

# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2009

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Legislative Document

No. 1441

S.P. 525

In Senate, April 7, 2009

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**An Act To Amend and Clarify the Application of the Laws  
Regarding Severance Pay**

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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 JACKSON of Aroostook.  
Cosponsored by Representative BRYANT of Windham and  
Senator: BRYANT of Oxford, Representatives: CAMPBELL of Newfield, CLARK of  
Millinocket, DRISCOLL of Westbrook, EVES of North Berwick, GIFFORD of Lincoln,  
KNIGHT of Livermore Falls, RUSSELL of Portland, THERIAULT of Madawaska, TUTTLE  
of Sanford.

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

2 **Sec. 1. 26 MRSA §625-B, sub-§1, ¶A,** as enacted by PL 1979, c. 663, §157, is  
3 amended to read:

4 A. "Covered establishment" means any industrial or commercial facility or part  
5 ~~thereof which~~ of a facility in the State that employs or has employed 100 or more  
6 ~~persons at any time in the preceding 12-month~~ 36-month ~~100 or more persons.~~

7 **Sec. 2. 26 MRSA §625-B, sub-§1, ¶B-1** is enacted to read:

8 B-1. "Employee" means a person employed at a covered establishment at the time a  
9 decision to terminate or relocate is made, whether or not that person is actively  
10 working at the time.

11 **Sec. 3. 26 MRSA §625-B, sub-§1, ¶E,** as enacted by PL 1979, c. 663, §157, is  
12 amended to read:

13 E. "Physical calamity" means any sudden calamity such as fire, flood or other natural  
14 disaster, or the final order of any federal, state or local governmental agency  
15 including adjudicated an involuntary bankruptcy petition filed under 11 United States  
16 Code, Section 303 (2007). A bankruptcy petition filed by the employer or its parent  
17 corporation is not a physical calamity.

18 **Sec. 4. 26 MRSA §625-B, sub-§1, ¶H,** as enacted by PL 1979, c. 663, §157, is  
19 repealed and the following enacted in its place:

20 H. "Week's pay" means the greater of:

21 (1) The employee's wage rate at the time of a decision to terminate or relocate a  
22 covered establishment times the number of hours in that employee's most  
23 recently scheduled workweek; or

24 (2) An amount equal to the employee's gross earnings during the previous 12  
25 months divided by the number of weeks in which the employee worked.

26 **Sec. 5. 26 MRSA §625-B, sub-§2,** as enacted by PL 1979, c. 663, §157, is  
27 amended to read:

28 **2. Severance pay.** ~~Any An~~ An employer who relocates or terminates a covered  
29 establishment ~~shall be~~ is liable to ~~his employees~~ an employee for severance pay at the rate  
30 of one week's pay for each year of employment by the employee in that establishment.  
31 The severance pay to an eligible employees ~~shall be~~ employee is in addition to any final  
32 wage payment to the employee and ~~shall~~ must be paid within one regular pay period after  
33 the employee's last full day of work, notwithstanding any other provisions of law. The  
34 provisions of sections 621-A and 626 apply to the payment of severance pay, as do the  
35 penalties in section 626-A.

36 **Sec. 6. 26 MRSA §625-B, sub-§3, ¶D,** as enacted by PL 1979, c. 663, §157, is  
37 amended to read:

1 D. That employee has been employed ~~by the employer~~ at a covered establishment for  
2 less than 3 years. In determining the number of years an employee has worked at a  
3 covered establishment, it is immaterial whether or not the employee has been  
4 employed by the same person.

5 **Sec. 7. 26 MRSA §625-B, sub-§8**, as enacted by PL 2001, c. 625, §1, is amended  
6 to read:

7 **8. Rules.** The Department of Labor shall adopt rules to implement this section.  
8 Rules adopted pursuant to this subsection are major substantive rules as defined in Title  
9 5, chapter 375, subchapter ~~II-A 2-A~~. ~~Initial rules must be provisionally adopted and~~  
10 ~~submitted to the Legislature not later than January 15, 2003.~~

11 **Sec. 8. 26 MRSA §625-B, sub-§10** is enacted to read:

12 **10. Mass layoff.** Whenever an employer lays off 100 or more employees at a  
13 covered establishment, it must be presumed that the layoff constitutes a termination of a  
14 part of that covered establishment within the meaning of subsection 1, paragraph G, and  
15 the affected employees are eligible for severance pay under this section. The employer  
16 has the burden of proof that the layoff is not permanent. The terms of a collective  
17 bargaining agreement, if negotiated after the effective date of this subsection, supercede  
18 the terms of this subsection.

19 **Sec. 9. 26 MRSA §632, sub-§1**, as amended by PL 1983, c. 172, is further  
20 amended to read:

21 **1. Fund established.** There is established a Maine Wage Assurance Fund to be used  
22 by the Bureau of Labor Standards within the Department of Labor for the purpose of  
23 assuring that all former employees of employers within the State receive payment for  
24 wages for a maximum of 2 weeks for the work they have performed. The Legislature  
25 intends that payment of earned wages from the fund be limited to those cases when the  
26 employer has terminated ~~his~~ that employer's business and there are no assets of the  
27 employer from which earned wages may be paid, or when the employer has filed under  
28 any provision of the Federal Bankruptcy Act. No officer or director in the case of a  
29 corporation, no partner in the case of a partnership and no owner in the case of a sole  
30 proprietorship may be considered an employee for purposes of this section.

31 An employee who is due severance pay under section 625-B is eligible for payment from  
32 the Maine Wage Assurance Fund of the severance pay due to that employee from any  
33 employer who fails to timely pay the severance pay.

## 34 SUMMARY

35 This bill makes the following changes to the laws governing severance pay.

36 1. It makes changes to definitions.

37 2. It provides that certain provisions of the labor laws that apply to the payment of  
38 wages and penalties for the nonpayment of wages also apply to severance pay.

1           3. It provides a presumption that whenever an employer lays off 100 or more  
2 employees at a covered establishment, that layoff constitutes a termination of a part of  
3 that covered establishment.

4           4. It provides that severance pay may be paid from the Maine Wage Assurance Fund  
5 if an employer fails to timely pay severance pay.