. An eligible employee on paid or unpaid
34 vacation or sick leave, approved family medical leave or
35 disability leave must be paid within one regular pay period
36 after the effective date of the employee's termination of
37 employment.

38 **Sec. 4. 26 MRSA §625-B, sub-§3,** as amended by PL 1999, c. 55,
39 §1, is further amended to read:

40 **3. Mitigation of severance pay liability.** There is no
41 liability for an employer under this section for severance pay to
42 an eligible employee if:

43 A. Relocation or termination of a covered establishment is
44 necessitated by a physical calamity; or

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2 B. The employee is covered by an express contract providing
3 for severance pay that is equal to or greater than the
4 severance pay required by this section; and the employer is
5 bound by the contract. This paragraph applies to all
6 contracts, whether entered into before or after September
7 18, 1999.

8
9 ~~C. --That employee accepts employment at the new location; or~~

10
11 ~~D. --That employee has been employed by the employer for less~~
12 ~~than 3 years.~~

13 **Sec. 5. 26 MRSA §625-B, sub-§4**, as enacted by PL 1979, c. 663,
14 §157, is repealed.

15
16 **Sec. 6. 26 MRSA §625-B, sub-§4-A** is enacted to read:

17
18 **4-A. Action to enforce severance pay obligations.** An
19 action may be maintained in any state or federal court of
20 competent jurisdiction against an employer who violates this
21 section.

22
23 A. Action may be brought by an employee or group of
24 employees affected by a violation on behalf of that employee
25 or those employees and on behalf of other employees
26 similarly situated, by a labor organization on behalf of its
27 members or by the director on behalf of affected employees.

28
29 B. A court shall award the following to plaintiffs who
30 prevail in an action brought under this subsection:

31
32 (1) The amount of unpaid severance pay due;

33
34 (2) Interest on the unpaid amount, calculated pursuant
35 to Title 14, section 1602; and

36
37 (3) Reasonable attorney's fees and costs for the
38 action, to be paid by the defendant.

39
40 C. In addition to the recovery under paragraph B, in an
41 action brought by the director, the court may impose a
42 forfeiture of up to \$250 per affected employee on the
43 employer who knowingly and intentionally violates this
44 section.

45
46 D. Any sum recovered by the director on behalf of an
47 employee pursuant to this subsection must be held in a
48 special deposit account and paid, on order of the director,
49 directly to the employee affected. Any sum recovered by the
50

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2 director and not paid to an employee within 3 years because
3 of an inability to do so must be paid over to the State.

4 **Sec. 7. 26 MRSA §625-B, sub-§5,** as enacted by PL 1979, c. 663,
5 §157, is repealed.

6 **Sec. 8. 26 MRSA §625-B, sub-§6,** as enacted by PL 1979, c. 663,
7 §157, is amended to read:

10 **6. Notice to director.** Any person proposing to relocate or
11 terminate a covered establishment shall ~~notify~~ give written
12 notice of the relocation or termination to its employees, the
13 director in--writing and the municipal officers of the
14 municipality where the covered establishment is located not less
15 than 60 days prior to the relocation or termination. A person's
16 compliance with the Worker Adjustment and Retraining Notification
17 Act, 29 United States Code, Section 2101 et seq. constitutes
18 compliance with this section. A person who violates this
19 subsection commits a civil violation for which a forfeiture of
20 not more than \$500 may be adjudged, except that a forfeiture may
21 not be adjudged if the relocation or termination is necessitated
22 by a physical calamity or if the failure to give notice is due to
23 unforeseen circumstances.

24 **Sec. 9. 26 MRSA §625-B, sub-§6-A,** as enacted by PL 1981, c.
25 337, is repealed.

26 **Sec. 10. 26 MRSA §625-B, sub-§7,** as enacted by PL 1979, c.
27 663, §157, is amended to read:

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

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

38
39
40
41
42
43
44 **· FISCAL NOTE**

45 The additional workload and administrative costs associated
46 with the minimal number of new cases filed in the court system
47 can be absorbed within the budgeted resources of the Judicial
48 Department. The collection of additional fines may increase
49 General Fund revenue by minor amounts.
50

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

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

14

SUMMARY

16

17 This amendment is the minority report of the Joint Standing
18 Committee on Labor. It replaces the bill and makes the following
19 changes in the severance pay laws:

20

21 1. It codifies the court rulings and an Attorney General
22 opinion specifying how long an employer has to own a facility,
23 how long the employee has to have worked there and how many weeks
24 of pay are due;

25 2. It clarifies that employees who are on leave, disability
26 or workers' compensation are eligible employees but payments
27 under disability and workers' compensation are not counted as
28 gross wages;

30

31 3. It provides that an order under 11 United States Code is
32 included in the definition of "physical calamity";

33 4. It clarifies that contractual severance pay supersedes
34 the statute only if the employer is bound by the contract;

36

37 5. It deletes language allowing the Director of the Bureau
38 of Labor Standards within the Department of Labor to extinguish
39 employee actions for unpaid severance pay;

40

41 6. It requires the court to order the payment of interest
42 on unpaid severance pay in the same manner as prejudgment
43 interest is imposed;

44

45 7. It provides for a forfeiture for failure to pay
46 severance pay of up to \$250 per affected employee, recoverable by
47 the Department of Labor;

48

49 8. It requires that the same notice of relocation or
50 termination be provided to affected employees and municipalities
as is provided to the department and provides for the same

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forfeiture for all notice violations;

2

9. It allows employees to agree to be paid severance pay at
4 a time other than with the last wage payment; and

6

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

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