

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2015

H.P. 1436

House of Representatives, January 14, 2020

**An Act To Provide for Leave from Work for Victims of Domestic
Violence, Sexual Assault or Stalking**

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

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 DAUGHTRY of Brunswick.

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

2 **Sec. 1. 26 MRSA §42-B, sub-§1, ¶A-1** is enacted to read:

3 A-1. Leave under section 638-A.

4 **Sec. 2. 26 MRSA §638-A** is enacted to read:

5 **§638-A. Leave for victims of domestic violence, sexual assault or stalking**

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

8 A. "Dating partner" means an individual whom an employee is currently dating or
9 formerly dated, whether or not the individual and the employee are or were sexual
10 partners.

11 B. "Domestic violence" means conduct described in Title 17-A, chapters 9, 11, 12
12 and 13; Title 17-A, sections 432, 433, 506, 506-A, 506-B, 758, 805, 806, 852 and
13 853; and Title 19-A, section 4002, subsection 1, when the victim of that conduct is a
14 family member or dating partner.

15 C. "Employee" means a person engaged to work on a regular basis, whether full time
16 or part time.

17 D. "Employer" means a person, partnership, firm, association, corporation,
18 employment agency, labor organization or other legal entity, public or private, that is
19 located or doing business in the State. The term "employer" includes, but is not
20 limited to:

21 (1) A person, partnership, firm, association or corporation acting in the interest
22 of an employer, directly or indirectly; and

23 (2) The State in its capacity as an employer.

24 E. "Family member" means an employee's child, spouse, former spouse, domestic
25 partner, former domestic partner, parent, mother-in-law, father-in-law, grandparent or
26 dating partner.

27 F. "Sexual assault" means conduct described under Title 17-A, chapters 11, 12 and
28 35 and Title 17-A, sections 852 and 853.

29 G. "Stalking" means conduct described in Title 17-A, section 210-A.

30 **2. Domestic violence, sexual assault or stalking leave.** An employee may take
31 reasonable leave from work, with or without pay, including by reducing the employee's
32 usual number of hours per work day or workweek, to:

33 A. Seek legal or law enforcement assistance or remedies to ensure the health and
34 safety of the employee or a family member, including, but not limited to, preparing
35 for or participating in any civil or criminal legal proceeding related to or derived from
36 domestic violence, sexual assault or stalking;

1 B. Seek treatment by a health care provider for physical or mental injuries caused by
2 domestic violence, sexual assault or stalking or to attend to health care treatment for a
3 victim who is a family member;

4 C. Obtain, or assist a family member in obtaining, services from a domestic violence
5 shelter, rape crisis center or other social services program for relief from domestic
6 violence, sexual assault or stalking;

7 D. Obtain, or assist a family member in obtaining, mental health counseling related
8 to an incident of domestic violence, sexual assault or stalking in which the employee
9 or the family member was a victim; or

10 E. Participate in safety planning, temporarily or permanently relocate or take other
11 actions to protect the employee or a family member from domestic violence, sexual
12 assault or stalking.

13 **3. Advance notice to employer.** As a condition of taking leave for any purpose
14 under subsection 2, an employee shall give an employer advance notice of the employee's
15 intention to take leave. The timing of the notice must be consistent with the employer's
16 stated policy for requesting such leave if the employer has such a policy. When advance
17 notice cannot be given because of an emergency or unforeseen circumstance due to
18 domestic violence, sexual assault or stalking, the employee shall give notice to the
19 employer no later than the end of the first day that the employee takes such leave.

20 A. When an employee requests leave under subsection 2, the employer may require
21 that the request be supported by verification that:

22 (1) The employee or a family member is a victim of domestic violence, sexual
23 assault or stalking; and

24 (2) The leave taken was for one of the purposes in subsection 2.

25 B. If an employer requires verification, the employee must provide verification in a
26 timely manner. In the event that advance notice of the leave cannot be given because
27 of an emergency or unforeseen circumstance due to domestic violence, sexual assault
28 or stalking and the employer requires verification, the employee must provide
29 verification to the employer within a reasonable time period during or after the leave.

30 C. An employee may satisfy the verification requirement of this subsection by
31 providing the employer with one or more of the following:

32 (1) A police report indicating that the employee or a family member was a
33 victim of domestic violence, sexual assault or stalking;

34 (2) A court order protecting or separating the employee or a family member from
35 the perpetrator of the act of domestic violence, sexual assault or stalking or other
36 evidence from the court or the prosecuting attorney that the employee or the
37 family member appeared, or is scheduled to appear, in court in connection with
38 an incident of domestic violence, sexual assault or stalking;

39 (3) Documentation that the employee or a family member is a victim of domestic
40 violence, sexual assault or stalking from any of the following persons from whom
41 the employee or the family member sought assistance in addressing the domestic
42 violence, sexual assault or stalking;

- 1 (a) An advocate for victims of domestic violence, sexual assault or stalking;
- 2 (b) An attorney;
- 3 (c) A member of the clergy; or
- 4 (d) A medical or other health or mental or behavioral health professional.

5 The provision of documentation under this subparagraph does not waive or
6 diminish the confidential or privileged nature of communications between a
7 victim of domestic violence, sexual assault or stalking with one or more of the
8 persons named in this subparagraph; or

9 (4) An employee's written statement that the employee or a family member is a
10 victim of domestic violence, sexual assault or stalking and that the leave taken
11 was for one of the purposes described in subsection 2.

12 D. If the victim of domestic violence, sexual assault or stalking is a family member,
13 verification of the relationship between the employee and the victim may include, but
14 is not limited to:

- 15 (1) A statement from the employee;
- 16 (2) A birth certificate; and
- 17 (3) A court document or other similar documentation.

18 E. An employee who is absent from work pursuant to subsection 2 may elect to use
19 the employee's paid leave, compensatory time or unpaid leave.

20 F. An employee is required to provide only the information under paragraph A to
21 establish that the employee's leave is protected under this section. An employee is
22 not required to produce or discuss any information with the employer that is beyond
23 the scope of paragraph A or that would compromise the employee's safety or the
24 safety of a family member in any way, and an employer is prohibited from requiring
25 any such disclosure.

26 G. An employer shall maintain the confidentiality of all information provided by the
27 employee under this section, including the fact that the employee or a family member
28 is a victim of domestic violence, sexual assault or stalking and that the employee has
29 requested or obtained leave under this chapter and any written or oral statement,
30 documentation, record or corroborating evidence provided by the employee, except
31 that information given by an employee may be disclosed by an employer if disclosure
32 is:

- 33 (1) Requested or consented to by the employee;
- 34 (2) Ordered by the court; or
- 35 (3) Required by applicable state or federal law.

36 **4. Effect on position held, compensation and health insurance and other**
37 **benefits.** The taking of leave under subsection 2 may not result in the loss of any pay or
38 benefits to the employee that accrued before the date on which the leave commenced.
39 Upon an employee's return, an employer shall either restore the employee to the position
40 of employment held by the employee when the leave commenced or restore the employee

1 to an equivalent position with equivalent employment benefits, pay and other terms and
2 conditions of employment.

3 To the extent allowed by law, an employer shall maintain coverage under a health
4 insurance plan for an employee who takes leave under subsection 2. The coverage must
5 be maintained for the duration of the leave at the level and under the conditions at which
6 coverage would have been provided if the employee had not taken the leave.

7 This subsection does not apply if the employment from which the employee takes leave is
8 with an employment agency and the employee is assigned on a temporary basis to
9 perform work at or services for another organization to support or supplement the other
10 organization's workforce or to provide assistance in special work situations, including,
11 but not limited to, employee absences, skill shortages, seasonal workloads or the
12 performance of special assignments or projects under the direction and supervision of the
13 organization to which the employee is assigned.

14 This subsection does not apply if an employee was hired for a specific term or only to
15 perform work on a discrete project, the employment term or project is over and the
16 employer would not otherwise have continued to employ the employee.

17 **5. Other rights.** The rights provided in this section are in addition to any other
18 rights provided by state and federal law.

19 This section may not be construed to discourage employers from adopting policies that
20 provide greater leave rights to employees who are victims of domestic violence, sexual
21 assault or stalking than those required by this section.

22 This section may not be construed to diminish an employer's obligation to comply with a
23 collective bargaining agreement or an employment benefit program or plan that provides
24 greater leave rights to employees than the rights provided by this section.

25 **6. Confidentiality of complaint files.** Information contained in the Department of
26 Labor's complaint files and records of employees under this chapter is confidential and is
27 not a public record pursuant to Title 1, section 402, subsection 3 except that, as limited by
28 state or federal law, rule or regulation:

29 A. The information may be provided to public employees in the performance of their
30 official duties; and

31 B. A complainant or a representative of a complainant, whether an individual or an
32 organization, may review a complaint file or receive specific information from a
33 complaint file upon the presentation of the signed authorization of the complainant.

34 **7. Employee protections.** An employer may not discharge, threaten to discharge,
35 demote, deny a promotion to, sanction, discipline, retaliate against, harass or otherwise
36 discriminate against an employee with respect to compensation or terms, conditions or
37 privileges of employment because the employee:

38 A. Exercised rights under subsection 2;

39 B. Filed or communicated to the employer an intent to file a complaint under
40 subsection 8 or bring a civil action under subsection 9; or

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5. To participate in safety planning, temporarily or permanently relocate or take other actions to protect the employee or employee's family members from domestic violence, sexual assault or stalking.