

MAINE STATE LEGISLATURE

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STATE OF MAINE
128TH LEGISLATURE
FIRST REGULAR SESSION



Summaries of bills, adopted amendments and laws enacted or finally passed

**JOINT STANDING COMMITTEE ON LABOR, COMMERCE,
RESEARCH AND ECONOMIC DEVELOPMENT**

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STAFF:

HENRY FOUTS, LEGISLATIVE ANALYST
JANET STOCCO, LEGISLATIVE ANALYST
OFFICE OF POLICY AND LEGAL ANALYSIS
13 STATE HOUSE STATION
AUGUSTA, ME 04333
(207) 287-1670
<http://legislature.maine.gov/legis/opla/>

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*Committee member for a portion of the session

STATE OF MAINE

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LEGISLATIVE DIGEST OF BILL SUMMARIES AND ENACTED LAWS

This *Legislative Digest of Bill Summaries and Enacted Laws* contains summaries of all LDs and adopted amendments and all laws enacted or finally passed during the First Regular Session of the 128th Maine Legislature.

The *Digest* is arranged alphabetically by committee and within each committee by Legislative Document (LD) number. The committee report(s), prime sponsor and lead co-sponsor(s), if designated, are listed below each LD title. All adopted amendments are summarized and listed by paper number. A subject index is included with each committee. An appendix provides a summary of relevant session statistics.

Final action on each LD is noted to the right of the LD title. The following describes the various final actions.

CARRIED OVER..... carried over to a subsequent session of the Legislature
CON RES XXX..... chapter # of constitutional resolution passed by both houses
CONF CMTE UNABLE TO AGREE..... Committee of Conference unable to agree; legislation died
DIED BETWEEN HOUSES..... House & Senate disagreed; legislation died
DIED IN CONCURRENCE..... defeated in each house, but on different motions; legislation died
DIED ON ADJOURNMENT..... action incomplete when session ended; legislation died
EMERGENCY..... enacted law takes effect sooner than 90 days after session adjournment
FAILED, EMERGENCY ENACTMENT or FINAL PASSAGE..... emergency failed to receive required 2/3 vote
FAILED, ENACTMENT or FINAL PASSAGE..... failed to receive final majority vote
FAILED, MANDATE ENACTMENT..... legislation proposing local mandate failed required 2/3 vote
HELD BY GOVERNOR..... Governor has not signed; final disposition to be determined at subsequent session
LEAVE TO WITHDRAW..... sponsor's request to withdraw legislation granted
NOT PROPERLY BEFORE THE BODY..... ruled out of order by the presiding officer; legislation died
INDEF PP..... indefinitely postponed; legislation died
ONTP, ACCEPTED, MAJORITY, MINORITY or REPORT X... ought-not-to-pass report accepted; legislation died
P&S XXX..... chapter # of enacted private & special law
PUBLIC XXX..... chapter # of enacted public law
RESOLVE XXX..... chapter # of finally passed resolve
VETO SUSTAINED..... Legislature failed to override Governor's veto

The effective date for non-emergency legislation enacted in the First Regular Session of the 128th Legislature is Wednesday, November 1, 2017. The effective date for legislation enacted as an emergency measure may be found in the enacted law summary for that legislation.

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the laws regarding employment of minors.

Public Law 2017, chapter 286 was enacted as an emergency measure effective July 9, 2017.

LD 1566 An Act To Enact the Maine Fair Chance Employment Act

CARRIED OVER

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
TALBOT ROSS R VOLK A		

This bill enacts the Maine Fair Chance Employment Act and adds restrictions to the use of criminal history information in the context of employment decisions by private employers and the State and its political subdivisions and of licensing decisions by licensing agencies.

It prohibits an employer from asking an applicant for employment to disclose information concerning the applicant's criminal history, or considering such information, until after the applicant has received a conditional offer of employment. It restricts the way a private employer, or the State and its political subdivisions, may use criminal history information in the course of making employment decisions and adds similar restrictions to the existing restrictions applicable to licensing agencies' consideration of criminal history information. It also makes certain criminal history information in the possession of the State and its political subdivisions confidential and makes all criminal background check information obtained by the State in connection with an employment decision confidential.

The Maine Human Rights Commission is charged with enforcement of the Maine Fair Chance Employment Act and may seek civil penalties against a private employer for a violation of \$1,000 for the first violation and \$2,000 for each subsequent violation.

The bill also creates a private right of action that may be brought by an affected individual against a private employer that has violated the Maine Fair Chance Employment Act and, upon prevailing, the affected individual is entitled to such legal or equitable relief as the court may determine appropriate and reasonable attorney's fees and costs.

This bill was carried over to any special or regular session of the 128th Legislature by joint order, H.P. 1138.

LD 1575 An Act To Update the Statutes Governing the Bureau of Labor Standards To Promote Clarity for Workers and Employers

PUBLIC 219

<u>Sponsor(s)</u>	<u>Committee Report</u>	<u>Amendments Adopted</u>
CUSHING A STETKIS J	OTP-AM	S-252

This bill makes the following changes to the labor laws.

1. It removes a reference to the Director of Labor Standards as the "state factory inspector" to recognize that the workplaces governed by these statutes are not restricted to factories.
2. It requires posters regarding video display terminal safety and minimum wage and overtime requirements to be posted in the same location as other posters required by the Department of Labor, Bureau of Labor Standards and establishes a penalty structure for violations of the posting requirements within the section of law requiring posting.

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3. It removes the requirement that a willful violation of the requirement to cooperate and comply with an investigation by the bureau is punishable as a criminal conviction because the statute does not provide a means to obtain a conviction and instead provides for a civil penalty of up to \$10,000 for a willful violation.
4. It brings the law prohibiting discrimination against tobacco use by employees into compliance with federal law by allowing an employer to discriminate against an employee who uses tobacco when determining health and life insurance premiums and other employee benefit plans but exempts from discrimination an employee's tobacco use that is part of a voluntary wellness program for the cessation of tobacco use.
5. It amends the law regarding the possession of firearms by employees to reflect the repeal of the requirement to obtain a concealed carry permit and clarifies that it does not authorize an employee to carry or possess a firearm where carrying or possessing a firearm is prohibited, including on worksites that are not owned by that employee's employer.
6. It amends the law regarding rest breaks to clarify the differences between paid rest breaks and unpaid lunch breaks.
7. It amends the exemption from rest breaks for those employees who have frequent rest breaks during the work day to specify that the exemption only applies if the rest breaks are paid rest breaks and of shorter duration than the 30 minutes otherwise required.
8. It amends the law regarding the exemption from mandatory overtime pay for salaried workers to specify that the exemption applies to a salaried employee who works in a bona fide executive, administrative or professional capacity who meets the test for a white collar exemption, including a minimum salary level, as established in the final rules adopted by the United States Department of Labor pursuant to the federal Fair Labor Standards Act and allows such employees to be paid on a monthly basis, instead of every 16 days, as for other employees.
9. It amends the law regarding timing of payment of wages to specify that the payment must include all wages earned for the prior pay period, instead of those earned within eight days of the payment date, and allows such payments to be made on the next business day when the payment date occurs on a day when the business is closed. The bill prohibits an employer from increasing any pay interval without providing notice to its employees.
10. Current law requires an employer to keep a record showing the date and amount paid to each employee and a daily record of time worked by an employee. This bill specifies that those records must be maintained by the employer for three years.
11. Current law requires an employee leaving employment to be paid within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid. Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. This bill removes the "reasonable time" requirement and instead specifies that when an employee leaves employment, that employee must be paid on the next established payday. The bill also specifies that payment of vacation is payable only in accordance with the employer's established policy or practice.
12. It repeals the exemption from the minimum wage and overtime laws for an individual employed as a switchboard operator in a public telephone exchange that has less than 750 stations.
13. It amends the definitions of "automobile mechanic," "automobile parts clerk" and "automobile service writer" to reflect provisions in federal law.
14. It changes the definition of "tip" and provisions regarding service charges to conform to the federal Fair Labor Standards Act, or FLSA. Current Maine law creates a wage violation under the FLSA by allowing a charge added to a customer's bill to be treated as a tip, whereas the FLSA treats it as a service charge, which is the employer's

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property not the service worker's.

15. It clarifies the intent of the Legislature, to conform with federal law, that the distribution of certain products is exempt from the provisions governing overtime pay. It amends the 1995 law by reordering the series of exempt tasks for the purpose of eliminating any perceived ambiguity.

16. It adds the exemption adopted by the United States Department of Labor in 2015 for a domestic service worker employed to provide companionship services. The provision of care provided in conjunction with the provision of fellowship and protection cannot exceed 20% of the total hours worked per person and per workweek to qualify for exemption.

17. It repeals the definition of "hotel" for purposes of the subchapter on minimum wage since the term is not used in that subchapter.

18. It repeals and reallocates the provisions of the Maine Revised Statutes, Title 26, chapter 7, subchapter 4, article 1 regarding the application of the subchapter, record of work hours of minors and penalties.

19. It requires the bureau to conduct a survey every three years to determine the prevailing hourly wage and benefits rate in the construction industry. Current law requires the bureau to determine that wage and benefits rate annually.

20. It repeals the provisions of law regarding placement restrictions for a person required to work as a condition of receiving public assistance.

21. It updates the safety standard for inspection of firefighters' breathing apparatus to require that the inspection procedure follow the procedure specified in the manufacturer's operation manual. The document referred to in current law was never finalized for adoption.

Committee Amendment "A" (S-252)

This amendment makes a number of changes to the bill, including the following:

1. It restores the fine of up to \$20,000 for repeated violations of occupational safety requirements. It also removes the requirement for a conviction and instead provides that the fine is collectible upon a determination of a violation by the Department of Labor;
2. It allows an employer to offer a voluntary wellness program that offers incentives to employees for the cessation of use of tobacco products in compliance with federal regulations;
3. It eliminates the portion of the bill regarding possession of firearms by employees;
4. It amends the portion of the bill regarding rest breaks to specify that the 30-minute rest break may be used by the employee as unpaid mealtime only if the employee is completely relieved of duty, and limits the exception that allows small businesses with fewer than three employees on duty at any one time when the employee has frequent paid breaks of shorter duration to be exempted from the 30-minute rest break requirement only if the employees are completely relieved of duty during the frequent paid breaks;
5. It eliminates the portions of the bill regarding exemptions to mandatory overtime pay for certain salaried employees and automobile mechanics, automobile parts clerks and automobile service writers;
6. It eliminates the provision in the bill that allows a salaried employee to be paid on a monthly basis;
7. It eliminates the requirement in the bill that an employer preserve wage records for three years;

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8. It changes the provision in the bill that specifies that when the terms of employment or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned;
9. It eliminates the exemption from minimum wage and overtime pay requirements in the bill for domestic service workers employed to provide companionship services;
10. It eliminates the provisions in the bill relating to the definition of "tip" and that make a mandatory service charge the property of the employer and not the service employee; and
11. It eliminates the provision in the bill that requires the Department of Labor, Bureau of Labor Standards to conduct a survey every three years to determine the prevailing hourly wage and benefits rate in the construction industry, instead of annually under current law.

This amendment also makes changes to the bill to provide further clarity regarding the current exemption from overtime contained in the Maine Revised Statutes, Title 26, section 664, subsection 3, paragraph F relating to work in the distribution of agricultural produce, meat and fish products and perishable foods. The bill and the current amendment are specifically intended to correct a perceived ambiguity identified by the United States Court of Appeals for the First Circuit in *O'Connor v. Oakhurst Dairy*, 851 F.3d 69 (2017). The amendment attempts to clarify current law by using semicolons to separate the applicable categories of work to which the exemption applies, and by changing the term "distribution" to "distributing" to conform to the grammatical convention of parallel usage by matching the gerund form of the other activities listed in the exemption, with the intent that work done in the distribution of, or distributing of, agricultural produce, meat and fish products and perishable foods is exempt from the overtime requirements of Title 26, section 664. The amendment also adds a retroactivity clause, applying the changes made to Title 26, section 664, subsection 3, paragraph F retroactively to September 29, 1995. This retroactivity applies to pending cases except, in deference to the authority of the judiciary to redress disputes, for cases pending on March 12, 2017. The Legislature does not intend any retroactive change to the overtime requirements for egg processing facilities enacted by Public Law 2011, chapter 681.

Enacted Law Summary

Public Law 2017, chapter 219 makes a number of changes to the labor laws, including the following:

1. It removes imprisonment as a penalty for an employer who willfully or repeatedly violates any standard, rule or order relating to occupational safety. It also removes the requirement for a conviction in order to enforce fines for such a violation and instead provides that a fine is collectible upon a determination of a violation by the Department of Labor;
2. It allows an employer to offer a voluntary wellness program that offers incentives to employees for the cessation of use of tobacco products in compliance with federal regulations;
3. It amends the law regarding mandatory rest breaks to specify that the 30-minute rest break may be used by the employee as unpaid mealtime, but only if the employee is completely relieved of duty. It also clarifies that the exception that applies to businesses with fewer than three employees on duty at any one time only applies if the employee is paid during the employee's frequent breaks of shorter duration;
4. It provides that when the terms of employment or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned; and
5. It clarifies that the exemption in the overtime wage laws regarding work involving agricultural produce, meat and fish products and perishable foods applies to work distributing such products and applies this change retroactively to pending cases, except for cases pending on March 12, 2017.