

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 507

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H.P. 364

House of Representatives, January 31, 2019

### **An Act To Amend the Laws Governing Employer Recovery of Overcompensation Paid to an Employee**

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Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative DOORE of Augusta.  
Cosponsored by Senator DESCHAMBAULT of York and  
Representatives: BRYANT of Windham, DUNPHY of Old Town, MARTIN of Sinclair,  
MOONEN of Portland, NADEAU of Winslow, RYKERSON of Kittery, VEROW of Brewer,  
Senator: POULIOT of Kennebec.

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

2 **Sec. 1. 26 MRSA §635**, as enacted by PL 1989, c. 804, is amended to read:

3 **§635. Overcompensation by employer**

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

6 A. "Net amount" means the amount of money due an employee as compensation  
7 after any deductions or withholdings other than an employer's withholding for the  
8 purpose of recovering any overcompensation.

9 B. "Overcompensation" means any compensation paid to an employee, including  
10 paid leave, that is greater than that to which the employee is entitled under the  
11 compensation system established by the employer, but does not include fringe  
12 benefits, awards, bonuses, settlements or insurance proceeds in respect to or in lieu of  
13 compensation, expense reimbursements, commissions or draws or advances against  
14 compensation.

15 C. "Paid leave" has the same meaning as in section 636, subsection 1, paragraph C.

16 **2. Recovery of overcompensation; limits.** An employer who has overcompensated  
17 an employee through employer error may not withhold more than ~~10%~~ 5% of the net  
18 amount of any subsequent pay without the employee's written permission, except that, if  
19 the employee voluntarily terminates employment, the employer may deduct the full  
20 amount of overcompensation from any wages due. An employer who has  
21 overcompensated an employee through employer error may not recover more than the  
22 amount of overcompensation paid to that employee in the 3 years preceding the date of  
23 discovery of the overcompensation.

24 **3. Violation.** If an employer with over 25 employees violates this section, that  
25 employer forfeits any claim to the overcompensation.

26 If an employer with 25 or fewer employees knows of the limitation established by  
27 subsection 2 and violates this section, that employer forfeits any claim to the  
28 overcompensation. ~~Employers~~ An employer of 25 or fewer employees who ~~do~~ does not  
29 know of the limitation established by subsection 2 and who ~~violate~~ violates this section  
30 shall return all money withheld in excess of that permitted under subsection 2 within 3  
31 days of written or oral demand by the employee, or ~~forfeit~~ forfeits any claim to the  
32 overcompensation.

33 **4. Application.** This section is applied as follows.

34 A. An employer has the burden of proof, except that, if the overcompensation  
35 amounts to less than 15% of the correct net amount of the employee's compensation,  
36 the employer must prove by clear and convincing evidence that the employee  
37 knowingly accepted the overcompensation.

38 B. If an employee knowingly accepts the overcompensation, this section does not  
39 apply.

1 C. This section, except for the forfeiture provisions in subsection 3, does not limit or  
2 affect an employer's general civil remedies against an employee or an employee's  
3 general civil remedies against an employer.

4 **SUMMARY**

5 This bill amends the definition of "overcompensation" by an employer to include  
6 compensation in the form of paid leave. It changes the maximum amount an employer  
7 can withhold from an employee's pay to recover overcompensation from 10% to 5%. It  
8 prohibits an employer from recovering more than the amount of overcompensation paid  
9 to an employee in the 3 years preceding the discovery of the overcompensation. The bill  
10 also specifies that the section of law regarding overcompensation by employers that  
11 includes these provisions does not limit or affect an employee's general civil remedies  
12 against an employer.