

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

SECOND SPECIAL SESSION
July 29, 2005

SECOND REGULAR SESSION
January 4, 2006 to May 24, 2006

THE GENERAL EFFECTIVE DATE FOR
SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
OCTOBER 28, 2005

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 23, 2006

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2006

from descent from a member of a federally recognized Indian tribe.

Sec. 2. 22 MRSA §4038-C, sub-§11 is enacted to read:

11. Application to pending cases. The District Court may appoint a permanency guardian in a proceeding pending on September 17, 2005 or in a proceeding commenced on or after September 17, 2005.

Sec. 3. 22 MRSA §4038-D, sub-§10, as enacted by PL 2005, c. 372, §6, is amended to read:

10. Permanency guardian's eligibility for public benefits. The Except as required by federal law or regulation, the guardianship subsidy may not be counted as resources or income in the determination of the permanency guardian's eligibility for any public benefit.

Sec. 4. 22 MRSA §4038-D, sub-§11 is enacted to read:

11. Application to pending cases. The department may provide a guardianship subsidy pursuant to this section to a child who is the subject of a child protection proceeding pending on September 17, 2005 or to a child who is the subject of a child protection proceeding commenced on or after September 17, 2005.

See title page for effective date.

CHAPTER 522

H.P. 1294 - L.D. 1854

An Act To Expand the Alternative Aid Program

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

Sec. 1. 22 MRSA §3763, sub-§8, as enacted by PL 1997, c. 530, Pt. A, §16, is amended to read:

8. Alternative aid. To assist applicants who seek short term assistance to obtain or retain employment, the department shall pay one time voucher payments of up to 3 times the monthly TANF grant for which the family is eligible. The department shall provide alternative aid to applicants who seek short-term assistance in order to obtain or retain employment. The applicants must meet the eligibility requirements established by rule adopted pursuant to section 3762, subsection 3, paragraph A. The alternative aid may not exceed 3 times the value of the monthly TANF grant for which the applicant's family

is eligible. An eligible applicant may receive alternative aid no more than once during any 12-month period. If the family reapplies for TANF within 3 months of receiving alternative aid, the family must shall repay any alternative aid received in excess of the amount that the family would have received on TANF. The method of repayment must be the same as that used for the repayment of unintentional overpayments in the TANF program.

See title page for effective date.

CHAPTER 523

S.P. 664 - L.D. 1747

An Act To Assist Maine Military Families

Emergency preamble. **Whereas**, acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, with the continued and ongoing deployment of Maine residents to active military duty, it is necessary that the leave authorized by this legislation become immediately available to the family members of those residents; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 26 MRSA c. 7, sub-c. 5, as amended, is further amended by repealing the subchapter headnote and enacting the following in its place:

SUBCHAPTER 5

LEAVE RELATING TO RESERVE TRAINING OR MILITARY SERVICE

Sec. 2. 26 MRSA §814 is enacted to read:

§814. Family military leave

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

A. "Deployed for military service" or "deployment" means active military duty with the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, includ-

ing the National Guard and Reserves, whether pursuant to orders of the Governor or the President of the United States, when the duty assignment is in a combat theater or in an area where armed conflict is taking place.

B. "Employee" means any person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment and who has been employed by the same employer for at least 12 months and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the employee's family military leave. "Employee" includes an independent contractor.

C. "Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

D. "Employer" means:

(1) Any person, partnership, corporation, association or other business entity; and

(2) The State, a county, a municipality or any political subdivision.

E. "Family military leave" means leave requested by an employee who is the spouse, domestic partner or parent of a person who is a resident of the State and is deployed for military service for a period lasting longer than 180 days with the State or United States pursuant to the orders of the Governor or the President of the United States.

2. Family military leave requirement. Subject to the requirements of subsection 3, an employer that employs 50 or more employees shall provide each eligible employee up to 15 days of family military leave per deployment, if requested by the employee. Family military leave under this subsection may be taken only during the 15 days immediately prior to deployment or the 15 days immediately following the period of deployment, or both. Family military leave granted under this section may consist of unpaid leave.

3. Notice requirements. An employee taking family military leave under this section is subject to the following.

A. The employee must give at least 14 days' notice of the intended date upon which the family military leave will commence if leave will consist of 5 or more consecutive work days.

B. An employee taking family military leave for fewer than 5 consecutive work days must give the employer advance notice as is practicable.

C. The employee shall consult with the employer to attempt to schedule the leave so as to not unduly disrupt the operations of the employer.

4. Certification. An employer may require certification from the proper military authority to verify an employee's eligibility for the family military leave requested pursuant to this section.

5. Restoration to position. An employee who exercises the right to family military leave under this section is entitled, upon expiration of the leave, to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this section.

6. Employee benefits protection. An employer shall make it possible for an employee to continue employee benefits at the employee's expense during any family military leave taken under this section. The employer and employee may negotiate for the employer to maintain employee benefits at the employer's expense for the duration of the leave.

A. Taking family military leave under this section does not result in the loss of any employee benefit accrued before the date on which the leave commenced.

B. Nothing in this section may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this section.

C. The family military leave rights provided under this section may not be diminished by any collective bargaining agreement or employee benefit plan.

D. Nothing in this section may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under this section.

7. Prohibited acts. An employer may not:

A. Interfere with, restrain or deny the exercise or the attempt to exercise any right provided under this section;

B. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee who exercises any right provided under this section; or

C. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this section.

8. Enforcement. An employee may bring a civil action in Superior Court to enforce this section. The court may enjoin any act or practice that violates or may violate this section and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this section.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective April 3, 2006.

CHAPTER 524

H.P. 1339 - L.D. 1898

An Act To Protect the Employment Rights of Military Reserve and National Guard Personnel

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

Sec. 1. 26 MRSA §811, sub-§3, as amended by PL 2001, c. 662, §11, is further amended to read:

3. Reinstatement. Any person who is in compliance with subsection 2 and is still qualified to perform the duties of such position must be reinstated at the same pay, seniority, benefits and status and receive any other incidences of advantages of employment as if the person had remained continuously employed. The period of absence must be construed as an absence with leave; and, within the discretion of the employer, the leave may be with pay. The employer may not require any person returning from a period of military service to report back to work:

A. For periods of military service of 3 days or less, until the completion of the period of service and the expiration of 24 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence;

B. For periods of military service of more than 3 days but not more than 15 days, until the completion of the period of service and the expiration

of 48 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence;

C. For periods of military service of more than 15 days but not more than 30 days, until the completion of the period of service and the expiration of 72 hours after a period allowing for the safe transportation of the person from the place of that service to the person's residence;

D. For periods of military service of more than 30 days but not more than 180 days, until the completion of the period of service and the expiration of 14 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence; or

E. For periods of military service of more than 180 days, until the completion of the period of service and the expiration of 90 days after a period allowing for the safe transportation of the person from the place of that service to the person's residence.

See title page for effective date.

CHAPTER 525

H.P. 1448 - L.D. 2054

An Act To Establish Harbor Master Training Requirements

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

Sec. 1. 38 MRSA §1-A is enacted to read:

§1-A. Training

The following provisions govern the training of harbor masters and deputy harbor masters appointed pursuant to section 1 or 2.

1. Basic training course. A person appointed or reappointed a harbor master or a deputy harbor master after August 31, 2006 must complete a basic harbor master training course offered by a statewide harbor masters association within one year after being appointed or reappointed unless that person has previously completed such a course. The person appointed or reappointed a harbor master or deputy harbor master shall pay the cost of the training required under this subsection.

2. Reimbursement. Nothing in this section may be construed to prohibit a municipality, at its sole discretion, from reimbursing a harbor master or deputy