

# MAINE STATE LEGISLATURE

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# 130th MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2021

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Legislative Document

No. 1519

S.P. 493

In Senate, April 20, 2021

**An Act To Increase Workplace Transparency with Regard to  
Arbitration Agreements, the Rights of Employees and Legal  
Remedies**

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Received by the Secretary of the Senate on April 15, 2021. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator MIRAMANT of Knox.  
Cosponsored by Representative SYLVESTER of Portland and  
Senator: President JACKSON of Aroostook, Representative: GEIGER of Rockland.

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

2 **Sec. 1. 26 MRSA c. 47** is enacted to read:

3 **CHAPTER 47**

4 **MAINE WORKPLACE TRANSPARENCY ACT**

5 **§3701. Short title**

6 This chapter may be known and cited as "the Maine Workplace Transparency Act."

7 **§3702. Definitions**

8 As used in this chapter, unless the context otherwise indicates, the following terms  
9 have the following meanings.

10 **1. Arbitration agreement.** "Arbitration agreement" means an agreement between an  
11 employer and an employee to submit to arbitration all or certain disputes that arise in  
12 respect to a defined legal relationship, whether contractual or not, and may be in the form  
13 of an arbitration clause in a contract or in the form of a separate agreement.

14 **2. Electronic device.** "Electronic device" means a device that is electric and that  
15 enables access to, or use of, an electronic communication service, remote computing  
16 service or location information service.

17 **3. Employee.** "Employee" means an individual employed or formerly employed by or  
18 applying for employment with an employer.

19 **4. Employer.** "Employer" means a person in the State employing an employee,  
20 whatever the place of employment of the employee, and any person outside the State  
21 employing an employee whose usual place of employment is in the State; a person acting  
22 in the interest of an employer, directly or indirectly, so that the person's actions are  
23 considered the actions of the employer for purposes of liability; and a labor organization,  
24 whether or not organized on a religious, fraternal or sectarian basis, with respect to the  
25 organization's employment of employees. "Employer" does not include a religious or  
26 fraternal corporation or association, not organized for private profit or conducted for private  
27 profit, with respect to employment of the corporation's or association's employment of  
28 members of the same religion, sect or fraternity.

29 **5. Inconvenient venue.** "Inconvenient venue" means:

30 A. For state law claims, a place other than the county in which the employee resides  
31 or where the contract was executed; and

32 B. For federal law claims, a place other than the federal judicial district in accordance  
33 with Local Rule 3(b) of the Local Rules of the United States District Court for the  
34 District of Maine in which the employee resides or the contract was executed.

35 **§3703. Unconscionable terms and rights**

36 **1. Unconscionable terms.** There is a rebuttable presumption that the following  
37 contractual terms are unconscionable if they are included in an arbitration agreement and  
38 the employee does not draft the contract or agreement:

- 1           A. A requirement that resolution of a claim takes place in an inconvenient venue;
- 2           B. A waiver of the employee's right to assert a claim or seek a remedy provided by a
- 3           common law or statute of the State or a federal statute;
- 4           C. A waiver of the employee's right to seek punitive damages as provided by law;
- 5           D. A provision limiting the time that an employee may bring an action to a period
- 6           shorter than the applicable statute of limitations;
- 7           E. A requirement that an employee pay fees or costs to bring a claim in excess of the
- 8           fees and costs that a state or federal court requires to bring a claim;
- 9           F. A requirement to arbitrate an employee claim that stems from the United States
- 10          Equal Employment Opportunity Commission laws or the Maine Human Rights Act;
- 11          and
- 12          G. A waiver of the employee's right to pursue or participate in a class action or
- 13          collective action against an employer.

14          **2. Rights.** An employee has rights that may not be waived in an arbitration agreement,  
15          including:

- 16          A. To criticize the employee's employer, protest the employee's wages or working
- 17          conditions and share information in support of a complaint of wages or working
- 18          conditions;
- 19          B. To use and possess an electronic device during work hours in workplace and
- 20          nonworkplace areas to photograph or make video and audio recordings in furtherance
- 21          of a concerted activity for mutual aid or protection, such as the right to use an electronic
- 22          device to take such photographs or make video and audio recordings for the following
- 23          limited purposes to document or attempt to document:
  - 24                  (1) An unfair labor practice under this Title;
  - 25                  (2) Any municipal, state or federal criminal conduct;
  - 26                  (3) An unlawful discriminatory practice under Title 5, chapter 337;
  - 27                  (4) A public health, traffic or safety violation; and
  - 28                  (5) An unlawful act of harassment under Title 5, chapter 337-A;
- 29          C. To pursue or participate in a class action or collective action against the employee's
- 30          employer;
- 31          D. To rescind an employment separation agreement by notifying the employer in
- 32          writing by mail or e-mail within 9 days of executing an employment separation
- 33          agreement;
- 34          E. To distribute literature by electronic means in workplace and nonworkplace areas
- 35          during nonworking hours at the business premises of the employer;
- 36          F. To distribute literature in paper form in workplace break areas and nonworkplace
- 37          areas during nonworking hours at the business premises of the employer; and
- 38          G. To strike and picket.

39          An employee who exercises a right under subsection 2 must do so in accordance with the  
40          laws concerning confidential information, including confidentiality of health care

1 information under Title 22, section 1711-C, confidential information provided to  
2 professional and occupational licensing boards under Title 22, section 3294 and the  
3 limitations of information under Title 16, chapters 7 and 9.

4 **§3704. Action**

5 **1. Action.** An employee may bring an action under this chapter for the intentional,  
6 knowing or reckless use of an unconscionable contractual term or violation of a right under  
7 section 3703, subsection 2 for actual damages, compensatory damages, punitive damages,  
8 equitable relief, back pay damages, front pay damages, injunctive relief, including issuance  
9 of a temporary restraining order, or any other appropriate relief.

10 **2. Place of action.** Notwithstanding the federal court's authority to exercise  
11 supplemental jurisdiction under 28 United States Code, Section 1367, an action under this  
12 chapter must be instituted in the Superior Court of the county where the alleged violator  
13 resides or has a principal place of business.

14 **3. Impartial jury trial.** An employee may request a jury trial on the merits of an action  
15 brought under this section, except for an application for a preliminary injunction or  
16 temporary restraining order.

17 **4. Limitation of action.** An action under this chapter must be commenced within 6  
18 years after the cause of action accrues. The period to commence an action under this  
19 subsection tolls for an employee determined incompetent even if a guardian ad litem has  
20 been appointed during the pendency of any criminal proceedings against the employee.

21 **5. Preponderance of evidence.** An action under this chapter must be decided by a  
22 preponderance of evidence.

23 **6. Causation.** An action under this chapter may not be decided by a "but for" causation  
24 standard.

25 **7. Service of order of injunction.** A temporary restraining order or preliminary or  
26 permanent injunction issued under this chapter must include a statement describing the  
27 penalties provided in this chapter for a knowing violation of the order or injunction. The  
28 clerk of the Superior Court shall transmit a certified copy of each order or injunction issued  
29 under this chapter to the appropriate law enforcement agency having jurisdiction over a  
30 location where the defendant is alleged to have committed the act giving rise to the action,  
31 and service of the order or injunction must be accomplished pursuant to the Maine Rules  
32 of Civil Procedure unless otherwise ordered by the court. Service must be made by the  
33 delivery of a copy in hand to the defendant.

34 **8. Violation of court order.** A person who knowingly violates a temporary restraining  
35 order or preliminary or permanent injunction issued under this chapter commits a Class D  
36 crime.

37 **9. Protection against violation.** The rights secured by this chapter are protected  
38 against violation due to nongovernmental discrimination and violation under color of state  
39 law. For purposes of this chapter, rights secured under this chapter and the laws of the  
40 State include rights that would be protected from interference of the exercise of rights by  
41 governmental actors regardless of whether the specific interference complained of is  
42 performed or attempted by private parties.

