

MAINE STATE LEGISLATURE

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130th MAINE LEGISLATURE

FIRST SPECIAL SESSION-2021

Legislative Document

No. 1436

H.P. 1052

House of Representatives, April 12, 2021

An Act To Protect Certain Essential Workers from Infectious Disease

Received by the Clerk of the House on April 8, 2021. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

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

ROBERT B. HUNT
Clerk

Presented by Representative O'CONNELL of Brewer.

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

2 **Sec. 1. 26 MRSA c. 7, sub-c. 8-A** is enacted to read:

3 **SUBCHAPTER 8-A**

4 **PERSONAL PROTECTIVE EQUIPMENT PRACTICES**

5 **§865. Personal protective equipment**

6 This section governs the handling of personal protective equipment by employers of
7 covered employees.

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

10 A. "Covered employee" means:

11 (1) A health care worker who provides direct patient care, a person who prepares
12 food for patients or a member of the administrative staff in a hospital, sanatorium,
13 convalescent home, rest home, nursing home, ambulatory surgical facility or other
14 institution for the hospitalization or nursing care of human beings that is governed
15 by Title 22, section 1811;

16 (2) A person who is in direct contact with persons being held in a correctional
17 facility, as defined in Title 34-A, section 1001, subsection 6, or a county or
18 municipal jail, holding facility, short-term detention area, secure detention facility,
19 temporary holding resource or other facility subject to standards established under
20 Title 34-A, section 1208 or 1208-A;

21 (3) A firefighter, as defined in section 809, subsection 1, paragraph A-1; and

22 (4) An emergency medical services person, as defined in section 809, subsection
23 1, paragraph A-2.

24 B. "Employer" means a private or public employer, including the State and any political
25 subdivision of the State, that employs one or more covered employees.

26 C. "Personal protective equipment" means protective gloves and other equipment and
27 devices necessary to comply with rules relating to personal protective equipment
28 adopted under section 565.

29 **2. Supply.** An employer shall supply personal protective equipment to covered
30 employees and shall ensure these employees use the personal protective equipment in
31 accordance with rules relating to personal protective equipment adopted under section 565.

32 **3. Stockpiling.** Beginning November 1, 2021, an employer shall:

33 A. In accordance with rules adopted under this section, maintain a stockpile of the
34 following equipment in an amount equal to 3 months of normal use by covered
35 employees:

36 (1) N95 filtering facepiece respirators;

37 (2) Powered air-purifying respirators with high-efficiency particulate air filters;

- 1 (3) Elastomeric air-purifying respirators and appropriate particulate filters or
- 2 cartridges;
- 3 (4) Surgical masks;
- 4 (5) Isolation gowns;
- 5 (6) Eye protection; and
- 6 (7) Shoe coverings;

7 B. Ensure that single-use equipment in the stockpile under paragraph A is unexpired
8 and not previously worn or used;

9 C. Establish and implement effective written procedures for periodically determining
10 the quantity and types of equipment normally used by covered employees; and

11 D. Provide an inventory of the stockpile under paragraph A and a copy of the written
12 procedures required pursuant to paragraph C to the Board of Occupational Safety and
13 Health upon request.

14 If an employer's covered employees work in a facility or other setting controlled by another
15 employer subject to this subsection, the employer that controls that facility or other setting
16 is responsible for meeting the requirements of this subsection for all covered employees
17 who work in that facility or setting.

18 **4. Rules.** The Department of Labor shall adopt rules necessary to implement this
19 section. Rules adopted under this section are routine technical rules as defined in Title 5,
20 chapter 375, subchapter 2-A.

21 **5. Penalty.** The following penalties apply to violations of this section.

22 A. An employer that willfully or repeatedly violates any requirement of this section or
23 rule adopted under this section may be assessed a civil penalty of not more than \$1,000
24 for each day during which the violation continues.

25 B. An employer that violates subsection 3, paragraph A may be assessed an
26 administrative penalty by the Department of Labor of up to \$25,000 for each violation,
27 unless the department determines that the employer could not meet the requirement
28 due to factors beyond the employer's control. Factors beyond the employer's control
29 may include, but are not limited to, a failure of a manufacturer or distributor to fulfill
30 an order of equipment, damage by a 3rd party to equipment or theft of equipment. If
31 the department determines that there are factors beyond the employer's control, an
32 administrative penalty may nevertheless be imposed on the employer for failure to meet
33 the requirements of paragraph A with respect to supplies to which those factors do not
34 apply.

35 **Sec. 2. Reporting.** On or before January 15, 2022, an employer, as defined in the
36 Maine Revised Statutes, Title 26, section 865, shall determine its highest 7-day consecutive
37 daily average consumption of personal protective equipment governed by Title 26, section
38 865 during the 2021 calendar year and shall provide this information to the Department of
39 Labor upon request.

1 **SUMMARY**

2 This bill requires public and private employers that employ persons who provide direct,
3 in-person services in medical settings or in correctional institutions or that employ
4 firefighters or emergency medical services persons, collectively referred to in this bill as
5 "covered employees," to take certain actions with respect to providing personal protective
6 equipment for those covered employees.

7 The bill requires employers to supply personal protective equipment to covered
8 employees and to ensure these employees use the personal protective equipment in
9 accordance with occupational and safety rules of the Department of Labor.

10 It also requires employers to maintain a stockpile of the following specific personal
11 protective equipment equal to 3 months of normal use by covered employees: N95 filtering
12 facepiece respirators, powered air-purifying respirators with high-efficiency particulate air
13 filters, elastomeric air-purifying respirators and appropriate particulate filters or cartridges,
14 surgical masks, isolation gowns, eye protection and shoe coverings. If an employer's
15 covered employees work in a facility or other setting controlled by another employer that
16 must stockpile equipment for its own covered employees, the employer that controls that
17 facility or other setting is responsible for meeting the stockpiling requirements for all
18 covered employees who work in that facility or setting.

19 The bill provides that, on or before January 15, 2022, an employer is required to
20 determine its highest 7-day consecutive daily average consumption of personal protective
21 equipment and to provide this information to the Department of Labor upon request.

22 The bill provides for civil and administrative penalties for violations of the
23 requirements of the bill.