

MAINE STATE LEGISLATURE

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125th MAINE LEGISLATURE

FIRST REGULAR SESSION-2011

Legislative Document

No. 1235

H.P. 926

House of Representatives, March 22, 2011

An Act To Allow a Tax-free Employee Illness Account

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Heather J.R. Priest".

HEATHER J.R. PRIEST
Clerk

Presented by Representative COTTA of China.
Cosponsored by Senator KATZ of Kennebec and
Representatives: BEAULIEU of Auburn, BOLAND of Sanford, DILL of Old Town,
HARVELL of Farmington, KESCHL of Belgrade, RICHARDSON of Warren, WILLETTE of
Presque Isle.

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

2 **Sec. 1. 26 MRSA §1043, sub-§19**, as amended by PL 1999, c. 464, §1, is further
3 amended to read:

4 **19. Wages.** "Wages" means all remuneration for personal services, including
5 commissions, bonuses, severance or terminal pay, gratuities and the cash value of all
6 remuneration in any medium other than cash. The reasonable cash value of remuneration
7 in any medium other than cash ~~shall~~ must be estimated and determined in accordance
8 with regulations prescribed by the commission, except that:

9 A. For purposes of section 1221, the term "wages" does not include remuneration
10 that exceeds the first \$7,000 through December 31, 1999, and on and after January 1,
11 2000, the first \$12,000 that is paid in a calendar year to an individual by an employer
12 or the employer's predecessor for employment during any calendar year, unless that
13 remuneration is subject to a tax under a federal law imposing a tax against which
14 credit may be taken for contributions required to be paid into a state unemployment
15 fund. The wages of an individual for employment with an employer are subject to this
16 exception whether earned in this State or any other state when the employer-
17 employee relationship is between the same legal entities;

18 B. For purposes of section 1191, subsection 2, section 1192, subsection 5 and section
19 1221, the term "wages" ~~shall~~ may not include:

20 (1) The amount of any payment, including any amount paid by an employer for
21 insurance or annuities, or into a fund, to provide for any such payment, made to,
22 or on behalf of, an employee or any of ~~his~~ the employee's dependents under a
23 plan or system established by an employer ~~which~~ that makes provision for ~~his~~ the
24 employees generally, or for ~~his~~ the employees generally and their dependents, or
25 for a class or classes of ~~his~~ employees, or for a class or classes of ~~his~~ employees
26 and their dependents, on account of:

27 (a) Sickness or accident disability, but, in the case of payments made to an
28 employee or any of ~~his~~ the employee's dependents, this subparagraph ~~shall~~
29 exclude from the term "wages" only payments ~~which~~ that are received under
30 a workers' compensation law;

31 (b) Medical or hospitalization expenses in connection with sickness or
32 accident disability; or

33 (c) Death;

34 (1-A) Any payment on account of sickness or accident disability, or medical or
35 hospitalization expenses in connection with sickness or accident disability, made
36 by an employer or a 3rd party to, or on behalf of, an employee after the expiration
37 of 6 calendar months following the last calendar month in which the employee
38 worked for that employer;

39 (2) The payment by an employing unit, without deduction from the remuneration
40 of the employee, of the tax imposed upon an employee under section 3101 of the
41 Federal Insurance Contributions Act, as amended, with respect to service
42 performed after July 26, 1940, with respect to remuneration paid to an employee

1 for domestic service in a private home of the employer or for agricultural labor;
2 or

3 (3) The amount of any payment, other than vacation or sick pay, to an individual
4 after the month in which ~~he~~ the individual attains the age of 62, if ~~he~~ the
5 individual did not perform services for the employing unit in the period for which
6 such payment is made and is not expected to perform service in the future for the
7 payment;

8 C. With respect to weeks of unemployment beginning on or after January 1, 1978,
9 wages for insured work ~~shall~~ include wages paid for previously uncovered services.
10 For the purposes of this paragraph, the term "previously uncovered services" means
11 services, except to the extent that assistance under Title II of the Emergency Jobs and
12 Unemployment Assistance Act of 1974 was paid on the basis of such services:

13 (1) ~~Which~~ That were not employment as defined in subsection 11, and were not
14 services covered pursuant to section 1222, at any time during the one-year period
15 ending December 31, 1975; and

16 (2) ~~Which~~ That:

17 (a) Are agricultural labor, as defined in subsection 11, paragraph A-2 or
18 domestic service as defined in subsection 11, paragraph A-3; or

19 (b) Are services performed by an employee of this State or a political
20 subdivision thereof, or any of their instrumentalities as provided in
21 subsection 11, paragraph A-1, subparagraph (1), or by an employee of a
22 nonprofit educational institution ~~which~~ that is not an institution of higher
23 education, as provided in subsection 11, paragraph F, subparagraph (21),
24 division (i);

25 ~~except to the extent that assistance under Title II of the Emergency Jobs and~~
26 ~~Unemployment Assistance Act of 1974 was paid on the basis of such services;~~

27 D. Nothing in this subsection may be construed to include as wages any payment
28 ~~which~~ that is not included as wages under the Federal Unemployment Tax Act, 26
29 United States Code, ~~Section~~ Sections 3306(b)(5) and 3306(r), as amended, as of
30 January 1, 1985; ~~and~~

31 E. Nothing in this subsection may be construed to exclude from wages any
32 remuneration ~~which~~ that is:

33 (1) Taxable under any federal law that imposes a tax against which credit may be
34 taken for contributions required to be paid into a state unemployment fund; or

35 (2) Required to be covered under this chapter as a condition for full tax credit
36 against the tax imposed by the Federal Unemployment Tax Act; ~~and~~

37 F. Funds deposited into an illness account under Title 36, section 5117 minus an
38 amount equal to a withdrawal in violation of Title 36, section 5117, subsection 4 are
39 not wages.

40 **Sec. 2. 36 MRSA §5117** is enacted to read:

1 **§5117. Illness account**

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

4 A. "Employer" has the same meaning as in Title 26, section 1043, subsection 9.

5 B. "Income" means income that is included in Maine adjusted gross income as
6 defined in section 5102, subsection 1-C.

7 C. "Wages" has the same meaning as in Title 26, section 1043, subsection 19.

8 **2. Illness account.** If an employer does not provide compensated sick leave to an
9 employee of the employer, the employer may establish an account to which the employer
10 and the employee may contribute to compensate the employee for time lost at work due
11 to illness. The account must be a dedicated account separate from the employer's other
12 funds. The account may be an interest-bearing account, all proceeds of which accrue to
13 the employee except for fees assessed to maintain the account by the financial institution
14 in which the account is located. Except for an amount withdrawn from the account in
15 violation of subsection 4, an amount deposited into an account under this section is not
16 considered wages subject to the provisions of Title 26, chapter 13 or income subject to
17 the tax imposed under this chapter. An employer is not obligated to contribute to the
18 illness account.

19 **3. Account limit.** Funds in an illness account under subsection 2 may not exceed an
20 amount equal to 40 hours at the employee's hourly rate of compensation if the employee
21 is compensated on an hourly basis or one week of the employee's salary if the employee
22 is a salaried employee.

23 **4. Withdrawals.** A withdrawal from an illness account in subsection 2 may be
24 made:

25 A. To compensate an employee in the amount equal to one hour of the employee's
26 hourly compensation or 1/40 of the weekly salary for a salaried employee for each
27 hour the employee is unable to fulfill the employee's duties due to illness; and

28 B. Once every calendar year at the employee's option in an amount up to the full
29 amount of funds in the account.

30 **5. Rules.** The State Tax Assessor shall adopt rules to carry out the purposes of this
31 section. Rules adopted pursuant to this subsection are routine technical rules as defined
32 in Title 5, chapter 375, subchapter 2-A.

33 **Sec. 3. 36 MRSA §5122, sub-§2, ¶FF**, as corrected by RR 2009, c. 2, §112, is
34 amended to read:

35 FF. To the extent included in federal adjusted gross income, student loan payments
36 made by the taxpayer's employer in accordance with section 5217-D; ~~and~~

37 **Sec. 4. 36 MRSA §5122, sub-§2, ¶GG**, as reallocated by RR 2009, c. 2, §113, is
38 amended to read:

1 GG. To the extent included in the taxpayer's federal adjusted gross income, the
2 recovery of a portion of a federal standard deduction claimed in a prior year for
3 which the taxpayer was not allowed under this Part to reduce federal adjusted gross
4 income or Maine adjusted gross income for that year; and

5 **Sec. 5. 36 MRSA §5122, sub-§2, ¶HH** is enacted to read:

6 HH. For income tax years beginning on or after January 1, 2012, an amount equal to
7 the contributions made to an illness account under section 5117, except for an amount
8 equal to a withdrawal from the illness account in violation of section 5117,
9 subsection 4.

10 **SUMMARY**

11 This bill allows an employer to establish an illness account for employees who do not
12 receive compensated sick leave. Both the employer and employee may contribute to the
13 illness account up to an amount equal to one week of the employee's wages, and the
14 employee may withdraw funds from the account equal to one hour of the employee's
15 wages for every hour the employee is unable to perform the employee's duties due to
16 illness. The employee may also withdraw an amount up to the entire amount in the
17 illness account once every year. The funds contributed to the account are not subject to
18 state unemployment tax or income tax.