

MAINE STATE LEGISLATURE

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H.P. 822

House of Representatives, March 26, 2013

An Act To Establish the Fair Chance for Employment Act

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative RUSSELL of Portland.
Cosponsored by Senator JACKSON of Aroostook.

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

2 **Sec. 1. 26 MRSA §42, first ¶**, as amended by PL 1999, c. 649, §1, is further
3 amended to read:

4 The bureau shall collect, assort and arrange statistical details relating to all
5 departments of labor and industrial pursuits in the State; to trade unions and other labor
6 organizations and their effect upon labor and capital; to the number and character of
7 industrial accidents and their effect upon the injured, their dependent relatives and upon
8 the general public; to other matters relating to the commercial, industrial, social,
9 educational, moral and sanitary conditions prevailing within the State, including the
10 names of firms, companies or corporations, where located, the kind of goods produced or
11 manufactured, the time operated each year, the number of employees classified according
12 to age and sex and the daily and average wages paid each employee; and the exploitation
13 of such other subjects as will tend to promote the permanent prosperity of the industries
14 of the State. The director is authorized and empowered, subject to the approval of the
15 Governor, to accept from any other agency of government, individual, group or
16 corporation such funds as may be available in carrying out this section, and meet such
17 requirements with respect to the administration of such funds, not inconsistent with this
18 section, as are required as conditions precedent to receiving such funds. An accounting of
19 such funds and a report of the use to which they were put must be included in the biennial
20 report to the Governor. Each agency of government shall cooperate fully with the
21 bureau's efforts to compile labor and industrial statistics. The director shall cause to be
22 enforced all laws regulating the employment of minors; all laws established for the
23 protection of health, lives and limbs of operators in workshops and factories, on railroads
24 and in other places; all laws regarding consideration of employment status in hiring
25 practices; all laws regulating the payment of wages; and all laws enacted for the
26 protection of the working classes. During an investigation to enforce those laws, the
27 director may request records and other information relating to an employer's compliance
28 with unemployment compensation and workers' compensation laws, including
29 information needed to determine whether the employer has properly classified a worker
30 as an independent contractor, and shall report suspected violations of those laws to the
31 state or federal agency responsible for enforcing them. The director may adopt, in
32 accordance with the Maine Administrative Procedure Act, rules regarding all such laws,
33 except where this authority is granted to a board or commission. Rules adopted pursuant
34 to this section are routine technical rules as defined in Title 5, chapter 375, subchapter
35 ~~H-A~~ 2-A. The director shall, on or before the first day of July, biennially, report to the
36 Governor, and may make such suggestions and recommendations as the director may
37 ~~deem~~ consider necessary for the information of the Legislature. The director may from
38 time to time cause to be printed and distributed bulletins upon any subject that is of public
39 interest and benefit to the State and may conduct a program of research, education and
40 promotion to reduce industrial accidents. The director may review various data, such as
41 workers' compensation records, as well as other information relating to any public or
42 private employer's safety experience. When any individual public or private employer's
43 safety experience causes the director to question seriously the safe working environment
44 of that employer, the director may offer any safety education and consultation programs
45 to that employer that may be beneficial in providing a safer work environment. If the
46 employer refuses this assistance or is in serious noncompliance ~~which~~ that may lead to

1 injuries, or if serious threats to worker safety continue, then the director shall
2 communicate concerns to appropriate agencies, such as the United States Occupational
3 Safety and Health Administration. As used in this section, the term "noncompliance"
4 means a lack of compliance with any applicable health and safety regulations of the
5 United States Occupational Safety and Health Administration or other federal agencies.
6 The bureau is responsible for the enforcement of indoor air quality and ventilation
7 standards with respect to state-owned buildings and buildings leased by the State. The
8 bureau shall enforce air quality standards in a manner to ensure that corrections to
9 problems found in buildings be made over a reasonable period of time, using consent
10 agreements and other approaches as necessary and reasonable.

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

12 **SUBCHAPTER 1-C**

13 **FAIR CHANCE FOR EMPLOYMENT ACT**

14 **§614. Short title**

15 This subchapter may be known and cited as "the Fair Chance for Employment Act."

16 **§615. Definitions**

17 As used in this subchapter, unless the context otherwise indicates, the following
18 terms have the following meanings.

19 **1. Affected individual.** "Affected individual" means an individual who was refused
20 consideration for employment or was not hired by an employer because of the
21 individual's current employment status or an individual who was not recruited, screened,
22 considered or referred for employment opportunities by an employment agency because
23 of the individual's current employment status.

24 **2. Contracting agency.** "Contracting agency" means a state agency that has the
25 authority to make and administer contracts and to make determinations and findings with
26 respect to contracts or the state agency's authorized representative.

27 **3. Contractor.** "Contractor" means a person that is a party to a government contract
28 other than the government and includes the department, division, subcontractor or other
29 unit of a person responsible for the performance under the contract.

30 **4. Current employment status.** "Current employment status" means an individual's
31 current status as employed or unemployed.

32 **5. Director.** "Director" means the Director of the Bureau of Labor Standards within
33 the Department of Labor.

34 **6. Employer.** "Employer" means a person engaged in commerce or any industry or
35 activity affecting commerce that has 15 or more employees for each working day in each
36 of 20 or more calendar weeks in the current or preceding calendar year and includes:

1 A. A person who acts, directly or indirectly, in the interest of an employer with
2 respect to employing individuals to work for the employer; and

3 B. Any successor in interest of an employer.

4 7. Employment agency. "Employment agency" means a person regularly
5 undertaking, with compensation and for profit, to procure employees for an employer or
6 to procure for individuals opportunities to work for an employer and includes an agent of
7 such a person.

8 8. Online job website. "Online job website" means any publicly accessible website
9 that provides online job postings.

10 9. Person. "Person" means an individual, partnership, association, corporation,
11 business trust, legal representative or any organized group of persons.

12 **§616. Prohibited acts**

13 **1. Employers; unlawful practices.** An employer may not:

14 A. Fail or refuse to consider for employment or to offer employment to an individual
15 because of the individual's current employment status;

16 B. Publish, in print, on the Internet or in any other medium, an advertisement or
17 announcement for a job vacancy that includes:

18 (1) A provision stating or indicating that current employment status is a
19 requirement or qualification for the job; or

20 (2) A provision stating or indicating that an employer will not consider an
21 individual for employment based on current employment status; or

22 C. Direct or request that an employment agency take current employment status into
23 account in screening or referring individuals for employment.

24 **2. Employment agencies; unlawful practices.** An employment agency may not:

25 A. Fail or refuse to consider or refer an individual for employment based on the
26 individual's current employment status;

27 B. Limit, segregate or classify an individual in any manner that may limit the
28 individual's access to information about jobs or limit the individual's number of
29 referrals for consideration of jobs because of current employment status; or

30 C. Publish, in print, on the Internet or in any other medium, an advertisement or
31 announcement for a job vacancy that includes:

32 (1) A provision stating or indicating that current employment status is a
33 requirement or qualification for the job; or

34 (2) A provision stating or indicating that the employer will not consider
35 individuals for employment based on current employment status.

36 **3. Online job websites; unlawful practices.** A person may not publish on an online
37 job website an advertisement or announcement for a job vacancy that includes:

1 A. A provision stating or indicating that current employment status is a requirement
2 or qualification for the job; or

3 B. A provision stating or indicating that the employer will not consider individuals
4 for employment based on current employment status.

5 **4. Interference with rights.** An employer or employment agency may not:

6 A. Interfere with, restrain or deny the exercise of or the attempt to exercise any right
7 provided under this subchapter; or

8 B. Refuse to hire, discharge or in any other manner discriminate against any
9 individual for the individual's opposing any practice made unlawful by this
10 subchapter.

11 **5. Interference with proceedings or inquiries.** A person may not discharge or in
12 any other manner discriminate against an individual because that individual:

13 A. Has filed a charge or has instituted or caused to be instituted any proceeding
14 pursuant to this subchapter;

15 B. Has given, or is about to give, any information in connection with an inquiry or
16 proceeding instituted pursuant to this subchapter; or

17 C. Has testified, or is about to testify, in an inquiry or proceeding instituted pursuant
18 to this subchapter.

19 **6. Civil violation.** A person that violates subsection 3, 4 or 5 commits a civil
20 violation for which a fine of not less than \$250 and not more than \$1,000 for each
21 violation, payable to the State, may be adjudged.

22 **7. Employment history.** Nothing in this subchapter is intended to preclude an
23 employer or employment agency from considering an individual's employment history or
24 from examining the reasons underlying an individual's employment status in assessing an
25 individual's ability to perform a job or otherwise making employment decisions about
26 that individual.

27 **§617. Investigative authority**

28 To ensure compliance with the provisions of this subchapter or any rule adopted or
29 order issued under this subchapter, the director may enter an employer's workplace and
30 examine all the employer's records related to allegations of violations of section 616. An
31 employer or employment agency shall make, keep and preserve records pertaining to
32 compliance with this subchapter.

33 **§618. Private civil action**

34 **1. Civil action by individual.** An employer or employment agency that violates
35 section 616, subsection 1 or 2 is liable to an affected individual for:

36 A. Actual damages equal to the amount of:

1 (1) Any wages, salary, employment benefits and other compensation denied or
2 lost to the individual by reason of the violation; or

3 (2) In a case in which wages, salary, employment benefits or other compensation
4 has not been denied or lost to the individual, any actual monetary losses sustained
5 by the individual as a direct result of the violation or damages in the amount of
6 \$1,000 per violation per day, whichever is greater;

7 B. Reasonable interest on the amount described in paragraph A calculated at a rate
8 determined by the court;

9 C. An additional amount as liquidated damages equal to the sum of the amount
10 described in paragraph A and the interest described in paragraph B except that, if an
11 employer or employment agency that has violated section 616 proves to the
12 satisfaction of the court that the act or omission that violated section 616 was in good
13 faith and that the employer or employment agency had reasonable grounds for
14 believing that the act or omission was not a violation of section 616, the court may, in
15 its discretion, reduce the amount of the liability to the amount and interest determined
16 under paragraphs A and B, respectively; and

17 D. Any equitable relief the court may determine appropriate, including employment
18 as well as compensatory and punitive damages.

19 **2. Right of action.** An action to recover the damages or equitable relief prescribed
20 in subsection 1 may be maintained against an employer or employment agency in the
21 Superior Court by one or more persons for and on behalf of:

22 A. The affected individual; or

23 B. The affected individual and other individuals similarly situated.

24 **3. Fees and costs.** If the plaintiff is successful in an action brought under this
25 section, in addition to any judgment it awards, the court shall require the defendant to pay
26 the plaintiff's reasonable attorney's fees, reasonable expert witness fees and other costs of
27 the action.

28 **4. Limitations.** An action taken by an affected individual under subsection 1 may be
29 brought not later than 2 years after the date of the last event constituting the alleged
30 violation for which the action is brought except that the limitation for filing an action is
31 tolled during the period that the director is considering a complaint against a defendant
32 named in a complaint filed under section 619, subsection 1. The right provided by
33 subsection 2 to bring an action by or on behalf of an affected individual and other
34 individuals similarly situated terminates on the filing of a complaint by the director in an
35 action under section 619 in which a recovery is sought of the damages described in
36 subsection 1, paragraph A to an affected individual by an employer or employment
37 agency liable under subsection 1.

38 **§619. Action by the director**

39 **1. Duty.** The director shall receive, investigate and attempt to resolve complaints of
40 violations of section 616.

1 **2. Civil action.** The Department of Labor may bring a civil action in Superior
2 Court:

3 A. To enjoin violations of this subchapter and seek other relief going forward
4 necessary to prevent future violations;

5 B. To recover on behalf of an affected individual the damages described in section
6 618, subsection 1, paragraph A; or

7 C. To seek any other equitable relief the court determines appropriate.

8 **3. Nonlapsing fund.** There is created in the Department of Labor a nonlapsing fund
9 to carry out the purposes of this subchapter. Any sums recovered by the Department of
10 Labor pursuant to subsection 2, paragraph B must be placed in this fund and paid directly
11 to the affected individual or individuals on behalf of whom the action was brought. Any
12 sums recovered pursuant to subsection 2, paragraph B that are not paid to an affected
13 individual because of the death of the affected individual or the inability of the
14 Department of Labor to locate the affected individual within a period of 3 years, and any
15 interest earned on this fund, must be paid to the Treasurer of State for deposit to the
16 General Fund.

17 **§620. Termination or debarment of contractors and subcontractors**

18 **1. Grounds for termination and debarment.** If a contractor that has a contract
19 with a state agency has been found by a court of competent jurisdiction to have engaged
20 in any of the prohibited acts enumerated in section 616, subsection 1, 2, 4 or 5 in an
21 action brought under section 618 or 619, the Department of Labor may, after consulting
22 with the contracting agency:

23 A. Direct the contracting agency to cancel, terminate or suspend the contract or any
24 portion of the contract; and

25 B. Debar the contractor from participation in state contracts for a period not to
26 exceed 3 years.

27 **§620-A. Exception**

28 This subchapter does not apply to instances in which current employment status is a
29 bona fide occupational qualification reasonably necessary to successful performance in
30 the job.

31 **SUMMARY**

32 This bill establishes the Fair Chance for Employment Act and does the following.

33 1. It prohibits employers from refusing to consider for employment or offer
34 employment to an individual based on the individual's status as employed or unemployed.
35 Employers are also prohibited from advertising that current employment status is a
36 qualification or requirement for a job or that the employer will not consider an applicant
37 based on current employment status. Employers are prohibited from directing an

1 employment agency to take current employment status into consideration when screening
2 or referring applicants.

3 2. It prohibits employment agencies from failing to consider or refer applicants based
4 on employment status, advertising that employment status is a qualification or
5 requirement for a job or that an employer will not consider applicants based on current
6 employment status or discriminating against individuals in any manner that may limit
7 their access to information about jobs or limit the individuals' number of referrals for
8 consideration of jobs because of their current employment status.

9 3. It prohibits online job websites from publishing any advertisement for a job
10 vacancy that includes any provision requiring or indicating that current employment
11 status is a qualification or requirement for a job or that an employer will not consider
12 applicants for employment based on current employment status.

13 4. It prohibits an employer or employment agency from interfering with individuals
14 exercising their rights under this Act or otherwise discriminating against individuals for
15 opposing any practice made illegal by this Act. It also prohibits discriminating against
16 any individual who has filed a complaint or caused to be instituted any proceeding under
17 this Act or who otherwise gives or may give information or testimony in connection with
18 any inquiry or proceeding under this Act.

19 5. It requires employers and employment agencies to keep records pertaining to
20 compliance with this Act, and it gives the Director of the Bureau of Labor Standards
21 within the Department of Labor the investigative authority to enter places of business and
22 examine all records related to allegations of violations of this Act.

23 6. It creates a right for a person who has been affected by a violation under this Act
24 to bring a civil action against the employer or employment agency responsible. A person
25 may bring a civil action on behalf of another individual who has been affected by a
26 violation of this Act or a group of individuals similarly situated.

27 7. It grants the Department of Labor the power to file a civil action on behalf of an
28 individual or group of individuals against an employer or employment agency that
29 violates the Act. Once the director begins such a lawsuit, there is no more private right to
30 a civil action on behalf of the individual.

31 8. It creates a duty for the Director of the Bureau of Labor Standards to enforce all
32 laws relating to consideration of employment status in hiring practices, as well as the
33 specific duty to receive, investigate and attempt to resolve complaints of violations of this
34 Act.

35 9. It gives the Department of Labor the authority to terminate state contracts and
36 debar a contractor from participating in state contracts for a period of up to 3 years when
37 a contractor has been found by a court to be in violation of this Act.

38 10. It would not prohibit employment decisions or advertisements when a
39 requirement related to employment status is a bona fide occupational qualification
40 reasonably necessary to successful performance in the job. It also would not preclude an

1 employer from considering employment history or the reasons underlying an individual's
2 employment status.