Title 26, Chapter 7, EMPLOYMENT PRACTICES

Chapter 7: EMPLOYMENT PRACTICES

Subchapter 1: CONDITIONS FOR EMPLOYMENT

§591. Examination; definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings: [1985, c. 112, § 1 (amd).]

1. Employee. "Employee" means every person who may be permitted, required or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment;

[1985, c. 112, § 1 (amd).]

2. Employer. "Employer" means an individual, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy and any common carrier by rail, motor, water, air or express company doing business in or operating within the State.

[1985, c. 112, § 1 (amd).]

PL 1985, Ch. 112, §1 (AMD).

§592. Charge by employer prohibited

No employer may require any employee or accepted applicant for employment to bear the medical expense of an examination when that examination is ordered or required by the employer. No employer may require any employee or accepted applicant for employment to bear the expense of an eye examination ordered or required by the employer which is performed by a person licensed to perform the examinations, except that if an employer orders or requires the eye examination to be performed by a specific type of eye care provider, or specific provider, the employer must pay for the examination only when performed by that specific type of eye care provider or specific provider. An employer may pay for an examination under this section directly, through group health insurance coverage of the employee or otherwise, as long as the employee is not ultimately required to bear the expense of that examination. Any employer who violates this section commits a civil violation for which a forfeiture not to exceed $50 for each and every violation may be adjudged. It is the duty of the director to enforce this section. Notwithstanding section 591, subsection 2, for the purposes of this section, the term "employer" includes the State, a county, a municipality, a quasi-municipal corporation or any other public employer. For the purposes of this section, the term "accepted applicant" means an applicant who has been offered a job by the employer. [1989, c. 535 (amd).]

PL 1971, Ch. 620, §13 (AMD).
PL 1985, Ch. 112, §2 (AMD).
PL 1989, Ch. 535, § (AMD).

§593. Textile piecework (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/1/04)

The occupier or manager of every textile factory shall post in every room where any employees work by piece rate, in legible writing or printing, and in sufficient numbers to be easily accessible to such employees, specifications of the character of each kind of work to be done by them and the rate of compensation, whether paid by the pound or by the pick as registered by the pick clock on each loom. Such specifications in the case of weaving rooms shall state the intended and maximum length of a cut or piece, the count per inch of reed and the number of picks per inch, width of loom, width of cloth woven in the loom, and each warp shall bear a designating ticket or mark of identification. In mills operating looms engaged in the weaving of cloth or other textiles, where weavers are not paid on a per hour or day basis, pick clocks shall be placed on each loom in operation, and each weaver shall be paid according to the number of picks registered on

said clock. This section shall not apply to so-called gang looms or the weaving of carpets or elastic webbing. Violation of any provision of this section shall for the first offense be punishable by a fine of not more than $50; for the 2nd offense by a fine of not more than $100; and for a subsequent offense by a fine of not more than $200 or by imprisonment for not more than 30 days, or by both.

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Textile piecework

(WHOLE SECTION TEXT EFFECTIVE 7/1/04)

1. Posting of specifications. The occupiers or managers of every textile factory shall post in every room where employees work by piece rate, in legible writing or printing, and in sufficient numbers to be easily accessible to such employees, specifications of the character of each kind of work to be done by them and the rate of compensation, whether paid by the pound or by the pick as registered by the pick clock on each loom. Such specifications in the case of weaving rooms must state the intended and maximum length of a cut or piece, the count per inch of reed and the number of picks per inch, width of loom and width of cloth woven in the loom, and each warp must bear a designating ticket or mark of identification.

[2003, c. 452, Pt. O, §1 (new); Pt. X, §2 (aff).]

2. Pick clocks. In mills operating looms engaged in the weaving of cloth or other textiles where weavers are not paid on a per hour or day basis, pick clocks must be placed on each loom in operation, and each weaver must be paid according to the number of picks registered on the pick clock.

[2003, c. 452, Pt. O, §1 (new); Pt. X, §2 (aff).]

3. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not more than $50 may be adjudged.

[2003, c. 452, Pt. O, §1 (new); Pt. X, §2 (aff).]

B. A person who violates this section after having previously violated this section commits a civil violation for which a fine of not more than $100 may be adjudged.

[2003, c. 452, Pt. O, §1 (new); Pt. X, §2 (aff).]

C. A person who violates this section after having previously violated this section 2 or more times commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. O, §1 (new); Pt. X, §2 (aff).]

[2003, c. 452, Pt. O, §1 (new); Pt. X, §2 (aff).]

4. Application. This section does not apply to so-called gang looms or the weaving of carpets or elastic webbing.

[2003, c. 452, Pt. O, §1 (new); Pt. X, §2 (aff).]

PL 2003, Ch. 452, §O1 (RPR).
PL 2003, Ch. 452, §X2 (AFF).

§594. Charge by an employer for an application for employment

It is unlawful for an employer to assess a fee or charge a prospective employee in any fashion for requesting, submitting, filing or completing an application for employment with that employer. Any employer who violates this section shall be liable to a penalty of not more than $500 for each violation. It is the duty of the director to enforce this section. [1983, c. 627 (new).]

PL 1983, Ch. 627, § (NEW).

§595. Hiring of workers during a labor dispute

1. Legislative findings. The Legislature finds that:

A. The practice of receiving applicants for employment, conducting interviews of job applicants or performing medical examinations of job applicants at the worksite of an employer who is currently engaged in a labor dispute with his employees tends to incite violence by bringing individuals who may be considered as replacements for workers to the physical focus of the labor dispute and by encouraging a direct confrontation between these individuals and the prior employees; and

[1987, c. 558, §1 (new).]

B. The presence of persons carrying dangerous weapons near sites where applications for positions with an employer involved in a labor dispute are being accepted or where interviews of those job applicants are being conducted or medical examinations of those applicants are being performed creates an unacceptable risk of violence; and

[1987, c. 558, §1 (new).]

C. The public safety requires the regulation of these practices to reduce the likelihood of violence.

[1987, c. 558, §1 (new).]

[1987, c. 558, §1 (new).]

2. Purpose. The purpose of this section is to reduce the potential for violence during labor disputes by prohibiting certain provocative acts and imposing penalties for failure to obey this section.

[1987, c. 558, §1 (new).]

3. Receiving job applicants at worksite prohibited. No employer may perform any of the following acts at any of that employer's plants, facilities, places of business or worksites where a labor dispute, strike or lockout involving the employees of that employer is in progress:

A. Receiving persons for the purpose of soliciting or receiving applications for employment with the employer;

[1987, c. 558, §1 (new).]

B. Conducting or having conducted interviews of applicants for employment with the employer; or

[1987, c. 558, §1 (new).]

C. Performing or having performed medical examinations of applicants for employment with the employer.

[1987, c. 558, §1 (new).]

Any employer who violates this subsection is subject to a civil penalty not to exceed $10,000 for each day the violation continues, payable to the State, to be recovered in a civil action. Upon request, any court of competent jurisdiction shall also enjoin the violation under section 5.

The Attorney General, the Commissioner of Labor or any employee, employees or bargaining agent of employees involved in the labor dispute may file a civil action to enforce this subsection.

[1987, c. 558, §1 (new).]

4. Hiring off-site permitted. An employer involved in a labor dispute, strike or lockout may perform hiring activities prohibited under subsection 3 at any site other than his customary plants, facilities, places of business or worksites where a labor dispute, strike or lockout involving the employees of that employer is in progress.

A. The employer must notify the law enforcement agencies of the county and municipality in which these activities will be conducted at least 10 days before commencing hiring activities.

[1987, c. 558, §1 (new).]

B. No employee of the employer conducting hiring activities under this subsection and who is involved in the labor dispute, strike or lockout may picket, congregate or in any way protest the hiring activity of the employer within 200 feet of the building or structure at which such activities are taking place. Violation of this paragraph is a Class E crime.

[1987, c. 558, §1 (new).]

[1987, c. 558, §1 (new).]

5. Dangerous weapons prohibited. It is a Class D crime for any person, including, but not limited to, security guards and persons involved in a labor dispute, strike or lockout, to be armed with a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, at a site where applications for employment with an employer involved in a labor dispute, strike or lockout are being received or where interviews of those job applicants are being conducted or where medical examinations of those job applicants are being performed.

A. A person holding a valid permit to carry a concealed firearm is not exempt from this subsection.

[1987, c. 558, §1 (new).]

B. A security guard is exempt from this subsection to the extent that federal laws or rules required the security guard to be armed with a dangerous weapon at such a site.

[1987, c. 558, §1 (new).]

C. A public law enforcement officer is exempt from this subsection while on active duty in the public service.

[1987, c. 558, §1 (new).]

D. A security guard employed by an employer involved in a labor dispute, strike or lockout may be present at the location where applications for employment with the employer will be accepted, interviews of those applicants conducted or medical examinations of those applicants performed to the extent permitted under Title 32, chapter 93. Nothing in this section may be construed to extend or limit in any way the restrictions placed upon the location of private security guards under Title 32, chapter 93.

[1987, c. 558, §1 (new).]

[1987, c. 558, §1 (new).]

PL 1987, Ch. 558, §1 (NEW).

§596. Recall period

An employee who is temporarily laid off by an employer for over 6 weeks and who is placed on a "recall" or "spare" list by that employer for the purpose of being recalled to work shall have 7 days from receiving notice of a recall to work in which to respond to the notice without discrimination on subsequent recalls by the employer. [1989, c. 460 (new).]

1. Effect of exercising option. No employer may remove an employee from a "recall" or "spare" list solely because the employee chooses to exercise the 7-day option under this section. No employer may discriminate against an employee in subsequent recalls to work solely because the employee chooses to exercise the 7-day option under this section.

[1989, c. 460 (new).]

2. Limitations. Nothing in this section may be construed to:

A. Prevent an employer from offering recall to another employee on the "recall" or "spare" list in the place of an employee who is contacted earlier but who chooses to exercise the 7-day option under this section;

[1989, c. 460 (new).]

B. Require an employer to hold a position or an offer of recall open for an employee who exercises the 7-day option under this section; or

[1989, c. 460 (new).]

C. Require an employee to wait 7 days before returning to work after receiving a recall notice.

[1989, c. 460 (new).]

[1989, c. 460 (new).]

PL 1989, Ch. 460, § (NEW).

§597. Conditions of employment

An employer or an agent of an employer may not require, as a condition of employment, that any employee or prospective employee refrain from using tobacco products outside the course of that employment or otherwise discriminate against any person with respect to the person's compensation, terms, conditions or privileges of employment for using tobacco products outside the course of employment as long as the employee complies with any workplace policy concerning use of tobacco. [1991, c. 366 (new).]

PL 1991, Ch. 366, § (NEW).

§598. Employment reference immunity

An employer who discloses information about a former employee's job performance or work record to a prospective employer is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for such disclosure or its consequences. Clear and convincing evidence of lack of good faith means evidence that clearly shows the knowing disclosure, with malicious intent, of false or deliberately misleading information. This section is supplemental to and not in derogation of any claims available to the former employee that exist under state law and any protections that are already afforded employers under state law. [1995, c. 335, §1 (new).]

PL 1995, Ch. 335, §1 (NEW).

§599. Broadcasting industry contract

1. Definition. As used in this section, unless the context otherwise indicates, "broadcasting industry contract" means an employment contract between a person and a legal entity that owns one or more television stations or networks or one or more radio stations or networks.

[2003, c. 225, §1 (amd).]

2. Presumed unreasonable. A broadcasting industry contract provision that requires an employee or prospective employee to refrain from obtaining employment in a specified geographic area for a specified period of time following expiration of the contract or upon termination of employment without fault of the employee is presumed to be unreasonable.

[1999, c. 406, §1 (new).]

PL 1999, Ch. 406, §1 (NEW).
PL 2003, Ch. 225, §1 (AMD).

Subchapter 1-A: HOURS OF EMPLOYMENT

§601. Rest breaks

In the absence of a collective bargaining agreement or other written employer-employee agreement providing otherwise, an employee, as defined in section 663, may be employed or permitted to work for no more than 6 consecutive hours at one time unless he is given the opportunity to take at least 30 consecutive minutes of rest time, except in cases of emergency in which there is danger to property, life, public safety or public health. This rest time may be used by the employee as a mealtime. [1985, c. 212 (new).]

1. Small business. This section does not apply to any place of employment where:

A. Fewer than 3 employees are on duty at any one time; and

[1985, c. 212 (new).]

B. The nature of the work done by the employees allows them frequent breaks during their work day.

[1985, c. 212 (new).] [1985, c. 212 (new).]

PL 1985, Ch. 212, § (NEW).

§602. Enforcement and penalty

The following provisions govern the enforcement of this subchapter. [1985, c. 212 (new).]

1. Violation. Any employer who violates this subchapter commits a civil violation for which a forfeiture of not less than $100 nor more than $500 for each violation may be adjudged.

[1985, c. 212 (new).]

2. Discharge or discrimination. Any employer who discharges or in any other manner discriminates against any employee because the employee makes a complaint to the director, the district attorney or the Attorney General concerning a violation of this subchapter, commits a civil violation for which a forfeiture of not less than $100 nor more than $500 may be adjudged.

[1985, c. 212 (new).]

3. Injunction. If any provision of this subchapter is violated, the Attorney General may seek an injunction in the Superior Court to enjoin any further violations or to compel the reinstatement of an employee discharged or discriminated against as described in subsection 2.

[1985, c. 212 (new).]

PL 1985, Ch. 212, § (NEW).

§603. Limits on mandatory overtime

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

A. "Employer" means all private and public employers, including the State and political subdivisions of the State.

[1999, c. 750, §1 (new).]

B. "Overtime" means the hours worked in excess of 40 hours in a calendar week.

[1999, c. 750, §1 (new).]

[1999, c. 750, §1 (new).]

2. Limits on mandatory overtime. An employer may not require an employee to work more than 80 hours of overtime in any consecutive 2-week period.

[1999, c. 750, §1 (new).]

3. Exceptions. This section does not apply to:

A. Work performed in response to an emergency declared by the Governor under the laws of the State;

[1999, c. 750, §1 (new).]

B. An employee who performs essential services for the public. For purposes of this paragraph, "essential services" means those services that are basic or indispensable and are provided to the public as a whole, including, but not limited to, utility service, snowplowing, road maintenance and telecommunications service;

[1999, c. 750, §1 (new).]

C. An employee whose work is necessary to protect the public health or safety, when the excess overtime is required outside the normal course of business;

[1999, c. 750, §1 (new).]

D. An individual exempt from the definition of employee in section 663, subsection 3, paragraph A, B, C, F, G, I or J;

[1999, c. 750, §1 (new).]

E. A salaried employee who works in a bona fide executive capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage;

[1999, c. 750, §1 (new).]

F. An employee of a seasonal employer. For purposes of this paragraph, "seasonal employer" means an employer in an industry that operates in a regularly recurring period or periods of less than 26 weeks in a calendar year;

[1999, c. 750, §1 (new).]

G. A medical intern or resident engaged in a graduate educational program approved by the Accreditation Council on Graduate Medical Education, the American Board of Medical Specialties or the American Osteopathic Association at a health care facility. For purposes of this paragraph, "health care facility" has the same meaning as in Title 22, section 8702, subsection 4; or

[1999, c. 750, §1 (new).]

H. An employee who works for an employer who shuts down an operation for annual maintenance or work performed in the construction, rebuilding, maintenance or repair of production machinery and equipment, including machine start-ups and shutdowns related to such activity. This exception applies to contractors of the employer that are providing services related to the activities in this paragraph. It does not apply to other operations not involved in the work stated in this paragraph. Notwithstanding this paragraph, a worker may not be required to work beyond the limits prescribed in subsection 2 for more than 4 consecutive weeks.

[1999, c. 750, §1 (new).]

[1999, c. 750, §1 (new).]

4. Lower limit by agreement. Employers and employees may agree to limit mandatory overtime to fewer hours than provided for in this section.

[1999, c. 750, §1 (new).]

5. Exception for nurse. Notwithstanding subsection 2, a nurse may not be disciplined for refusing to work more than 12 consecutive hours. A nurse may be disciplined for refusing mandatory overtime in the case of an unforeseen emergent circumstance when overtime is required as a last resort to ensure patient safety. Any nurse who is mandated to work more than 12 consecutive hours, as permitted by this section, must be allowed at least 10 consecutive hours of off-duty time immediately following the worked overtime.

This subsection does not apply to overtime for performance of services described in subsection 3, paragraph A or C.

[2001, c. 401, §1 (new).]

PL 1999, Ch. 750, §1 (NEW).
PL 2001, Ch. 401, §1 (AMD).

Title 26, Chapter 7, EMPLOYMENT PRACTICES

§611. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1985, c. 623, § 1 (new).]

1. Employment agency. "Employment agency" means any person who conducts a full-time or part-time service for the purpose of procuring or attempting to procure permanent or temporary employment or engagement for persons seeking employment or engagement, or for giving information about where employment or engagement may be procured when a fee paid by the employee is charged for that service. Employment agencies do not include teachers' agencies, nurses' associations, charitable institutions, arrangers of employment for seamen and professional or occupational associations which serve only their own membership and which charge only a nominal fee, and persons employed by a public or private nonprofit agency.

[1985, c. 623, § 1 (new).]

PL 1985, Ch. 623, §1 (NEW).

§612. Fees charged to applicants for employment; receipt

1. Placement fee. The placement fee charged to an applicant for employment by an employment agency shall not exceed the equivalent of the first full week's gross wages. This fee shall be in full compensation for all services of the employment agency. If for any reason employment terminates in less than one month, the fee shall be adjusted so as not to exceed 10% of the wages earned.

[1985, c. 623, § 1 (new).]

2. Terms of payment of fee for placement. If the placement fee charged to an applicant for employment is paid weekly, 1/8 of the fee shall be paid each week for the first 8 weeks of employment; if paid semi-monthly, each payment shall be 1/4 of the total fee; and if paid monthly, each payment shall be 1/2 of the total fee.

[1985, c. 623, § 1 (new).]

3. Receipt given to an applicant for employment. Every employment agency shall give to each applicant for employment, from whom a fee or other consideration is received, a receipt which must show the name of the applicant for employment, the amount of the fee, any balance due, the date, name or nature of the employment or situation procured and the name and address of the employer.

[1985, c. 623, § 1 (new).]

PL 1985, Ch. 623, §1 (NEW).

§612-A. Municipal licensing

This subchapter may not be construed to prevent a municipality from acting under its home rule authority granted by Title 30-A, section 3001 and by the Constitution of Maine, Article VIII, Part Second, to license or regulate the business of employment agencies or to require a bond. [1991, c. 824, Pt. A, §55 (amd).]

PL 1987, Ch. 583, §2 (NEW).
PL 1991, Ch. 824, §A55 (AMD).

§613. Enforcement penalty

1. Violation. Any employment agency which violates this subchapter commits a civil violation for which a forfeiture of not less than $100 nor more than $500 for each violation may be adjudged.

[1985, c. 623, § 1 (new).]

2. Civil action. An action may be brought by the injured party, the Attorney General, the Department of Labor or any municipality which has issued a license to the employment agency in accordance with section 612-A.

[1987, c. 583, §3 (amd).]

PL 1985, Ch. 623, §1 (NEW).
PL 1987, Ch. 583, §3 (AMD).

Subchapter 2: WAGES AND MEDIUM OF PAYMENT

§621. Time of payment (REPEALED)

PL 1983, Ch. 778, § (RPR).
PL 1995, Ch. 340, §1 (AMD).
PL 1999, Ch. 465, §1 (RP).

§621-A. Timely payment of wages

1. Minimum frequency. At regular intervals not to exceed 16 days, every employer must pay all wages earned by each employee. Each payment must include all wages earned to within 8 days of the payment date. An employee who is absent from work at a time fixed for payment must be paid on demand after that time.

[1999, c. 465, §2 (new).]

2. Regular payment required. Wages must be paid on an established day or date at regular intervals made known to the employee. When the interval is less than the maximum allowed by subsection 1, the interval may not be increased without written notice to the employee at least 30 days in advance of the increase.

[1999, c. 465, §2 (new).]

3. Compensatory time agreements. Notwithstanding subsections 1 and 2, public agency employers and employees may enter into compensatory time overtime agreements in accordance with the federal Fair Labor Standards Act, 29 United States Code, Section 207(o). These agreements are governed solely by federal law. For purposes of this subsection, "public agency" has the same meaning as in 29 United States Code, Section 203(x).

[1999, c. 790, Pt. P, §1 (new); §3 (aff).]

4. School personnel. Employees of a school administrative unit who work the school year schedule may, upon written agreement between the employees and the school administrative unit, be paid for their work during the school year over 12 months or a shorter period, as provided in the written agreement. For purposes of this subsection, "written agreement" includes but is not limited to a collective bargaining agreement.

[2001, c. 156, §1 (amd).]

PL 1999, Ch. 465, §2 (NEW).
PL 1999, Ch. 790, §P1 (AMD).
PL 1999, Ch. 790, §P3 (AFF).
PL 2001, Ch. 156, §1 (AMD).

§622. Records

Every employer shall keep a true record showing the date and amount paid to each employee pursuant to section 621-A. Every employer shall keep a daily record of the time worked by each such employee unless the employee is paid a salary that is fixed without regard for the number of hours worked. Records required to be kept by this section must be accessible to any representative of the department at any reasonable hour. Sections 621-A to 623 do not excuse any employer subject to section 702 from keeping the records required by that section. [1999, c. 465, §3 (rpr).]

PL 1975, Ch. 113, §1 (AMD).
PL 1999, Ch. 465, §3 (RPR).

§623. Exemptions

This section and sections 621-A and 622 do not apply to family members and salaried employees as defined in section 663, subsection 3, paragraphs J and K. Sections 621-A and 622 do not apply to an employee of a cooperative corporation or association if the employee is a stockholder of the corporation or association, unless the employee requests the association or corporation to pay that employee in accordance with section 621-A. Except as provided in section 621-A, subsections 3 and 4, a corporation, contractor, person or partnership may not by a special contract with an employee or by any other means exempt itself from this section and sections 621-A and 622. [1999, c. 790, Pt. P, Â§2 (amd); Â§3 (aff).]

PL 1973, Ch. 40, § (AMD).
PL 1975, Ch. 113, §2 (AMD).
PL 1999, Ch. 465, §4 (AMD).
PL 1999, Ch. 790, §P2 (AMD).
PL 1999, Ch. 790, §P3 (AFF).

§624. Penalties (REPEALED)

PL 1975, Ch. 113, §3 (RP).

§625. Notice of intention to quit

Any person, firm or corporation engaged in any manufacturing or mechanical business may contract with adult or minor employees to give one week's notice of intention on such employee's part to quit such employment under a penalty of forfeiture of one week's wages. In such case, the employer shall be required to give a like notice of intention to discharge the employee, and on failure, shall pay to such employee a sum equal to one week's wages. No such forfeiture shall be enforced when the leaving or discharge of the employee is for a reasonable cause. The enforcement of the penalty shall not prevent either party from recovering damages for a breach of the contract of hire.

PL 1971, Ch. 452, § (AMD).
PL 1973, Ch. 545, § (AMD).
PL 1975, Ch. 512, §1,2 (AMD).

§625-A. Severance pay (REPEALED)

PL 1975, Ch. 512, §3 (NEW).
PL 1975, Ch. 717, §4 (AMD).
PL 1979, Ch. 663, §156 (RP).

§625-B. Severance pay

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

A. "Covered establishment" means any industrial or commercial facility or part thereof which employs or has employed at any time in the preceding 12-month period 100 or more persons.

[1979, c. 663, §157 (new).]

B. "Director" means the Director of the Bureau of Labor Standards.

[1989, c. 502, Pt. A, §106 (amd).]

C. "Employer" means any person who directly or indirectly owns and operates a covered establishment. For purposes of this definition, a parent corporation is considered the indirect owner and operator of any covered establishment that is directly owned and operated by its corporate subsidiary.

[1989, c. 667, §1 (amd); §2 (aff).]

D. "Person" means any individual, group of individuals, partnership, corporation, association or any other entity.

[1979, c. 663, §157 (new).]

E. "Physical calamity" means any calamity such as fire, flood or other natural disaster, or the final order of any federal, state or local governmental agency including adjudicated bankruptcy.

[1979, c. 663, §157 (new).]

F. "Relocation" means the removal of all or substantially all of industrial or commercial operations in a covered establishment to a new location, within or without the State of Maine, 100 or more miles distant from its original location.

[1979, c. 663, §157 (new).]

G. "Termination" means the substantial cessation of industrial or commercial operations in a covered establishment.

[1979, c. 663, §157 (new).]

H. "Week's pay" means an amount equal to 1/52nd part of the gross wages paid to an employee during the 12 months prior to relocation or termination.

[1979, c. 663, §157 (new).]

[1989, c. 502, Pt. A, §106 (amd); c. 667, §1 (amd); §2 (aff)]

2. Severance pay. Any employer who relocates or terminates a covered establishment shall be liable to his employees for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment. The severance pay to eligible employees shall be in addition to any final wage payment to the employee and shall be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.

[1979, c. 663, §157 (new).]

3. Mitigation of severance pay liability. There is no liability under this section for severance pay to an eligible employee if:

A. Relocation or termination of a covered establishment is necessitated by a physical calamity;

[1979, c. 663, §157 (new).]

B. The employee is covered by an express contract providing for severance pay that is equal to or greater than the severance pay required by this section;

[1999, c. 55, §1 (amd).]

C. That employee accepts employment at the new location; or

[1979, c. 663, §157 (new).]

D. That employee has been employed by the employer for less than 3 years.

[1979, c. 663, §157 (new).]

[1999, c. 55, §1 (amd).]

4. Suits by employees. Any employer who violates the provisions of this section shall be liable to the employee or employees affected in the amount of their unpaid severance pay. Action to recover the liability may be maintained against any employer in any state or federal court of competent jurisdiction by any one or more employees for and on behalf of himself or themselves and any other employees similarly situated. Any labor organization may also maintain an action on behalf of its members. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant and costs of the action.

[1979, c. 663, §157 (new).]

5. Suits by the director. The director is authorized to supervise the payment of the unpaid severance pay owing to any employee under this section. The director may bring an action in any court of competent jurisdiction to recover the amount of any unpaid severance pay. The right provided by subsection 4 to bring an action by or on behalf of any employee, and of any employee to become a party plaintiff to any such action, shall terminate upon the filing of a complaint by the director in an action under this subsection, unless the action is dismissed without prejudice by the director. Any sums recovered by the director on behalf of an employee pursuant to this subsection shall be held in a special deposit account and shall be paid, on order of the director, directly to the employee affected. Any sums thus recovered not paid to an employee because of inability to do so within a period of 3 years shall be paid over to the State of Maine.

[1979, c. 663, §157 (new).]

6. Notice of director. Any person proposing to relocate or terminate a covered establishment shall notify the director in writing not less than 60 days prior to the relocation.

[1979, c. 663, §157 (new).]

6-A. Notice to employees and municipality. Any person proposing to relocate a covered establishment outside the State shall notify employees, and the municipal officers of the municipality where the plant is located, in writing not less than 60 days prior to the relocation. Any person violating this provision commits a civil violation for which a forfeiture of not more than $500 may be adjudged, provided that no forfeiture may be adjudged if the relocation is necessitated by a physical calamity, or if the failure to give notice is due to unforeseen circumstances.

[1981, c. 337 (new).]

7. Powers of director. In any investigation or proceeding under this section, the director shall have, in addition to all other powers granted by law, the authority to examine books and records of any employer affected by this section as set out in section 665, subsection 1.

[1979, c. 663, §157 (new).]

8. Rules. The Department of Labor shall adopt rules to implement this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A. Initial rules must be provisionally adopted and submitted to the

Legislature not later than January 15, 2003.

[2001, c. 625, §1 (new).]

PL 1979, Ch. 663, §157 (NEW).
PL 1981, Ch. 337, § (AMD).
PL 1989, Ch. 502, §A106 (AMD).
PL 1989, Ch. 667, §1,2 (AMD).
PL 1999, Ch. 55, §1 (AMD).
PL 2001, Ch. 625, §1 (AMD).

§626. Cessation of employment

An employee leaving employment must be paid in full within a reasonable time after demand at the office of the employer where payrolls are kept and wages are paid, provided that any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee. Whenever the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. [1991, c. 162 (amd).]

For purposes of this section, the term "employee" means any person who performs services for another in return for compensation, but does not include an independent contractor. [1991, c. 162 (new).]

For purposes of this subchapter, a reasonable time means the earlier of either the next day on which employees would regularly be paid or a day not more than 2 weeks after the day on which the demand is made. [1991, c. 162 (amd).]

In any action for unpaid wages brought under this subchapter, the employer may not deduct as a setoff or counterclaim any money allegedly due the employer as compensation for damages caused to the employer's property by the employee, or any money allegedly owed to the employer by the employee, notwithstanding any procedural rules regarding counteractions, provided that any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee, and that nothing in this section may be construed to limit or restrict in any way any rights that the employer has to recover, by a separate legal action, any money owed the employer by the employee. [1991, c. 162 (amd).]

An action for unpaid wages under this section may be brought by the affected employee or employees or by the Department of Labor on behalf of the employee or employees. An employer found in violation of this section is liable for the amount of unpaid wages and, in addition, the judgment rendered in favor of the employee or employees must include a reasonable rate of interest, an additional amount equal to twice the amount of those wages as liquidated damages and costs of suit, including a reasonable attorney's fee. [1991, c. 162 (amd).]

Within 2 weeks after the sale of a business, the seller of the business shall pay employees of that business any wages earned while employed by the seller. If the terms of employment include provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. The seller of a business may comply with the provisions of this paragraph through a specific agreement with the buyer in which the buyer agrees to pay any wages earned by employees through employment with the seller and to honor any paid vacation earned under the seller's vacation policy. [1995, c. 580, §1 (new).]

PL 1975, Ch. 113, §4 (RPR).
PL 1975, Ch. 623, §37-A,37-B (AMD).
PL 1983, Ch. 652, §1 (AMD).
PL 1991, Ch. 162, § (AMD).
PL 1995, Ch. 580, §1 (AMD).

§626-A. Penalties

Whoever violates any of the provisions of sections 621-A to 623 or section 626, 628, 629 or 629-B is subject to a forfeiture of not less than $100 nor more than $500 for each violation. [1999, c. 465, §5 (amd).]

Any employer is liable to the employee or employees for the amount of unpaid wages and health benefits. Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages or health benefits under this subchapter, such judgment includes, in addition to the unpaid wages or health benefits adjudged to be due, a reasonable rate of interest, costs of suit including a reasonable attorney's fee, and an additional amount equal to twice the amount of unpaid wages as liquidated damages. [1993, c. 648, §1 (amd).]

Remedies for unpaid wages do not become available to the employee except as follows. If the wages are clearly due without a bona fide dispute, remedies are available to the employee 8 days after the due date for payment. If there is a bona fide dispute at the time payment is due, remedies become available to the employee 8 days after demand when the wages are, in fact, due and remain unpaid. [1999, c. 465, §5 (new).]

The action for unpaid wages or health benefits may be brought by either the affected employee or employees or by the Department of Labor. The Department of Labor is further authorized to supervise the payment of the judgment, collect the judgment on behalf of the employee or employees and collect fines incurred through violation of this subchapter. When the Department of Labor brings an action for unpaid wages or health benefits, this action and an action to collect a civil forfeiture may both be joined in the same proceeding. [1993, c. 648, §1 (amd).]

PL 1975, Ch. 113, §5 (NEW).
PL 1975, Ch. 623, §37-C (AMD).
PL 1975, Ch. 770, §114 (AMD).
PL 1983, Ch. 652, §2,3 (AMD).
PL 1993, Ch. 648, §1 (AMD).
PL 1999, Ch. 465, §5 (AMD).

§626-B. Collective bargaining exceptions (REPEALED)

PL 1975, Ch. 113, §5 (NEW).
PL 1999, Ch. 465, §6 (RP).

§627. Assignment of wages

No assignment of wages is valid against any other person than the parties thereto, unless such assignment is recorded by the clerk in the office of the Secretary of State. No such assignment of wages may be valid against the employer, unless he has actual notice thereof. [1987, c. 184, § 24 (amd).]

An assignment of wages executed in satisfaction of a child support obligation shall have absolute priority over all previously filed orders against earnings entered pursuant to Title 14, section 3127-B and former section 3137, and over any other assignment of wages, which orders and assignments were entered after July 24, 1984. [1987, c. 184, § 24 (amd).]

PL 1983, Ch. 782, §5 (AMD).
PL 1987, Ch. 184, §24 (AMD).

§628. Equal pay

An employer may not discriminate between employees in the same establishment on the basis of sex by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of the opposite sex for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility. Differentials that are paid pursuant to established seniority systems or merit increase systems or difference in the shift or time of the day worked that do not discriminate on the basis of sex are not within this prohibition. An employer may not discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of this section. [2001, c. 304, §2 (amd).]

The Department of Labor shall annually report to the joint standing committee of the Legislature having jurisdiction over labor matters on progress made in the State to comply with this section. The report must be issued annually on Equal Pay Day as designated pursuant to Title 1, section 140. [2001, c. 304, §2 (new).]

PL 1965, Ch. 150, § (AMD).
PL 1983, Ch. 652, §4 (AMD).
PL 2001, Ch. 304, §2 (AMD).

§629. Unfair agreements

No person, firm or corporation shall require or permit any person as a condition of securing or retaining employment to work without monetary compensation or when having an agreement, verbal, written or implied that a part of such compensation should be returned to the person, firm or corporation for any reason other than for the payment of a loan, debt or advance made to the person, or for the payment of any merchandise purchased from the employer or for sick or accident benefits, or life or group insurance premiums, excluding

compensation insurance, which an employee has agreed to pay, or for rent, light or water expense of a company-owned house or building. This section shall not apply to work performed in agriculture or in or about a private home.

For purposes of this subchapter, the word "debt" means a benefit to the employee. Debt does not include items incurred by the employee in the course of the employee's work or dealing with the customers on his employer's behalf, such as cash shortages, inventory shortages, dishonored checks, dishonored credit cards, damages to the employer's property in any form or any merchandise purchased by a customer. [1981, c. 285 (new).]

An employer shall be liable to the employees for the amount returned to the employer as prohibited in this section. [1981, c. 285 (new).]

PL 1981, Ch. 285, § (AMD).
PL 1983, Ch. 652, §5 (AMD).

§629-A. Fringe benefits as wages

Whenever a person ceases to be employed because of the insolvency of his employer, if in claiming from the employer wages earned but not yet paid to him, the term "wages earned" shall include all fringe benefits earned by the employee that were considered in the employment contract, including plans for retirement, insurance, health care and vacations. [1977, c. 448 (new).]

PL 1977, Ch. 448, § (NEW).

§629-B. Employee health benefit plans

1. Application. This section applies to health benefit plans which an employer provides or agrees to provide to his employees. It does not apply to employee health benefit plans separately provided by any employee organization or bargaining agent, regardless of any financial contribution to that plan by the employer.

[1985, c. 660 (new).]

2. Failure to implement a health benefit plan. If an employer fails to implement a health benefit plan which the employer had agreed to provide to his employees, the employer shall notify the employees of the failure to implement the plan as soon as possible after he knows that he will not implement the plan. The employer is liable for benefits which would have been payable to a covered employee, if the health benefit plan had been in force during the period of time from the date which the employer had agreed to implement the health benefit plan, until the employer gives the employee notice of his failure or inability to provide the health benefit plan.

[1985, c. 660 (new).]

3. Termination or change in carriers of a health benefit plan. If an employer terminates a health benefit plan for employees, if a health benefit plan for employees is terminated for failure to pay premium or for any other reason or if the insurance carrier administering the health benefit plan is changed, the employer shall notify the covered employees of the termination of their coverage or the change of carriers at least 10 days before the termination or the change of carriers takes effect. The employer is liable for benefits which would have been payable to a covered employee had the health benefit plan remained in force and not been terminated or the carrier changed during the period of time following the termination of or change in carrier of the health benefit plan until the employee is given notice of the termination or the change of carrier.

[1985, c. 660 (new).]

4. Notice. Whenever notice to an employee is required under this section, the notice must:

A. Be in writing; and

[1985, c. 660 (new).]

B. Be delivered:

(1) In person to the employee;

(2) To the employee by the same means as and along with wages due the employee; or

(3) By mailing the notice to the employee's last known address.

[1985, c. 660 (new).]

[1985, c. 660 (new).]

5. Wage withholdings. When an employer makes withholdings from employees' wages for contributions to health benefit plans, the

employer shall be the trustee of the funds until they are paid to the health carrier. The employer is liable to an employee for any wages withheld for the purpose of financing an employee health benefit plan and which are not actually used for that purpose.

[1985, c. 660 (new).]

6. Action; parties. An action for benefits under this section may be brought by:

A. The affected employee or employees; or

[1985, c. 660 (new).]

B. The Department of Labor on behalf of the employee or employees.

[1985, c. 660 (new).] [1985, c. 660 (new).]

7. Lien. Whoever loses wages or medical benefits due to an employer's violation of this section shall have a lien against the employer's real estate or personal property for the full amount of the wages wrongfully withheld and the medical benefits for which the employer is liable under this section.

A. The lien shall be created by filing the statement described in this subsection in the appropriate place for filing an execution lien on real property, personal property or motor vehicles under Title 14, section 4651-A. The statement filed must contain:

(1) A statement of the amount of wages or medical benefits claimed to have been lost;

(2) The name and address of the employer and the name and address of the person claiming the loss of wages or benefits; and

(3) A recital that by virtue of the loss a lien is claimed on the real estate or personal property of the employer for the amount of the claim.

The statement must be subscribed and sworn to by the person claiming the lien or by someone on his behalf. Upon the filing of the statement, the amount claimed in the statement shall constitute a lien upon the property for which the statement is filed.

[1987, c. 231,(new).]

B. A lien created under this subsection is void 20 days after the date on which the statement described in paragraph A was filed unless, within the 20-day period, the person claiming the lien or someone on his behalf notifies the employer, by certified or registered mail sent to the employer's last known address, of the existence of the lien. The notice must contain the following:

(1) The fact that a lien has been filed;

(2) The date and place the lien was filed;

(3) The amount of the claim on which the lien is based;

(4) The name of the person making the claim and his attorney, if any, including their addresses; and

(5) The following statement: "To dissolve this lien, please contact (the person making the claim or his attorney). A bond may be given to the claimant to replace the lien."

[1987, c. 231,(new).]

C. A lien created under this subsection is void 90 days after the date on which the statement described in paragraph A was filed unless, within the 90-day period, an action to enforce the lien is commenced and a clerk's certificate of the commencement of the action is filed in the place where the statement is filed. Upon the filing of the clerk's certificate, the lien shall continue until a final judgment. Thereafter, extensions of the lien shall be governed by the provisions for extensions of attachments in Title 14, section 4601.

[1987, c. 231,(new).]

D. An employer may, at any time after he receives notice of a lien under paragraph B, give bond, with sufficient sureties, in the amount of the claim to the person claiming the lien. Within 7 days of receipt of the bond, the person claiming the lien or someone on his behalf shall discharge the lien.

[1987, c. 231,(new).]

[1987, c. 231,(amd).]

8. Exceptions. The following exceptions apply.

A. An employer is not liable under this section for benefits which would have been payable under an employee health benefit plan if

the failure to provide the notice required by subsection 2 or 3 is due to circumstances beyond the control of the employer.

[1985, c. 660 (new).]

B. This section does not apply to any termination of or failure to implement an employee health benefit plan which results from or occurs during a strike or lockout. Section 634 applies to the termination of any employee health benefit plan during a strike.

[1985, c. 660 (new).] [1985, c. 660 (new).]

PL 1985, Ch. 660, § (NEW).
PL 1987, Ch. 231, § (AMD).

§630. Written statement of reason for termination of employment

An employer shall, upon written request of the affected employee, give that employee the written reasons for the termination of that person's employment. An employer who fails to satisfy this request within 15 days of receiving it may be subject to a forfeiture of not less than $50 nor more than $500. An employee may bring an action in the District Court or the Superior Court for such equitable relief, including an injunction, as the court may consider to be necessary and proper. The employer may also be required to reimburse the employee for the costs of suit, including a reasonable attorney's fee if the employee receives a judgment in the employee's favor. This section does not apply to public employees in proceedings governed by Title 1, section 405. [1997, c. 356, §1 (amd).]

PL 1975, Ch. 420, § (NEW).
PL 1979, Ch. 175, § (AMD).
PL 1997, Ch. 356, §1 (AMD).

§631. Employee right to review personnel file

The employer shall, upon written request from an employee or former employee, provide the employee, former employee or duly authorized representative with an opportunity to review and copy the employee's personnel file if the employer has a personnel file for that employee. The reviews and copying must take place at the location where the personnel files are maintained and during normal office hours unless, at the employer's discretion, a more convenient time and location for the employee are arranged. In each calendar year, the employer shall provide, at no cost to the employee, one copy of the entire personnel file when requested by the employee or former employee and, when requested by the employee or former employee, one copy of all the material added to the personnel file after the copy of the entire file was provided. The cost of copying any other material requested during that calendar year is paid by the person requesting the copy. For the purpose of this section, a personnel file includes, but is not limited to, any formal or informal employee evaluations and reports relating to the employee's character, credit, work habits, compensation and benefits and nonprivileged medical records or nurses' station notes relating to the employee that the employer has in the employer's possession. Records in a personnel file may be maintained in any form including paper, microfiche or electronic form. The employer shall take adequate steps to ensure the integrity and confidentiality of these records. An employer maintaining records in a form other than paper shall have available to the employee, former employee or duly authorized representative the equipment necessary to review and copy the personnel file. Any employer who, following a request pursuant to this section, without good cause fails to provide an opportunity for review and copying of a personnel file, within 10 days of receipt of that request, is subject to a civil forfeiture of $25 for each day that a failure continues. The total forfeiture may not exceed $500. An employee, former employee or the Department of Labor may bring an action in the District Court or the Superior Court for such equitable relief, including an injunction, as the court may consider to be necessary and proper. The employer may also be required to reimburse the employee, former employee or the Department of Labor for costs of suit including a reasonable attorney's fee if the employee or the department receives a judgment in the employee's or department's favor, respectively. For the purposes of this section, the term "nonprivileged medical records or nurses' station notes" means all those materials that have not been found to be protected from discovery or disclosure in the course of civil litigation under the Maine Rules of Civil Procedure, Rule 26, the Maine Rules of Evidence, Article V or similar rules adopted by the Workers' Compensation Board or other administrative tribunals. [2003, c. 58, §1 (amd).]

PL 1975, Ch. 694, §2 (NEW).
PL 1979, Ch. 66, §1,2 (AMD).
PL 1989, Ch. 178, § (AMD).
PL 1991, Ch. 105, § (AMD).
PL 1991, Ch. 885, §D2 (AMD).
PL 1997, Ch. 420, §1 (AMD).
PL 1999, Ch. 235, §1 (AMD).
PL 2003, Ch. 58, §1 (AMD).

§632. Fund for unpaid wages

1. Fund established. There is established a Maine Wage Assurance Fund to be used by the Bureau of Labor Standards within the Department of Labor for the purpose of assuring that all former employees of employers within the State receive payment for wages for a maximum of 2 weeks for the work they have performed. The Legislature intends that payment of earned wages from the fund be limited to those cases when the employer has terminated his business and there are no assets of the employer from which earned wages may be paid, or when the employer has filed under any provision of the Federal Bankruptcy Act. No officer or director in the case of a corporation, no partner in the case of a partnership and no owner in the case of a sole proprietorship may be considered an employee for purposes of this section.

[1983, c. 172 (amd).]

2. Administration. The fund shall be administered by the Director of the Bureau of Labor Standards. Applications for payment from the fund and disbursements from the fund shall be in accordance with regulations promulgated by the director. The State shall be subrogated to any claims against an employer for unpaid wages by an employee who has received payment from the fund. Subrogation to these claims shall be to the extent of payment from the fund to the employee.

[1989, c. 502, Pt. A, §107 (amd).]

3. Amount in fund. The Maine Wage Assurance Fund shall be a nonlapsing, revolving fund limited to a maximum of $100,000. All moneys collected from an employer pursuant to a claim for unpaid wages by an employee who has received payment from the fund, or by the State as his subrogee, shall be credited to the fund.

The fund shall be established and augmented periodically as necessary.

Moneys in the fund not needed currently to meet claims against the fund shall be deposited with the Treasurer of State to be credited to the fund and may be invested in such manner as is provided for by statute. Interest received on that investment shall be credited to the Maine Wage Assurance Fund.

§632. Information to be furnished to railroad

employees

[1979, c. 202, § 1 (new).]

Reallocated by PL 1979, c. 663, §158 to section 633.

PL 1979, Ch. 202, §1 (NEW).
PL 1979, Ch. 287, § (NEW).
PL 1979, Ch. 663, §158 (RAL).
PL 1983, Ch. 172, § (AMD).
PL 1989, Ch. 502, §A107 (AMD).

§633. Information to be furnished to railroad employees

1. Wage statement. Every railroad corporation in the State shall furnish each employee of that corporation with a statement with every payment of wages, listing accrued total earnings and taxes to date, and further furnish that employee at the same time with a separate listing of his daily wages and how they were computed.

[1979, c. 663, § 158 (real).]

2. Coverage. Only railroad employees who are operating personnel working on a train are covered under this section.

[1979, c. 663, § 158 (real).]

3. Penalty. Any person, firm or corporation violating this section commits a civil violation for which a forfeiture of not more than $100 may be adjudged for each offense.

[1979, c. 663, § 158 (real).]

PL 1979, Ch. 663, §158 (RAL).

§634. Continuation of health insurance coverage during strike; notice

1. Employer's duty. During a strike, an employer may not cancel any policy of group health insurance issued pursuant to Title 24-A, section 2804 until the employer has first notified insured members that the policy is to be canceled.

[1981, c. 354 (new).]

2. Notice. The notice requirement contained in subsection 1 is satisfied if:

A. The employee actually receives the written notice;

[1981, c. 354 (new).]

B. The notice is mailed to the employee at an address which the employer reasonably believes is current;

[1981, c. 354 (new).]

C. The notice is delivered to the employee by the same means as and along with wages due the employee; or

[1981, c. 354 (new).]

D. Timely notice is given to the collective bargaining agent of the employee.

[1981, c. 354 (new).] [1981, c. 354 (new).]

PL 1981, Ch. 354, § (NEW).

§635. Overcompensation by employer

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

A. "Net amount" means the amount of money due an employee as compensation after any deductions or withholdings other than an employer's withholding for the purpose of recovering any overcompensation.

[1989, c. 804 (new).]

B. "Overcompensation" means any compensation paid to an employee that is greater than that to which the employee is entitled under the compensation system established by the employer, but does not include fringe benefits, awards, bonuses, settlements or insurance proceeds in respect to or in lieu of compensation, expense reimbursements, commissions or draws or advances against compensation.

[1989, c. 804 (new).]

[1989, c. 804 (new).]

2. Recovery of overcompensation. An employer who has overcompensated an employee through employer error may not withhold more than 10% of the net amount of any subsequent pay without the employee's written permission, except that, if the employee voluntarily terminates employment, the employer may deduct the full amount of overcompensation from any wages due.

[1989, c. 804 (new).]

3. Violation. If an employer with over 25 employees violates this section, that employer forfeits any claim to the overcompensation.

If an employer with 25 or fewer employees knows of the limitation established by subsection 2 and violates this section, that employer forfeits any claim to the overcompensation. Employers of 25 or fewer employees who do not know of the limitation established by subsection 2 and who violate this section shall return all money withheld in excess of that permitted under subsection 2 within 3 days of written or oral demand by the employee, or forfeit any claim to the overcompensation.

[1989, c. 804 (new).]

4. Application. This section is applied as follows.

A. An employer has the burden of proof, except that, if the overcompensation amounts to less than 15% of the correct net amount of the employee's compensation, the employer must prove by clear and convincing evidence that the employee knowingly accepted the overcompensation.

[1989, c. 804 (new).]

B. If an employee knowingly accepts the overcompensation, this section does not apply.

[1989, c. 804 (new).]

C. This section, except for the forfeiture provisions in subsection 3, does not limit or affect an employer's general civil remedies against an employee.

[1989, c. 804 (new).]

[1989, c. 804 (new).]

PL 1989, Ch. 804, § (NEW).

Title 26, Chapter 7, EMPLOYMENT PRACTICES

Subchapter 3: MINIMUM WAGES

§661. Declaration of policy

It is the declared public policy of the State of Maine that workers employed in any occupation should receive wages sufficient to provide adequate maintenance and to protect their health, and to be fairly commensurate with the value of the services rendered.

§662. Coverage (REPEALED)

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PL 1965, Ch. 410,  §1 (AMD).
PL 1971, Ch. 525,  § (RP ).
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§663. Definitions

Terms used in this subchapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

1. Director. "Director," the Director of the Bureau of Labor Standards;

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[1981, c. 168, §26 (amd).]
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2. Employ. "Employ," to suffer or permit to work;

3. Employee. "Employee," any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:

A. Any individual employed in agriculture as defined in the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law, except when that individual performs services for or on a farm with over 300,000 laying birds;

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[1975, c. 717, §5 (amd).]
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B. Any individual employed in domestic service in or about a private home;

C. Those employees whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer;

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[1967, c. 466, §1 (amd).]
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D. Any individual employed as a taxicab driver;

E. Any individual engaged in the activities of a public supported nonprofit organization or an educational nonprofit organization, neither of which is a political body or its political or administrative subdivision;

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[1979, c. 516, §1 (rpr).]
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F. Those employees who are counsellors or junior counsellors at summer camps for boys and girls; and employees who are under the age of 19 and are regularly enrolled in an educational institution or are on vacation therefrom, and who are employees of summer camps operated by or belonging to corporations or associations existing under the provisions of Title 13, Part 2;

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[1975, c. 92 (rpr).]
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[1967, c. 466, §2 (rp).]
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G. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee;

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[1965, c. 410, §2 (amd).]
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H. Any individual employed as a switchboard operator in a public telephone exchange which has less than 750 stations;

I. Any home worker who is not subject to any supervision or control by any person whomsoever, and who buys raw material and makes and completes any article and sells the same to any person, even though it is made according to specifications and the requirements of some single purchaser;

J. Members of the family of the employer who reside with and are dependent upon the employer;

K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage.

[1999, c. 465, §7 (rpr).]

[1999, c. 465, §7 (amd).]

4. Occupation. "Occupation," an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

5. Wages. "Wages" paid to any employee includes compensation paid to such employee in the form of legal tender of the United States, checks on banks convertible into cash on demand, and includes the reasonable cost to the employer who furnishes such employee board or lodging;

[1965, c. 410, §4 (amd).]

6. Resort establishment.

[1975, c. 623, §38 (rp).]

7. Minimum wage for firemen. Members of municipal fire fighting departments, other than volunteer or call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. Firemen's wages may be paid by the municipality based upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1 1/2 times the hourly rate shall not be paid for all work done over 48 hours under this subsection;

[1967, c. 385 (amd).]

8. Service employee. "Service employee", any employee engaged in an occupation in which he customarily and regularly receives more than $20 a month in tips.

[1967, c. 466, §4 (new).]

9. Hotel. "Hotel," a commercial establishment offering lodging to transients and often having restaurants, public rooms, shops, etc., that are available to the general public; hostelry, hotel, motor hotel, house inn, resort, tourist court, motor court, cottage colony, tavern or any other establishment relating to the innkeeping industry that refers to establishments for the lodging or entertainment of travelers.

[1973, c. 504 (new).]

10. Public employees. "Public employees" are considered employees within the meaning of this section and include any person whose wages are paid by a state or local public employer, including the State, a county, a municipality, the University of Maine System, a school administrative unit and any other political body or its political or administrative subdivision. "Public employee" does not include any officer or official elected by popular vote or appointed to office pursuant to law for a specified term or any person defined in subsection 7.

[1985, c. 779, §69 (amd).]

11. Automobile salesman. "Automobile salesman" means a person who is primarily engaged in selling automobiles or trucks as an employee of an establishment primarily engaged in the business of selling these vehicles to the ultimate purchaser.

[1985, c. 76, §1 (new).]

12. Automobile mechanic. "Automobile mechanic" means a person who is primarily engaged in the servicing of automobiles or trucks as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, except when the employee is paid by the employer on an hourly basis.

[1985, c. 76, §1 (new).]

13. Automobile parts clerk. "Automobile parts clerk" means a person employed for the purpose of and primarily engaged in requisitioning, stocking and dispensing automobile parts as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, except when the employee is paid by the employer on an hourly basis.

[1991, c. 507, §1 (new).]

PL 1965, Ch. 399, §1,2 (AMD).
PL 1965, Ch. 410, §2-4 (AMD).
PL 1967, Ch. 385, § (AMD).

PL 1967, Ch. 466, §1-4 (AMD).
PL 1971, Ch. 620, §13 (AMD).
PL 1971, Ch. 622, §87 (AMD).
PL 1973, Ch. 504, § (AMD).
PL 1975, Ch. 48, § (AMD).
PL 1975, Ch. 59, §3 (AMD).
PL 1975, Ch. 92, §3 (AMD).
PL 1975, Ch. 623, §38 (AMD).
PL 1975, Ch. 717, §5 (AMD).
PL 1979, Ch. 516, §1,2 (AMD).
PL 1981, Ch. 168, §26 (AMD).
PL 1981, Ch. 276, § (AMD).
PL 1985, Ch. 76, §1 (AMD).
PL 1985, Ch. 779, §69 (AMD).
PL 1991, Ch. 507, §1 (AMD).
PL 1999, Ch. 465, §7 (AMD).

§664. Minimum wage; overtime rate

Except as otherwise provided in this subchapter, an employer may not employ any employee at a rate less than the rates required by this section. [1995, c. 305, §1 (rpr).]

1. Minimum wage. The minimum hourly wage is $5.15 per hour. Starting January 1, 2002, the minimum hourly wage is $5.75 per hour. Starting January 1, 2003, the minimum hourly wage is $6.25 per hour. If the highest federal minimum wage is increased in excess of the minimum wage in effect under this section, the minimum wage under this section is increased to the same amount, effective on the same date as the increase in the federal minimum wage, but in no case may the minimum wage exceed the minimum wage otherwise in effect under this section by more than $1.00 per hour.

[2001, c. 297, §1 (amd).]

2. Tip credit. An employer may consider tips as part of the wages of a service employee, but such a tip credit may not exceed 50% of the minimum hourly wage established in this section. An employer who elects to use the tip credit must inform the affected employee in advance and must be able to show that the employee receives at least the minimum hourly wage when direct wages and the tip credit are combined. Upon a satisfactory showing by the employee or the employee's representative that the actual tips received were less than the tip credit, the employer shall increase the direct wages by the difference.

[1995, c. 305, §1 (new).]

3. Overtime rate. An employer may not require an employee to work more than 40 hours in any one week unless 1 1/2 times the regular hourly rate is paid for all hours actually worked in excess of 40 hours in that week. The regular hourly rate includes all earnings, bonuses, commissions and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of "regular rate" under the Fair Labor Standards Act, 29 United States Code, Section 207(e).

The overtime provision of this section does not apply to:

A. Automobile mechanics, automobile parts clerks and automobile salesmen as defined in section 663. The interpretation of these terms must be consistent with the interpretation of the same terms under federal overtime law, 29 United States Code, Section 213;

[2001, c. 336, §1 (amd).]

B. Hotels and motels;

[1995, c. 305, §1 (new).]

C. Mariners;

[1995, c. 305, §1 (new).]

D. Public employees, except those employed by the executive or judicial branch of the State;

[2003, c. 423, §1 (amd); §5 (aff).]

E. Restaurants and other eating establishments;

[2001, c. 628, §1 (amd); §5 (aff).]

F. The canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of:

(1) Agricultural produce;

(2) Meat and fish products; and

(3) Perishable foods.

Individuals employed, directly or indirectly, for or at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with this subsection;

[2001, c. 628, §2 (amd); §5 (aff).]

G.

[2001, c. 628, §3 (new); §5 (aff); T. 26, §664, sub-§3, paragraph G (rp).]

H. Effective September 1, 2003, a driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section if the driver or driver's helper is paid overtime pay reasonably equivalent to that required by this section for all hours worked in excess of 40 per week. The Department of Labor may adopt rules governing the determination of payment methods that satisfy the "reasonably equivalent" standard set forth in this paragraph. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A;

[2001, c. 628, §3 (new); §5 (aff).]

I. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section and who is represented for purposes of collective bargaining by a labor organization certified by the National Labor Relations Board that is a party to a collective bargaining agreement that intends to regulate the rate of pay to be paid the driver or driver's helper; and

[2001, c. 628, §3 (new); §5 (aff).]

J. A driver or driver's helper who is subject to the provisions of 49 United States Code, Section 31502 as amended or to regulations adopted pursuant to that section and who is employed by an entity that is party to a contract with the Federal Government or an agency of the Federal Government that dictates the minimum hourly rate of pay to be paid the driver or driver's helper.

[2001, c. 628, §3 (new); §5 (aff).]

[2003, c. 423, §1 (amd); §5 (aff).]

4. Compensatory time. To the extent permitted under the federal Fair Labor Standards Act of 1938, as amended, 29 United States Code, Section 207(o), the overtime pay requirement applicable to executive or judicial employees as described in subsection 3, paragraph D may be met through compensatory time agreements.

[2003, c. 423, §2 (new); §5 (aff).]

MRSA , §T.26, SEC.664/3/G (AMD).
PL 1965, Ch. 410, §5 (AMD).
PL 1967, Ch. 333, § (AMD).
PL 1967, Ch. 466, §5 (AMD).
PL 1969, Ch. 184, § (AMD).
PL 1969, Ch. 356, § (AMD).
PL 1969, Ch. 504, §43 (AMD).
PL 1969, Ch. 590, §41 (AMD).
PL 1971, Ch. 78, §1 (AMD).
PL 1971, Ch. 415, § (AMD).
PL 1971, Ch. 620, §13 (AMD).
PL 1971, Ch. 622, §88 (AMD).
PL 1973, Ch. 420, § (AMD).
PL 1973, Ch. 467, § (AMD).
PL 1973, Ch. 625, §171 (AMD).
PL 1973, Ch. 752, §1,2 (AMD).
PL 1975, Ch. 23, § (AMD).
PL 1975, Ch. 352, § (AMD).
PL 1979, Ch. 54, § (AMD).
PL 1979, Ch. 516, §3 (AMD).
PL 1983, Ch. 857, § (AMD).
PL 1985, Ch. 76, §2 (AMD).
PL 1985, Ch. 576, § (AMD).
PL 1987, Ch. 738, §1,2 (AMD).
PL 1991, Ch. 507, §2 (AMD).
PL 1991, Ch. 544, §1 (AMD).

PL 1993, Ch. 233, §1 (AMD).
PL 1993, Ch. 233, §3 (AFF).
PL 1993, Ch. 434, §1 (AMD).
PL 1993, Ch. 434, §8 (AFF).
PL 1995, Ch. 305, §1 (RPR).
PL 1995, Ch. 510, §1 (AMD).
PL 1997, Ch. 136, §1 (AMD).
PL 2001, Ch. 297, §1 (AMD).
PL 2001, Ch. 336, §1 (AMD).
PL 2001, Ch. 628, §1-3 (AMD).
PL 2001, Ch. 628, §5 (AFF).
PL 2003, Ch. 423, §1,2 (AMD).
PL 2003, Ch. 423, §5 (AFF).

§665. Powers and duties of commissioner

1. Examination of records, books; copies. Every employer subject to this subchapter shall keep a true and accurate record of the hours worked by each employee and of the wages paid, such records to be preserved by the employer for a period of at least 3 years; and shall furnish to each employee with each payment of wages a statement which shall clearly show the date of the pay period, the hours, total earnings and itemized deductions. The director or his authorized representative may, and upon written complaint shall have authority to enter the place of business or employment of any employer or employees in the State, as defined in section 663, for the purpose of examining and inspecting such records; and copy any or all of such records as he or his authorized representative may deem necessary or appropriate. Any and all information so received shall be considered as confidential and shall not be divulged to any other person or agency, except insofar as may be necessary for the enforcement of this subchapter.

[1971, c. 620, § 13 (amd).]

2. Rules and regulations. The director may make and promulgate from time to time, pursuant to Title 5, section 8051 et seq., such rules and regulations, not inconsistent with this subchapter, as he may deem appropriate or necessary for the proper administration and enforcement of this subchapter. The rules and regulations affecting any particular class of employees and employers shall be made and promulgated only after notice and opportunity to be heard to those employees and employers affected.

[1977, c. 694, § 465 (rpr).]

PL 1965, Ch. 410, §6 (AMD).
PL 1967, Ch. 466, §6 (AMD).
PL 1971, Ch. 620, §13 (AMD).
PL 1977, Ch. 694, §465 (AMD).

§666. Handicapped workers

For any employment in which the minimum wage is applicable, the director may issue to any person physically handicapped by age, or otherwise, a special certificate authorizing the employment of such person for a period not to exceed one year at a wage less than the minimum wage established by this subchapter. The director may hold such hearings and conduct such investigations as he shall deem necessary for the purpose of fixing the special minimum wage for the licensee. Such license may be renewed from time to time by the director. [1971, c. 620, § 13 (amd).]

PL 1971, Ch. 620, §13 (AMD).

§667. Apprentice

For any occupation within the scope of this subchapter, the director may cause to be issued to an employer of any learner, or of an employee under an approved apprentice training program, a special certificate authorizing employment at such wages, less than the minimum wage established by this subchapter, and for such period of time as shall be fixed by the director and stated in the certificate. The director may hold such hearings and conduct such investigations as he shall deem necessary before fixing a special wage for such apprentice or learner. [1971, c. 620, § 13 (amd).]

PL 1971, Ch. 620, §13 (AMD).

§668. Posting of summary

Every employer subject to this subchapter shall keep a summary of this subchapter, furnished by the director, without charge, posted

in a conspicuous place, in or about the premises wherein any person subject to this subchapter is employed, or in a place accessible to his employees. [1971, c. 620, § 13 (amd).]

PL 1971, Ch. 620, §13 (AMD).

§669. Enforcement (REPEALED)

PL 1965, Ch. 410, §7 (RP).

§670. Employees' remedies

Any employer shall be liable to the employee or employees for the amount of unpaid minimum wages. Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages under this subchapter, such judgment shall include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as liquidated damages, and costs of suit including a reasonable attorney's fee. [1965, c. 410, § 8 (amd).]

PL 1965, Ch. 410, §8 (AMD).

§670-A. Remedies for overtime wage violations involving state employees

Notwithstanding section 670, in an action brought to recover unpaid overtime wages for an employee of the executive or judicial branch of the State, the judgment or award is limited to the unpaid overtime compensation adjudged to be due, without liquidated damages or attorney's fees. An action for unpaid overtime wages for an employee of the executive or judicial branch of the State must be brought within 2 years after the cause of action accrued, except that a cause of action arising from a willful violation of the overtime wage payment law must be commenced within 3 years after the cause of action accrued. Overtime wages are recoverable by employees of the executive or judicial branch beginning with the later of the date the cause of action accrued and the date the applicable limitations period began. [2003, c. 423, §3 (new); §5 (aff).]

PL 2003, Ch. 423, §3 (NEW).
PL 2003, Ch. 423, §5 (AFF).

§671. Penalties

Any employer who violates this subchapter shall, upon conviction thereof, be punished by a fine of not less than $50 nor more than $200.

Any employer, who discharges or in any other manner discriminates against any employee because such employee makes a complaint to the director or to the county attorney concerning a violation of this subchapter, shall be punished by a fine of not less than $50 nor more than $200. [1971, c. 620, § 13 (amd).]

In the event of the violation of any of the provisions of this subchapter, the Attorney General may institute injunction proceedings in the Superior Court to enjoin further violation thereof. [1965, c. 410, § 9 (amd).]

PL 1965, Ch. 410, §9 (AMD).
PL 1971, Ch. 620, §13 (AMD).

§672. Unfair contracts

No employer shall by a special contract with an employee or by any other means exempt himself from this subchapter. [1967, c. 466, § 7 (new).]

PL 1967, Ch. 466, §7 (NEW).

Subchapter 3-A: SUBSTANCE ABUSE TESTING (HEADING: PL 1989, c. 536, @1 (new))

§681. Purpose; applicability

1. **Purpose.** This subchapter is intended to:

A. Protect the privacy rights of individual employees in the State from undue invasion by employers through the use of substance abuse tests while allowing the use of tests when the employer has a compelling reason to administer a test;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. Ensure that, when substance abuse tests are used, proper test procedures are employed to protect the privacy rights of employees and applicants and to achieve reliable and accurate results;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §1 (amd).]

C. Ensure that an employee with a substance abuse problem receives an opportunity for rehabilitation and treatment of the disease and returns to work as quickly as possible; and

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §1 (amd).]

D. Eliminate drug use in the workplace.

[1989, c. 832, §1 (new).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §1 (amd).]

2. Employer discretion. This subchapter does not require or encourage employers to conduct substance abuse testing of employees or applicants. An employer who chooses to conduct such testing is limited by this subchapter, but may establish policies which are supplemental to and not inconsistent with this subchapter.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

3. Collective bargaining agreements. This subchapter does not prevent the negotiation of collective bargaining agreements that provide greater protection to employees or applicants than is provided by this subchapter.

A labor organization with a collective bargaining agreement effective in the State may conduct a program of substance abuse testing of its members. The program may include testing of new members and periodic testing of all members. It may not include random testing of members. The program may be voluntary. The results may not be used to preclude referral to a job where testing is not required or to otherwise discipline a member. Sample collection and testing must be done in accordance with this subchapter. Approval of the Department of Labor is not required.

[1995, c. 324, §1 (amd).]

4. Home rule authority preempted. No municipality may enact any ordinance under its home rule authority regulating an employer's use of substance abuse tests.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

5. Contracts for work out of State. All employment contracts subject to the laws of this State shall include an agreement that this subchapter will apply to any employer who hires employees to work outside the State.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

6. Medical examinations. This subchapter does not prevent an employer from requiring or performing medical examinations of employees or applicants or from conducting medical screenings to monitor exposure to toxic or other harmful substances in the workplace, provided that these examinations are not used to avoid the restrictions of this subchapter. No such examination may include the use of any substance abuse test except in compliance with this subchapter.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

7. Other discipline unaffected. This subchapter does not prevent an employer from establishing rules related to the possession or use of substances of abuse by employees, including convictions for drug-related offenses, and taking action based upon a violation of any of those rules, except when a substance abuse test is required, requested or suggested by the employer or used as the basis for any disciplinary action.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

8. Nuclear power plants; federal law. The following limitations apply to the application of this subchapter.

A. This subchapter does not apply to nuclear electrical generating facilities and their employees, including independent contractors and employees of independent contractors who are working at nuclear electrical generating facilities.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §2 (rpr).]

B. This subchapter, except for section 685, subsection 2 and section 689, subsections 1 and 4, does not apply to employees subject to substance abuse testing under any federal law or regulation or under rules adopted by the Department of Public Safety that incorporate any federal laws or regulations related to substance abuse testing for motor carriers. This exception does not prevent the

negotiation of collective bargaining agreements that provide greater protection to employees as long as the agreements are consistent with federal law.

(1) For the purposes of applying section 685, subsection 2 to an employee under this paragraph, the employee is deemed to have previously worked in an employment position subject to random or arbitrary testing under an employer's written policy.

[1995, c. 324, §2 (amd).]

[1995, c. 324, §2 (amd).]

9. Board of Licensure of Railroad Personnel; testing restricted.

[1993, c. 428, §3 (rp).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).
PL 1989, Ch. 832, §1-3 (AMD).
PL 1993, Ch. 428, §3 (AMD).
PL 1995, Ch. 324, §1,2 (AMD).

§682. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

1. Applicant. "Applicant" means any person seeking employment from an employer. The term includes any person using an employment agency's services.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

2. Employee. "Employee" means a person who is permitted, required or directed by any employer to engage in any employment for consideration of direct gain or profit. A person separated from employment while receiving a mandated benefit, including but not limited to workers' compensation, unemployment compensation and family medical leave, is an employee for the period the person receives the benefit and for a minimum of 30 days beyond the termination of the benefit. A person separated from employment while receiving a nonmandated benefit is an employee for a minimum of 30 days beyond the separation.

A. A full-time employee is an employee who customarily works 30 hours or more each week.

[1995, c. 324, §3 (new).]

[1995, c. 324, §3 (amd).]

3. Employer. "Employer" means any person, partnership, corporation, association or other legal entity, public or private, that employs one or more employees. The term also includes an employment agency.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

3-A. Medically disqualified. "Medically disqualified" means that an employee is prohibited by a federal law or regulation, or any rules adopted by the State's Department of Public Safety that incorporate any federal laws or regulations related to substance abuse testing for motor carriers, from continuing in the employee's former employment position due to the result of a substance abuse test conducted under the federal law or regulation or the Department of Public Safety rule.

[1989, c. 832, §4 (new).]

4. Negative test result. "Negative test result" means a test result that indicates that:

A. A substance of abuse is not present in the tested sample; or

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. A substance of abuse is present in the tested sample in a concentration below the cutoff level.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

5. Positive test result. "Positive test result" means a test result that indicates the presence of a substance of abuse in the tested sample above the cutoff level of the test.

A. "Confirmed positive result" means a confirmation test result that indicates the presence of a substance of abuse above the cutoff

level in the tested sample.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

6. Probable cause. "Probable cause" means a reasonable ground for belief in the existence of facts that induce a person to believe that an employee may be under the influence of a substance of abuse, provided that the existence of probable cause may not be based exclusively on any of the following:

A. Information received from an anonymous informant;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. Any information tending to indicate that an employee may have possessed or used a substance of abuse off duty, except when the employee is observed possessing or ingesting any substance of abuse either while on the employer's premises or in the proximity of the employer's premises during or immediately before the employee's working hours; or

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

C. A single work-related accident.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

7. Substance abuse test. "Substance abuse test" means any test procedure designed to take and analyze body fluids or materials from the body for the purpose of detecting the presence of substances of abuse. The term does not include tests designed to determine blood-alcohol concentration levels from a sample of an individual's breath.

A. "Screening test" means an initial substance abuse test performed through the use of immunoassay technology, or a test technology of similar or greater accuracy and reliability approved by the Department of Human Services under rules adopted under section 687, and that is used as a preliminary step in detecting the presence of substances of abuse.

(1) A screening test of an applicant's urine or saliva may be performed at the point of collection through the use of a noninstrumented point of collection test device approved by the federal Food and Drug Administration. Section 683, subsection 5-A governs the use of such tests.

[2001, c. 556, §1 (amd).]

B. "Confirmation test" means a 2nd substance abuse test performed through the use of gas chromatography-mass spectrometry that is used to verify the presence of a substance of abuse indicated by an initial positive screening test result.

(1) The Department of Human Services may recommend to the joint standing committee of the Legislature having jurisdiction over labor matters that other testing technologies be authorized for use in confirmation tests if the department finds those technologies to be of equal or greater accuracy and reliability than gas chromatography-mass spectrometry.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §5 (amd).]

[2001, c. 556, §1 (amd).]

8. Substance of abuse. "Substance of abuse" means any scheduled drug, alcohol or other drug, or any of their metabolites.

A. "Alcohol" has the same meaning as found in Title 28-A, section 2, subsection 2.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. "Drug" has the same meaning as found in Title 32, section 13702, subsection 9.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

C. "Scheduled drug" has the same meaning as found in Title 17-A, section 1101, subsection 11.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).
PL 1989, Ch. 832, §4,5 (AMD).
PL 1995, Ch. 324, §3 (AMD).
PL 2001, Ch. 556, §1 (AMD).

§683. Testing procedures

No employer may require, request or suggest that any employee or applicant submit to a substance abuse test except in compliance with this section. All actions taken under a substance abuse testing program shall comply with this subchapter, rules adopted under this subchapter and the employer's written policy approved under section 686. [1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

1. Employee assistance program required. Before establishing any substance abuse testing program for employees, an employer with over 20 full-time employees must have a functioning employee assistance program.

A. The employer may meet this requirement by participating in a cooperative employee assistance program that serves the employees of more than one employer.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. The employee assistance program must be certified by the Office of Substance Abuse under rules adopted pursuant to section 687. The rules must ensure that the employee assistance programs have the necessary personnel, facilities and procedures to meet minimum standards of professionalism and effectiveness in assisting employees.

[1995, c. 283, §1 (amd).]

[1995, c. 283, §1 (amd).]

2. Written policy. Before establishing any substance abuse testing program, an employer must develop a written policy in compliance with this subchapter providing for, at a minimum:

A. The procedure and consequences of an employee's voluntary admission of a substance abuse problem and any available assistance, including the availability and procedure of the employer's employee assistance program;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. When substance abuse testing may occur. The written policy must describe:

(1) Which positions, if any, will be subject to testing, including any positions subject to random or arbitrary testing under section 684, subsection 3. For applicant testing and probable cause testing of employees, an employer may designate that all positions are subject to testing; and

(2) The procedure to be followed in selecting employees to be tested on a random or arbitrary basis under section 684, subsection 3;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §6 (amd).]

C. The collection of samples.

(1) The collection of any sample for use in a substance abuse test must be conducted in a medical facility and supervised by a licensed physician or nurse. A medical facility includes a first aid station located at the work site.

(2) An employer may not require an employee or applicant to remove any clothing for the purpose of collecting a urine sample, except that:

(a) An employer may require that an employee or applicant leave any personal belongings other than clothing and any unnecessary coat, jacket or similar outer garments outside the collection area; or

(b) If it is the standard practice of an off-site medical facility to require the removal of clothing when collecting a urine sample for any purpose, the physician or nurse supervising the collection of the sample in that facility may require the employee or applicant to remove their clothing.

(3) No employee or applicant may be required to provide a urine sample while being observed, directly or indirectly, by another individual.

(4) The employer may take additional actions necessary to ensure the integrity of a urine sample if the sample collector or testing laboratory determines that the sample may have been substituted, adulterated, diluted or otherwise tampered with in an attempt to influence test results. The Department of Human Services shall adopt rules governing when those additional actions are justified and the scope of those actions. These rules may not permit the direct or indirect observation of the collection of a urine sample. If an employee or applicant is found to have twice substituted, adulterated, diluted or otherwise tampered with the employee's or applicant's urine sample, as determined under the rules adopted by the department, the employee or applicant is deemed to have refused to submit to a substance abuse test.

(5) If the employer proposes to use the type of screening test described in section 682, subsection 7, paragraph A, subparagraph (1), the employer's policy must include:

(a) Procedures to ensure the confidentiality of test results as required in section 685, subsection 3; and

(b) Procedures for training persons performing the test in the proper manner of collecting samples and reading results, maintaining a proper chain of custody and complying with other applicable provisions of this subchapter;

[2001, c. 556, §2 (amd).]

D. The storage of samples before testing sufficient to inhibit deterioration of the sample;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

E. The chain of custody of samples sufficient to protect the sample from tampering and to verify the identity of each sample and test result;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

F. The substances of abuse to be tested for;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

G. The cutoff levels for both screening and confirmation tests at which the presence of a substance of abuse in a sample is considered a positive test result.

(1) Cutoff levels for confirmation tests for marijuana may not be lower than 15 nanograms of delta-9-tetrahydrocannabinol-9-carboxylic acid per milliliter for urine samples.

(2) The Department of Human Services shall adopt rules under section 687 regulating screening and confirmation cutoff levels for other substances of abuse, including those substances tested for in blood samples under subsection 5, paragraph B, to ensure that levels are set within known tolerances of test methods and above mere trace amounts. An employer may request that the Department of Human Services establish a cutoff level for any substance of abuse for which the department has not established a cutoff level;

[1999, c. 199, §1 (amd).]

H. The consequences of a confirmed positive substance abuse test result;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

I. The consequences for refusal to submit to a substance abuse test;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

J. Opportunities and procedures for rehabilitation following a confirmed positive result;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

K. A procedure under which an employee or applicant who receives a confirmed positive result may appeal and contest the accuracy of that result. The policy must include a mechanism that provides an opportunity to appeal at no cost to the appellant; and

[1995, c. 324, §4 (amd).]

L. Any other matters required by rules adopted by the Department of Labor under section 687.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

An employer must consult with the employer's employees in the development of any portion of a substance abuse testing policy under this subsection that relates to the employees. The employer is not required to consult with the employees on those portions of a policy that relate only to applicants. The employer shall send a copy of the final written policy to the Department of Labor for review under section 686. The employer may not implement the policy until the Department of Labor approves the policy. The employer shall send a copy of any proposed change in an approved written policy to the Department of Labor for review under section 686. The employer may not implement the change until the Department of Labor approves the change.

[2001, c. 556, §2 (amd).]

3. Copies to employees and applicants. The employer shall provide each employee with a copy of the written policy approved by the Department of Labor under section 686 at least 30 days before any portion of the written policy applicable to employees takes effect. The employer shall provide each employee with a copy of any change in a written policy approved by the Department of Labor under section 686 at least 60 days before any portion of the change applicable to employees takes effect. The Department of Labor may waive the 60-day notice for the implementation of an amendment covering employees if the amendment was necessary to comply with the law

or if, in the judgment of the department, the amendment promotes the purpose of the law and does not lessen the protection of an individual employee. If an employer intends to test an applicant, the employer shall provide the applicant with a copy of the written policy under subsection 2 before administering a substance abuse test to the applicant. The 30-day and 60-day notice periods provided for employees under this subsection do not apply to applicants.

[1995, c. 324, §5 (amd).]

4. Consent forms prohibited. No employer may require, request or suggest that any employee or applicant sign or agree to any form or agreement that attempts to:

A. Absolve the employer from any potential liability arising out of the imposition of the substance abuse test; or

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. Waive an employee's or applicant's rights or eliminate or diminish an employer's obligations under this subchapter.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

Any form or agreement prohibited by this subsection is void.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

5. Right to obtain other samples. At the request of the employee or applicant at the time the test sample is taken, the employer shall, at that time:

A. Segregate a portion of the sample for that person's own testing. Within 5 days after notice of the test result is given to the employee or applicant, the employee or applicant shall notify the employer of the testing laboratory selected by the employee or applicant. This laboratory must comply with the requirements of this section related to testing laboratories. When the employer receives notice of the employee or applicant's selection, the employer shall promptly send the segregated portion of the sample to the named testing laboratory, subject to the same chain of custody requirements applicable to testing of the employer's portion of the sample. The employee or applicant shall pay the costs of these tests. Payment for these tests may not be required earlier than when notice of the choice of laboratory is given to the employer; and

[1995, c. 324, §6 (amd).]

B. In the case of an employee, have a blood sample taken from the employee by a licensed physician, registered physician's assistant, registered nurse or a person certified by the Department of Human Services to draw blood samples. The employer shall have this sample tested for the presence of alcohol or marijuana metabolites, if those substances are to be tested for under the employer's written policy. If the employee requests that a blood sample be taken as provided in this paragraph, the employer may not test any other sample from the employee for the presence of these substances.

(1) The Department of Human Services may identify, by rules adopted under section 687, other substances of abuse for which an employee may request a blood sample be tested instead of a urine sample if the department determines that a sufficient correlation exists between the presence of the substance in an individual's blood and its effect upon the individual's performance.

(2) No employer may require, request or suggest that any employee or applicant provide a blood sample for substance abuse testing purposes nor may any employer conduct a substance abuse test upon a blood sample except as provided in this paragraph.

(3) Applicants do not have the right to require the employer to test a blood sample as provided in this paragraph.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1995, c. 324, §6 (amd).]

5-A. Point of collection screening test. Except as provided in this subsection, all provisions of this subchapter regulating screening tests apply to noninstrumented point of collection test devices described in section 682, subsection 7, paragraph A, subparagraph (1).

A. A noninstrumented point of collection test described in section 682, subsection 7, paragraph A, subparagraph (1) may be performed at the point of collection rather than in a laboratory. Subsections 6 and 7 and subsection 8, paragraphs A to C do not apply to such screening tests. Subsection 5 applies only to a sample that results in a positive test result.

[2001, c. 556, §3 (new).]

B. Any sample that results in a negative test result must be destroyed. Any sample that results in a postive test result must be sent to a qualified testing laboratory consistent with subsections 6 to 8 for confirmation testing.

[2001, c. 556, §3 (new).]

[2001, c. 556, §3 (new).]

6. Qualified testing laboratories required. No employer may perform any substance abuse test administered to any of that employer's employees. An employer may perform screening tests administered to applicants if the employer's testing facilities comply with the requirements for testing laboratories under this subsection. Except as provided in subsection 5-A, any substance abuse test administered under this subchapter must be performed in a qualified testing laboratory that complies with this subsection.

A.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §8 (rp).]

B. The laboratory must have written testing procedures and procedures to ensure a clear chain of custody.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

C. The laboratory must demonstrate satisfactory performance in the proficiency testing program of the National Institute on Drug Abuse, the College of American Pathology or the American Association for Clinical Chemistry.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

D. The laboratory must comply with rules adopted by the Department of Human Services under section 687. These rules shall ensure that:

(1) The laboratory possesses all licenses or certifications that the department finds necessary or desirable to ensure reliable and accurate test results;

(2) The laboratory follows proper quality control procedures, including, but not limited to:

(a) The use of internal quality controls during each substance abuse test conducted under this subchapter, including the use of blind samples and samples of known concentrations which are used to check the performance and calibration of testing equipment;

(b) The internal review and certification process for test results, including the qualifications of the person who performs that function in the testing laboratory; and

(c) Security measures implemented by the testing laboratory; and

(3) Other necessary and proper actions are taken to ensure reliable and accurate test results.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[2001, c. 556, §4 (amd).]

7. Testing procedure. A testing laboratory shall perform a screening test on each sample submitted by the employer for only those substances of abuse that the employer requests to be identified. If a screening test result is negative, no further test may be conducted on that sample. If a screening test result is positive, a confirmation test shall be performed on that sample. A testing laboratory shall retain all confirmed positive samples for one year in a manner that will inhibit deterioration of the samples and allow subsequent retesting. All other samples shall be disposed of immediately after testing.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

8. Laboratory report of test results. This subsection governs the reporting of test results.

A. A laboratory report of test results shall, at a minimum, state:

(1) The name of the laboratory that performed the test or tests;

(2) Any confirmed positive results on any tested sample.

(a) Unless the employee or applicant consents, test results shall not be reported in numerical or quantitative form but shall state only that the test result was positive or negative. This division does not apply if the test or the test results become the subject of any grievance procedure, administrative proceeding or civil action.

(b) A testing laboratory and the employer must ensure that an employee's unconfirmed positive screening test result cannot be determined by the employer in any manner, including, but not limited to, the method of billing the employer for the tests performed by the laboratory and the time within which results are provided to the employer. This division does not apply to test results for applicants;

(3) The sensitivity or cutoff level of the confirmation test; and

(4) Any available information concerning the margin of accuracy and precision of the test methods employed.

The report shall not disclose the presence or absence of evidence of any physical or mental condition or of any substance other than the specific substances of abuse that the employer requested to be identified. A testing laboratory shall retain records of confirmed positive results in a numerical or quantitative form for at least 2 years.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §9 (amd).]

B. The employer shall promptly notify the employee or applicant tested of the test result. Upon request of an employee or applicant, the employer shall promptly provide a legible copy of the laboratory report to the employee or applicant. Within 3 working days after notice of a confirmed positive test result, the employee or applicant may submit information to the employer explaining or contesting the results.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §9 (amd).]

C. The testing laboratory shall send test reports for samples segregated at an employee's or applicant's request under subsection 5, paragraph A, to both the employer and the employee or applicant tested.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

D. Every employer whose policy is approved by the Department of Labor under section 686 shall annually send to the department a compilation of the results of all substance abuse tests administered by that employer in the previous calendar year. This report shall provide separate categories for employees and applicants and shall be presented in statistical form so that no person who was tested by that employer can be identified from the report. The report shall include a separate category for any tests conducted on a random or arbitrary basis under section 684, subsection 3.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §9 (amd).]

9. Costs. The employer shall pay the costs of all substance abuse tests which the employer requires, requests or suggests that an employee or applicant submit. Except as provided in paragraph A, the employee or applicant shall pay the costs of any additional substance abuse tests.

Costs of a substance abuse test administered at the request of an employee under subsection 5, paragraph B, shall be paid:

A. By the employer if the test results are negative for all substances of abuse tested for in the sample; and

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. By the employee if the test results in a confirmed positive result for any of the substances of abuse tested for in the sample.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

10. Limitation on use of tests. An employer may administer substance abuse tests to employees or applicants only for the purpose of discovering the use of any substance of abuse likely to cause impairment of the user or the use of any scheduled drug. No employer may have substance abuse tests administered to an employee or applicant for the purpose of discovering any other information.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

11. Rules. The Department of Human Services shall adopt any rules under section 687 regulating substance abuse testing procedures that it finds necessary or desirable to ensure accurate and reliable substance abuse testing and to protect the privacy rights of employees and applicants.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §1-3 (AMD).
PL 1989, Ch. 832, §6-9 (AMD).
PL 1995, Ch. 283, §1 (AMD).
PL 1995, Ch. 324, §4-6 (AMD).
PL 1999, Ch. 199, §1 (AMD).
PL 2001, Ch. 556, §2-4 (AMD).

§684. Imposition of tests

1. Testing of applicants. An employer may require, request or suggest that an applicant submit to a substance abuse test only if:

A. The applicant has been offered employment with the employer; or

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. The applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. The number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding 6 months.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

The offer of employment or offer of a position on a roster of eligibility may be conditioned on the applicant receiving a negative test result.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

2. Probable cause testing of employees. An employer may require, request or suggest that an employee submit to a substance abuse test if the employer has probable cause to test the employee.

A. The employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel shall make the determination of probable cause.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §10 (amd).]

B. The supervisor or other person must state, in writing, the facts upon which this determination is based and provide a copy of the statement to the employee.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §10 (amd).]

3. Random or arbitrary testing of employees. In addition to testing employees on a probable cause basis under subsection 2, an employer may require, request or suggest that an employee submit to a substance abuse test on a random or arbitrary basis if at least one of the following conditions is met:

A. The employer and the employee have bargained for provisions in a collective bargaining agreement, either before or after the effective date of this subchapter, that provide for random or arbitrary testing of employees. A random or arbitrary testing program that would result from implementation of an employer's last best offer is not considered a provision bargained for in a collective bargaining agreement for purposes of this section; or

[2001, c. 706, §1 (amd).]

B. The employee works in a position the nature of which would create an unreasonable threat to the health or safety of the public or the employee's co-workers if the employee were under the influence of a substance of abuse. It is the intent of the Legislature that the requirements of this paragraph be narrowly construed.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[2001, c. 706, §1 (amd).]

4. Testing while undergoing rehabilitation or treatment. While the employee is participating in a substance abuse rehabilitation program either as a result of voluntary contact with or mandatory referral to the employer's employee assistance program or after a confirmed positive result as provided in section 685, subsection 2, paragraphs B and C, substance abuse testing may be conducted by the rehabilitation or treatment provider as required, requested or suggested by that provider.

A. Substance abuse testing conducted as part of such a rehabilitation or treatment program is not subject to the provisions of this subchapter regulating substance abuse testing.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. An employer may not require, request or suggest that any substance abuse test be administered to any employee while the employee is undergoing such rehabilitation or treatment, except as provided in subsections 2 and 3.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

C. The results of any substance abuse test administered to an employee as part of such a rehabilitation or treatment program may not be released to the employer.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

5. Testing upon return to work. If an employee who has received a confirmed positive result returns to work with the same employer, whether or not the employee has participated in a rehabilitation program under section 685, subsection 2, the employer may

require, request or suggest that the employee submit to a subsequent substance abuse test anytime between 90 days and one year after the date of the employee's prior test. A test may be administered under this subsection in addition to any tests conducted under subsections 2 and 3. An employer may require, request or suggest that an employee submit to a substance abuse test during the first 90 days after the date of the employee's prior test only as provided in subsections 2 and 3.

[1989, c. 832, §11 (new).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).
PL 1989, Ch. 832, §10,11 (AMD).
PL 2001, Ch. 706, §1 (AMD).

§685. Action taken on substance abuse tests

Action taken by an employer on the basis of a substance abuse test is limited as provided in this section. [1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

1. Before receipt of test results. An employer may suspend an employee with full pay and benefits or may transfer the employee to another position with no reduction in pay or benefits while awaiting an employee's test results.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

2. Use of confirmation test results. This subsection governs an employer's use of confirmed positive results and an employee's or applicant's refusal to submit to a test requested or required by an employer in compliance with this subchapter.

A. Subject to any limitation of the Maine Human Rights Act or any other state law or federal law, an employer may use a confirmed positive result or refusal to submit to a test as a factor in any of the following decisions:

(1) Refusal to hire an applicant for employment or refusal to place an applicant on a roster of eligibility;

(2) Discharge of an employee;

(3) Discipline of an employee; or

(4) Change in the employee's work assignment.

[1995, c. 324, §7 (amd).]

A-1. An employer who tests a person as an applicant and employs that person prior to receiving the test result may take no action on a positive result except in accordance with the employee provisions of the employer's approved policy.

[1995, c. 324, §8 (new).]

B. Before taking any action described in paragraph A in the case of an employee who receives an initial confirmed positive result, an employer shall provide the employee with an opportunity to participate for up to 6 months in a rehabilitation program designed to enable the employee to avoid future use of a substance of abuse. The employer may take any action described in paragraph A if the employee receives a subsequent confirmed positive result from a test administered by the employer under this subchapter.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff); c. 832, §12 (amd).]

C. If the employee chooses not to participate in a rehabilitation program under this subsection, the employer may take any action described in paragraph A. If the employee chooses to participate in a rehabilitation program, the following provisions apply.

(1) If the employer has an employee assistance program that offers counseling or rehabilitation services, the employee may choose to enter that program at the employer's expense. If these services are not available from an employer's employee assistance program or if the employee chooses not to participate in that program, the employee may enter a public or private rehabilitation program.

(a) Except to the extent that costs are covered by a group health insurance plan, the costs of the public or private rehabilitation program must be equally divided between the employer and employee if the employer has more than 20 full-time employees. This requirement does not apply to municipalities or other political subdivisions of the State or to any employer when the employee is tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V. If necessary, the employer shall assist in financing the cost share of the employee through a payroll deduction plan.

(b) Except to the extent that costs are covered by a group health insurance plan, an employer with 20 or fewer full-time employees, a municipality or other political subdivision of the State is not required to pay for any costs of rehabilitation or

treatment under any public or private rehabilitation program. An employer is not required to pay for the costs of rehabilitation if the employee was tested because of the alcohol and controlled substance testing mandated by the federal Omnibus Transportation Employee Testing Act of 1991, Public Law 102-143, Title V.

(2) No employer may take any action described in paragraph A while an employee is participating in a rehabilitation program, except as provided in subparagraph (2-A) and except that an employer may change the employee's work assignment or suspend the employee from active duty to reduce any possible safety hazard. Except as provided in subparagraph (2-A), an employee's pay or benefits may not be reduced while an employee is participating in a rehabilitation program, provided that the employer is not required to pay the employee for periods in which the employee is unavailable for work for the purposes of rehabilitation or while the employee is medically disqualified. The employee may apply normal sick leave and vacation time, if any, for these periods.

(2-A) A rehabilitation or treatment provider shall promptly notify the employer if the employee fails to comply with the prescribed rehabilitation program before the expiration of the 6-month period provided in paragraph B. Upon receipt of this notice, the employer may take any action described in paragraph A.

(3) Except as provided in divisions (a) and (b), upon successfully completing the rehabilitation program, as determined by the rehabilitation or treatment provider after consultation with the employer, the employee is entitled to return to the employee's previous job with full pay and benefits unless conditions unrelated to the employee's previous confirmed positive result make the employee's return impossible. Reinstatement of the employee must not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part. If the rehabilitation or treatment provider determines that the employee has not successfully completed the rehabilitation program within 6 months after starting the program, the employer may take any action described in paragraph A.

(a) If the employee who has completed rehabilitation previously worked in an employment position subject to random or arbitrary testing under an employer's written policy, the employer may refuse to allow the employee to return to the previous job if the employer believes that the employee may pose an unreasonable safety hazard because of the nature of the position. The employer shall attempt to find suitable work for the employee immediately after refusing the employee's return to the previous position. No reduction may be made in the employee's previous benefits or rate of pay while awaiting reassignment to work or while working in a position other than the previous job. The employee shall be reinstated to the previous position or to another position with an equivalent rate of pay and benefits and with no loss of seniority within 6 months after returning to work in any capacity with the employer unless the employee has received a subsequent confirmed positive result within that time from a test administered under this subchapter or unless conditions unrelated to the employee's previous confirmed positive test result make that reinstatement or reassignment impossible. Placement of the employee in suitable work and reinstatement may not conflict with any provision of a collective bargaining agreement between the employer and a labor organization that is the collective bargaining representative of the unit of which the employee is or would be a part.

(b) Notwithstanding division (a), if an employee who has successfully completed rehabilitation is medically disqualified, the employer is not required to reinstate the employee or find suitable work for the employee during the period of disqualification. The employer is not required to compensate the employee during the period of disqualification. Immediately after the employee's medical disqualification ceases, the employer's obligations under division (a) attach as if the employee had successfully completed rehabilitation on that date.

[1995, c. 344, §1 (amd).]

D. This subsection does not require an employer to take any disciplinary action against an employee who refuses to submit to a test, receives a single or repeated confirmed positive result or does not choose to participate in a rehabilitation program. This subsection is intended to set minimum opportunities for an employee with a substance abuse problem to address the problem through rehabilitation. An employer may offer additional opportunities, not otherwise in violation of this subchapter, for rehabilitation or continued employment without rehabilitation.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1995, c. 324, §§7,8 (amd); c. 344, §1 (amd).]

3. Confidentiality. This subsection governs the use of information acquired by an employer in the testing process.

A. Unless the employee or applicant consents, all information acquired by an employer in the testing process is confidential and may not be released to any person other than the employee or applicant who is tested, any necessary personnel of the employer and a provider of rehabilitation or treatment services under subsection 2, paragraph C. This paragraph does not prevent:

(1) The release of this information when required or permitted by state or federal law, including release under section 683,

subsection 8, paragraph D; or

(2) The use of this information in any grievance procedure, administrative hearing or civil action relating to the imposition of the test or the use of test results.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. Notwithstanding any other law, the results of any substance abuse test required, requested or suggested by any employer may not be used in any criminal proceeding.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).
PL 1989, Ch. 832, §12,13 (AMD).
PL 1995, Ch. 324, §7,8 (AMD).
PL 1995, Ch. 344, §1 (AMD).

§686. Review of written policies

1. Review required. The Department of Labor shall review each written policy or change to an approved policy submitted to the department by an employer under section 683, subsection 2.

A. The department shall determine if the employer's written policy or change complies with this subchapter and shall immediately notify the employer who submitted the policy or change of that determination. If the department finds that the policy or change does not comply with this subchapter, the department shall also notify the employer of the specific areas in which the policy or change is defective.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. The department may request additional information from an employer when necessary to determine whether an employment position meets the requirements of section 684, subsection 3. The department shall not approve any written policy that provides for random or arbitrary testing of any employment position that the employer has failed to demonstrate meets the requirements of section 684, subsection 3.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

2. Review procedure. The Department of Labor shall adopt rules under section 687 governing the procedure for reviews conducted under this section.

A. The rules must provide for notice to be given to the employees of any employer who submits a written policy or amendment applicable to employees to the department for review under this section. The employees may submit written comments to the department challenging any portion of the employer's written policy, including the proposed designation of any position under section 684, subsection 3, paragraph B.

[1995, c. 324, §9 (amd).]

B. Nothing in this section requires a formal hearing to be held concerning the submission and review of an employer's written policy.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

C. Notwithstanding Title 5, section 8003, the Maine Administrative Procedure Act, Title 5, chapter 375, does not apply to reviews conducted under this section except that all determinations by the Department of Labor under this section may be appealed as provided in Title 5, chapter 375, subchapter VII.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

D. The rules may establish model applicant policies and employee probable cause policies and provide for expedited approval and registration for employers adopting such model policies. The rules adopted under this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1997, c. 49, §1 (new).]

[1997, c. 49, §1 (amd).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).

PL 1995, Ch. 324, §9 (AMD).
PL 1997, Ch. 49, §1 (AMD).

§687. Rulemaking

1. Office of Substance Abuse. The Office of Substance Abuse shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, as provided in this subchapter.

[1995, c. 283, §2 (amd).]

2. Department of Labor. The Department of Labor shall adopt rules under the Maine Administrative Procedure Act, Title 5, chapter 375, as provided in this subchapter.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

3. Coordination; deadline. The Department of Human Services and the Department of Labor shall cooperate to ensure any necessary coordination between the rules of both departments. The Department of Human Services and the Department of Labor shall adopt initial rules before December 1, 1989.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).
PL 1995, Ch. 283, §2 (AMD).

§688. Substance abuse education

All employers shall cooperate fully with the Department of Labor, Office of Substance Abuse, the Department of Human Services, the Department of Public Safety and any other state agency in programs designed to educate employees about the dangers of substance abuse and about public and private services available to employees who have a substance abuse problem. [1995, c. 283, §3 (amd).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).
PL 1995, Ch. 283, §3 (AMD).

§689. Violation and remedies

This section governs the enforcement of this subchapter. [1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

1. Remedies. Any employer who violates this subchapter is liable to any employee subjected to discipline or discharge based on that violation for:

A. An amount equal to 3 times any lost wages;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. Reinstatement of the employee to the employee's job with full benefits;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

C. Court costs; and

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

D. Reasonable attorney's fees, as set by the court.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

2. Breach of confidentiality. In addition to the liability imposed under subsection 1, any person who violates section 684, subsection 4, paragraph C, or section 685, subsection 3:

A. For the first offense, is subject to a civil penalty not to exceed $1,000, payable to the affected employee, to be recovered in a civil action; and

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. For any subsequent offense, is subject to a civil penalty of $2,000, payable to the affected employee, to be recovered in a civil action.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

3. Harassment. In addition to the liability imposed under subsection 1, any employer who requires or repeatedly attempts to require an employee or applicant to submit to a substance abuse test under conditions that would not justify the test under this subchapter or who without substantial justification repeatedly requires an employee to submit to a substance abuse test under section 684, subsection 3:

A. Is subject to a civil penalty not to exceed $1,000, payable to the affected employee, to be recovered in a civil action; and

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. For any subsequent offense against the same employee, is subject to a civil penalty of $2,000, payable to the affected employee, to be recovered in a civil action.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

4. Enforcement. The Department of Labor or the affected employee or employees may enforce this subchapter. The department may:

A. Collect the judgment on behalf of the employee or employees; and

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

B. Supervise the payment of the judgment and the reinstatement of the employee or employees.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).

§690. Report

The Department of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on March 1, 1990, and annually on that date thereafter. This report shall: [1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

1. List of employers. List those employers whose substance abuse testing policies have been approved by the Department of Labor under section 686;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

2. Persons tested. Indicate whether those employers are testing applicants or employees, or both;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

3. Random or arbitrary testing. Indicate those employers whose substance abuse testing policies permit random or arbitrary testing under section 684, subsection 3, and describe the employment positions subject to such random or arbitrary testing;

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

4. Results. Provide statistical data relating to the reports received from employers indicating the number of substance abuse tests administered by those employers in the previous calendar year and the results of those tests; and

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

5. Description. Briefly describe the general scope and practice of workplace substance abuse testing in the State.

[1989, c. 536, §§1, 2 (new); c. 604, §§2, 3 (aff).]

PL 1989, Ch. 536, §1,2 (NEW).
PL 1989, Ch. 604, §2,3 (AMD).

Subchapter 4: EMPLOYMENT OF WOMEN AND CHILDREN

Title 26, Chapter 7, EMPLOYMENT PRACTICES

Article 1: Provisions Common to Females and Minors

§701. Posting of notice of hours of labor (REPEALED)

PL 1971, Ch. 620, §13 (AMD).
PL 1975, Ch. 701, §11 (RPR).
PL 1989, Ch. 738, §1 (AMD).
PL 2001, Ch. 242, §2 (RP).

§701-A. Application of subchapter

This subchapter applies to employment by all private and public employers, including the State and its political subdivisions, except with respect to service in the National Guard and as otherwise specifically provided. [2003, c. 10, §1 (new).]

PL 2003, Ch. 10, §1 (NEW).

§702. Record of work hours of minors under 16 years of age

Every employer shall keep a time book or record for every minor under 18 years of age employed in any occupation, except the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, or household work, stating the number of hours worked by each minor under 18 years of age on each day of the week. The time book or record must be open at all reasonable hours to the inspection of the director, a director's deputy or any authorized agent of the bureau. Any employer who fails to keep the record required by this section or makes any false entry to the record, or refuses to exhibit the time book or record or makes any false statement to the director, a director's deputy or any authorized agent of the bureau in reply to any question in carrying out section 42-B and this section is liable for a violation of this section and section 42-B. [2001, c. 242, §3 (amd).]

PL 1971, Ch. 620, §13 (AMD).
PL 1975, Ch. 701, §12 (RPR).
PL 1979, Ch. 468, §1 (AMD).
PL 1991, Ch. 544, §2 (AMD).
PL 2001, Ch. 242, §3 (AMD).

§703. Exemptions for perishable goods (REPEALED)

PL 1975, Ch. 701, §13 (RP).

§704. Penalty for employers

1. Strict liability. An employer who violates either section 42-B or 702 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture of not less than $50 nor more than $250;

[1991, c. 544, §3 (new).]

B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture of not less than $100 nor more than $1,000; or

[1991, c. 544, §3 (new).]

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a forfeiture or penalty of not less than $250 nor more than $2,500.

[1991, c. 544, §3 (new).]

[2001, c. 242, §4 (amd).]

2. Adjudications. As used in this section, a prior adjudication includes a consent decree that contains an admission of a violation. The dates of prior adjudications for any violation of sections 42-B and 702 or a combination must precede the commission of the violation being enhanced, although prior adjudications involving a combination may have occurred on the same day. The date of any adjudication is

the date the forfeiture or penalty is adjudged or the consent decree allowed, even though an appeal was taken.

[2001, c. 242, §4 (amd).]

3. Subsequent offenses.

[1991, c. 544, §3 (rp).]

PL 1981, Ch. 470, §A141 (NEW).
PL 1981, Ch. 698, §115 (AMD).
PL 1991, Ch. 544, §3 (RPR).
PL 2001, Ch. 242, §4 (AMD).

Article 2: Females

§731. Hours of employment for females; 9 hours a day (REPEALED)

PL 1975, Ch. 701, §14 (RP).

§732. -- six and one-half hours continuous maximum (REPEALED)

PL 1971, Ch. 620, §13 (AMD).
PL 1975, Ch. 701, §14 (RP).

§733. -- fifty-four hours a week (REPEALED)

PL 1975, Ch. 701, §14 (RP).

§734. -- fifty hours a week in certain places (REPEALED)

PL 1975, Ch. 701, §14 (RP).

§735. Seats for female employees (REPEALED)

PL 1975, Ch. 701, §14 (RP).

§736. Application of provisions (REPEALED)

PL 1971, Ch. 620, §13 (AMD).
PL 1975, Ch. 701, §14 (RP).

§737. -- war and other emergencies (REPEALED)

PL 1971, Ch. 620, §13 (AMD).
PL 1975, Ch. 701, §14 (RP).

§738. Penalty for employers (REPEALED)

PL 1975, Ch. 701, §15 (AMD).
PL 1981, Ch. 407, § (AMD).
PL 1981, Ch. 470, §A142 (RP).
PL 1981, Ch. 698, §116 (RP).

Article 3: Minors

§771. Minors under 14 years of age

A minor under 14 years of age may not be employed, permitted or suffered to work in, about or in connection with agriculture, except for the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, any eating place, automatic laundries, retail establishment where frozen dairy products are manufactured on the premises, sporting or overnight camp, mercantile establishment or in outdoor occupations on the grounds of a hotel, and a minor between the ages of 14 and 16 years may not be so employed when the distance between the work place and the home of the minor, or any other factor, necessitates the minor's remaining away from home overnight. This section does not apply to any such minor who is employed directly by, with or under the supervision of either or both of the minor's parents; or to any such minor employed in school lunch programs, if limited to serving food and cleaning up dining rooms. [1991, c. 544, §4 (amd).]

PL 1975, Ch. 238, §1 (AMD).
PL 1979, Ch. 468, §2 (AMD).
PL 1991, Ch. 544, §4 (AMD).

§772. Minors under 18 years of age; hazardous employment

1. Prohibition against certain employment. A minor under 18 years of age may not be employed in any capacity that the director determines to be hazardous, dangerous to life or limbs or injurious to the minor's health or morals.

[2003, c. 59, §1 (new).]

2. Rules; list of occupations. The director shall adopt rules to develop and maintain a list of occupations not suitable for employment of a minor. The rules must conform as far as practicable to the child labor provisions of the federal Fair Labor Standards Act of 1938, 29 United States Code, Section 212 and any associated regulations. The rules must also contain a provision prohibiting the employment of minors in places having nude entertainment.

[2003, c. 59, §1 (new).]

3. Rules relating to confined spaces and height. The director shall adopt rules prohibiting a minor under 18 years of age from working in confined spaces or at a designated height when regulations of the federal Occupational Safety and Health Administration, adopted under the general industry standards, 29 Code of Federal Regulations, Part 1910, require special precautions or procedures for such work. The rules must provide exceptions to the prohibition in specific exceptional circumstances, such as work required for public safety.

[2003, c. 59, §1 (new).]

4. Rules are routine technical. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 59, §1 (new).]

5. Application. This section does not apply to minors in public and approved private schools where mechanical equipment is installed and operated primarily for purposes of instruction.

[2003, c. 59, §1 (new).]

PL 1971, Ch. 620, §13 (AMD).
PL 1979, Ch. 663, §159 (AMD).
PL 1997, Ch. 597, §1 (AMD).
PL 1999, Ch. 30, §1 (AMD).
PL 2003, Ch. 59, §1 (RPR).

§773. Minors under 16; prohibited in certain places

A minor under 16 years of age may not be employed, permitted or suffered to work in, about or in connection with any

manufacturing or mechanical establishment, hotel, rooming house, laundry, except those commonly known as automatic laundries, dry cleaning establishments, bakery, bowling alley, poolroom, commercial places of amusement, including traveling shows and circuses, or in any theater or moving picture house or in conjunction with an amusement, game or show that allows or conducts betting. The provisions of this section pertaining to theaters do not apply to minors under 16 years of age who are employed or in training as theatrical actors or film actors. This section does not prohibit a minor under 16 years of age from performing work for a nonprofit organization that preserves film and other moving images and provides education and research opportunities for the public or for a theater that is operated by such an organization as an integral part of its mission. [2001, c. 43, §1 (amd).]

The provisions of this section pertaining to manufacturing establishments shall not apply to minors under 16 years of age who are employed in retail establishments where any frozen dairy product or frozen dairy product mix or related food product is manufactured on the premises, regardless of trade name or brand or coined name.

The provisions of this section pertaining to hotels do not apply to minors under 16 years of age who are employed in outdoor occupations on the grounds of a hotel or to minors 15 years of age who are employed in kitchens, dining rooms, lobbies and offices of a hotel. Minors 15 years of age are expressly prohibited from working in an area not listed as permitted and are expressly prohibited from performing room service, making deliveries of any sort to the hotel rooms or entering the hallways to those rooms. [1997, c. 347, §2 (amd).]

The provisions of this section pertaining to manufacturing and mechanical establishments shall not apply to minors under 16 years of age who are employed on the grounds of a manufacturing or mechanical establishment, but who are assigned nonhazardous work which is performed outside of any building in which manufacturing or mechanical operations are undertaken. [1987, c. 401 (new).]

The provisions of this section pertaining to manufacturing or mechanical establishments, laundries, dry cleaning establishments and bakeries shall not apply to minors under 16 years of age who are employed in retail sales, customer service operations or office work for these establishments, provided that retail, customer service or office areas are in a separate room. [1987, c. 665, §1 (new).]

Notwithstanding other provisions of this section, a minor under 16 years of age may be employed at a commercial place of amusement operating at a permanent location, except that minors under 16 years of age may not be employed at games of chance as defined in Title 17, chapter 14 or hazardous occupations as determined by the director. [1997, c. 353, §2 (new).]

PL 1975, Ch. 238, §2 (AMD).
PL 1987, Ch. 401, § (AMD).
PL 1987, Ch. 665, §1 (AMD).
PL 1989, Ch. 520, §1 (AMD).
PL 1993, Ch. 434, §2 (AMD).
PL 1997, Ch. 347, §2,3 (AMD).
PL 1997, Ch. 353, §1,2 (AMD).
PL 2001, Ch. 43, §1 (AMD).

§774. Hours of employment

1. Minors under 18 years of age. A minor under 18 years of age, enrolled in school, may not be employed as follows:

A. More than 50 hours in any week when the minor's school is not in session;

[2003, c. 53, §1 (amd).]

B. More than 20 hours in any week when the minor's school is in session, except that the minor may work up to 8 hours on each day that an authorized school closure occurs in that minor's school up to a total of 28 hours in that week. In addition, the maximum weekly hours a minor may work is 50 hours during any week that the approved school calendar for the minor's school is less than 3 days or during the first or last week of the school calendar, regardless of how many days the minor's school is in session for the week. If requested, a school must provide verification of its closings to the minor's employer or the Department of Labor;

[2003, c. 53, §1 (amd).]

C. More than 10 hours in any day when the minor's school is not in session;

[2003, c. 53, §1 (amd).]

D. More than 4 hours in any day when the minor's school is in session, except that the minor may work up to 8 hours on the last scheduled day of the school week;

[2003, c. 53, §1 (amd).]

E. More than 6 consecutive days;

[1993, c. 434, §3 (amd).]

F. After 10 p.m. on a day preceding a day on which the minor's school is in session or after 12 midnight on a day that does not precede such a school day; or

[2003, c. 53, §1 (amd).]

G. Before 7 a.m. on a day on which the minor's school is in session or before 5 a.m. on any other day.

[2003, c. 53, §1 (amd).]

[2003, c. 53, §1 (amd).]

2. Minors under 16 years of age. A minor under 16 years of age may not be employed as follows:

A. More than 40 hours in any week when school is not in session;

[1991, c. 544, §5 (new).]

B. More than 18 hours in any week when school is in session;

[1991, c. 544, §5 (new).]

C. More than 8 hours in any day when school is not in session;

[1991, c. 544, §5 (new).]

D. More than 3 hours in any day when school is in session;

[1991, c. 544, §5 (new).]

E. More than 6 consecutive days; or

[1991, c. 544, §5 (new).]

F. Between the hours of 7 p.m. and 7 a.m. except during summer vacation, when that minor may not work between the hours of 9 p.m. and 7 a.m.

[1993, c. 434, §4 (amd).]

[1993, c. 434, §4 (amd).]

3. Employment during hours school in session. A minor under 17 years of age may not be employed during the hours that the public schools of the town or city in which the minor resides are in session.

A. This subsection does not apply to:

(1) A minor who has been excused from attendance by school officials in accordance with Title 20-A, section 5001-A, subsection 2 or subsection 3, except that a minor who has been excused in accordance with subsection 3 may not be employed during the hours that the minor's school or approved home instruction program is in session;

(2) A student in an alternative education plan that includes a work experience component;

(3) A student in an approved vocational cooperative education program; or

(4) A student who is granted permission for an early school release by the school principal.

[1991, c. 713, §2 (amd).]

The hours worked by a student in an alternative education plan or in an approved vocational cooperative education program may not be included in determining the student's total hours of permitted employment under subsection 1 and subsection 2.

[1991, c. 713, §2 (amd).]

4. Exemptions. Work performed in the planting, cultivating or harvesting of field crops or other agricultural employment, including the initial processing of farm crops, not in direct contact with hazardous machinery or hazardous substances, work performed as an employed or in-training theatrical actor or film actor or work performed as a summer camp employee in a children's camp is exempt from this section, provided a minor under 16 years of age has been excused by the local superintendent of schools in accordance with the policy established by the Commissioner of Education and the Director of the Bureau of Labor Standards. Work performed in the taking or catching of lobsters, fish or other marine organisms by any methods or means, or in the operating of ferries or excursion boats, is exempt from subsection 1, paragraphs A and C.

[1993, c. 434, §5 (amd).]

5. Application. This section does not apply to a person who holds a high school diploma or a high school equivalency certificate issued pursuant to Title 20-A, section 257 or to a minor emancipated pursuant to Title 15, section 3506-A.

[1991, c. 713, §4 (new).]

6. In session. School is considered in session if the students are required to be in attendance by the school board pursuant to Title 20-A, chapter 211.

[1997, c. 131, §2 (new).]

PL 1971, Ch. 620, §13 (AMD).
PL 1973, Ch. 571, §59 (AMD).
PL 1975, Ch. 59, §3 (AMD).
PL 1979, Ch. 468, §3 (AMD).
PL 1981, Ch. 310, § (AMD).
PL 1989, Ch. 700, §A102 (AMD).
PL 1991, Ch. 544, §5 (RPR).
PL 1991, Ch. 713, §1-4 (AMD).
RR 1991, Ch. 1, §34 (COR).
PL 1993, Ch. 434, §3-5 (AMD).
PL 1997, Ch. 131, §1,2 (AMD).
PL 2003, Ch. 53, §1 (AMD).

§775. Work permits

1. Work permit authority. A minor under 16 years of age may not be employed without a work permit signed by the superintendent of schools of the school administrative unit in which the minor resides and issued to the minor by the bureau. The superintendent may designate a school official to sign a work permit and that official is directly responsible to the superintendent for this activity.

[2001, c. 398, Pt. A, §1 (amd).]

2. Conditions for signature. The superintendent shall sign a permit in the following circumstances:

A. If the school is in session or the minor is attending summer school, the minor must be enrolled in school, not habitually truant, not under suspension and passing a majority of courses during the current grading period. Upon request of the minor, the superintendent may waive the requirements for one grading period if, in the opinion of the superintendent, there are extenuating circumstances or if imposing the requirements would create an undue hardship for the minor;

[1991, c. 544, §5 (new).]

B. If school is not in session, the minor must furnish to the superintendent a certificate signed by the principal of the school last attended showing that the minor has satisfactorily completed kindergarten to grade 8 in the public schools or their equivalent. If the certificate can not be obtained, the superintendent shall examine the minor to determine whether the minor meets these educational standards;

[1991, c. 713, §5 (amd); §9 (aff).]

C. If the minor has been granted an exception to compulsory education under Title 20-A, section 5001-A, subsection 2, the minor must only submit proof of age as provided in subsection 3; or

[1991, c. 713, §5 (amd); §9 (aff).]

D. If school is in session, the superintendent may have signed only one work permit for the minor at any given time. The superintendent may sign 2 work permits for the minor for the summer vacation period.

[2001, c. 398, Pt. A, §1 (amd)]

[2001, c. 398, Pt. A, §1 (amd).]

3. Proof of age. The superintendent may issue a permit only upon receiving and examining satisfactory evidence of the minor's age. Satisfactory evidence consists of a certified copy of the minor's birth certificate or baptismal record, a passport showing the date of birth or other documentary evidence of age satisfactory to the superintendent and approved by the director. The superintendent may require, in doubtful cases, a certificate signed by a physician appointed by the school board, stating that the minor has been examined and, in that physician's opinion, has reached the normal development of a minor of the same age and is in sufficiently sound health and physically able to perform the work the minor intends to do.

[2001, c. 398, Pt. A, §1 (amd).]

3-A. Issuance of work permit. The director or the director's agent shall issue the work permit to the minor upon verification:

A. Of the proper approval by the superintendent or other designated school official; and

[2001, c. 398, Pt. A, §1 (new).]

B. That the employment conforms with the provisions of this subchapter.

[2001, c. 398, Pt. A, §1 (new).]

The superintendent's office shall distribute the work permit to the minor. The work permit is valid only for the employer and positions listed on the permit as issued by the bureau.

[2001, c. 398, Pt. A, §1 (new).]

4. Conditions for revocation. The superintendent may revoke the work permit issued to a minor by the bureau if the superintendent determines that the minor has not maintained the conditions for issuance of the work permit under subsection 2, paragraph A. The superintendent shall revoke 2nd work permits at the end of the summer vacation in accordance with the limits imposed by subsection 2, paragraph D. The superintendent shall notify the Director of the Bureau of Labor Standards and the minor's employer in writing upon revoking a minor's work permit. The revocation is effective upon receipt by the employer of the superintendent's notice.

[2001, c. 398, Pt. A, §1 (amd).]

5. Permit on file. The employer shall keep all work permits issued for the employer's minor employees on file and accessible to any attendance officer, factory inspector or other authorized officer charged with the enforcement of this subchapter.

[1991, c. 544, §5 (new).]

6. Exception. This section does not apply to minors engaged in work performed in the planting, cultivating or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances or to minors engaged in household work. Minors who are participants in summer youth employment and training programs funded by the Department of Labor are exempt from obtaining individual permits as long as the program employing the minor has submitted a master permit as developed by the director under section 777.

[1993, c. 527, §1 (amd).]

PL 1965, Ch. 272, §3 (AMD).
PL 1971, Ch. 620, §13 (AMD).
PL 1973, Ch. 571, §60 (AMD).
PL 1975, Ch. 59, §3 (AMD).
PL 1979, Ch. 468, §4 (AMD).
PL 1989, Ch. 700, §A103 (AMD).
PL 1991, Ch. 544, §5 (RPR).
PL 1991, Ch. 713, §5-7 (AMD).
PL 1991, Ch. 713, §9 (AFF).
PL 1993, Ch. 527, §1 (AMD).
PL 2001, Ch. 398, §A1 (AMD).

§776. -- part time and vacation work (REPEALED)

PL 1991, Ch. 544, §6 (RP).

§777. Blanks furnished; filing of triplicate permits; surrender and cancellation of permits

The blank work permit required by section 775 must be formulated by the director and furnished by the director to the persons authorized to sign work permits. The forms of the permits must be approved by the Attorney General. Every work permit must be made out in triplicate. All triplicates, accompanied by the original papers on which the permits were signed, must be forwarded to the bureau by the officer signing the permits, within 24 hours of the time the permit was signed. The bureau shall examine the papers and promptly return them to the officer who sent them after validating the copies and retaining one copy for bureau files. The officer may then return to the minor all papers filed in proof of age. Whenever there is reason to believe that a work permit was improperly signed, the director, deputy director or agent shall notify the local superintendent of schools of the place in which the certificate was signed. The local superintendent shall cancel the permit when directed to do so by the director. The director may develop an electronic transmittal system to fulfill these requirements. [2001, c. 398, Pt. A, §2 (amd).]

The director shall develop a master permit system for participants in summer youth employment and training programs funded by the Department of Labor. The master permit eliminates the need for prior approval by the director or the superintendent of schools. A minor on a master permit may be removed from the master permit for the same reasons and in the same manner as applicable to an individual work permit. [1993, c. 527, §2 (new).]

PL 1971, Ch. 620, §13 (AMD).
PL 1991, Ch. 544, §7 (AMD).
PL 1993, Ch. 527, §2 (AMD).
PL 2001, Ch. 398, §A2 (AMD).

§778. Blank employment certificates prepared; notice when employment terminated (REPEALED)

PL 1971, Ch. 620, §13 (AMD).
PL 1991, Ch. 544, §8 (RP).

§779. Record of age received as evidence

Any record of age, as provided under section 775 to determine whether or not a work permit may be issued to any child, shall be received as evidence of the age of such child in any prosecution under this subchapter.

§780. Work permit conclusive for employer; documentary evidence of age

A work permit in regular form signed by a duly authorized officer, for all minors under 16 years of age, is conclusive evidence of age and educational attainment, in behalf of the employer of any minor, upon any prosecution for violation of the law relating to the employment of minors. An inspector of factories, attendance officer or other officer charged with the enforcement of this subchapter may make demand on any employer in or about whose place or establishment a minor apparently under the age of 16 years is employed, permitted or suffered to work, that such employer shall either furnish the inspector within 10 days documentary evidence of age as specified in section 775, or shall cease to employ, permit or suffer such minor to work in such place or establishment. [1991, c. 544, §9 (amd).]

PL 1991, Ch. 544, §9 (AMD).

§781. Penalties

1. Strict liability. An employer who employs, permits or suffers any minor to be employed or to work in violation of this article or Title 20-A, section 5054 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than $250 nor more than $5,000;

[1991, c. 544, §10 (new).]

B. For a 2nd violation occurring within 3 years of a prior adjudication, a forfeiture or penalty of not less than $500 nor more than $5,000; or

[1991, c. 544, §10 (new).]

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudication, a penalty of not less than $2,000 nor more than $10,000.

[1991, c. 544, §10 (new).]

[1991, c. 544, §10 (new).]

1-A. De minimis violations of section 774. Notwithstanding subsection 1, absent a finding that reasonably suggests a pattern of knowing and intentional conduct, the bureau may disregard the following violations of section 774:

A. A violation of the limits on the time that work may begin or end under section 774, subsection 1, paragraph F or G or section 774, subsection 2, paragraph F, as long as the violation is no greater than 10 minutes per day;

[RR 2001, c. 1, §39 (cor).]

B. A violation of the number of hours a minor may work in any day under section 774, subsection 1, paragraph B, C or D or section 774, subsection 2, paragraph C or D, as long as the violation is not greater than 10 minutes per day; and

[2001, c. 46, §1 (new).]

C. A violation of the number of hours worked in a week under section 774, subsection 1, paragraph A or B or section 774, subsection 2, paragraph A or B, as long as the violation is not greater than 50 minutes in a week.

[2001, c. 46, §1 (new).]

[RR 2001, c. 1, §39 (cor).]

2. Intentional or knowing violation of section 771, 772, or 773. An employer who intentionally or knowingly employs, permits or suffers any minor to be employed or to work in violation of section 771, 772 or 773 is subject to the following forfeiture or civil penalty, payable to the State and recoverable in a civil action:

A. For the first violation or a violation not subject to an enhanced sanction under paragraph B or C, a forfeiture or penalty of not less than $500;

[1991, c. 544, §10 (new).]

B. For a 2nd violation occurring within 3 years of a prior adjudication, a penalty of not less than $5,000 nor more than $20,000; or

[1991, c. 544, §10 (new).]

C. For a 3rd and subsequent violation occurring within 3 years of 2 or more prior adjudications, a penalty of not less than $10,000 nor more than $50,000.

[1991, c. 544, §10 (new).]

[1991, c. 544, §10 (new).]

3. Adjudications. As used in this section, a prior adjudication includes a consent decree that contains an admission of a violation. The dates of prior adjudications for any violation or a combination of violations must precede the commission of the violation being enhanced, although prior adjudications involving a combination may have occurred on the same day. The date of any adjudication is the date the forfeiture or penalty is adjudged or the consent decree allowed, even though an appeal was taken.

[1991, c. 544, §10 (new).]

PL 1987, Ch. 665, §2 (AMD).
PL 1989, Ch. 415, §33 (AMD).
PL 1991, Ch. 544, §10 (RPR).
PL 2001, Ch. 46, §1 (AMD).
RR 2001, Ch. 1, §39 (COR).

§782. -- parent, guardian or custodian (CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/1/04)

Whoever, having any child under his control as parent, guardian, custodian or otherwise, permits or suffers such child to be employed or to work in violation of any of the provisions of this subchapter, or whoever presents, or permits or allows any child under his control to present, to any employer, owner or superintendent, overseer or agent as required under section 775 any work permit containing any false statement as to the date of birth or age of such child, knowing it to be false, shall be punished by a fine of not less than $10 nor more than $50, for each offense.

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Parent, guardian or custodian

(WHOLE SECTION TEXT EFFECTIVE 7/1/04)

1. Permitting or allowing child to work. A person who has control over a child as parent, guardian, custodian or otherwise may not permit or allow the child to be employed or to work in violation of this subchapter.

[2003, c. 452, Pt. O, §2 (new); Pt. X, §2 (aff).]

2. Work permit containing false information. A person may not present, or permit or allow a child over which the person has control to present, to an employer, owner or superintendent or an overseer or agent as required under section 775 a work permit containing a false statement as to the date of birth or age of the child, knowing it to be false.

[2003, c. 452, Pt. O, §2 (new); Pt. X, §2 (aff).]

3. Penalties. A person who violates this section commits a civil violation for which a fine of not less than $10 and not more than $50

for each offense may be adjudged.

[2003, c. 452, Pt. O, §2 (new); Pt. X, §2 (aff).]

PL 2003, Ch. 452, §O2 (RPR).
PL 2003, Ch. 452, §X2 (AFF).

§783. -- failure to perform duties of office

Whoever, being authorized to issue a work permit, knowingly fails to perform the duties of his office as required by this subchapter shall be punished by a fine of not less than $25 nor more than $50, for each offense.

§784. -- certification of false statements

Whoever, being authorized to sign the work permit, or whoever, signing any certified copy of a town clerk's record of birth, or certified copy of a child's baptismal record or a physician's certificate, knowingly certifies to any false statement therein shall be punished by a fine of not less than $25 nor more than $50, for each offense.

§785. Rulemaking

The Director of the Bureau of Labor Standards may adopt rules pursuant to Title 5, chapter 375, subchapter II that are consistent with this subchapter and considered appropriate or necessary for the proper administration and enforcement of this subchapter. [1993, c. 434, §6 (new).]

PL 1993, Ch. 434, §6 (NEW).

Subchapter 4-A: EMPLOYMENT OF THE HANDICAPPED

§791. Legal identity (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§792. Membership representation (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§793. Committee tenures (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§794. Nonpartisan status (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§795. Committee officers (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§796. Primary duties (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§797. Authorization (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§798. Expenses of committee members; payment; office (REPEALED)

PL 1969, Ch. 478, §1 (NEW).
PL 1983, Ch. 176, §A8 (RP).

§799. Committee (REPEALED)

PL 1983, Ch. 176, §A9 (NEW).
PL 1985, Ch. 295, §38 (AMD).
PL 1989, Ch. 49, §4 (AMD).
PL 1997, Ch. 410, §5 (RP).

§800. Membership (REPEALED)

PL 1983, Ch. 176, §A9 (NEW).
PL 1983, Ch. 819, §A57 (AMD).
PL 1993, Ch. 600, §A20 (AMD).
PL 1997, Ch. 410, §6 (RP).

§801. Powers and duties (REPEALED)

PL 1983, Ch. 176, §A9 (NEW).
PL 1989, Ch. 49, §5 (AMD).
PL 1993, Ch. 600, §A21,22 (AMD).
PL 1997, Ch. 410, §7 (RP).

§802. Administrative authority (REPEALED)

PL 1983, Ch. 176, §A9 (NEW).
PL 1985, Ch. 295, §39 (AMD).
PL 1985, Ch. 785, §B116 (AMD).
PL 1997, Ch. 410, §8 (RP).

§803. Authorization (REPEALED)

PL 1993, Ch. 600, §A23 (NEW).
PL 1997, Ch. 683, §D2 (RP).

Subchapter 4-B: SEXUAL HARASSMENT POLICIES (HEADING: PL 1991, c. 474, @2 (new))

§806. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 474, §2 (new).]

1. Commission. "Commission" means the Maine Human Rights Commission described in Title 5, chapter 337, subchapter II.

[1991, c. 474, §2 (new).]

2. Employee. "Employee" means any person engaged to work on a steady or regular basis, whether full-time or part-time, by an employer located or doing business in the State.

[1991, c. 474, §2 (new).]

3. Employer. "Employer" means any person, partnership, firm, association, corporation, employment agency, labor organization, joint apprenticeship committee or other legal entity, public or private, that is located or doing business in the State. The term "employer" includes, but is not limited to:

A. Any person, partnership, firm, association or corporation acting in the interest of any employer, directly or indirectly; and

[1991, c. 474, §2 (new).]

B. The State in its capacity as an employer.

[1991, c. 474, §2 (new).]

[1991, c. 474, §2 (new).]

4. Sexual harassment. "Sexual harassment" has the same meaning as found in rules adopted by the Maine Human Rights Commission under the Maine Human Rights Act, Title 5, section 4572.

[1991, c. 474, §2 (new).]

PL 1991, Ch. 474, §2 (NEW).

§807. Requirements

In addition to employer responsibilities set forth in rules adopted under Title 5, section 4572, all employers shall act to ensure a workplace free of sexual harassment by implementing the following minimum requirements. [1991, c. 474, §2 (new).]

1. Workplace posting. An employer shall post in a prominent and accessible location in the workplace a poster providing, at a minimum, the following information: the illegality of sexual harassment; a description of sexual harassment, utilizing examples; the complaint process available through the commission; and directions on how to contact the commission. The text of this poster may meet but may not exceed 6th-grade literacy standards. Upon request, the commission shall provide this poster to employers at a price that reflects the cost as determined by the commission. This poster may be reproduced.

[1991, c. 474, §2 (new).]

2. Employee notification. Employers shall provide annually all employees with individual written notice that includes at a minimum the following information: the illegality of sexual harassment; the definition of sexual harassment under state law; a description of sexual harassment, utilizing examples; the internal complaint process available to the employee; the legal recourse and complaint process available through the commission; directions on how to contact the commission; and the protection against retaliation as provided pursuant to Title 5, section 4553, subsection 10, paragraph D. This notice must be initially provided within 90 days after the effective date of this subchapter. The notice must be delivered in a manner to ensure notice to all employees without exception, such as including the notice with an employee's pay.

[1991, c. 474, §2 (new).]

3. Education and training. In workplaces with 15 or more employees, employers shall conduct an education and training program for all new employees within one year of commencement of employment that includes, at a minimum, the following information: the illegality of sexual harassment; the definition of sexual harassment under state and federal laws and federal regulations, including the Maine Human Rights Act and the Civil Rights Act of 1964, 42 United States Code, Title VII, Sections 2000e to 2000e-17; a description of sexual harassment, utilizing examples; the internal complaint process available to the employee; the legal recourse and complaint process

available through the commission; directions on how to contact the commission; and the protection against retaliation as provided under Title 5, section 4553, subsection 10, paragraph D. Employers shall conduct additional training for supervisory and managerial employees within one year of commencement of employment that includes, at a minimum, the specific responsibilities of supervisory and managerial employees and methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

Education and training programs conducted under this subsection by the State, a county or a municipality for its public safety personnel, including, but not limited to, law enforcement personnel, corrections personnel and firefighters, may be used to meet training and education requirements mandated by any other law, rule or other official requirement.

[1991, c. 474, §2 (new).]

PL 1991, Ch. 474, §2 (NEW).

Subchapter 5: LEAVE FOR RESERVE TRAINING

§811. Preservation of status

1. Intent. The intent of this subchapter is to minimize the disruption to the lives of persons performing service in the National Guard or the Reserves of the United States Armed Forces as well as to their employers, their fellow employees and their communities by providing for the prompt reemployment of these persons upon their satisfactory completion of military service and to prohibit discrimination against these persons because of their military service.

[2001, c. 662, §11 (amd).]

2. Military leave of absence. Any member of the National Guard or the Reserves of the United States Armed Forces is entitled to a military leave of absence from a position with any public or private employer, in response to state or federal military orders. The military member shall:

A. Give prior reasonable notice, if reasonable under the military circumstances, to the member's employer of the anticipated absence for military duty; and

[2001, c. 662, §11 (amd).]

B. If the employer so requests, obtain a confirmation from the Adjutant General or applicable reserve component headquarters of the anticipated military duty and satisfactory completion of the member's military duties.

[2001, c. 662, §11 (amd).]

[2001, c. 662, §11 (amd).]

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.

[2001, c. 662, §11 (amd).]

4. Disability. A person who is in compliance with subsection 2 but who has a disability incurred in or aggravated during the military service for which that person was absent and who, after reasonable efforts by the employer to accommodate the disability, is not qualified due to that disability to be employed in the position of employment in which the member would have been employed if the member had remained continuously employed must be reinstated without loss of seniority, benefits, status and any other incidences of advantages of employment:

A. To any other position that is equivalent in pay, seniority, benefits, status and any other incidences of advantages of employment, the duties of which the person is qualified to perform or would become qualified to perform with reasonable efforts by the employer; or

[2001, c. 662, §11 (new).]

B. To a position that is the nearest approximation to a position referred to in paragraph A in terms of pay, seniority, benefits, status and any other incidences or advantages of employment consistent with circumstances of the person's case.

[2001, c. 662, §11 (new).]

[2001, c. 662, §11 (new).]

5. Employer defined. As used in this section, "employer" means any person, institution, organization or other entity that pays salary or wages for work performed or that has control over employment opportunities, including a person, institution, organization or other

entity to whom the employer has delegated the performance of employment-related responsibilities; the Federal Government; the State and any subdivision or agency of the State; and any successor in interest to a person, institution, organization, or other entity referred to in this subsection.

[2001, c. 662, §11 (new).]

PL 1987, Ch. 285, §1 (RPR).
PL 1987, Ch. 769, §A105 (AMD).
PL 2001, Ch. 662, §11 (AMD).

§812. Right to benefits retained

1. Benefits accrual. Absence for military training as described in section 811 does not affect the employee's right to receive normal vacation, sick leave, bonus, advancement and other advantages of employment normally to be anticipated in the employee's particular position.

[2001, c. 662, §12 (new).]

2. Extension of insurance benefits. Insurance benefits must be extended according to this subsection.

A. A public or private employer shall continue, at no additional cost to the member, the existing health, dental and life insurance benefits for at least the first 30 days of the military duty for any member of the National Guard or the Reserves of the United States Armed Forces if the member takes a military leave of absence from a position with that employer, other than a temporary position, in response to state or federal military orders.

[2001, c. 662, §12 (new).]

B. After the expiration of the first 30 days of military leave, the member of the National Guard or the Reserves of the United States Armed Forces has the option of continuing the health, dental and life insurance benefits in effect at the member's own expense by paying the insurance premium at the same rates as paid by the employer.

[2001, c. 662, §12 (new).]

[2001, c. 662, §12 (new).]

PL 2001, Ch. 662, §12 (RPR).

§813. Remedies

1. Action authorized. If any employer fails to comply with any of the provisions of sections 811 and 812, the Attorney General, Judge Advocates of the Maine National Guard or employee may bring a civil action for damages for such noncompliance or apply to the courts for such equitable relief as may be just and proper under the circumstances.

[2001, c. 662, §12 (new).]

2. Award of fees; costs. In any civil action under section 811 or 812, the court in its discretion may award reasonable attorney's fees and costs.

[2001, c. 662, §12 (new).]

PL 2001, Ch. 662, §12 (RPR).

Subchapter 5-A: LEAVE OF ABSENCE AS LEGISLATOR

§821. Person employed in position other than temporary

Any person, except a person covered under Title 20-A, section 13602, employed in a position other than a temporary position shall be granted a leave of absence to fulfill the duties of a Legislator, provided that the employee gives written notice to his employer of his intent to become a candidate for the Legislature within 10 days after taking action under Title 21-A to place his name on a primary or general election ballot. Following his term of service as a Legislator, the employee, if he is still qualified to perform the duties of the position from which he was granted leave, shall be entitled to be restored to his previous, or a similar, position with the same status, pay and seniority. This leave of absence shall, within the discretion of the employer, be with or without pay and shall be limited to one legislative term of 2 years. [1987, c. 402, Pt. A, § 154 (amd).]

§821. Short title

§821 enacted by PL 1983, c. 452 reallocated to §831 by PL 1983, c. 452, §15)

PL 1983, Ch. 128, §1 (NEW).
PL 1983, Ch. 452, § (NEW).
PL 1983, Ch. 583, §15 (RAL).
PL 1985, Ch. 161, §7 (AMD).
PL 1987, Ch. 402, §A154 (AMD).

§822. Exception for employer with 5 or fewer employees

This subchapter is not applicable if the employer employs 5 or fewer persons immediately prior to the first day of the leave of absence. [1983, c. 128, § 1 (new).]

§822. Definitions

(§ 822 enacted by PL 1983, c. 452 reallocated to Title 26, § 832 by 1983, c. 583, § 15.)

PL 1983, Ch. 128, §1 (NEW).
PL 1983, Ch. 452, § (NEW).
PL 1983, Ch. 583, §15 (RAL).

§823. Waiver of right

An employee who fails to provide the notice to his employer required by section 821 waives any rights to a leave of absence provided by this subchapter. [1983, c. 128, § 1 (new).]

§823. Discharge of, threats to or discrimination

against employee for reporting violations of

law or refusing to carry out illegal directives

(Title 26, § 823 as enacted by PL 1983, c. 452 is reallocated to Title 26, § 833 by 1983, c. 583, § 15)

PL 1983, Ch. 128, §1 (NEW).
PL 1983, Ch. 452, § (NEW).
PL 1983, Ch. 583, §15 (RAL).

§824. Appeal by employer

1. Request. An employer who feels that granting the leave of absence required by this subchapter will cause unreasonable hardship for his business may appeal for relief by a written notice of appeal to the chairman of the State Board of Arbitration and Conciliation. If the notice of appeal is not filed within 14 days of receipt of the employee's notice requesting a leave of absence, the employer waives his right to appeal. The notice of appeal shall state the name of the employee and the reasons for the alleged unreasonable hardship. This section provides the exclusive remedy for an employer claiming unreasonable hardship as a result of a request for leave of absence.

[1983, c. 128, § 1 (new).]

2. Proceedings. The chairman of the State Board of Arbitration and Conciliation, or any member of the board designated by the chairman, shall serve as an arbitrator of any case appealed under this section. The proceeding shall provide an opportunity for the employee to respond, orally or in writing, to the allegations contained in the appeal. Within 30 days of receipt of the notice of appeal, the arbitrator shall issue an order, binding on both parties, either affirming or denying the claim of unreasonable hardship. If the claim is affirmed, the employee is not entitled to a leave of absence under this subchapter. In reaching his decision, the arbitrator shall consider, but is not limited to, the following factors:

A. The length of time the employee has been employed by the employer;

[1983, c. 128, § 1 (new).]

B. The number of employees in the employer's business;

[1983, c. 128, § 1 (new).]

C. The nature of the employer's business;

[1983, c. 128, § 1 (new).]

D. The nature of the position held by the employee and the ease or difficulty and cost of temporarily filling the position during the leave of absence; and

[1983, c. 128, § 1 (new).]

E. Any agreement entered into between the employee and employer as a condition of employment.

[1983, c. 128, § 1 (new).]

§824. Civil actions for injunctive relief or other

remedies

(§ 824 enacted by PL 1983, c. 452 reallocated to § 834 by 1983, c. 583, § 15)

[1983, c. 128, § 1 (new).]

PL 1983, Ch. 128, §1 (NEW).
PL 1983, Ch. 452, § (NEW).
PL 1983, Ch. 583, §15 (RAL).

Subchapter 5-B: PROTECTION OF EMPLOYEES WHO REPORT OR REFUSE TO COMMIT ILLEGAL ACTS

§831. Short title

This subchapter may be cited as the "Whistleblowers' Protection Act." [1983, c. 583, § 15 (ral).]

§832. Definitions

As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 583, § 15 (ral).]

1. Employee. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied, but does not include an independent contractor engaged in lobster fishing. "Employee" includes school personnel and a person employed by the State or a political subdivision of the State.

[1999, c. 351, §5 (amd).]

2. Employer. "Employer" means a person who has one or more employees. "Employer" includes an agent of an employer and the State, or a political subdivision of the State. "Employer" also means all schools and local education agencies.

[1999, c. 351, §6 (amd).]

3. Person. "Person" means an individual, sole proprietorship, partnership, corporation, association or any other legal entity.

[1983, c. 583, §15 (ral).]

4. Public body. "Public body" means all of the following:

A. A state officer, employee, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State Government;

[1983, c. 583, §15 (ral).]

B. An agency, board, commission, council, member or employee of the legislative branch of State Government;

[1983, c. 583, §15 (ral).]

C. A county, municipal, village, intercounty, intercity or regional governing body, a council, school district or municipal corporation, or a board, department, commission, council, agency or any member or employee thereof;

[1983, c. 583, §15 (ral).]

D. Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body;

[1983, c. 583, §15 (ral).]

E. A law enforcement agency or any member or employee of a law enforcement agency; and

[1983, c. 583, §15 (ral).]

F. The judiciary and any member or employee of the judiciary.

[1983, c. 583, §15 (ral).]

[1983, c. 583, §15 (ral).]

§833. Discrimination against certain employees prohibited (CONFLICT)

1. Discrimination prohibited. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because:

A. The employee, acting in good faith, or a person acting on behalf of the employee, reports orally or in writing to the employer or a public body what the employee has reasonable cause to believe is a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States;

[1987, c. 782, §4 (new).]

B. The employee, acting in good faith, or a person acting on behalf of the employee, reports to the employer or a public body, orally or in writing, what the employee has reasonable cause to believe is a condition or practice that would put at risk the health or safety of that employee or any other individual. The protection from discrimination provided in this section specifically includes school personnel who report safety concerns to school officials with regard to a violent or disruptive student;

[1999, c. 351, §7 (amd).]

C. The employee is requested to participate in an investigation, hearing or inquiry held by that public body, or in a court action;

[2003, c. 306, §1 (amd).]

D. (CONFLICT: Text as amended by PL 2003, c. 306, §1) The employee acting in good faith, has refused to carry out a directive that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the dangerous condition from the employer; or

[2003, c. 306, §1 (amd).]

D. (CONFLICT: Text as amended by PL 2003, c. 357, §1) The employee acting in good faith, has refused to carry out a directive to engage in activity that would be a violation of a law or rule adopted under the laws of this State, a political subdivision of this State or the United States or that would expose the employee or any individual to a condition that would result in serious injury or death, after having sought and been unable to obtain a correction of the illegal activity or dangerous condition from the employer.

[2003, c. 357, §1 (amd).]

E. The employee, acting in good faith and consistent with state and federal privacy laws, reports to the employer, to the patient involved or to the appropriate licensing, regulating or credentialing authority, orally or in writing, what the employee has reasonable cause to believe is an act or omission that constitutes a deviation from the applicable standard of care for a patient by an employer charged with the care of that patient. For purposes of this paragraph, "employer" means a health care provider, health care practitioner or health care entity as defined in Title 24, section 2502.

[2003, c. 306, §2 (new).]

[2003, c. 306, §§1, 2 (amd); c. 357, §1 (amd).]

2. Initial report to employer required; exception. Subsection 1 does not apply to an employee who has reported or caused to be reported a violation, or unsafe condition or practice to a public body, unless the employee has first brought the alleged violation, condition or practice to the attention of a person having supervisory authority with the employer and has allowed the employer a reasonable opportunity to correct that violation, condition or practice.

Prior notice to an employer is not required if the employee has specific reason to believe that reports to the employer will not result in promptly correcting the violation, condition or practice.

[1987, c. 782, §4 (new).]

3. Reports of suspected abuse. An employee required to report suspected abuse, neglect or exploitation under Title 22, section 3477 or 4011-A, shall follow the requirements of those sections under those circumstances. No employer may discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment because the employee followed the requirements of those sections.

[2001, c. 345, §7 (amd).]

§834. Civil actions for injunctive relief or other remedies (REPEALED)

§834-A. Arbitration before the Maine Human Rights Commission

An employee who alleges a violation of that employee's rights under section 833, and who has complied with the requirements of section 833, subsection 2, may bring a complaint before the Maine Human Rights Commission for action under Title 5, section 4612. [1987, c. 782, §6 (new).]

§835. Remedies ordered by court (REPEALED)

§836. Penalties for violations

A person who violates section 839 is liable for a civil fine of $10 for each day of willful violation which shall not be suspended. Any civil fine imposed under this section shall be submitted to the Treasurer of State for deposit to the General Fund. [1983, c. 816, Pt. A, § 19 (amd).]

§837. Collective bargaining rights

This subchapter shall not be construed to diminish or impair the rights of a person under any collective bargaining agreement. [1983, c. 583, § 15 (ral).]

§838. Compensation for employee participation in investigation, hearing or inquiry

This subchapter shall not be construed to require an employer to compensate an employee for participation in an investigation, hearing or inquiry held by a public body in accordance with section 833. [1983, c. 816, Pt. A, § 20 (amd).]

§839. Notices of employee protections and obligations

1. Notice provided; posting. The Department of Labor shall provide each employer in the State with a notice as provided in this section. Each employer shall prominently post the notice in the employer's place of business so that the employees are informed of their protections and obligations under this subchapter.

[1987, c. 782, §8 (new).]

2. Contents of notice. The notice provided by the department shall include:

A. A summary of this subchapter written in concise and plain language;

[1987, c. 782, §8 (new).]

B. A telephone number at the department that employees may call if they have questions or wish to report a violation, condition or practice; and

[1987, c. 782, §8 (new).]

C. A space where the employer shall write in the name of the individual or department to which employees may report violations, unsafe conditions or practices as required by section 833.

[1987, c. 782, §8 (new).]

[1987, c. 782, §8 (new).]

§840. Common-law rights

Nothing in this section may be construed to derogate any common-law rights of an employee. [1987, c. 782, §9 (rpr).]

Subchapter 6: EMPLOYEE TRUSTS

§841. Not subject to rule against perpetuities

A trust of real or personal property, or real and personal property combined, created by an employer as part of a stock bonus, pension, disability, death benefit or profit sharing plan for the benefit of some or all of his employees, to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees the earnings or the principal, or both earnings and principal, of the fund held in trust, may continue in perpetuity or for such time as may be necessary to accomplish the purpose for which it is created, and shall not be invalid as violating any rule of law against perpetuities or suspension of the power of alienation of the title to property.

No rule of law against perpetuities or suspension of the power of alienation of the title to property shall operate to invalidate any trust created or attempted to be created, prior to August 20, 1951, by an employer as a part of a stock bonus, pension, disability, death benefit

or profit sharing plan for the benefit of some or all of his employees to which contributions are made by the employer or employees, or both, for the purpose of distributing to the employees earnings or principal, or both earnings and principal, of the fund held in trust, unless the trust is terminated by a court of competent jurisdiction in a civil action instituted within 3 years after August 20, 1951.

Subchapter 6-A: FAMILY MEDICAL LEAVE REQUIREMENTS (HEADING: PL 1987, c. 661 (new))

§843. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 661 (new).]

1. Employee. "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 but does not include an independent contractor.

[1987, c. 661 (new).]

2. Employee benefits. "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.

[1987, c. 661 (new).]

3. Employer. "Employer" means:

A. Any person, sole proprietorship, partnership, corporation, association or other business entity that employs 15 or more employees at one location in this State;

[1999, c. 127, Pt. D, §2 (amd).]

B. The State, including the executive, legislative and judicial branches, and any state department or agency that employs any employees;

[1987, c. 661 (new).]

C. Any city, town or municipal agency that employs 25 or more employees; and

[1987, c. 661 (new).]

D. Any agent of an employer, the State or a political subdivision of the State.

[1987, c. 661 (new).]

[1999, c. 127, Pt. D, §2 (amd).]

4. Family medical leave. "Family medical leave" means leave requested by an employee for:

A. Serious health condition of the employee;

[1997, c. 546, §1 (amd).]

B. The birth of the employee's child;

[1987, c. 661 (new).]

C. The placement of a child 16 years of age or less with the employee in connection with the adoption of the child by the employee;

[2001, c. 684, §1 (amd).]

D. A child, parent or spouse with a serious health condition; or

[2001, c. 684, §2 (amd).]

E. The donation of an organ of that employee for a human organ transplant.

[2001, c. 684, §3 (new).]

[2001, c. 684, §§1-3 (amd).]

4-A. Health care provider. "Health care provider" means:

A. A doctor of medicine or osteopathy who is licensed to practice medicine or surgery in this State; or

[1997, c. 546, §2 (new).]

B. Any other person determined by the Secretary of Labor to be capable of providing health care services.

[1997, c. 546, §2 (new).]

[1997, c. 546, §2 (new).]

5. Serious illness.

[1997, c. 546, §3 (rp).]

6. Serious health condition. "Serious health condition" means an illness, injury, impairment or physical or mental condition that involves:

A. Inpatient care in a hospital, hospice or residential medical care facility; or

[1997, c. 546, §2 (new).]

B. Continuing treatment by a health care provider.

[1997, c. 546, §2 (new).]

[1997, c. 546, §2 (new).]

§844. Family medical leave requirement

1. Family medical leave entitlement. Every employee who has been employed by the same employer for 12 consecutive months is entitled to up to 10 consecutive work weeks of family medical leave in any 2 years unless employed at a permanent work site with fewer than 15 employees. The following conditions apply to family medical leave granted under this subchapter:

A. The employee must give at least 30 days' notice of the intended date upon which family medical leave will commence and terminate, unless prevented by medical emergency from giving that notice;

[1987, c. 861, §§19, 20 (amd).]

B. The employer may require certification from a physician to verify the amount of leave requested by the employee, except that an employee who in good faith relies on treatment by prayer or spiritual means, in accordance with the tenets and practice of a recognized church or religious denomination, may submit certification from an accredited practitioner of those healing methods; and

[1991, c. 277, §1 (amd).]

C. The employer and employee may negotiate for more or less leave, but both parties must agree.

[1987, c. 661 (new).]

[1997, c. 515, §1 (amd).]

2. Unpaid leave. Family medical leave granted under this subchapter may consist of unpaid leave. If an employer provides paid family medical leave for fewer than 10 weeks, the additional weeks of leave added to attain the total of 10 weeks required may be unpaid.

[1991, c. 277, §1 (amd).]

§845. Employee benefits protection

1. Restoration. Any employee who exercises the right to family medical leave under this subchapter, upon expiration of the leave, is entitled 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 subchapter.

[1987, c. 661 (new).]

2. Maintenance of employee benefits. During any family medical leave taken under this subchapter, the employer shall make it possible for employees to continue their employee benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

[1991, c. 277, §2 (amd).]

§846. Effect on existing employee benefits

1. Benefit accrual. The taking of family medical leave under this subchapter shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

[1987, c. 661 (new).]

2. Effect on collective bargaining. Nothing in this subchapter may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater family medical leave rights to employees than the

rights provided under this subchapter.

[1987, c. 661 (new).]

3. Rights not diminished. The family medical leave rights mandated by this subchapter may not be diminished by any collective bargaining agreement or by any employee benefit plan.

[1987, c. 661 (new).]

4. Contract rights. Nothing in this subchapter may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this subchapter.

[1987, c. 661 (new).]

§847. Prohibited acts

1. Unlawful interference or denial of rights. The employer may not interfere with, restrain or deny the exercise of or the attempt to exercise any right provided by this subchapter.

[1987, c. 661 (new).]

2. Unlawful discrimination against exercise of rights. The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for exercising any right provided by this subchapter.

[1987, c. 661 (new).]

3. Unlawful discrimination against opposition. The employer may not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this subchapter.

[1987, c. 661 (new).]

§848. Judicial enforcement

A civil action may be brought in the appropriate court by an employee against any employer to enforce this subchapter. The court may enjoin any act or practice that violates or may violate this subchapter and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this subchapter. The court may also order the employer to pay as liquidated damages $100 to the employee for each day the violation continues. [1987, c. 661 (new).]

§849. Review; sunset (REPEALED)

Subchapter 6-B: EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE (HEADING: PL 1999, c. 659, @1 (new))

§850. Employment leave for victims of violence

1. Required leave. An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:

A. Prepare for and attend court proceedings;

[1999, c. 435, §1 (new).]

B. Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or

[2001, c. 685, §1 (amd).]

C. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

[1999, c. 435, §1 (new).]

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 101. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

[2001, c. 685, §1 (amd).]

1-A. Definitions. For purposes of this subchapter, the terms "daughter," "son," "parent" and "spouse" have the same meanings as those terms have under federal regulations adopted pursuant to 29 United States Code, Section 2654, as in effect on January 1, 2002. An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents.

[2001, c. 685, §2 (new).]

2. Exceptions. Subsection 1 is not violated if:

A. The employer would sustain undue hardship from the employee's absence;

[2001, c. 685, §3 (amd).]

B. The request for leave is not communicated to the employer within a reasonable time under the circumstances; or

[1999, c. 435, §1 (new).]

C. The requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer.

[1999, c. 435, §1 (new).]

[2001, c. 685, §3 (amd).]

3. Civil penalties. The Department of Labor may assess civil penalties of up to $200 for each violation of this section, if notice of the violation was given to the employer and the department within 6 months of the occurrence.

[1999, c. 435, §1 (new).]

4. Application. This subchapter applies to all public and private employers, including the State and its political subdivisions.

[1999, c. 659, §2 (new).]

Subchapter 7: STRIKEBREAKERS

§851. Policy

It is declared to be the policy of the State, in the exercise of its police power for the protection of the public safety and for the maintenance of peace and good order and for the promotion of the state's trade, commerce and manufacturing, to assure all persons involved in labor strikes or lockouts, freedom of speech and freedom from bodily harm and to prohibit the occasion of violence and disorder and in furtherance of these policies, to prohibit the recruitment and furnishing of professional strikebreakers to replace the employees involved in labor strikes or lockouts. [1965, c. 189 (new).]

§852. Employment of replacements prohibited

No person, partnership, union, agency, firm or corporation or officer, employee or agent thereof shall recruit, procure, supply or refer any person for employment who customarily and repeatedly offers himself for employment in place of any employee involved in a labor, strike or lockout in which such person, partnership, union, agency, firm or corporation is not directly involved. [1965, c. 189 (new).]

§853. Arrangements

No person, partnership, union, firm or corporation involved in a labor, strike or lockout shall, directly or indirectly, employ in the place of an employee involved in such strike or lockout any person who customarily and repeatedly offers himself for employment in the place of employees involved in a labor strike or lockout, or contract or arrange with any other person, partnership, union, agency, firm or corporation to recruit, procure, supply or refer persons for employment who customarily and repeatedly offers themselves for employment in place of employees involved in such labor, strike or lockout. [1965, c. 189 (new).]

§854. Offers

No person who customarily and repeatedly offers himself for employment in place of employees involved in a labor, strike or lockout shall take or offer to take the place of employment of any employee involved in a labor, strike or lockout. [1965, c. 189 (new).]

§855. Evidence

It shall be prima facie evidence that a person customarily and repeatedly offers himself for employment in place of employees involved in a labor, strike or lockout, if such person shall have 2 times before offered to take the place of employment of persons involved in labor, strikes or lockouts. [1965, c. 189 (new).]

§856. Penalty

Any person, partnership, union, agency, firm or corporation or any officer, employee or agent thereof, who or which shall willfully and knowingly violate any provision of this subchapter, for each violation, shall be punished by a fine of not more than $300 for any such offense, or by imprisonment for not more than 180 days, or by both. [1965, c. 189 (new).]

Title 26, Chapter 7, EMPLOYMENT PRACTICES

Subchapter 8: FAIR EMPLOYMENT PRACTICE ACT

§861. Right to freedom from discrimination in employment (REPEALED)

§862. Unlawful employment practices (REPEALED)

§863. Procedure (REPEALED)

§864. Penalty (REPEALED)

Subchapter 9: ALIENS

§871. Illegal employment of aliens

1. Prohibition. No employer shall knowingly employ any alien in this State who has not been lawfully admitted to the United States for permanent residence, unless the employment of the alien is authorized by the United States Immigration and Naturalization Service.

[1977, c. 116 (new).]

2. Penalty. Violation of subsection 1 shall be a Class E crime. It is an affirmative defense to prosecution under subsection 1 that the employer, before employing or referring a person for employment, made a good faith inquiry as to whether that person was a United States citizen or an alien, and if the inquiry reasonably indicated that the person was an alien, the employer made a further good faith inquiry which reasonably indicated that the alien was lawfully admitted to the United States for permanent residence or that the United States Immigration and Naturalization Service had authorized the alien to accept employment in the United States.

A. A good faith inquiry under this subsection shall be in writing. An employment application form which requests citizenship data, or an alien registration number if the applicant is an alien, meets the requirement of a good faith inquiry in writing.

[1977, c. 116 (new).]

B. A social security account number card shall not be deemed evidence of the United States Immigration and Naturalization Service's authorization for an alien to accept employment in the United States.

[1977, c. 116 (new).]

[1977, c. 116 (new).]

3. Regulations. The Commissioner of Labor shall promulgate regulations specifying the procedure to be followed by each employer to ensure compliance with subsection 1. These regulations shall include provisions for reporting violations of subsection 1 to the Attorney General and the United States Immigration and Naturalization Service.

[1981, c. 168, §25 (amd).]