

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

SECOND REGULAR SESSION-2010

Legislative Document

No. 1665

S.P. 630

In Senate, December 21, 2009

An Act To Prevent the Spread of H1N1

(EMERGENCY)

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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 President MITCHELL of Kennebec.
Cosponsored by Speaker PINGREE of North Haven and
Senators: DAMON of Hancock, GERZOFSKY of Cumberland, HOBBS of York,
JACKSON of Aroostook, Representatives: BUTTERFIELD of Bangor, CAMPBELL of
Newfield, WALSH INNES of Yarmouth, PIOTTI of Unity.

1 **Emergency preamble.** Whereas, acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the world health community continues to monitor the emergence of the
4 pandemic influenza arising from the H1N1 virus; and

5 **Whereas,** the federal Centers for Disease Control and Prevention and the
6 Department of Health and Human Services, Maine Center for Disease Control and
7 Prevention have developed guidelines for employers to minimize the spread of the virus
8 in the workplace; and

9 **Whereas,** in order to restrict spread of the virus in the workplace, it is important to
10 provide standards for paid sick leave for employees; and

11 **Whereas,** these measures must take effect as soon as possible to address the
12 immediate threat of this pandemic; and

13 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
14 the meaning of the Constitution of Maine and require the following legislation as
15 immediately necessary for the preservation of the public peace, health and safety; now,
16 therefore,

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

18 **Sec. 1. 26 MRSA §636,** as enacted by PL 2005, c. 455, §1, is repealed.

19 **Sec. 2. 26 MRSA §637** is enacted to read:

20 **§637. Paid sick leave**

21 **1. Definitions.** As used in this section, unless the context otherwise indicates, the
22 following terms have the following meanings.

23 A. "Employee" means a person who may be permitted, required or directed by an
24 employer in consideration of direct or indirect gain or profit to engage in any
25 employment but does not include an independent contractor.

26 B. "Employer" means a large business employer or a small business employer.

27 C. "Family member" means:

28 (1) A biological, adopted or foster child, stepchild or ward of the employee or of
29 the employee's spouse or domestic partner;

30 (2) A biological, foster or adoptive parent, stepparent or guardian of an
31 employee or of the employee's spouse or a person who served in the place of a
32 parent to the employee when the employee was a minor;

33 (3) A spouse;

34 (4) A grandparent or spouse of a grandparent;

35 (5) A grandchild;

1 (6) A biological, foster or adoptive sibling or spouse of a biological, foster or
2 adoptive sibling; and

3 (7) A domestic partner as defined in section 843, subsection 7.

4 D. "Large business employer" means a public or private employer who employs 25
5 or more employees during the calendar year. For businesses in which the number of
6 persons who are employed by the employer fluctuates above and below 25 during a
7 year, the number of employees for the current calendar year is the average number of
8 persons who were employed per week when the business was in operation during the
9 preceding calendar year.

10 E. "Paid sick leave" means compensated leave provided by an employer to an
11 employee as a benefit of the employment for use by the employee during an absence
12 from the employment for the purposes described in subsection 3. "Paid sick leave"
13 does not include paid disability benefits.

14 F. "Small business employer" means a public or private employer who employs 24
15 or fewer employees during a calendar year. For businesses in which the number of
16 persons who are employed by the employer fluctuates above and below 24 during a
17 year, the number of employees for the current calendar year is the average number of
18 persons who were employed per week when the business was in operation during the
19 preceding calendar year.

20 **2. Accrual of hours; amount; process.** All employees have the right to paid sick
21 leave as provided in this section.

22 A. A large business employer shall provide a minimum of one hour of paid sick
23 leave for every 40 hours worked by an employee. The employer is not required to
24 provide more than 52 hours paid sick leave in a calendar year. The employer shall
25 allow an employee to carry over up to 52 hours paid sick leave to a subsequent
26 calendar year, to the extent that they were not used by the employee.

27 B. A small business employer shall provide a minimum of one hour of paid sick
28 leave for every 80 hours worked by an employee. The employer is not required to
29 provide more than 26 hours paid sick leave in a calendar year. The employer shall
30 allow an employee to carry over up to 26 hours paid sick leave to a subsequent
31 calendar year, to the extent that they were not used by the employee.

32 C. An employer shall allow an employee to accrue paid sick leave beginning on the
33 first day of employment. An employee may use accrued paid sick leave beginning on
34 the 90th day after the employee's first day of employment, unless the employer agrees
35 to an earlier date.

36 D. For a period of paid sick leave that is shorter than a normal work day, leave must
37 be counted on an hourly basis or in the smallest increment that the employer's payroll
38 system uses to account for absences or use of leave.

39 **3. Use of paid sick leave.** An employee may use paid sick leave accrued under this
40 section for any of the following:

41 A. An absence resulting from a physical or mental illness, injury or medical
42 condition of the employee;

1 B. An absence resulting from obtaining professional medical diagnosis or care, or
2 preventive medical care, for the employee. An employee must make a reasonable
3 effort to schedule leave in a manner that does not unduly disrupt the operations of the
4 employer;

5 C. An absence resulting from closure of the employee's place of business by order of
6 a public official due to a health emergency declared under Title 22, section 802 or an
7 employee's need to care for a child whose school or place of care has been closed by
8 order of a public official due to a health emergency;

9 D. An absence for the purpose of caring for a family member who has any of the
10 conditions or needs for diagnosis or care described in paragraph A or B; and

11 E. An absence for the purpose of obtaining social or legal services pertaining to
12 stalking, domestic violence or sexual abuse if the employee or the employee's family
13 member is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11,
14 stalking or any act that would support an order for protection from abuse under Title
15 19-A, chapter 101, including:

16 (1) Preparing for and attending court proceedings;

17 (2) Receiving medical treatment or assisting with medical treatment for a victim
18 who is the employee's family member; or

19 (3) Obtaining necessary services to remedy a crisis caused by domestic violence,
20 sexual assault or stalking.

21 4. Equivalent compensation. An employer providing an employee with
22 compensated leave for reasons consistent with this section that is equal to or greater in
23 amount than the paid sick leave required by this section is deemed to have satisfied all of
24 the obligations imposed by this section.

25 5. Relationship to collective bargaining. This section applies to employees
26 covered by a collective bargaining agreement unless the agreement provides paid sick
27 leave benefits that may be used for reasons consistent with and that are equal to or greater
28 than those provided in this section.

29 6. Prohibited actions by employer. An employer may not discharge, demote,
30 suspend, discipline or otherwise discriminate against an employee or threaten to take any
31 of these actions against an employee who requests paid sick leave required by this
32 section, or otherwise exercises rights granted under this section, or who files a complaint
33 or testifies or assists in an action brought against the employer for a violation of this
34 section. This section does not prohibit an employer from taking employment action
35 against an employee for taking leave that is not required by this section or other
36 applicable law.

37 7. Enforcement; rules. The Department of Labor shall adopt rules to implement
38 and enforce the provisions of this section including carry-over provisions for earned paid
39 sick leave from year to year and to provide for reinstatement, back pay or other equitable
40 remedies for violations of this section. The rules may also set forth procedures for the
41 receipt, investigation and prosecution of complaints brought under this section. Rules

1 adopted pursuant to this subsection are routine technical rules as defined in Title 5,
2 chapter 375, subchapter 2-A.

3 **Emergency clause.** In view of the emergency cited in the preamble, this
4 legislation takes effect when approved.

5 **SUMMARY**

6 This bill requires an employer to give a maximum of 52 accrued hours of paid sick
7 leave per year to any employee who is employed by a large business employer and a
8 maximum of 26 accrued paid sick leave hours per year to any employee who is employed
9 by a small business employer. Paid sick leave is accrued from the first day of
10 employment and can be used on the 90th day and thereafter. Earned paid sick leave may
11 be used by an employee during an absence from employment due to the illness of an
12 employee or illness of an employee's family member, if the employee's place of business
13 is closed due to a public health emergency, if an employee needs to care for a dependent
14 whose school or place of care has been closed due to a public health emergency, for the
15 purpose of an employee accessing necessary preventive health care or an employee's
16 family member accessing necessary preventive health care or due to the employee or the
17 employee's family member being a victim of stalking, domestic violence or sexual abuse.