

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

FIRST REGULAR SESSION-2017

Legislative Document

No. 1575

S.P. 553

In Senate, May 4, 2017

**An Act To Update the Statutes Governing the Bureau of Labor
Standards To Promote Clarity for Workers and Employers**

Submitted by the Department of Labor pursuant to Joint Rule 204.
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
Secretary of the Senate

Presented by Senator CUSHING of Penobscot.
Cosponsored by Representative STETKIS of Canaan and
Representatives: AUSTIN of Gray, LOCKMAN of Amherst, VACHON of Scarborough.

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

2 **Sec. 1. 26 MRSA §41**, as amended by PL 1995, c. 560, Pt. H, §7 and affected by
3 §17, is further amended to read:

4 **§41. Director; personnel; salaries; expenses**

5 The Bureau of Labor Standards within the Department of Labor, as established and
6 referred to in this Title as the "bureau," is maintained under the direction of an officer
7 whose title is Director of Labor Standards ~~and state factory inspector~~, referred to in this
8 Title, except in chapter 13, as the "director." The director is appointed by the
9 Commissioner of Labor and holds office at the pleasure of the commissioner. The
10 director has an office at the seat of government. The director shall appoint, subject to the
11 Civil Service Law, such employees as may be necessary.

12 **Sec. 2. 26 MRSA §42-B, sub-§1**, as enacted by PL 2001, c. 242, §1, is amended
13 to read:

14 **1. Bureau to furnish poster or notice.** The bureau shall produce and furnish to
15 employers posters or notices in electronic or printed form outlining state labor laws
16 applicable to those employers and regulating:

- 17 A. Employment of minors;
- 18 B. Time of payment of wages;
- 19 C. Safety and health of employees; ~~and~~
- 20 D. Family medical leave;
- 21 E. Video display terminal safety as described in section 252, subsection 1; and
- 22 F. Minimum wage and overtime provisions as described in section 664.

23 The posters or notices may also include such other laws as may be required or useful.

24 **Sec. 3. 26 MRSA §42-B, sub-§3**, as enacted by PL 2001, c. 242, §1, is amended
25 to read:

26 **3. Employer to post notice.** An employer subject to the laws outlined in the ~~printed~~
27 poster or notice issued by the bureau pursuant to subsection 1 shall post and keep posted
28 in a place accessible to the employer's employees a copy of the ~~printed~~ poster or notice
29 furnished by the bureau. An employer who violates this section ~~is subject to the penalties~~
30 ~~set forth in section 704.~~ may be assessed a fine by the department payable to the State as
31 follows:

- 32 A. For the first violation, a fine of up to \$25 per day after being notified by the
33 bureau of the violation, not to exceed \$1,000;
- 34 B. For a 2nd violation occurring within 3 years of a prior adjudication for a violation
35 of this section, a fine of not less than \$25 per day after being notified by the bureau of
36 the violation or more than \$50 per day, not to exceed \$2,500; or

1 C. For a 3rd or subsequent violation occurring within 3 years of 2 or more prior
2 adjudications for a violation of this section, a fine of not less than \$25 per day after
3 being notified by the bureau of the violation or more than \$100 per day, not to exceed
4 \$5,000.

5 **Sec. 4. 26 MRSA §44, first ¶**, as amended by PL 2015, c. 138, §2, is further
6 amended to read:

7 The director ~~as state factory inspector~~, and any authorized agent of the bureau, may
8 enter any workplace as defined in section 1, provided by the State or by a state agency,
9 county, municipal corporation, school district or other public corporation or political
10 subdivision when the same are open or in operation, for the purpose of gathering facts
11 and statistics under sections 42 to 44, and may examine the methods of protecting
12 employees from danger, the safety and health of employees and sanitary conditions in and
13 around such buildings and places, and may make a record of such inspection. Upon
14 petition of the director, a Superior Court in the county in which any refusal to permit
15 entry or fact gathering or inspection was alleged to have occurred may order appropriate
16 injunctive relief against any person in charge of the workplace who refuses entry to the
17 director or authorized agent of the bureau.

18 **Sec. 5. 26 MRSA §46, 6th ¶**, as amended by PL 1983, c. 296, is further amended
19 to read:

20 Any employer who willfully or repeatedly violates any standard, rule or order
21 ~~promulgated adopted~~ pursuant to section 565, ~~and that violation is specifically determined~~
22 ~~to be a serious violation, shall, upon conviction, be punished by a fine of not more than~~
23 ~~\$10,000 or by imprisonment for not more than 6 months, or by both; except that if the~~
24 ~~conviction is for a violation committed after a first conviction of such person, punishment~~
25 ~~shall be by a fine of not more than \$20,000, or by imprisonment for not more than one~~
26 ~~year, or by both~~ may be assessed a civil penalty of not more than \$10,000.

27 **Sec. 6. 26 MRSA §597**, as enacted by PL 1991, c. 366, is amended to read:

28 **§597. Conditions of employment**

29 An employer or an agent of an employer may not require, as a condition of
30 employment, that any employee or prospective employee refrain from using tobacco
31 products outside the course of that employment or otherwise discriminate against any
32 person with respect to the person's compensation, terms, conditions or privileges of
33 employment, except for life and health insurance and employee benefit plans, for using
34 tobacco products outside the course of employment as long as the employee is 18 years of
35 age or older and complies with any workplace policy concerning use of tobacco.
36 Tobacco use as part of a voluntary wellness program that offers incentives for the
37 cessation of tobacco products is not considered tobacco use for purposes of this section.

38 **Sec. 7. 26 MRSA §600, sub-§1**, as amended by PL 2011, c. 537, §1, is further
39 amended to read:

1 **1. Firearms in vehicles.** An employer or an agent of an employer may not prohibit
2 an employee ~~who has a valid permit to carry~~ from keeping a concealed firearm under
3 Title 25, chapter 252 ~~from keeping a firearm~~ in the employee's vehicle as long as the
4 vehicle is locked and the firearm is not visible. This subsection applies to the State as an
5 employer when a state employee's vehicle is on property owned or leased by the State.
6 This subsection does not authorize an employee or state employee to carry or possess
7 a firearm in a place where carrying or possessing a firearm is prohibited by law, including
8 worksites not owned by the employer of record. For purposes of this section, "state
9 employee" means an employee of the State within the executive branch, the legislative
10 branch or the judicial branch performing services within the scope of that employee's
11 employment.

12 **Sec. 8. 26 MRSA §601, first ¶**, as enacted by PL 1985, c. 212, is amended to
13 read:

14 In the absence of a collective bargaining agreement or other written employer-
15 employee agreement providing otherwise, an employee, as defined in section 663, may be
16 employed or permitted to work for no more than 6 consecutive hours at one time unless
17 ~~he~~ that employee is given the opportunity to take at least 30 consecutive minutes of rest
18 time, except in cases of emergency in which there is danger to property, life, public safety
19 or public health. This rest time may be used by the employee as a unpaid mealtime.

20 **Sec. 9. 26 MRSA §601, sub-§1, ¶B**, as enacted by PL 1985, c. 212, is amended
21 to read:

22 B. The nature of the work done by the employees allows them frequent paid breaks
23 of a shorter duration during their work day.

24 **Sec. 10. 26 MRSA §603, sub-§3, ¶E**, as enacted by PL 1999, c. 750, §1, is
25 repealed and the following enacted in its place:

26 E. A salaried employee:

27 (1) Who works in a bona fide executive, administrative or professional capacity
28 or satisfies the criteria for the white collar exemption specified by the United
29 States Department of Labor under the federal Fair Labor Standards Act; and

30 (2) Whose regular compensation meets or exceeds the annualized rate
31 established by the United States Department of Labor under the federal Fair
32 Labor Standards Act;

33 **Sec. 11. 26 MRSA §621-A, sub-§1**, as amended by PL 2005, c. 103, §1, is
34 further amended to read:

35 **1. Minimum frequency and full payment.** ~~At~~ Employees must be paid at regular
36 intervals not to exceed 16 days, every except that a salaried employee, as described in
37 section 663, subsection 3, paragraph K, may be paid at a regular interval not to exceed
38 one month. An employer must pay in full all wages earned by each employee at a time
39 fixed for payment. Each payment must include all wages earned to within 8 days of the
40 payment date during the prior pay period. Payments that fall on a day when the business
41 is regularly closed must be paid no later than the following business day. An employee

1 who is absent from work at a time fixed for payment must be paid ~~on demand after that~~
2 ~~time~~ as if the employee was not absent.

3 **Sec. 12. 26 MRSA §621-A, sub-§2**, as enacted by PL 1999, c. 465, §2, is
4 amended to read:

5 **2. Regular payment required.** Wages must be paid on an established day or date at
6 regular intervals made known to the employee. ~~When the interval is less than the~~
7 ~~maximum allowed by subsection 1, the~~ The interval may not be increased without written
8 notice to the employee at least 30 days in advance of the increase.

9 **Sec. 13. 26 MRSA §622**, as repealed and replaced by PL 1999, c. 465, §3, is
10 amended to read:

11 **§622. Records**

12 Every employer shall keep a true record showing the date and amount paid to each
13 employee pursuant to section 621-A. Every employer shall keep a daily record of the
14 time worked by each such employee unless the employee is paid a salary that is fixed
15 without regard for the number of hours worked. Records required to be kept by this
16 section must be accessible to any representative of the department at any reasonable hour.
17 Sections 621-A to 623 do not excuse any employer subject to section ~~702~~ 774 from
18 keeping the records required by that section. An employer shall preserve the records
19 required by this section for 3 years.

20 **Sec. 14. 26 MRSA §626, first ¶**, as amended by PL 1991, c. 162, is further
21 amended to read:

22 An employee leaving employment must be paid in full ~~within a reasonable time after~~
23 ~~demand at the office of the employer where payrolls are kept and wages are paid,~~
24 ~~provided that any~~ no later than the employee's next established payday. Any
25 overcompensation may be withheld if authorized under section 635 and any loan or
26 advance against future earnings or wages may be deducted if evidenced by a statement in
27 writing signed by the employee. Whenever the terms of employment include provisions
28 for paid vacations, vacation pay on cessation of employment has the same status as wages
29 earned in accordance with the employer's established policy or practice.

30 **Sec. 15. 26 MRSA §626, last ¶**, as enacted by PL 1995, c. 580, §1, is amended to
31 read:

32 Within 2 weeks after the sale of a business, the seller of the business shall pay
33 employees of that business any wages earned while employed by the seller. If the terms
34 of employment include provisions for paid vacations, vacation pay on cessation of
35 employment has the same status as wages earned. Payment of vacation pay is payable
36 only in accordance with the employer's established policy or practice. The seller of a
37 business may comply with the provisions of this paragraph through a specific agreement
38 with the buyer in which the buyer agrees to pay any wages earned by employees through
39 employment with the seller and to honor any paid vacation earned under the seller's
40 vacation policy.

1 **Sec. 16. 26 MRSA §663, sub-§3, ¶H** is repealed.

2 **Sec. 17. 26 MRSA §663, sub-§3, ¶K**, as amended by PL 2009, c. 529, §2, is
3 repealed and the following enacted in its place:

4 K. A salaried employee:

5 (1) Who works in a bona fide executive, administrative or professional capacity,
6 or satisfies the criteria for the white collar exemption specified by the United
7 States Department of Labor under the federal Fair Labor Standards Act; and

8 (2) Whose regular compensation meets or exceeds the annualized rate
9 established by the United States Department of Labor under the federal Fair
10 Labor Standards Act;

11 **Sec. 18. 26 MRSA §663, sub-§3, ¶L**, as amended by PL 2013, c. 133, §20, is
12 further amended to read:

13 L. A person who is a sentenced prisoner in actual execution of a term of
14 incarceration imposed in this State or any other jurisdiction for a criminal offense,
15 except a prisoner who is:

16 (1) Employed by a private employer;

17 (2) Participating in a work release program;

18 (4) Employed in a program established under a certification issued by the United
19 States Department of Justice under 18 United States Code, Section 1761;

20 (5) Employed while in a supervised community confinement program pursuant
21 to Title 34-A, section 3036-A; or

22 (6) Employed while in a community confinement monitoring program pursuant
23 to Title 30-A, section 1659-A; and

24 **Sec. 19. 26 MRSA §663, sub-§3, ¶M** is enacted to read:

25 M. A domestic service worker employed to provide companionship services for
26 elderly persons or persons with illnesses, injuries or disabilities who require
27 assistance in caring for themselves. In providing companionship services, the
28 provision of care provided in conjunction with the provision of fellowship and
29 protection must not exceed 20% of the total hours worked per person and per
30 workweek to qualify for exemption. As used in this paragraph, "companionship
31 services," "fellowship" and "protection" have the same meaning as in the regulations
32 adopted under the federal Fair Labor Standards Act by the United States Department
33 of Labor, effective January 1, 2015.

34 **Sec. 20. 26 MRSA §663, sub-§9**, as enacted by PL 1973, c. 504, is repealed.

35 **Sec. 21. 26 MRSA §663, sub-§12**, as amended by PL 2007, c. 360, §2, is further
36 amended to read:

37 **12. Automobile mechanic.** "Automobile mechanic" means a person who is
38 primarily engaged in the servicing of automobiles or trucks as an employee of an

1 establishment primarily engaged in the business of selling automobiles or trucks to the
2 ultimate purchaser, ~~as long as the person's annual compensation exceeds 3,000 times the~~
3 ~~state minimum hourly wage or the annualized rate established by the United States~~
4 ~~Department of Labor under the federal Fair Labor Standards Act, whichever is higher, as~~
5 ~~described in 29 United States Code, Section 213(b)(10)(A),~~ except when the employee is
6 paid by the employer on an hourly basis.

7 **Sec. 22. 26 MRSA §663, sub-§13**, as amended by PL 2007, c. 360, §3, is further
8 amended to read:

9 **13. Automobile parts clerk.** "Automobile parts clerk" means a person employed
10 for the purpose of and primarily engaged in requisitioning, stocking and dispensing
11 automobile parts as an employee of an establishment primarily engaged in the business of
12 selling automobiles or trucks to the ultimate purchaser, ~~as long as the person's annual~~
13 ~~compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate~~
14 ~~established by the United States Department of Labor under the federal Fair Labor~~
15 ~~Standards Act, whichever is higher, as described in 29 United States Code, Section~~
16 ~~213(b)(10)(A),~~ except when the employee is paid by the employer on an hourly basis.

17 **Sec. 23. 26 MRSA §663, sub-§14**, as enacted by PL 2007, c. 360, §4, is amended
18 to read:

19 **14. Automobile service writer.** "Automobile service writer" means a person
20 employed for the purpose of and primarily engaged in receiving, analyzing and
21 referencing requests for service, repair or analysis of motor vehicles as an employee of an
22 establishment primarily engaged in the business of selling automobiles or trucks to the
23 ultimate purchaser, ~~as long as the person's annual compensation exceeds 3,000 times the~~
24 ~~state minimum hourly wage or the annualized rate established by the United States~~
25 ~~Department of Labor under the federal Fair Labor Standards Act, whichever is higher,~~
26 ~~except that "automobile service writer" does not include an as described in 29 United~~
27 ~~States Code, Section 213(b)(10)(A),~~ except when the employee ~~who~~ is paid by the
28 employer on a an hourly basis.

29 **Sec. 24. 26 MRSA §663, sub-§15**, as enacted by PL 2011, c. 118, §2, is amended
30 to read:

31 **15. Tip.** "Tip" means a sum presented by a customer in recognition of services
32 performed by one or more service employees, ~~including a charge automatically included~~
33 ~~in the customer's bill.~~ "Tip" does not include a compulsory charge for service charge
34 ~~added to a customer's bill in a banquet or private club setting by agreement between the~~
35 ~~customer and employer.~~

36 **Sec. 25. 26 MRSA §664, sub-§2**, as amended by IB 2015, c. 2, §2, is further
37 amended to read:

38 **2. Tip credit.** An employer may consider tips as part of the wages of a service
39 employee, but such a tip credit may not exceed 50% of the minimum hourly wage
40 established in this section. Starting January 1, 2017, the minimum cash wage paid
41 directly to a tipped service employee may not be less than \$5.00 per hour, and the tip

1 credit may not exceed the difference between the minimum cash wage paid directly to a
2 tipped service employee and the minimum hourly wage established under subsection 1.
3 Starting January 1, 2018, and on each January 1st thereafter, the minimum cash wage
4 paid directly to a tipped service employee must be increased by an additional \$1.00 per
5 hour until it reaches the same amount as the annually adjusted minimum hourly wage
6 established under subsection 1, except that if the minimum cash wage paid directly to a
7 tipped service employee is less than \$1.00 less than the annually adjusted minimum
8 hourly wage, it must be increased by that lesser amount. An employer who elects to use
9 the tip credit, until it is eliminated under this subsection, must inform the affected
10 employee in advance and must be able to show that the employee receives at least the
11 minimum hourly wage when direct wages and the tip credit are combined. Upon a
12 satisfactory showing by the employee or the employee's representative that the actual tips
13 received were less than the tip credit, the employer shall increase the direct wages by the
14 difference.

15 The tips received by a service employee become the property of the employee and may
16 not be shared with the employer. ~~Tips that are automatically included in the customer's~~
17 ~~bill or~~ that are charged to a credit card must be treated like tips given to the service
18 employee. A tip that is charged to a credit card must be paid by the employer to the
19 employee by the next regular payday and may not be held while the employer is awaiting
20 reimbursement from a credit card company.

21 **Sec. 26. 26 MRSA §664, sub-§2-B**, as enacted by PL 2011, c. 118, §4, is
22 repealed and the following enacted in its place:

23 **2-B. Service charges.** A compulsory charge for service is not a tip and is part of the
24 employer's gross receipts. Sums distributed to employees from service charges may not
25 be counted as tips received, but may be used to satisfy the employer's minimum wage and
26 overtime obligations. If an employee receives tips in addition to the compulsory service
27 charge, those tips may be considered in determining whether the employee is a tipped
28 employee and the application of the tip credit.

29 **Sec. 27. 26 MRSA §664, sub-§3, ¶F**, as amended by PL 2011, c. 681, §1, is
30 further amended to read:

31 F. The canning, processing, preserving, freezing, drying, marketing, storing,
32 distribution or packing for shipment or distribution of:

- 33 (1) Agricultural produce;
- 34 (2) Meat and fish products; and
- 35 (3) Perishable foods.

36 Individuals employed, directly or indirectly, for or at an egg processing facility that
37 has over 300,000 laying birds must be paid overtime in accordance with this
38 subsection; and

39 **Sec. 28. 26 MRSA §668**, as amended by PL 1971, c. 620, §13, is repealed.

40 **Sec. 29. 26 MRSA c. 7, sub-c. 4, art. 1**, as amended, is repealed.

1 2. It requires posters regarding video display terminal safety and minimum wage and
2 overtime requirements to be posted in the same location as other posters required by the
3 Department of Labor, Bureau of Labor Standards and establishes a penalty structure for
4 violations of the posting requirements within the section of law requiring posting.

5 3. It removes the requirement that a willful violation of the requirement to cooperate
6 and comply with an investigation by the bureau is punishable as a criminal conviction
7 because the statute does not provide a means to obtain a conviction and instead provides
8 for a civil penalty of up to \$10,000 for a willful violation.

9 4. It brings the law prohibiting discrimination against tobacco use by employees into
10 compliance with federal law by allowing an employer to discriminate against an
11 employee who uses tobacco when determining health and life insurance premiums and
12 other employee benefit plans but exempts from discrimination an employee's tobacco use
13 that is part of a voluntary wellness program for the cessation of tobacco use.

14 5. It amends the law regarding the possession of firearms by employees to reflect the
15 repeal of the requirement to obtain a concealed carry permit and clarifies that it does not
16 authorize an employee to carry or possess a firearm where carrying or possessing a
17 firearm is prohibited, including on worksites that are not owned by that employee's
18 employer.

19 6. It amends the law regarding rest breaks to clarify the differences between paid rest
20 breaks and unpaid lunch breaks.

21 7. It amends the exemption from rest breaks for those employees who have frequent
22 rest breaks during the work day to specify that the exemption only applies if the rest
23 breaks are paid rest breaks and of shorter duration than the 30 minutes otherwise
24 required.

25 8. It amends the law regarding the exemption from mandatory overtime pay for
26 salaried workers to specify that the exemption applies to a salaried employee who works
27 in a bona fide executive, administrative or professional capacity who meets the test for a
28 white collar exemption, including a minimum salary level, as established in the final rules
29 adopted by the United States Department of Labor pursuant to the federal Fair Labor
30 Standards Act and allows such employees to be paid on a monthly basis, instead of every
31 16 days, as for other employees.

32 9. It amends the law regarding timing of payment of wages to specify that the
33 payment must include all wages earned for the prior pay period, instead of those earned
34 within 8 days of the payment date, and allows such payments to be made on the next
35 business day when the payment date occurs on a day when the business is closed. The bill
36 prohibits an employer from increasing any pay interval without providing notice to its
37 employees.

38 10. Current law requires an employer to keep a record showing the date and amount
39 paid to each employee and a daily record of time worked by an employee. This bill
40 specifies that those records must be maintained by the employer for 3 years.

1 11. Current law requires an employee leaving employment to be paid within a
2 reasonable time after demand at the office of the employer where payrolls are kept and
3 wages are paid. Whenever the terms of employment include provisions for paid
4 vacations, vacation pay on cessation of employment has the same status as wages earned.
5 This bill removes the "reasonable time" requirement and instead specifies that when an
6 employee leaves employment, that employee must be paid on the next established
7 payday. The bill also specifies that payment of vacation is payable only in accordance
8 with the employer's established policy or practice.

9 12. It repeals the exemption from the minimum wage and overtime laws for an
10 individual employed as a switchboard operator in a public telephone exchange that has
11 less than 750 stations.

12 13. It amends the definitions of "automobile mechanic," "automobile parts clerk" and
13 "automobile service writer" to reflect provisions in federal law.

14 14. It changes the definition of "tip" and provisions regarding service charges to
15 conform to the federal Fair Labor Standards Act, or FLSA. Current Maine law creates a
16 wage violation under the FLSA by allowing a charge added to a customer's bill to be
17 treated as a tip, whereas the FLSA treats it as a service charge, which is the employer's
18 property not the service worker's.

19 15. It clarifies the intent of the Legislature, to conform with federal law, that the
20 distribution of certain products is exempt from the provisions governing overtime pay. It
21 amends the 1995 law by reordering the series of exempt tasks for the purpose of
22 eliminating any perceived ambiguity.

23 16. It adds the exemption adopted by the United States Department of Labor in 2015
24 for a domestic service worker employed to provide companionship services. The
25 provision of care provided in conjunction with the provision of fellowship and protection
26 cannot exceed 20% of the total hours worked per person and per workweek to qualify for
27 exemption.

28 17. It repeals the definition of "hotel" for purposes of the subchapter on minimum
29 wage since the term is not used in that subchapter.

30 18. It repeals and reallocates the provisions of the Maine Revised Statutes, Title 26,
31 chapter 7, subchapter 4, article 1 regarding the application of the subchapter, record of
32 work hours of minors and penalties.

33 19. It requires the bureau to conduct a survey every 3 years to determine the
34 prevailing hourly wage and benefits rate in the construction industry. Current law
35 requires the bureau to determine that wage and benefits rate annually.

36 20. It repeals the provisions of law regarding placement restrictions for a person
37 required to work as a condition of receiving public assistance.

38 21. It updates the safety standard for inspection of firefighters' breathing apparatus to
39 require that the inspection procedure follow the procedure specified in the manufacturer's

1 operation manual. The document referred to in current law was never finalized for
2 adoption.