

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

FIRST REGULAR SESSION-2007

Legislative Document

No. 1777

S.P. 628

March 28, 2007

An Act for Fair Treatment of Workers

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BRANNIGAN of Cumberland. (BY REQUEST)

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

2 **Sec. 1. 26 MRSA c. 7, sub-c. 11** is enacted to read:

3 **SUBCHAPTER 11**

4 **TERMINATION OF EMPLOYMENT**

5 **§877. Limitation on termination of employment**

6 An employer may terminate the employment of an employee for misconduct only.
7 An employer who violates this section shall pay to that employee an amount equal to one
8 week's pay for each year after the first year that the employee has worked for that
9 employer. As used in this section, "misconduct" has the same meaning as in section
10 1043, subsection 23.

11 **Sec. 2. 26 MRSA §1043, sub-§23**, as repealed and replaced by PL 1999, c. 464,
12 §2, is amended to read:

13 **23. Misconduct.** "Misconduct" means a culpable breach of the employee's duties or
14 obligations to the employer or a pattern of irresponsible behavior, which in either case
15 manifests a disregard for a material interest of the employer. ~~This definition relates only~~
16 ~~to an employee's entitlement to benefits and does not preclude an employer from~~
17 ~~discharging an employee for actions that are not included in this definition of misconduct.~~
18 ~~A finding that an employee has not engaged in misconduct for purposes of this chapter~~
19 ~~may not be used as evidence that the employer lacked justification for discharge.~~

20 A. The following acts or omissions are presumed to manifest a disregard for a
21 material interest of the employer. If a culpable breach or a pattern of irresponsible
22 behavior is shown, these actions or omissions constitute "misconduct" as defined in
23 this subsection. This does not preclude other acts or omissions from being
24 considered to manifest a disregard for a material interest of the employer. The acts or
25 omissions included in the presumption are the following:

- 26 (1) Refusal, knowing failure or recurring neglect to perform reasonable and
27 proper duties assigned by the employer;
- 28 (2) Unreasonable violation of rules that are reasonably imposed and
29 communicated and equitably enforced;
- 30 (3) Unreasonable violation of rules that should be inferred to exist from common
31 knowledge or from the nature of the employment;
- 32 (4) Failure to exercise due care for punctuality or attendance after warnings;
- 33 (5) Providing false information on material issues relating to the employee's
34 eligibility to do the work or false information or dishonesty that may substantially
35 jeopardize a material interest of the employer;
- 36 (6) Intoxication while on duty or when reporting to work or unauthorized use of
37 alcohol while on duty;

- 1 (7) Using illegal drugs or being under the influence of such drugs while on duty
2 or when reporting to work;
- 3 (8) Unauthorized sleeping while on duty;
- 4 (9) Insubordination or refusal without good cause to follow reasonable and
5 proper instructions from the employer;
- 6 (10) Abusive or assaultive behavior while on duty, except as necessary for self-
7 defense;
- 8 (11) Destruction or theft of things valuable to the employer or another employee;
- 9 (12) Substantially endangering the safety of the employee, coworkers, customers
10 or members of the public while on duty;
- 11 (13) Conviction of a crime in connection with the employment or a crime that
12 reflects adversely on the employee's qualifications to perform the work; or
- 13 (14) Absence for more than 2 work days due to incarceration for conviction of a
14 crime.

15 B. "Misconduct" may not be found solely on:

- 16 (1) An isolated error in judgment or a failure to perform satisfactorily when the
17 employee has made a good faith effort to perform the duties assigned;
- 18 (2) Absenteeism caused by illness of the employee or an immediate family
19 member if the employee made reasonable efforts to give notice of the absence
20 and to comply with the employer's notification rules and policies; or
- 21 (3) Actions taken by the employee that were necessary to protect the employee
22 or an immediate family member from domestic violence if the employee made all
23 reasonable efforts to preserve the employment.

24 **SUMMARY**

25 This bill provides that an employer may terminate the employment of an employee
26 for misconduct only.