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STATE

Littler on

Maine Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Maine employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

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This publication is not intended to, and does not, provide legal advice or a legal opinion. It does not establish an attorney-client relationship between Littler Mendelson, P.C. and the user. It also is not a do-it-yourself guide to resolving employment issues or handling employment litigation. Nonetheless, employers involved in ongoing disputes and litigation may find the information useful in understanding the issues raised and their legal context. This publication is not a substitute for experienced legal counsel and does not provide legal advice regarding any particular situation or employer, or attempt to address the numerous factual issues that arise in any employment-related dispute.

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ACKNOWLEDGEMENTS

Erin M. Reid-Eriksen, Susie Papreck Wine, and Deanne Meyer would like to gratefully acknowledge the contributions of the attorneys who make this publication possible:

- Geetika Antani;
- Vincent Bates;
- Sebastian Chilco;
- Brittney Gibson;
- Maureen H. Lavery;
- Christine McDaniel Novak;
- Lilanthi Ravishankar;
- Rachel Simek;
- Mike Skidgel;
- Hannah Stilley; and
- Christine Sellers Sullivan.

Additional research and editing assistance was also rendered by Barb Olson.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

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[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331U.S. 722 (1947).

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3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Maine, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1). However, Maine also has a general classification standard for workers.[5] The law standardizes the definition of independent contractor for purposes of wage and hour law, unemployment insurance, and workers' compensation.

The definition creates a two-part test. Services performed by an individual for remuneration are presumed to be employment, unless the presumption is rebutted. An individual will be considered an independent contractor if by contract and in reality, the individual is free from the employing unit's essential direction and control, and the employing unit proves that the individual meets certain criteria.[6]

To prove independent contractor status, an employing unit must demonstrate *all* of the following:

1. the individual has the essential right to control the work's means and progress (except as to final results);
2. the individual is customarily engaged in an independently established trade, occupation, profession, or business;
3. the individual has the opportunity for profit and loss as a result of the services provided;

---

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15F.3d103, 105(8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545F.3d338, 347(5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] ME. STAT. tit.26, §§ 591, 591-A (employment law), 1043(11)(E) (unemployment insurance); ME. STAT. tit. 39-A, §§ 102(13-A), 401(1) (workers' compensation); *see also* Maine Dep't of Labor, Bureau of Labor Standards, *Employment Standard Defining Employee vs Independent Contractor*, *available at* https://www.maine.gov/labor/misclass/employmentstandard/index.shtml; Maine Workers' Comp. Bd., *FAQ-Independent Contractors*, *available at* http://www.maine.gov/wcb/Departments/coverage/independentcontractorFAQ.html; Maine Dep't of Labor, Bureau of Labor Standards, *Worker Misclassification – Understanding the Law*, *available at* http://www.maine.gov/labor/misclass/.

[6] ME. STAT. tit.26, § 1043(11)(E); ME. STAT. tit. 39-A, § 102(13-A).

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4. the individual hires and pays assistants, if any, and, to the extent assistants are employees, supervises the details of their work; and
5. the individual makes services available to some client or customer community even if the right to do so is voluntarily not exercised or is temporarily restricted.[7]

Additionally, an employing unit must demonstrate that *at least three* of the following criteria are met:

1. the individual has a substantive investment in facilities, tools, instruments, materials, and knowledge used to complete the work;
2. the individual is not required to work exclusively for the employing unit;
3. the individual is responsible for the work's satisfactory completion and may be held contractually responsible for failure to complete the work;
4. the parties' contract defines the relationship and gives contractual rights if the contract is terminated by the employing unit prior to completion of the work;
5. payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by the individual;
6. the work performed is outside the employing unit's usual course of business; or
7. the individual has been determined to be an independent contractor by the federal Internal Revenue Service (IRS).[8]

Penalties. Under the employment law provisions, a civil fine between $2,000 and $10,000 can be imposed against an employer for intentionally or knowingly misclassifying an employee as an independent contractor. As well, penalties may be imposed under the unemployment insurance and workers' compensation provisions.[9]

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Maine Human Rights Commission	Federal common-law agency test, as set forth in *Nationwide Mutual Insurance Co. v. Darden*.[10]

[7] ME. STAT. tit.26, § 1043(11)(E); ME. STAT. tit. 39-A, § 102(13-A).

[8] ME. STAT. tit.26, § 1043(11)(E); ME. STAT. tit. 39-A, § 102(13-A).

[9] ME. STAT. tit.26, § 591-A.

[10] *Gavrilovic v. Worldwide Language Res., Inc.*, 441F. Supp. 2d163, 175(D. Me. 2006) (in examining whether the plaintiff was an employee or independent contractor under Title VII of the Civil Rights Act of 1964 ("Title VII") and the Maine Human Rights Act (MHRA), the court noted that federal courts within the First Circuit Court of Appeals apply the federal common-law agency text). Under the *Darden* common-law agency test, in determining whether a hired party is an employee under the general common law of agency, courts consider "the hiring party's right to control the manner and means by which the product is accomplished." *Nationwide Mutual Ins. Co. v. Darden*, 503U.S.318, 323(1992). Relevant factors include:

> the skill required; the source of the instrumentalities and tools; the location of the work; the duration of the relationship between the parties; whether the hiring party has the right to assign additional projects

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Income Taxes	Maine Revenue Services	IRS 20-factor test.[11]
Wage & Hour Laws	Maine Department of Labor, Bureau of Labor Standards, Wage & Hour Division	General classification standard, see above.[12]
Unemployment Insurance	Maine Department of Labor, Bureau of Unemployment Compensation	General classification standard, see above.[13]
Workers' Compensation	Maine Workers' Compensation Board	General classification standard, see above.[14]

> to the hired party; the extent of the hired party's discretion over when and how long to work; the method of payment; the hired party's role in hiring and paying assistants; whether the work is part of the regular business of the hiring party; whether the hiring party is in business; the provision of employee benefits; and the tax treatment of the hired party.

Darden, 503 U.S. at 323-24. The court also noted that in Maine, "control is the most important factor in determining whether an individual is an employee or independent contractor." *Gavrilovic*, 441 F. Supp. 2d at 175 (citation omitted); *see also* Maine Human Rights Comm'n, *Counsel Memorandum* (Apr. 26, 2006), *available at* https://www.maine.gov/mhrc/sites/maine.gov.mhrc/files/pdfs/20060426_g.pdf (citing federal case law, including *Darden*, in interpreting the definition of employee in the MHRA); Maine Human Rights Comm'n, Interdepartmental Memorandum, *Coverage of the Maine Human Rights Act with Regard to the Distinction Between Status as "Employee" and as Independent Contractor* (July 29, 1980), *available at* https://www.maine.gov/mhrc/sites/maine.gov.mhrc/files/pdfs/19800729_g.pdf (likening the MHRA to Title VII, then analyzing the "economic realities" of the working relationship between the parties, and applying an agency test in analyzing control, when determining employee versus independent contractor status under the MHRA).

[11] Maine Dep't of Labor, Bureau of Labor Standards, *Worker Misclassification – Understanding the Law*, *available at* http://www.maine.gov/labor/misclass/ ("Maine Revenue Services follows the same standards as the Internal Revenue Service.").

[12] There is no direct citation to the test in the wage and hour laws. However, the Bureau of Labor Standards advises that "[c]urrent law establishes a common 'employment' definition for workers' compensation, unemployment insurance and wage & hour coverage." Maine Dep't of Labor, Bureau of Labor Standards, *Worker Misclassification – Understanding the Law*.

[13] ME. STAT. tit. 26, § 1043(11)(E).

[14] ME. STAT. tit. 39-A, § 102(13-A). The Workers' Compensation Board also has a process that allows (but does not require) an individual to receive a predetermination of their status as an independent contractor. The general classification law has not impacted this process. However, the predeterminations are rebuttable, except for landowners who hire wood harvesters. In addition, the Maine Department of Labor will not rely on independent contractor predeterminations made by the Workers' Compensation Board for proceedings before the Department. *See* Maine Workers' Comp. Bd., *FAQ-Independent Contractors*, *available at*

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
Workplace Safety	Not applicable	There are no relevant statutory definitions or case law identifying a test for independent contractor status. Maine does not have an approved state plan under the federal Occupational Safety and Health Act.

1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[15]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly,

http://www.maine.gov/wcb/Departments/coverage/independentcontractorFAQ.html and Maine Workers' Comp. Bd., *Independent Contractors Predetermination Applications*, *available at* http://www.maine.gov/wcb/Departments/coverage/independentcontractor.html; see also ME. STAT. tit. 39-A, §§ 105, 209-A, 221, 360, 401.

[15] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

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state and local immigration laws have faced legal challenges.[16] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[17]

For more information on these topics, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.

1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Employer Prohibitions*

Employers are prohibited from knowingly employing aliens in Maine who have not been lawfully admitted to the United States for permanent residence, unless employment of the alien is authorized by the U.S. Citizenship and Immigration Services (USCIS).[18]

Maine does not require employers to use E-Verify or another electronic verification method.

Affirmative Defense. An employer that made a good faith inquiry as to whether a person is a U.S. citizen or alien will have a defense to having knowingly employed an unauthorized alien provided:

- If the inquiry reasonably indicated the individual was an alien, the employer made a further good faith inquiry that reasonably indicated the alien was lawfully admitted to the United States for permanent residence or that the USCIS had authorized the alien to accept employment in the United States.
- The good faith inquiry is in writing. An employment application that requests citizenship data or an alien registration number (if an alien) satisfies the good faith requirement. However, a Social Security account number card is not evidence of USCIS authorization for an alien to accept employment in the United States.[19]

1.2(b)(ii) *State Enforcement, Remedies & Penalties*

Violation of the employment eligibility provision is a Class E crime, punishable by fines, imprisonment, or both.[20]

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[16] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[17] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

[18] ME. STAT. tit. 26, § 871(1). Although the statute refers to the U.S. Immigration and Naturalization Service, that agency ceased to exist in 2003, and its functions were assumed by USCIS, U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).

[19] ME. STAT. tit. 26, § 871(2).

[20] ME. STAT. tit. 26, § 871(2); *see also* ME. STAT. tit. 17-A, §§ 1704, 1705, 1252.

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In addition, employers convicted of knowingly employing aliens who are not lawfully admitted to the United States as permanent residents, or who are not otherwise authorized to work, can be barred for two years from hiring temporary foreign workers in Maine under the federal H-2A program.[21]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[22] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in 1.3(b)(i). The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

The Maine Human Rights Commission's *Pre-Employment Inquiry Guide* lists inquiries about arrest records as "unlawful." This guide expressly addresses inquiries to applicants, and not current employees.[23]

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[21] The preclusion applies to temporary foreign workers classified under classified under 8 U.S.C. § 1101(a)(15)(H)(ii)(a). ME. STAT. tit. 26, § 871(1-A).

[22] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[23] Maine Human Rights Comm'n, *Pre-Employment Inquiry Guide - Category Race* (rev. July 2012), *available at* https://www.maine.gov/mhrc/laws-guidance/employment/pre-employment.

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Ban-the-Box Law. Under state the law, an employer of one or more employees cannot:

- request criminal history record information on the employer's initial employment application form; or
- state on an initial employment application form or advertisement, or specify prior to determining a person is otherwise qualified for the position, that a person with a criminal history may not apply or will not be considered for a position.[24]

However, an employer may inquire about a prospective employee's criminal history record information during an interview or once the prospective employee has been determined otherwise qualified for the position. In addition, an employer may nonetheless inquire about criminal convictions on an initial employee application form, or state on an initial employee application form or advertisement, or otherwise assert that a person with a criminal history may not apply or will not be considered for a position if:

- the position is one for which a federal or state law or regulation or rule creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses, and the questions on the initial employee application form are limited to the types of criminal offenses creating the disqualification;
- the employer is subject to an obligation imposed by a federal or state law or regulation or rule not to employ in a position a person who has been convicted of one or more types of criminal offenses, and the questions on the initial employee application form are limited to the types of criminal offenses creating the obligation; or
- the employer is required by federal or state law or regulation or rule to conduct a criminal history record check for the position for which the prospective employee is applying.[25]

The Maine Criminal History Record Information Act. If employers wish to pull criminal history records on any of their employees, some of these records are considered public information, and the employer would be free to obtain this information.[26] Specifically, public criminal history record information is considered public information and may be disseminated by a Maine criminal justice agency to any person or public or private entity for any purpose.[27] *Public criminal history record information* means criminal history record information that is not confidential criminal history record information.[28]

A Maine criminal justice agency is restricted from disseminating confidential criminal history, except under certain, limited circumstances. One of the allowances is for persons who make a specific inquiry to the criminal justice agency as to whether a named individual was summoned, arrested, or detained or had formal criminal charges initiated on a specific date. Another allowance would be if an employee is arrested and the employer wonders about the disposition of the charge, the employer can be told the specific disposition if the inquiry is within 30 days of the date of occurrence of that disposition. However, if the person to whom the disposition relates (the employee) specifically authorizes that the information be

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[24] ME. STAT. tit. 26, § 600-A.

[25] ME. STAT. tit. 26, § 600-A.

[26] ME. STAT. tit. 16, § 704.

[27] ME. STAT. tit. 16, § 704.

[28] ME. STAT. tit. 16, § 703(8).

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made public, then that information can be released anytime.[29] A Maine criminal justice agency may *not* confirm the existence or nonexistence of confidential criminal history record information to any person or public or private entity that would not be eligible to receive the information itself.[30] *Confidential criminal history record information* includes such information as summons and arrest information in a pending case with an interval of more than one year with no active prosecution or information where a law enforcement agency, prosecutor, or grand jury has elected not to proceed.[31]

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

Maine's ban-the-box law does not distinguish between arrest and conviction records.[32] The provisions regarding access to criminal records are applicable to conviction records (see **1.3(a)(ii)**).

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

Juvenile Records. A person may legally deny the existence of their conviction for certain current crimes committed as juvenile without being subject to any sanctions, if these convictions have been sealed under the statute.[33]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[34] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[35] regarding job applicants for use in hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

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[29] ME. STAT. tit. 16, §§ 704, 705.

[30] ME. STAT. tit. 16, § 705(2).

[31] ME. STAT. tit. 16, § 703(2).

[32] *See* ME. STAT. tit. 26, § 600-A.

[33] ME. STAT. tit. 15 § 3308-C(10).

[34] 15 U.S.C. §§ 1681 *et seq*.

[35] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing, character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

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Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[36]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Maine's mini-FCRA, as it relates to all relevant provisions concerning employment-related requirements, expressly incorporates the federal standards, and simply requires compliance with the federal FRCA. However, additional penalties and remedies exist under state law.[37]

1.3(b)(iii) *State Enforcement, Remedies & Penalties*

Employers that violate Maine's credit check provisions may be sued, and ordered to pay actual damages, additional damages of at least $100 for each violation for negligent violations, treble damages for willful violations, and, reasonable attorneys' fees and costs. Employers that are sued may also be liable for civil penalties.[38]

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.
- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

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[36] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

[37] ME. STAT. tit. 10, §§ 1306 *et seq*.

[38] ME. STAT. tit. 10, §§ 1310-A, 1310-C, and 1310-D.

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For additional information on federal law related to background screening, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

In Maine, an employer cannot:

- require or coerce an employee or applicant to disclose, or request that they disclose, the password or any other means for accessing a personal social media account;
- require or coerce an employee or applicant to access, or request that they access, a personal social media account in the presence of the employer or its agent;
- require or coerce an employee or applicant to disclose any personal social media account information;
- require or cause an employee or applicant to add anyone, including the employer or its agent, to the employee's personal social media account's contacts list; or
- require or cause an employee or applicant to alter, or request that they alter, settings that affect a third party's ability to view the contents of a personal social media account.[39]

An employer cannot threaten to or actually discharge, discipline, or otherwise penalize an employee, or fail or refuse to hire an applicant, because they refused to comply with a prohibited request.[40]

A *social media account* is an account with an electronic medium or service through which users create, share, and view user-generated content including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant and text messages, email, online service accounts, and website profiles and locations.[41]

Exceptions. The law does not preclude an employer from accessing information about an applicant or employee that is publicly available.[42] In addition, the law does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established by a self-regulatory organization or under state or federal law, regulation, or rule to the extent necessary to supervise communications of regulated financial institutions or insurance or securities licensees for banking-related, insurance-related, or securities-related business purposes.[43]

In regards to workplace investigations, an employer can require an employee to disclose personal social media account information the employer reasonably believes to be relevant to an investigation of allegations of employee misconduct or a workplace-related violation of applicable laws, rules, or regulations if requiring disclosure is not otherwise prohibited by law, and as long as the information

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[39] ME. STAT. tit. 26, § 616.

[40] ME. STAT. tit. 26, § 616.

[41] ME. STAT. tit. 26, § 615(4).

[42] ME. STAT. tit. 26, § 617(1).

[43] ME. STAT. tit. 26, § 617(2).

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disclosed is accessed and used solely to the extent necessary for purposes of that investigation or a related proceeding.[44]

Rules of Employer-Provided Devices & Online Accounts. The statutory definition of social media account does not include an account opened at an employer's behest, provided by an employer, or intended to be used primarily on an employer's behalf.[45]

Moreover, the law does not limit an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement that an employee disclose to the employer their username, password or other information necessary to access employer-issued electronic devices, including but not limited to cellular telephones and computers, or to access employer-provided software or email accounts.[46]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

An employer that violates the social media law is subject to a fine, which varies depending on whether the violation is a first, second, or subsequent.[47]

1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[48] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty.

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[44] ME. STAT. tit. 26, § 617(3).

[45] ME. STAT. tit. 26, § 615(4).

[46] ME. STAT. tit. 26, § 618.

[47] ME. STAT. tit. 26, § 619.

[48] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

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For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

Employers and employment agencies cannot: (1) directly or indirectly require, request, or suggest that an applicant or employee submit to a polygraph examination as a condition of obtaining or continuing employment; (2) administer or cause to be administered to an applicant or employee any such examination; or (3) use or refer to the results of such an examination for hiring or employment purposes.[49]

The law does not prohibit an *employee* from voluntarily requesting a polygraph examination in connection with employment. Moreover, the law does not preclude an employer from using or referring to the results of any examination that an employee has requested.[50] However, the results of a voluntary examination cannot be used against the employee by the employer for any purpose. In addition, the employer must give the employee a copy of the polygraph law at the time the employee requests the examination and the examination must be recorded or a witness of the employee's choice must be present during the examination, or both, as the employee requests.[51]

An employer cannot disclose the information or records from a polygraph examination to another person other than those listed in the statute, which includes the subject of the examination or the subject's attorney and any other person specifically designated in writing by the subject of the examination.[52]

1.3(d)(iii) *State Enforcement, Remedies & Penalties*

An employer that intentionally violates the confidentiality provisions may be found guilty of a Class D crime. An intentional violation of the polygraph law, except for the confidentiality provisions, is a Class E crime.[53]

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[54] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not

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[49] ME. STAT. tit. 32, § 7364.

[50] ME. STAT. tit. 32, § 7364(4).

[51] ME. STAT. tit. 32, § 7364(4).

[52] ME. STAT. tit. 32, § 7365.

[53] ME. STAT. tit. 32, § 7355.

[54] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

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subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[55] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Maine has a drug testing law that covers both private and public employees.[56] While employers are not required to conduct substance abuse testing of applicants or employees, those that voluntarily choose to test must do so in accordance with Maine's drug testing law.[57] Supplemental policies may be established, provided such policies are not inconsistent with Maine's drug testing law. The law also does not prevent the negotiation of collective bargaining agreements that provide greater protection to applicants or employees.[58]

Written Policy Requirement. Before establishing any substance abuse testing program, an employer must develop a written policy that meets the statutory requirements and includes information such as:

- the procedures 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 (mandatory for any employer with over 20 full-time employees);
- when substance abuse testing may occur, including the positions subject to testing and the procedure to be followed in selecting employees for random or arbitrary testing;
- testing specifics, including the collection of samples, the storage of samples, the chain of custody of samples, the substances to be tested for, the cutoff levels for screening, and conformation tests;
- the consequences of a confirmed positive substance abuse test result or the consequences of refusal to submit to a substance abuse test;
- opportunities and procedures for rehabilitation following a confirmed positive result;
- the procedure under which an applicant or employee who receives a confirmed positive result may appeal and contest the accuracy of a positive result; and
- any other matters required by rules adopted by the Maine Department of Labor.[59]

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[55] 41 U.S.C. §§ 8101 *et seq.*; *see also* 48 C.F.R. §§ 23.500 *et seq*.

[56] ME. STAT. tit. 26, §§ 681 *et seq*.

[57] ME. STAT. tit. 26, §§ 681(2), 683.

[58] ME. STAT. tit. 26, § 681(2)-(3).

[59] ME. STAT. tit. 26, § 683(1)-(2).

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The Maine Department of Labor must approve the substance abuse testing program policy *before* the employer implements it.[60]

An employer must provide each employee with a copy of the approved written policy at least 30 days before any portion applicable to employees takes effect. The employer also must notify employees of any approved changes at least 60 days before the portion of the change applicable to employees takes effect. These notification periods do not apply to applicants, but the employer nonetheless must provide a copy of the written policy to an applicant prior to any testing.[61]

Testing Requirements. An employer may perform screening tests administered to applicants if it has testing facilities that meet the requirements for testing laboratories under the statute.[62] An employer must pay all costs of all substance abuse testing that it requires, requests, or suggests of an applicant or an employee. Costs of additional testing must be paid for by the employer if the results are negative and by the employee if the results are positive.[63] An employer must promptly notify the applicant or employee of the test result and upon request, provide the laboratory report to the individual. Within three workdays after notice of a confirmed positive result, the applicant or employee may submit an explanation or contest the results.[64]

Testing of Applicants. An employer may require, request, or suggest that an applicant submit to a substance abuse test only if: (1) the applicant has been offered employment with the employer; or (2) the applicant has been offered a position on a roster of eligibility from which applicants will be selected for employment. However, the number of persons on this roster of eligibility may not exceed the number of applicants hired by that employer in the preceding six months. An offer of employment or of a position on the eligibility roster may be conditioned on a negative test result.[65] An employer may use a confirmed positive result or the refusal of an applicant to submit to a test as a factor in refusal to hire the applicant or refusal to place the applicant on an eligibility roster.[66] However, "[a]n 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."[67]

Testing of Employees. The Maine guidelines allow employers to require, suggest, or request an employee submit to a substance abuse test if the employer has "probable cause" to test the employee. Only the employee's immediate supervisor, other supervisory personnel, a licensed physician or nurse, or the employer's security personnel have the authority to make a determination of probable cause. 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.[68]

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[60] ME. STAT. tit. 26, §§ 683, 686.

[61] ME. STAT. tit. 26, § 683(3).

[62] ME. STAT. tit. 26, § 683(6).

[63] ME. STAT. tit. 26, § 683(9).

[64] ME. STAT. tit. 26, § 683(8)(B).

[65] ME. STAT. tit. 26, § 684(1).

[66] ME. STAT. tit. 26, § 685(2).

[67] ME. STAT. tit. 26, § 685(A-1).

[68] ME. STAT. tit. 26, § 684(2).

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In addition to testing employees on a probable cause basis, an employer may require, request, or suggest that an employee submit to a substance abuse test on a random or arbitrary basis if:

- the employer and the employee have bargained for provisions in a collective bargaining agreement that provide for random or arbitrary testing of employees (note, 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 requirement);
- 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 coworkers if the employee were under the influence of a substance of abuse; or
- the employer has established a random or arbitrary testing program that applies to all employees, except as otherwise provided in a collective bargaining agreement, regardless of position.[69]

An employer may establish a random testing policy if the employer has 50 or more employees that are not covered by a collective bargaining agreement. Before initiating this type of testing program, the employer must obtain from the Maine Department of Labor approval of the policy developed by an employee committee. If the employer does not approve of the written policy developed by the employee committee, the employer may decide not to submit the policy to the department and not to establish the testing program. The employer may not change the written policy without approval of the employee committee.[70]

Waiver Prohibited. An employer may not require, request, or suggest that any employee or applicant sign or agree to any form or agreement that attempts to waive rights and obligations under the law or absolve the employer of any potential liability arising out of the imposition of the substance abuse testing.[71]

Confidentiality. Unless the employer has received consent from the applicant or employee, all information acquired by the employer during the substance abuse testing process is confidential and may not be released to any person other than the individual tested, necessary personnel, a provider of treatment or rehabilitation or, as otherwise required by law.[72]

1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

Employers cannot charge applicants a fee for requesting, submitting, filing, or completing employment applications.[73]

Additionally, an employer cannot require an employee or an applicant to pay the cost of a medical or eye examination that is ordered or required by the employer.[74]State law prohibits employers from requesting

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[69] ME. STAT. tit. 26, § 684(3).

[70] ME. STAT. tit. 26, § 684(3).

[71] ME. STAT. tit. 26, § 683(4).

[72] ME. STAT. tit. 26, § 685(3).

[73] ME. STAT. tit. 26, § 594.

[74] ME. STAT. tit. 26, § 592.

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an applicant's Social Security number unless it is to be used for substance use testing, a preemployment background check, or if required by federal law.[75]

1.3(f)(ii) *Restrictions on Salary History Inquiries*

Under state law, an employer may not use or inquire about a prospective employee's compensation history from the prospective employee or a current or former employer of the prospective employee unless an offer of employment that includes all terms of compensation has been negotiated and made to the prospective employee. After the employer makes such an offer of employment, the employer may inquire about or confirm the prospective employee's compensation history.[76]

The law builds in exceptions to the general prohibition against compensation history inquiries. If an employee or prospective employee has voluntarily disclosed compensation history information, without prompting by the employer or employment agency, the employer or employment agency may seek to confirm or permit a prospective employee to confirm such information prior to an offer of employment.[77] In addition, the prohibition on compensation history inquiries does not apply to an employer who inquires about compensation history pursuant to any federal or state law that specifically requires the disclosure or verification of compensation history for employment purposes.[78]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[79] and a cost-sharing reduction under section 1402 of the Patient Protection and

[75] ME. STAT. tit. 26, § 598A.

[76] ME. STAT. tit. 5, § 4577; ME. STAT. tit. 26, § 628-A.

[77] ME. STAT. tit. 5, § 4577.

[78] ME. STAT. tit. 5, § 4577; ME. STAT. tit. 26, § 628-A.

[79] 26 U.S.C. § 36B.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Affordable Care Act[80] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for federal income tax purposes.[81] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[82]
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[83] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[84]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[85] In either case, distribution may be accomplished electronically. Employers may use a

[80] 42 U.S.C. § 18071.

[81] 29 U.S.C. § 218b.

[82] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[83] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[84] 29 C.F.R. § 2590.606-1.

[85] 29 C.F.R. § 825.300(a).

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[86] Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[87]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[88] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[89]
Uniformed Services Employment and Reemployment Rights	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[90]

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[86] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

[87] 29 C.F.R. § 825.300(a).

[88] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[89] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[90] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Act (USERRA) Documents	
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[91]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Paid Family and Medical Leave Program	**Effective May 1, 2026**, an employer shall issue to each employee not more than 30 days from the beginning date of the employee's employment the following written information provided or approved by the department in the employee's primary language: • an explanation of the availability of family leave benefits and medical leave benefits provided under this subchapter, including rights to reinstatement of employment and continuation of health insurance; • the employee's contribution amount and obligations under this subchapter; • the name and mailing address of the employer; • the identification number assigned to the employer by the administrator; • instructions on how to file a claim for family leave benefits or medical leave benefits; • the mailing address, email address and telephone number of the administrator; and • any other information deemed necessary by the administrator.[92]
Fair Employment Practices Documents	No notice requirement located.

[91] 29 C.F.R. § 531.59.

[92] ME. STAT. tit. 26 § 850-I.

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Table 3. State Documents to Provide at Hire	
Category	**Notes**
Substance Abuse Testing Program Documents	As discussed in 1.3(e)(ii), Maine employers may voluntarily adopt a substance abuse testing program. Among other requirements, employers must develop a written testing policy and must provide a copy of the policy to applicants before any testing is administered.[93]
Tax Documents	Employees must furnish employers a signed Maine Employee's Withholding Allowance Certificate (Form W-4ME) on the same date they furnish the required federal withholding allowance certificate. The certificate must list the number of withholding allowances employees claim.[94]
Wage & Hour Documents: Tipped Employees	Employers that elect to use the tip credit must inform affected employees in advance, either orally or in writing, of the following information: (1) the amount of the direct wage to be paid by the employer to the tipped employee; (2) the amount of tips to be credited as wages toward the minimum wage; (3) that the amount of tips to be credited as wages may not exceed the value of the tips actually received by the employee; (4) that all tips received by the affected employee must be retained by the employee, except for a valid tip pooling arrangement limited to employees who customarily and regularly receive tips (effective September 19, 2023, it is not limited to employees who customarily and regularly receive tips); (5) that the tip credit does not apply to any employee who has not been informed by the employer of the provisions for a tip credit; and, (5) if the employer uses a tip pooling arrangement, any required tip pool contribution amount from the employee.[95]
Noncompete Agreements	If an employer requires a noncompete agreement for a position of employment, the employer must disclose that requirement in any advertisement for that position, and an employer must provide an employee or prospective employee with a copy of a noncompete agreement at least three business days before requiring that employee or prospective employee to sign the agreement.[96]

[93] ME. STAT. tit. 26, § 683(3).

[94] 18-125-803 ME. CODE R. § 8. Maine Revenue Services provides online Form W-4ME (employee's Maine withholding allowance certificate), which is available at https://www.maine.gov/revenue/tax-return-forms/employment-tax-returns-2020.

[95] ME. STAT. tit. 26, § 664.

[96] ME. STAT. tit. 26, § 599-A.

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2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[97] State new hire reporting laws must include these minimum requirements:

1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[98]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;

[97] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

[98] 42 U.S.C. § 653a.

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- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

Table 4. Multistate Employer New Hire Information	
Contact By Mail or Fax	**Contact Online**
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[99] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

The following is a summary of the key elements of Maine's new hire reporting laws.

Who Must Be Reported. An employer must report employees who reside or work in the state to whom the employer anticipates paying earnings and who have not previously been employed by the employer or those previously employed by the employer but who have been separated from employment for at least 60 consecutive days.[100]

Report Timeframe. Reporting must be made within seven days of the date that services for remuneration are first performed.[101]

Information Required. The employer must include in the report the employee's full name, address, Social Security number, date of birth, and the most recent date that services for remuneration are first performed along with the employer's name, address, phone number, and employment security reference number or unified business identifier number.[102]

Form & Submission of Report. Acceptable reporting forms include the federal Form W-4 or the Maine New Hire Reporting Form. The report may be submitted by mail, fax, email, magnetic tape, diskette, or online reporting system.[103]

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[99] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[100] ME. STAT. tit. 19-A, § 2154(1).

[101] ME. STAT. tit. 19-A, § 2154(4).

[102] ME. STAT. tit. 19-A, § 2154(4).

[103] ME. STAT. tit. 19-A, § 2154(3).

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Location to Send Information.

Division of Support Enforcement & Recovery
New Hire Reporting Program
11 State House Station Augusta, ME 04333-0011
(800) 845-5808
(207) 624-7880
(207) 287-6882 (fax)
(800) 437-9611 (fax)
https://portal.maine.gov/newhire/

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims of trade secret misappropriation.[104] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see **LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS**.

[104] 18 U.S.C. §§ 1832 *et seq.*

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2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Maine law prohibits noncompete agreements with employees earning at or below 400% of the federal poverty level. *Noncompete agreement* means a contract or contract provision that prohibits an employee or prospective employee from working in the same or a similar profession or in a specified geographic area for a certain time following termination of employment. *Federal poverty level* means the nonfarm income official poverty line for an individual, as defined by the federal Office of Management and Budget and revised annually in accordance with the Omnibus Budget Reconciliation Act of 1981.

Under the Act, noncompete agreements are contrary to public policy and only enforceable to the extent they are reasonable and no broader than necessary to protect one of more of the following legitimate business interests:

- the employer's trade secrets;
- the employer's confidential information that does not qualify as a trade secret; or
- the employer's goodwill.

A noncompete agreement may be presumed necessary if the legitimate business interest cannot be adequately protected through an alternative restrictive covenant, including but not limited to a nonsolicitation agreement or a nondisclosure or confidentiality agreement.

The Act requires an employer to disclose that a noncompete agreement will be required prior to an offer of employment. The employer must notify an employee or prospective employee of the requirement and provide a copy of the noncompete agreement not less than three business days before the employer requires the agreement to be signed, to allow time for the employee or prospective employee to review the agreement and negotiate the terms of the agreement or employment.

Except for a noncompete agreement between an employer and an allopathic physician or an osteopathic physician, the terms of a noncompete agreement do not take effect until after one year of the employee's employment with the employer or six months from the date the agreement was signed, whichever is later.

The law also prohibits restrictive employment agreements. An employer may not enter into a restrictive employment agreement, or enforce or threaten to enforce a restrictive employment agreement. A *restrictive employment agreement* means an agreement that is between two or more employers, including through a franchise agreement or a contractor and subcontractor agreement, that prohibits or restricts one employer from soliciting or hiring another employer's employees or former employees.[105]

Enforceability Following Employee Discharge. Maine courts have not specifically addressed whether the employer's termination of employment relationship renders noncompete void.[106] Instead, the U.S. District Court for the District of Maine considers an employee's termination "as a factor in balancing the relative equities between the parties."[107]

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[105] ME. STAT. tit. 26, § 599-A.

[106] *OfficeMax, Inc. v. County Qwick Print, Inc.*, 751 F. Supp. 2d 221 (D. Me. 2010), *vacated and remanded on other grounds by OfficeMax, Inc. v. Levesque*, 658 F.3d 94 (1st Cir. 2011).

[107] 751 F. Supp. 2d at 243.

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2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

Although state courts have not specifically addressed the sufficiency of consideration for noncompetes entered into at the inception of employment, courts have upheld such agreements.[108] Continued employment itself has also been held to be sufficient consideration for a noncompete agreement.[109]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

If a court finds that a noncompete is overbroad, the agreement may be modified and enforced to the extent reasonable.[110] Maine courts will evaluate the reasonableness of a noncompetition clause as the employer seeks to apply it, as opposed to how it is written and may be hypothetically applied.[111] However, the court will not impose its own draft of an overly broad provision on the parties. The parties may only rely on the court to narrow the scope of the noncompete.[112]

2.3(b)(iv) *State Trade Secret Law*

Maine is one of many states to have adopted the Uniform Trade Secrets Act. The Act protects employers from the misuse of trade secrets.

Definition of a Trade Secret. The definition of a trade secret is a matter of law, while the determination of whether specific information is a trade secret in a given case is a question of facts.[113] Under the Uniform Trade Secrets Act, a *trade secret* means information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique, or process that:

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108 *See, e.g., Sisters of Charity Health Sys. Inc. v. Farrago*, 21 A.3d 110 (Me. 2011).

109 *Brignull v. Albert*, 666 A.2d 82, 84 (Me. 1995).

110 *Lord v. Lord*, 454 A.2d 830, 834 (Me. 1983).

111 *Brignull*, 666 A.2d at 84.

112 *Prescott v. Ross*, 390 F. Supp. 2d 44, 47 (D. Me. 2005).

113 *Bernier v. Merrill Air Eng'rs*, 770 A.2d 97 (Me. 2001).

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1. derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other person who can obtain economic value from its disclosure or use; and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[114]

Courts may examine the following factors to determine whether the information is the subject of reasonable efforts to maintain its secrecy:

- the extent to which the information is known outside the plaintiff's business;
- the extent to which employees and others involved in the plaintiff's business know the information;
- the nature and extent of measures the plaintiff took to guard the secrecy of the information;
- the existence or absence of an express agreement restricting disclosure; and
- the circumstances under which the information was disclosed to any employee, to the extent that the circumstances give rise to a reasonable inference that further disclosure without the plaintiff's consent is prohibited.[115]

To determine whether the information derives independent economic value from not being generally known, courts may consider:

- the value of the information to the plaintiff and to its competitors;
- the amount of effort or money the plaintiff expended in developing the information;
- the extent of measures the plaintiff took to guard the secrecy of the information;
- the ease or difficulty with which others could properly acquire or duplicate the information; and
- the degree to which third parties have placed the information in the public domain or rendered the information readily ascertainable through patent applications or unrestricted product marketing.[116]

Misappropriation of a Trade Secret. Under the Uniform Trade Secrets Act, *misappropriation* means:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who:
    a. used improper means to acquire knowledge of the trade secret; or
    b. at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

[114] ME. STAT. tit. 10, § 1542(4).

[115] *Spottiswoode v. Levine*, 730 A.2d 166 (Me. 1999).

[116] 730 A.2d at 174 n.6.

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i. derived from or through a person who had utilized improper means to acquire it;

ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

c. before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[117]

Any actual or threatened misappropriation may be enjoined.[118] A complainant is also entitled to recover damages based on the actual loss and the unjust enrichment caused by the misappropriation.[119]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Maine has no statutory authority addressing ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[120]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[121]

[117] ME. STAT. tit. 10, § 1542(2).

[118] ME. STAT. tit. 10, § 1543.

[119] ME. STAT. tit. 10, § 1543.

[120] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[121] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[122]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[123]
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[124]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[125]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[126]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[127]

[122] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[123] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

[124] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[125] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[126] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[127] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[128] The second page includes reference to government contractors.
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[129]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[130]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[131]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[132]

[128] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

[129] 41 C.F.R. §§ 60-300.44, 60-741.44.

[130] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[131] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[132] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[133]
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[134]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[135]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[136] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written

[133] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[134] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[135] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[136] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	(including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[137]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[138]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[139]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Maine employers should be aware that they will be held strictly liable and will be subject to penalties if they fail to abide by certain posting requirements. Specifically, if employers fail to post, in a place accessible to employees, the following categories of posters, they will be held strictly liable for fines between $25 and $5,000, payable to the state of Maine: (1) employment of minors; (2) time of payment of wages; (3) safety and health of employees; (4) family medical leave; (5) video display terminal safety; (6) minimum wage and overtime provisions; and (7) earned paid leave.[140]

[137] 29 C.F.R. § 13.5.

[138] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[139] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[140] ME. STAT. tit. 26, § 42-B.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Benefits & Leave: Victims of Domestic Violence, etc. (Optional)	The Maine Department of Labor provides an optional poster for employers, informing employees about the benefits, leave, and other assistance that may be available to them if they (or a close relative) are victims of domestic violence, sexual assault, or stalking.[141]
Benefits & Leave: Earned Paid Leave	Employers must post a copy of the poster furnished by the Bureau of Labor that provides notice of the earned paid leave law.[142]
Benefits & Leave: Paid Family and Medical Leave Program	**Effective May 1 1, 2026**, an employer shall post in a conspicuous place on each of its premises a workplace notice provided or approved by the department providing notice of benefits available under this subchapter. The department shall issue the workplace notice in English, Spanish, French, Somali and Portuguese and any other language that is the primary language of at least 2,000 residents of the state. The employer shall post the workplace notice in English and each language other than English that is the primary language of three or more employees of that workplace, if such notice is available from the department.[143]
Child Labor	Employers that employ minors must post notice in a conspicuous place, so that each employee may easily see it, summarizing the restrictions on child labor in Maine.[144]
Fair Employment Practices: Equal Opportunity (Optional)	The Maine Department of Labor provides an optional poster for employers, informing employees about the prohibition against discrimination in employment.[145]
Fair Employment Practices: Equal Pay (Optional)	The Maine Department of Labor provides an optional poster for employers, informing employees about the Maine equal pay law, how to assess whether a violation may be occurring, and who to contact in that event.[146]
Fair Employment Practices: Public Contractors	Contractors with a state or state-related agency contract for public works or services must post a copy of the contractor's commitment to nondiscrimination in conspicuous places available to employees and applicants. The contractor must also send a copy to each labor union or

[141] This poster is available at https://www.maine.gov/labor/docs/2015/posters/domesticviolence.pdf.

[142] ME. STAT. tit. 26, §§ 42-B, 637. This poster is included in the state Regulation of Employment poster, available at https://www.maine.gov/labor/posters/index.shtml.

[143] ME. STAT. tit. 26 § 850-I.

[144] ME. STAT. tit. 26, § 42-B. This poster is available at https://www.maine.gov/labor/posters/index.shtml.

[145] This poster is available at https://www.maine.gov/mhrc/sites/maine.gov.mhrc/files/inline-files/eeoposter.pdf.

[146] This poster is available at https://www.maine.gov/labor/docs/2022/posters/equalpay_new.pdf.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	representative of the workers with which it has a collective bargaining agreement. Notice should be obtained from the contracting department or agency.[147]
Fair Employment Practices: Maine Supports Nursing Moms (Optional)	The Maine Department of Labor provides an optional poster for employers, informing employees about lactation accommodations required under state law and other protections for employees who are breast feeding.[148]
Fair Employment Practices: Sexual Harassment	Employers must 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 sixth-grade literacy standards.[149]
Fair Employment Practices: Veterans' Rights	**Effective September 19, 2023**, employers with 50 or more employees must post a notice of veterans' rights and benefits in a conspicuous place accessible to employees in the workplace. The poster must include the following information: • contact and website information for the Department of Defense, Veterans and Emergency Management, Maine Bureau of Veterans' Services and services for veterans provided by that bureau; • substance use and mental health treatment services; • educational, workforce and training resources; • tax benefits; • obtaining driver's licenses and nondriver identification cards; • eligibility for unemployment insurance benefits under state and federal law; • legal services; and • contact information for the United States Department of Veterans Affairs Veterans Crisis Line.[150]
An Act to Protect Employee Freedom of Speech Poster	Within 30 days after the effective date (September 19, 2023), employers must post a notice of employee rights under this law where employee notices are customarily placed.[151]

[147] ME. STAT. tit. 5, § 784.

[148] This poster is available at https://www.maine.gov/labor/docs/2020/posters/nursingmother.pdf.

[149] ME. STAT. tit. 26, § 807. This poster is available at https://www.maine.gov/labor/posters/2017/sexual_harassment_poster.pdf.

[150] ME. STAT. tit. 26, § 42-D.

[151] ME. STAT. tit. 26, § 600-B.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Human Trafficking Awareness Poster	Certain employers must post a sign that is clearly visible to the public and employees that contains a contact number for the national human trafficking line. The state has created these posters. Covered employers are: Department of Labor career centers, offices that provide services under the Governor's Jobs Initiative Program, hospitals or facilities providing emergency medical services that is licensed by the state, eating and lodging places licensed under state law, adult entertainment nightclubs, bars, adult spas, or establishments featuring strippers or erotic dancers or other sexually oriented businesses, money transmitters licensed under state law, and check cashing businesses or foreign currency exchange businesses registered under state law.[152]
Maine Regulation of Employment Poster	All employers must post notice summarizing certain state labor laws, including: time and payment of wages; earned paid leave; at-will employment; family and medical leave; and various other laws.[153]
Social Media (Optional)	The Maine Department of Labor provides an optional poster for employers, informing employees about the restrictions on employer access to the personal social media accounts of employees and applicants.[154]
Unemployment Compensation	Employers must post and maintain notice, in places readily accessible, informing employees about unemployment benefits, eligibility requirements, and how to file a claim. Employers must also give this notice to employees when they become unemployed.[155]
Wages, Hours & Payroll	Employers must conspicuously post notice, so that each employee may easily see it, summarizing the state minimum wage law and related topics, such as overtime compensation and service employees.[156]
Whistleblowers' Protection Act	Employers must prominently display a poster, so that each employee may easily see it, informing employees of the state's whistleblower protections and who to contact to report unsafe conditions or illegal conduct in the workplace.[157]

[152] ME. STAT. tit. 26, § 879. The posters are available at https://www.maine.gov/labor/posters/index.shtml.

[153] ME. STAT. tit. 26, § 42-B. This poster is available at https://www.maine.gov/labor/posters/index.shtml.

[154] This poster is available at https://www.maine.gov/labor/docs/2019/laborlaws/SocialMedianov2019.pdf.

[155] ME. STAT. tit. 26, § 1194(1); 12-172-2 ME. CODE R. § 1. This poster is available at https://www.maine.gov/labor/posters/2019/Maine%20Employment%20Security%20Law_3-19.pdf.

[156] ME. STAT. tit. 26, § 42-B. This poster is available at https://www.maine.gov/labor/posters/2018/minimumwage.pdf.

[157] ME. STAT. tit. 26, § 839. This poster is available at https://www.maine.gov/labor/posters/2019/whistleblowerprotection.pdf.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Workers' Compensation	Employers must conspicuously post notices, in each of the employer's mills, factories, or places of business, informing employees of their rights and obligations under the workers' compensation law.[158]
Workplace Safety: Public Employers	Public employers must post notice, where workers can easily see it, informing employees of the protections of the state occupational safety and health regulations.[159]
Workplace Safety: Video Display Terminal Poster	Employers must post notice, in a prominent location in the workplace, if its employees work at a computer four or more hours per day and the employer uses two or more electronic video screens at one location.[160]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[161]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee;	At least 1 year from the date of the personnel action to which any records relate.

[158] ME. STAT. tit. 39A, § 406. This poster is available at http://www.maine.gov/wcb/forms/WCB-90.pdf.

[159] This poster is available at https://www.maine.gov/labor/posters/index.shtml.

[160] ME. STAT. tit. 26, §§ 251, 252(1)(A). This poster is available at https://www.maine.gov/labor/posters/index.shtml.

[161] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[162]	
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[163]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act (ADA): Personnel Records	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants; • other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[164]	At least 1 year from the date the records were made, or from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been

[162] 29 C.F.R. § 1627.3(b).

[163] 29 C.F.R. § 1627.3(b).

[164] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[165]	brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[166]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[167]	At least 3 years following the date on which the polygraph examination was conducted.
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This	At least 6 years after documents are filed or would have been filed but

[165] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[166] 29 C.F.R. § 1602.7.

[167] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	includes vouchers, worksheets, receipts, and applicable resolutions.[168]	for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[169]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[170]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth, if under19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;	3 years from the last day of entry.

[168] 29 U.S.C. § 1027.

[169] 29 C.F.R. § 1620.32(a).

[170] 29 C.F.R. § 1620.32(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[171] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips; • weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[172]	

[171] 29 C.F.R. §§ 516.2, 516.5.

[172] 29 C.F.R. § 516.28.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees, and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[173]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms; • written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[174]	At least 3 years from the last effective date.
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and	At least 2 years from the date of last entry.

[173] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

[174] 29 C.F.R. § 516.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• records of additions to or deductions from wages.[175]	
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid.	At least 3 years.

[175] 29 C.F.R. § 516.6.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees. *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[176]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must	At least 4 years after the date the tax is due or paid, whichever is later.

[176] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[177]	
Immigration	Employers must retain all completed Form I-9s.[178]	3 years after the date of hire or 1 year following the termination of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:*	Required to be maintained for "so long as the contents [of the records] may

[177] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[178] 8 C.F.R. § 274a.2.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[179]	become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[180]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[181]	As long as it is in effect and at least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation;	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.

[179] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[180] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[181] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[182]	
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:* • background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance,	At least 30 years.

[182] 26 C.F.R. § 31.6001-4.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[183]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[184]	Duration of employment plus 30 years.
Workplace Safety: Analyses Using Medical and Exposure Records	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[185]	At least 30 years.

[183] 29 C.F.R. § 1910.1020(d).

[184] 29 C.F.R. § 1910.1020(d).

[185] 29 C.F.R. § 1910.1020(d).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[186]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[187]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes;	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees or does not have a contract of at least $150,000, the minimum retention period is one year from the date of

[186] 29 C.F.R. §§ 1904.33, 1904.44.

[187] 41 C.F.R. § 60-1.12(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[188]	making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same position as the aggrieved person applied and was rejected.[189]	Until final disposition of the complaint, compliance review or action.
Minimum Wage Under Executive Orders Nos. 13658 (contracts	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s);	3 years.

[188] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

[189] 41 C.F.R. §§ 60-1.12, 60-741.80.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	• rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[190]	
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO); • a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee;	During the course of the covered contract as well as after the end of the contract.

[190] 29 C.F.R. § 23.260.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[191]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for *bona fide* fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[192]	At least 3 years after the work.
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation;	At least 3 years from the completion of the work records containing the information.

[191] 29 C.F.R. § 13.25.

[192] 29 C.F.R. § 5.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[193]	
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[194]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the key state record-keeping requirements. Additional requirements may apply to certain industries, such as public works contractors.[195]

Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Fair Employment Practices	*All employers must retain personnel or employment records, including:* • employment application forms; • applicant and employee rating sheets; • tests; and	At least one year from the making of the record or the personnel action involved

[193] 29 C.F.R. § 4.6.

[194] 41 C.F.R. § 50-201.501.

[195] ME. STAT. tit. 26, § 1311.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• other records having to do with job referral, hiring, promotion, demotion, transfer, lay-off, rates of pay or other terms of compensation, seniority, labor organization memberships, or selection for training or apprenticeship.[196]	(*e.g.*, 1 year after involuntary termination), whichever occurs later.
Fair Employment Practices: Sexual Harassment Prevention Training	Employers with 15 or more employees must maintain sexual harassment training program records, including a record of employees who have received the training.[197]	At least 3 years.
Income Tax	All taxpayers must maintain all records pertaining to taxes.[198]	As required by federal law.
Unemployment Compensation	*Each employing unit must preserve employment records. Such records must include, for each pay period:* • the beginning and ending dates of such periods; • the total wages paid for employment in the period; and • the week during which, on any part of a day, there were one or more workers in employment. *Such records must include, for each worker*: • full name; • Social Security number; • wages, salary, and basis of pay during period; • period of employment; • special payments of any kind (including but not limited to annual bonuses, gifts, prizes, and other awards), while showing separately: money payments, reasonable cash value of other remuneration, the nature of the payment, and the calendar quarter during which such services were performed; • wages earned weekly; • wages earned quarterly; • whether any week was a week of less than full-time work; and	At least 4 years after the calendar year for which the contributions were due or were paid, whichever is later.

[196] 94-348-003 ME. CODE R. § 20.

[197] ME. STAT. tit. 26, § 807.

[198] ME. STAT. tit. 36, §§ 135, 5250.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• time lost, if any, by each worker due to their unavailability for work.[199]	
Wages, Hours & Payroll	*Every employer must keep true and accurate payroll records, including:* • hours worked by each employee; • date and amount paid to each employee; and • daily record of time worked by the employee, except salaried employees as described in § 663 subsection 3 paragraph k.[200] **Effective September 19, 2023**, limited liability partnerships and S corporations are exempt from the above recordkeeping requirements.[201] For minors, such records should also include the specific date and day of the week that the minor worked, as discussed in 3.6(b)(ii).[202]	At least 3 years. Given the longer statute of limitations on wage claims, however, it is recommended that employers retain these records for 6 years.
Workers' Compensation	Employers must retain a copy of any first report of injury form required to be completed for employee injury.[203]	No time frame specified.
Workplace Safety	Employers must keep and preserve records regarding the employer's activities related to occupational safety and health.[204]	See federal requirements.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

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[199] ME. STAT. tit. 26, §§ 1082(7), 1225(6); 12-172-002 ME. CODE R. § 2.

[200] ME. STAT. tit. 26, §§ 622, 665.

[201] ME. STAT. tit. 26, §§ 622.

[202] *See, e.g.*, Maine Dep't of Labor, Bureau of Labor Standards, *Maine Laws Governing the Employment of Minors* (Sept. 2008), *available at* https://www1.maine.gov/labor/labor_laws/publications/minorsguide.html#FAQ; ME. STAT. tit. 26, § 774.

[203] ME. STAT. tit. 39-A, § 303.

[204] ME. STAT. tit. 26, § 44.

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3.1(c)(ii) *State Guidelines on Personnel Files*

Under Maine law, a *personnel file* includes, but is not limited to, any formal or informal employee evaluations; reports relating to the employee's character, credit, work habits, or compensation and benefits; nonprivileged medical records or nurses' station notes relating to the employee that the employer has in its possession; and records relating to an internal investigation of misconduct.[205] A personnel file may be maintained in any form including paper, microfiche, or electronic form.

Access to a Personnel File. Upon written request, an employee, former employee, or duly authorized representative may review and copy the employee's personnel file, if one has been maintained by the employer. Each calendar year, upon request, the employer must provide, at no cost to the employee or former employee, one copy of the entire personnel file. When requested by the employee or former employee, the employer must provide a copy of all the material added to the personnel file after the copy of the entire file was provided. The employee must pay for any additional copies. An employer that, following an employee request, fails to provide an opportunity for review and copying of the file within 10 days of receipt of the request without good cause is subject to a civil forfeiture of $25 for each day that failure continues, up to a total of $500.[206]

Viewing a Personnel File. An employee or former employee may designate a representative to inspect their personnel file. The file must be inspected at the location where the files are maintained, during normal office hours. At the employer's discretion, a more convenient time and location for the employee may be arranged. If an employer maintains personnel files in any form other than paper, it must have available the equipment necessary to review and copy the personnel file.[207]

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

For more information on Maine's drug testing law, which covers both applicants and current employees, see **1.3(e)(ii)**.

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[205] ME. STAT. tit. 26, § 631; *Harding v. Wal-Mart Stores*, 765 A.2d 73 (Me. 2001).

[206] ME. STAT. tit. 26, § 631.

[207] ME. STAT. tit. 26, § 631.

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3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[208]

3.2(c)(ii) *State Guidelines on Marijuana*

Maine has both recreational and medical marijuana laws.

Recreational Marijuana. An employer is not required to permit or accommodate the use, consumption, possession, trade, display, transportation, sale, or cultivation of marijuana or marijuana products in the workplace. An employer can enact and enforce workplace policies restricting marijuana and marijuana product use by employees in the workplace or while otherwise engaged in activities within the course and scope of employment. An employer can discipline employees who are under the influence of marijuana in the workplace or while otherwise engaged in activities within the course and scope of employment in accordance with the employer's workplace policies regarding marijuana and marijuana product use by employees.[209] The prohibitions and limitations on smoking tobacco products in specific areas apply to smoking marijuana.[210]

Medical Marijuana. In Maine, unless failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding, an employer cannot penalize a person solely for that person's status as a qualifying patient or a primary caregiver (to be *caregiver*).[211]

An employer, however, does not have to accommodate the ingestion of marijuana in any workplace. Further, an employer does not have to accommodate any employee working while under the influence of marijuana.[212] A business owner can prohibit smoking medical marijuana on the business's premises if it prohibits all smoking on the premises and posts notice to that effect on the premises.[213]

The medical marijuana laws do not permit:

- undertaking any task under the influence of marijuana when doing so would constitute negligence or professional malpractice or would otherwise violate any professional standard; or
- operating, navigating, or being in actual physical control of any motor vehicle, aircraft, motorboat, snowmobile, or all-terrain vehicle while under the influence of marijuana.[214]

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[208] 21 U.S.C. §§ 811-12, 841 *et seq*.

[209] ME. STAT. tit. 28-B, § 112.

[210] ME. STAT. tit. 28-B, § 1501.

[211] ME. STAT. tit. 22, § 2430-C(3); *see also Savage v. Maine Pretrial Servs., Inc.*, 58 A.3d 1138 (Me. 2013) (alleged termination of employee who applied for a license to operate a medical marijuana dispensary not a violation of (former) section 2423-E(1), which, in part, prohibited penalties or disciplinary action by a business or occupational or professional licensing board or bureau against a person for lawfully engaging in conduct involving the authorized use of medical marijuana).

[212] ME. STAT. tit. 22, § 2426.

[213] ME. STAT. tit. 22, § 2430-C(3).

[214] ME. STAT. tit. 22, § 2426(1).

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A private health insurer is not required to reimburse a person for costs associated with the medical use of marijuana.[215] Also, the Supreme Judicial Court of Maine held that an employer did not have to comply with an order of the Workers' Compensation Board requiring it to pay an employee's medical marijuana costs because doing so would require the employer to violate the federal Controlled Substances Act.[216]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in the individual's gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[217]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[218]

3.2(d)(ii) *State Data Security Breach Guidelines*

Under Maine's law, notice is required when a covered entity becomes aware of a security breach and has conducted in good faith a reasonable and prompt investigation to determine the likelihood that personal information of a resident of Maine has been or will be misused or disclosed to another person. A *security breach* is an unauthorized acquisition, release or use of an individual's computerized data that

[215] ME. STAT. tit. 22, § 2426(2).

[216] *Bourgoin v. Twin Rivers Paper Co., LLC*, 187 A.3d 10 (Me. 2018).

[217] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[218] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

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compromises the security, confidentiality, or integrity of personal information of the individual maintained by a covered entity.[219]

Covered Entities & Information. Any person or information broker who maintains computerized data that includes personal information. Under the statute, an *information broker* means a person who, for monetary fees or dues, engages in whole or in part in the business of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning individuals for the primary purpose of furnishing personal information to nonaffiliated third parties.[220]

Personal information includes an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- driver's license number or state identification number;
- account number or credit or debit card number, if circumstances exist where such a number could be used without additional identifying information, access codes, or passwords;
- account passwords or personal identification numbers or other access codes; or
- any of the above items when not in connection with the individual's first name or first initial, and last name, if the information would be sufficient to permit any person to fraudulently assume or attempt to assume the identity of the person.

Exceptions include:

- data that is encrypted or redacted;
- information from third party claims databases maintained by property and casualty insurers; and
- information which is lawfully available publicly through federal, local, or state government records or widely distributed media.[221]

Content & Form of Notice. Notice may be in one of the following formats:

- written notice;
- electronic notice, if it is compliant with the federal e-sign act; or
- substitute notice if the covered entity demonstrates that:
  - the cost of providing notice would exceed $5,000;
  - the affected class of persons to be notified exceeds 1,000; or
  - the covered entity does not have sufficient contact information.

Substitute notice must consist of all of the following:

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[219] ME. STAT. tit. 10, § 1347.

[220] ME STAT. tit. 10, § 1346(3).

[221] ME STAT. tit. 10, § 1346(6).

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- electronic mail notice when the covered entity has an electronic mail address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by major statewide media.[222]

Any person who complies with the security breach notification rules regulations and procedures or guidelines established pursuant to federal law or Maine state law is compliant with the statute and exempt from the notification requirement. The federal or state law must provide protection as least as protective as under the Maine data security breach statute.

Timing of Notice. Notice must be given as expediently as possible and without unreasonable delay, but no later than 30 days following knowledge of the breach. However, notification may be delayed if:

- A law enforcement agency indicates that notification will impede a criminal investigation, but may be delayed no longer than 7 days after law enforcement determines that the notice will no longer impede an investigation.
- A covered entity needs time to determine the scope of the breach.
- A covered entity needs time to restore the reasonable integrity, security, and confidentiality of the data system.

Additional Provisions. If more than 1,000 persons at a single time will be notified of a security breach, then the covered entity must also notify all nationwide consumer reporting agencies. Notification must include the date of the breach, an estimate of the number of persons affected by the breach, if known, and the actual or anticipated date that persons were or will be notified. Covered entities must notify the appropriate state regulator within the Maine Department of Professional and Financial Regulation, or the Attorney General's office as appropriate.[223]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[224] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from

222 ME STAT. tit. 10, § 1346(4).

223 ME STAT. tit. 10, § 1348.

224 29 U.S.C. § 218(a).

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either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[225]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[226]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[227]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[228] For more information on exemptions to the federal minimum wage and/or overtime obligations, see **LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS**.

3.3(b) *State Guidelines on Minimum Wage Obligations*

3.3(b)(i) *State Minimum Wage*

As of January 1, 2024, the minimum wage in Maine is $14.15 per hour. If the federal minimum wage is increased above the state rate, the state minimum wage will be increased to the federal rate on the date the federal increase takes effect. On January 1, the minimum wage is adjusted based on the increase in the cost of living, rounded to the nearest multiple of $0.05, *e.g.*, on January 1, 2025, it will increase to $14.65.[229]

3.3(b)(ii) *Tipped Employees*

Tipped employees may be paid differently. An employer may consider tips as part of their wages, but a tip credit cannot exceed 50% of the minimum wage. Employers using a tip credit must be able to show that the employee receives at least the minimum wage when direct wages and tips are combined within an established seven-day workweek. If they do not, an employer must pay the employee the difference.

Table 9 presents the minimum wage and tip credit schedule for Maine.

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[225] 29 U.S.C. § 206.

[226] 29 U.S.C. §§ 203, 206.

[227] 29 U.S.C. § 3(m)(2)(B).

[228] 29 U.S.C. § 207.

[229] ME. STAT. tit. 26, § 664.

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Table 9. Minimum Wage & Tip Credit Schedule			
Date	**Minimum Wage**	**Minimum Cash Wage**	**Maximum Tip Credit**
January 1, 2024	$14.15	$7.08	$7.07
January 1, 2025	$14.65	$7.33	$7.32
January 1, 2026	TBD	TBD	TBD

Employers that elect to use the tip credit must inform the affected employee in advance, either orally or in writing, of the following information:

- the amount of the direct wage to be paid by the employer to the tipped employee;
- the amount of tips to be credited as wages toward the minimum wage;
- that the amount of tips to be credited as wages may not exceed the value of the tips actually received by the employee;
- that all tips received by the affected employee must be retained by the employee, except for a valid tip pooling arrangement;
- that the tip credit does not apply to any employee who has not been informed by the employer of the provisions for a tip credit; and
- if the employer uses a tip pooling arrangement, any required tip pool contribution amount from the employee.[230]

Tip pooling is permitted as long as the arrangement is either only among service employees when the employer uses the tip credit or among a group of employees when the employer pays all employees in the group the minimum wage and does not use the tip credit. An employer cannot receive tips from such a tip pool, and cannot allow supervisors and managers to receive tips from the tip pool. [231]

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

The definition of *employee* under the Maine minimum wage law excludes the following categories of workers:

- 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;
- 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;
- any individual employed as a taxicab driver;
- counselors, junior counselors, or counselors-in-training at organized camps licensed under state law and those employees of organized camps and similar seasonal recreation programs

[230] ME. STAT. tit. 26, § 664.

[231] ME. STAT. tit. 26, § 664.

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not requiring such licensure that are operated as or by nonprofit organizations who are under 18 years of age;

- an individual employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustaceans, 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 loading and unloading when performed by any such employee;
- an individual employed as a switchboard operator in a public telephone exchange that has less than 750 stations;
- a home worker who is not subject to any supervision or control by another person, and who buys raw material and makes, completes, and sells any article, even though it is made according to specifications and the requirements of some single purchaser;
- members of the employer's family who reside with and are dependent upon the employer;
- 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 3,000 times the state minimum hourly wage or the annualized rate established by the federal FLSA, whichever is higher; and
- a prisoner serving a term of incarceration for a criminal offense, *except* a prisoner who is: employed by a private employer; participating in a work release program; employed in a program established under a certification issued by the U.S. Department of Justice; employed while in a supervised community confinement program; or employed while in a community confinement monitoring program.[232]

An employer may not pay a person with a mental or physical disability at a rate less than minimum wage because of that disability.[233] Previously, under limited circumstances, employers could pay a subminimum wage to certain employees if they had applied to the Maine Department of Labor for a special certificate.

3.3(b)(iv) *Local Minimum Wage Ordinances*

Portland and Rockland, Maine have enacted minimum wage ordinances that establishes a local minimum wage rate that may differ from the state's minimum wage rate. Local minimum wage ordinances often include their own notice, record-keeping, and wage statement requirements, so employers with operations in those localities must be aware of their overlapping state and local compliance obligations.

As of January 1, 2024, the minimum wage in Portland is $15.00 per hour, with annual adjustments beginning January 1, 2025, and each subsequent January 1. Note, however, that if the state minimum wage exceeds the adjusted local minimum wage, the local minimum wage adopts the state rate as its own, which will be used in future annual adjustments. For tipped employees, a minimum cash wage of half the local minimum wage must be paid, so the maximum tip credit will also be half the applicable minimum wage if the minimum cash wage plus tips equals at least the minimum wage.[234] Notably, there is also a "declared emergency minimum wage" of one-and-half times the "normal" minimum wage for work performed during a declared emergency that is not performed under a teleworking arrangement.

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[232] ME. STAT. tit. 26, § 663.

[233] ME. STAT. tit. 26, § 666.

[234] PORTLAND, M.E., CODE OF ORDINANCES §§ 33.1 *et seq.*

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Additional requirements include: written notice with the first paycheck; written notice to tipped employees; a workplace poster; and record-keeping requirements.[235]

Rockland will generally follow the same rate schedule, and tipped employee standards, in the Portland ordinance. However, unlike in Portland, the ordinance does not contain a "declared emergency minimum wage," a first paycheck notice, or record-keeping requirements. Another notable difference is that administrative complaints are an individual's sole recourse; there is no private right of action.

3.3(c) *State Guidelines on Overtime Obligations*

Employees must be paid one-and-one-half times their regular rate for all hours worked over 40 in a workweek. With certain exceptions, an employee may not be required to work more than 80 hours of overtime in any two-consecutive week period.[236]

3.3(d) *State Guidelines on Overtime Exemptions*

In addition to the categories of employees excluded from the state minimum wage provisions as listed in **3.3(b)(iii)**, Maine's overtime provisions do not apply to the following categories of employees:

- automobile mechanics, automobile parts clerks, automobile service writers, and automobile salespersons, interpreted in a manner consistent with the interpretation of the same terms under the FLSA;
- mariners;
- public employees, except those employed by the executive or judicial branch of the state;
- employees who work in canning, processing, preserving, freezing, drying, marketing, storing, packing for shipment or distribution of agricultural produce, meat and fish products, and perishable foods, except that individuals employed at an egg processing facility that has over 300,000 laying birds must be paid overtime in accordance with Maine law; and
- a driver or driver's helper who is not paid hourly and is subject to the provisions of the federal Motor Carrier Act.[237]

In addition, Maine follows the same categories of exemptions as the federal FLSA, but in Maine the minimum wage is higher than the federal minimum wage, which creates an unexpected overtime issue for Maine employers. Under Maine law, an employee is exempt from overtime if the employee is "[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 3,000 times the State's minimum hourly wage or the annualized rate established by the [U.S. Department of Labor under the FLSA], whichever is higher."[238] Prior to 2017, this provision did not present a problem because the FLSA's salary level for overtime exempt employees was higher than the Maine salary level. However, because the Maine salary level is tied to the Maine minimum wage, the increase in Maine's minimum wage means that Maine

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[235] *See also Portland Reg'l Chamber of Commerce v. City of Portland*, 253 A.3d 586 (Me. 2021) (first possible date declared emergency minimum wage could be in effect is January 1, 2022, which is the effective date of approved November 2020 ballot measure amendments concerning minimum wage).

[236] ME. STAT. tit. 26, §§ 603, 664.

[237] ME. STAT. tit. 26, § 664.

[238] ME. STAT. tit. 26, § 663(3)(K).

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employers will have to ensure that exempt employees receive a salary higher than that currently required by the FLSA's salary level for overtime exempt employees.[239]

It is important to reiterate that federal wage and hour laws do not preempt state laws[240] and that the law most beneficial to the employee will apply. Therefore, even if an employee meets one of the exemptions discussed below under federal law, if the employee does not meet the requirements of the state exemption (or vice versa), including the salary thresholds, then the employee will not qualify as exempt.

3.3(d)(i) *Executive Exemption*

Under Maine law, to qualify for the executive exemption, an employee must meet the following test:

- the employee's regular compensation, when converted to an annual rate, exceeds 3,000 times the state minimum wage or the annualized FLSA rate set by the U.S. Labor Department, whichever is higher;
- the employee must be a salaried employee;
- the employee's primary duty must be management of the enterprise in which employed or of a customarily recognized department or subdivision thereof;
- the employee must customarily and regularly direct of the work of two or more other full-time (or full-time equivalent) employees; and
- the employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees must be given particular weight.[241]

The Maine Department of Labor has provided the following examples to assist employers in determining whether an employee qualifies under the executive exemption:

Qualifying Example: An assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves, and cleaning the establishment, but performance of such nonexempt work does not preclude the exemption if the assistant manager's primary duty is management. An assistant manager can supervise employees and serve customers at the same time without losing the exemption. An exempt employee can also simultaneously direct the work of other employees and stock shelves.[242]

Non-Qualifying Example: A relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees when, for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor. Generally, an employee whose

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[239] Maine Dep't of Labor, *Overtime Rule Changes as Apply to Maine Employers.*

[240] 29 U.S.C. § 218(a).

[241] ME. STAT. tit. 26, § 663; 12-170-016 ME. CODE R. §§ I *et seq.*; 29 C.F.R, pt. 541.

[242] Maine Dep't of Labor, *Overtime Rule Changes as Apply to Maine Employers*, *available at* http://www.maine.gov/labor/labor_laws/overtime.html.

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primary duty is ordinary production work or routine, recurrent, or repetitive tasks cannot qualify for exemption as an executive.[243]

3.3(d)(ii) *Administrative Exemption*

To qualify for the administrative exemption under Maine law, an employee must meet the following test:

- the employee's regular compensation, when converted to an annual rate, exceeds 3,000 times the state minimum wage or the annualized FLSA rate set by the U.S. Labor Department, whichever is higher;
- the employee is paid on a salary or fee basis;
- the employee's primary duty is either:
  - the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers; or
  - the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training; and
- the performance of such primary duty customarily and regularly includes the exercise of discretion and independent judgment.[244]

The Maine Department of Labor has provided the following examples to assist employers in determining whether an employee qualifies under the administrative exemption:

Qualifying Example: Insurance claims adjusters, financial employees who collect and analyze information regarding customer income, assets, investments, and debts, or an executive assistant or administrative assistant to a business owner or senior executive of a large business generally meet the duties requirements for the administrative exemption if the employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance. Purchasing agents with authority to bind the company on significant purchases, and human resources managers who formulate, interpret, or implement employment policies, and management consultants who study the operations of a business and propose changes in organization also generally meet the duties requirements for the administrative exemption.[245]

Non-Qualifying Example: Personnel clerks who "screen" applicants or individuals performing ordinary inspection work do not qualify for the administrative exemption because the work involves the use of skills and technical abilities in gathering factual information, applying known standards or prescribed procedures, determining which procedure to follow, or determining whether prescribed standards or criteria are met.[246]

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[243] Maine Dep't of Labor, *Overtime Rule Changes as Apply to Maine Employers.*

[244] ME. STAT. tit. 26, § 663; 12-170-016 ME. CODE R. §§ I *et seq.*; 29 C.F.R., pt. 541. *See also, e.g.*, *Bocko v. Univ. of Me. Sys.*, 2024 Me. LEXIS 7 (Jan. 25, 2024) (adjunct law professor paid per course was lawfully paid on a fee basis).

[245] Maine Dep't of Labor, *Overtime Rule Changes as Apply to Maine Employers.*

[246] Maine Dep't of Labor, *Overtime Rule Changes as Apply to Maine Employers*.

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3.3(d)(iii) *Professional Exemption*

Under Maine law, to qualify for the professional exemption, an employee must meet the following test:

- the employee's regular compensation, when converted to an annual rate, exceeds 3,000 times the state minimum wage or the annualized FLSA rate set by the U.S. Labor Department, whichever is higher;
- the employee is paid on a salary or fee basis;
- the employee's primary duty is work:
  - requiring knowledge of an advanced type in a field of science or learning;
  - as a teacher in the activity of imparting knowledge; or
  - requiring invention, imagination, or talent in a recognized field of artistic endeavor; and
- the performance of such primary duty customarily and regularly includes the exercise of discretion and independent judgment.[247]

The Maine Department of Labor has provided the following examples to assist employers in determining whether an employee qualifies under the professional exemption:

Qualifying Example: An exempt professional employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction such as those of a teacher, doctor, accountant, or lawyer.[248]

Non-Qualifying Example: While a certified public accountant generally meets the exemption, accounting clerks, bookkeepers and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals. Paralegals and legal assistants generally do not qualify as exempt professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution.[249]

3.3(d)(iv) *Outside Sales Exemption*

Maine's overtime provisions do not apply to "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."[250]

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[247] ME. STAT. tit. 26, § 663; 12-170-016 ME. CODE R. §§ I *et seq.*; 29 C.F.R., pt. 541. *See also, e.g.*, *Bocko v. Univ. of Me. Sys.*, 2024 Me. LEXIS 7 (Jan. 25, 2024) (adjunct law professor paid per course was lawfully paid on a fee basis).

[248] Maine Dep't of Labor, *Overtime Rule Changes as Apply to Maine Employers*, *available at* http://www.maine.gov/labor/labor_laws/overtime.html.

[249] Maine Dep't of Labor, *Overtime Rule Changes as Apply to Maine Employers*.

[250] ME. STAT. tit. 26, § 663.

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3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[251] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[252]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[253] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[254] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[255] Exemptions apply for smaller employers and air carriers.[256]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related

[251] 29 C.F.R. § 785.19.

[252] 29 C.F.R. § 785.18.

[253] 29 U.S.C. § 218d.

[254] 29 U.S.C. § 218d(b)(2).

[255] 29 U.S.C. § 218d(a).

[256] 29 U.S.C. § 218d(c), (d).

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medical conditions.[257] Lactation is considered a related medical condition.[258] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[259] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

Meal Periods. Maine law does not have specific provisions for meal time, although the law provides that a rest break (described below) can be used as a meal time.[260] Therefore, if an employer provides at least 30 minutes for lunch in the middle of the day, this would satisfy the statutory rest break period requirement as long as the employee is not required to work more than six hours before or after the lunch break.

Rest Periods. Under Maine law, an employee may not be employed or permitted to work more than six consecutive hours at a time unless the employee is given an opportunity to take at least thirty consecutive minutes of rest.[261] Employers in Maine are not required to pay their employees for this mandatory break time.[262] Also, an employer can require employees to remain on the premises during breaks.[263] This break can be used as unpaid meal time, but only if the employee is completely relieved of duty.[264]

The rest period requirement does not apply if an employer has fewer than three employees on duty at any one time and the nature of the work done by the employee allows him/her frequent paid breaks of a shorter duration during the employee's work day, in which case the employer does not have to provide a 30-minute rest break.[265] Further, the rest period requirement does not apply in cases of emergency in which there is danger to property, life, public safety, or public health.[266]

Waiver. The law in Maine allows for employers and employees to agree to waive the rest break requirement. The employee may sign a waiver that shows the employee voluntarily chooses not to take the mandatory 30-minute break. Other written employer-employee agreements, including collective bargaining agreements, will supersede Maine's rest break law.[267]

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[257] 42 U.S.C. § 2000gg–1.

[258] 29 C.F.R. § 1636.3.

[259] 29 C.F.R. § 1636.3.

[260] ME. STAT. tit. 26, § 601.

[261] ME. STAT. tit. 26, § 601.

[262] Maine Dep't of Labor, *Maine Employee Rights Guide (Breaks)*, *available at* https://www.maine.gov/labor/labor_laws/employeerightsguide/.

[263] Maine Dep't of Labor, *Maine Employee Rights Guide (Breaks)*.

[264] ME. STAT. tit. 26, § 601.

[265] ME. STAT. tit. 26, § 601.

[266] ME. STAT. tit. 26, § 601.

[267] ME. STAT. tit. 26, § 601.

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Exempt Employees. The meal/rest period requirements apply to the same employees who are entitled to overtime under Maine law. In other words, the rest break provisions do not apply to exempt employees.[268]

3.4(b)(ii) *State Meal & Rest Periods for Minors*

There are no additional meal or rest period requirements for minor employees in Maine—the adult standards apply.

3.4(b)(iii) *State Enforcement, Remedies & Penalties*

Any employer that fails to provide the 30-minute break mandated by state law commits a civil violation and may be required to pay a fine between $100 and $500 for each violation, unless the employer has contracted out of the requirement per a written agreement with the employee.[269]

If an employer discharges or in any way discriminates against an employee for making a complaint about not being provided the mandatory break, then the employer commits a civil violation and may be required to pay a fine between $100 and $500. Additionally, the employer may be forced to reinstate the employee who was discharged or discriminated against.[270]

3.4(b)(iv) *Lactation Accommodation Under State Law*

In Maine, an individual may breast feed their baby in any public or private location where the individual is otherwise authorized to be.[271]

In the employment context, employers must provide nursing individuals with reasonable break time to express breast milk for up to three years following the birth of a child. The break time may be paid or unpaid, at the discretion of the employer, and may coincide with the employee's regular break periods.[272]

Employers also must make a reasonable effort to provide nursing individuals with appropriate space where they can express breast milk in a private, secure, and sanitary location (*i.e.*, not a bathroom stall). This may include an employee's normal workspace if it meets these requirements.[273]

An employer may not discriminate in any way against an employee who chooses to express breast milk in the workplace.[274]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked

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[268] ME. STAT. tit. 26, §§ 601, 663.

[269] ME. STAT. tit. 26, § 602(1).

[270] ME. STAT. tit. 26, § 602.

[271] ME. STAT. tit. 5, § 4634.

[272] ME. STAT. tit. 26, § 604.

[273] ME. STAT. tit. 26, § 604.

[274] ME. STAT. tit. 26, § 604.

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in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[275] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[276]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

There are a number of issues considered when determining whether activities constitute work. This publication looks more closely at pay requirements for reporting time, on-call time, and travel time. Maine law addresses only the compensability of on-call time.

In Maine, employees do not need to be paid for on-call time if they are free to use the time for their own purposes and are not required to remain at the work site. On-call time is not compensable even if the employer requires the employee to refrain from the use of alcohol.[277]

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[278] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers

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[275] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[276] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

[277] *Crook v. Russell*, 532 A.2d 1351 (Me. 1987) (time spent waiting while on-call was not "working" for purposes of overtime pay; employees were not required to remain on employer's premises and were free to come and go as they wished during on-call period); *Gould v. A-1 Auto, Inc.*, 945 A.2d 1225 (Me. 2008) (*Crook* standard requires court, when determining whether waiting time is compensable, to examine the parties' agreement and the surrounding circumstances, using a totality of the circumstances analysis; however, *Crook* analysis only to be used when the parties arrangement is unclear).

[278] 29 C.F.R. §§ 570.36, 570.50.

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may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[279] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

In general, under Maine's child labor laws, minors under age 18 cannot be employed in any capacity that the state labor department deems hazardous, dangerous to life or limb, or injurious to their health or morals.[280]

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Like federal law, Maine's child labor laws restrict the employment of minors under age 18 by age and by the type of job (see Table 10).

Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 18	*Minors age 16 and 17 cannot perform the following work or occupations:* • manufacturing and storing explosives; • motor vehicle driving on public highways or as outside helpers; • mining; • operation of power-driven machinery; • meat slaughtering, packing, processing, or rendering; • brick, tile, and kindred product manufacturing; • wrecking and demolition; • roofing and excavation; • all occupations in places having nude entertainment; • at scenes of fires, explosions, or other emergency situations with some exceptions for students and apprentices; • gas or electric welding, brazing, burning, or cutting, if done in conjunction with other hazardous occupations; • work in confined spaces where federal safety and health regulations require a permit entry system; • heights where federal safety and health regulations requires special precautions and protective gear; • at medical marijuana dispensaries or other marijuana-related establishments.[281] *Limited exemption for 17 year olds:* • driving certain automobiles and trucks on public roads as part of employment on an occasional and incidental basis under certain conditions.

[279] 29 C.F.R. § 570.6.

[280] ME. STAT. tit. 26, § 772.

[281] ME. STAT. tit. 26, § 772; 12-170-011 ME. CODE R. §§ 3, 4.

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Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	Limited exemption for 16 and 17 year olds: • junior firefighters and emergency medical services persons.[282]
Under Age 16	*Minors under age 16 cannot be employed at or as:* • any manufacturing, mechanical, or processing establishment; • mining; • processing occupation (except those allowed in retail, food service, gasoline stations, and all other venues not prohibited by federal law); • a motor vehicle driver or outside helper; • operation of hoisting apparatus or power-driven machinery (some exceptions apply); • construction, including maintenance and repair of public highways, roofing, trenching, and excavation; • boiler or engine rooms; • outside window washing that involves working from window sills, and all work involving ladders, scaffolds, and their substitutes; • cooking (except at soda fountains, lunch counters, snack bars, or cafeteria serving counters and other venues allowed by federal law) and baking; • setting up, cleaning, oiling, adjusting, or repairing power-driven food slicers, grinders, choppers and cutters, and bakery-type mixers; • freezers or meat coolers; • use of power-driven mowers or cutters, including chain saws; • warehousing; • welding, brazing, and soldering; • occupations involving toxic chemicals and paints; • certain door-to-door sales; • amusement park rides, including ticket collection and sales; • fire, explosion, or other emergency response scenes; • hotels or rooming houses; • laundries, except a laundry commonly known as an automatic laundry; • dry cleaning establishments; • bakeries; and • poolroom or commercial place of amusement, including a traveling show or circus, or in conjunction with an amusement, game, or show that allows or conducts betting.[283] *Minors under age 16 can be employed at:* • ice cream parlors where 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;

[282] 12-170-011 ME. CODE R. §§ 3, 4, 5.

[283] ME. STAT. tit. 26, § 773-A; 12-170-011 ME. CODE R. § 3.

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Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• outdoor occupations on the grounds of a hotel, kitchens, dining rooms, recreational areas, lobbies, and offices of a hotel, but they may not perform room service, housekeeping, nor may they make deliveries of any sort to guest rooms; • a bakery in retail sales, customer service operations, or doing office work, provided that retail, customer service or office areas are in a separate room; or • a commercial place of amusement operating at a permanent location (but may not be employed at games of chance or hazardous occupations).[284]
Under Age 14	*Minors under age 14 cannot perform the following work or be employed in the following occupations or establishments:* • certain agriculture jobs; or • direct contact with hazardous machinery or substances.[285] *Limited exemption for minors age 14 years or older:* • career-oriented law enforcement volunteer participants.[286]

Restrictions on Selling or Serving Alcohol. In Maine, employees who are at least 17 but less than 21 years old may serve or sell alcohol only if supervised by an employee who is at least age 21 and in a supervisory capacity. Employees who are younger than 17 years old cannot sell or serve alcohol at licensed establishments where alcohol is consumed on the premises. However, minors who are 15 and 16 may bus tables and work indirectly with alcohol. Minors who are younger than 15 years old may have no direct or indirect contact with alcohol whatsoever in Maine.[287]

3.6(b)(ii) *State Limits on Hours of Work for Minors*

Age 16 and 17. When school is in session in Maine, minors aged 16 and 17 cannot work:

- more than six hours per day, except that such minors may work up to eight hours on the last scheduled day of the school week, and 10 hours on weekends, holiday, and teacher workshop days;
- more than 24 hours in any week with three or more school days;
- more than 50 hours in a week with less than three scheduled school days, or during the first or last week of the school year;
- more than six consecutive days;
- later than 10:15 P.M. on a night preceding a school day;

[284] ME. STAT. tit. 26, § 773-A.

[285] ME. STAT. tit. 26, § 771.

[286] 12-170-011 ME. CODE R. § 5.

[287] ME. STAT. tit. 28-A, § 704.

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- later than 12:00 A.M. on a day that does not precede a school day;
- before 7:00 A.M. on a school day; or
- before 5:00 A.M. on any other day.[288]

When school is not in session, minors aged 16 and 17 cannot work:

- more than 10 hours per day;
- more than 50 hours per week;
- between 12:00 A.M. and 5:00 A.M.; or
- more than six consecutive days.[289]

In Maine, minors under 17 cannot work during school hours unless their attendance from school has been excused, they are enrolled in an alternative education plan that includes a work experience component, they are in an approved vocational cooperative program, or they are granted early release by their school's principal.[290]

Under Age 16. When school is in session in Maine, minors under age 16 cannot work:

- more than three hours a day;
- more than 18 hours a week;
- more than six consecutive days; and
- between 7:00 P.M. and 7:00 A.M.[291]

When school is not in session, minors under age 16 cannot work:

- more than eight hours a day;
- more than 40 hours a week;
- more than six consecutive days; or
- between 9:00 P.M. or 7:00 A.M. during summer vacation.[292]

Records of Minors' Work Hours. Every employer must keep a readily accessible time book or record for every minor under 18 years old employed in any occupation, with certain exceptions, and this time book should state the number of hours that each minor under 18 years old worked. The record should also keep track of what specific date and day of the week the minor worked.[293]

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[288] ME. STAT. tit. 26, § 774.

[289] ME. STAT. tit. 26, § 774.

[290] ME. STAT. tit. 26, § 774.

[291] ME. STAT. tit. 26, § 774.

[292] ME. STAT. tit. 26, § 774.

[293] *See, e.g.*, Maine Dep't of Labor, Bureau of Labor Standards, *Maine Laws Governing the Employment of Minors* (Sept. 2008), *available at* https://www1.maine.gov/labor/labor_laws/publications/minorsguide.html#FAQ; ME. STAT. tit. 26, § 774.

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3.6(b)(iii) *State Child Labor Exceptions*

The prohibition against minors under 18 working in hazardous occupations does not apply to minors in public and approved private schools where mechanical equipment is installed and operated primarily for purposes of instruction, or to minors who are volunteer participants in a career-oriented law enforcement program and perform traffic control duties at civic events.[294] Exemptions may also be made concerning minors and hazardous occupations for apprentices and student learners.[295]

The prohibition against the employment of minors under 14 does not apply to minors employed in a business owned solely by the minor's parents, or to minors employed in school lunch programs, if employment is limited to serving food and cleaning up dining rooms.[296] Likewise, minors under age 16 may be employed in a business owned solely by the minor's parents, subject to certain exceptions.[297]

Maine's child labor time and hour restrictions do not apply to emancipated minors, or to minors with a high school or equivalency degree. Additionally, minors employed in certain agricultural work, those employed as actors, or minors employed as youth summer camp employees are exempted from the time and hour restrictions.[298]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

In Maine, a work permit is required for minors under age 16. Work permits are issued by the state labor department. A permit will only be issued if proof of the minor's age is submitted. The permit must be signed by the minor's school superintendent, and issued to the minor by the state labor department. An employer must keep all work permits on file and accessible.[299]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

Violation of Posting Requirement. In Maine, any employer that violates the posting requirements described in 3.1(a)(ii) is subject to the following penalties:

- for the first violation, a fine between $25 and $1,000;
- for a second violation occurring within three years of a prior adjudication, a fine between $25 and $2,500; and
- for a third and subsequent violation occurring within three years of two or more prior adjudications, a fine between $25 and $5,000.[300]

Violation of Laws Regulating the Hiring of Minors. If an employer violates Maine's provisions governing the hiring of minors, the employer can be held strictly liable and subject to the following penalties:

- for the first violation, a fine between $250 and $5,000;

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294 ME. STAT. tit. 26, § 772.

295 12-170-011 ME. CODE R. § 4(B).

296 ME. STAT. tit. 26, § 771.

297 ME. Stat. tit. 26, § 773-A.

298 ME. STAT. tit. 26, § 774.

299 ME. STAT. tit. 26, § 775.

300 ME. STAT. tit. 26, § 42-B.

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- for a second violation occurring within three years of a prior adjudication, a fine between $500 and $5,000; and
- for a third or subsequent violation occurring within three years of two or more prior adjudications, a fine between $2,000 and $10,000.

There are additional penalties for intentional and knowing violations of the law.[301]

These same penalties also apply if an employer fails to keep the records required for minors, or makes any false entry to the record, or refuses to exhibit the time book when asked, or makes any false statement to the Director of the Bureau of Labor Standards, a Director's deputy, or any authorized agent of the Bureau.[302]

Prohibition Against Employing Truants. Employers in Maine are not allowed to hire or otherwise engage any student who is *truant* without a release from the student's supervising superintendent. *Truant* generally means a student between the ages of seven and 17 who has a number of unexcused absences from school.[303] If employers hire truant students, employers become subject to the same penalties as laid out in the previous section.[304]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[305]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[306]

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[301] ME. STAT. tit. 26, § 781.

[302] ME. STAT. tit. 26, § 774.

[303] ME. STAT. tit. 20-A, § 5051-A.

[304] ME. STAT. tit. 20-A, § 5054; ME. STAT. tit. 26, § 781.

[305] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

[306] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

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According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[307]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[308] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[309]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[310] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[311]

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[307] Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

[308] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

[309] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[310] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[311] 12 C.F.R. § 1005.18.

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The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[312]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[313]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in 3.7(a)(ii), wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[314] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[315] Accordingly, among

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[312] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

[313] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[314] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[315] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

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other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[316] tools and equipment,[317] and business transportation and travel.[318] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[319]

3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[320]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[321]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[322]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[323]

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[316] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[317] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[318] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[319] 29 C.F.R. § 778.217.

[320] 29 C.F.R. § 531.38.

[321] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[322] 29 C.F.R. § 531.40.

[323] 29 C.F.R. § 531.40.

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- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[324] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[325]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[326]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[327] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[328]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[329]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles

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[324] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[325] 29 C.F.R. § 825.213.

[326] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[327] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[328] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[329] 29 C.F.R. § 531.36.

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that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[330]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[331]

3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. Wages may be paid by cash, checks, direct deposit, payroll debit card, or other means of electronic transfer if certain conditions exist.[332]

Direct Deposit. Mandatory direct deposit is allowed so long as the employee can make an initial withdrawal of the entire net pay without additional cost or fees. If there is a cost to the employee, the employee must have the option of choosing another means of payment that involves no additional cost to the employee.[333]

Payroll Debit Card. Mandatory payment by payroll debit card is allowed so long as the employee is able to make an initial withdrawal of the entire net pay without additional cost or fees. If the program includes costs, the employer must be able to choose another means of wage payment that involves no additional cost to the employee.[334]

3.7(b)(ii) *Frequency of Payment Under State Law*

In Maine, nonsalaried employees must be paid at regular intervals not to exceed 16 days, and the payment cannot occur more than eight days after that payment accrued. An absent employee must be paid as though the employee were not absent.[335] *Salaried employees* are defined as anyone who works in a *bona fide* executive, administrative, or professional capacity, and has a regular annual compensation that is more than 3,000 times the minimum wage.[336]

The general rule above does not apply to commissioned sales employees whose hours and places of employment are not substantially controlled by the employer.[337]

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[330] 29 C.F.R. § 531.37.

[331] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[332] ME. STAT. tit.26, § 663.

[333] ME. STAT. tit.26, § 663.

[334] ME. STAT. tit.26, § 663.

[335] ME. STAT. tit.26, § 621-A.

[336] ME. STAT. tit.26, § 663.

[337] ME. STAT. tit.26, § 663.

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Payments that fall on a day when a business is regularly closed must be paid no later than the following business day.[338]

3.7(b)(iii) *Final Payment Under State Law*

Employees who resign or are discharged must be paid in full no later than the next normal payday, regardless of demand.[339] In the case of a sale of a business, the seller must pay employees wages earned while employed by the seller within two weeks after the sale.[340]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

Employees must receive a statement with their wages showing:

- date of the pay period;
- hours worked;
- total earnings; and
- itemized deductions.[341]

Employees paid by direct deposit or other means of electronic transfer must receive a statement showing:

- an accurate record of the transfer;
- date of the pay period;
- hours worked;
- total earnings;
- itemized deductions; and
- the date the transfer is made.[342]

Employees may be provided wage statements by electronic delivery so long as employees have ready access to the information on the statement and can print it without cost.[343]

3.7(b)(v) *Wage Transparency*

In Maine, employers may not prohibit employees from disclosing their own wages or from inquiring about other employees' wages if the purpose for the disclosure or inquiry is to enforce the employee's right to equal pay.[344] However, there is no affirmative obligation to disclose wages in Maine.

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[338] ME. STAT. tit.26, § 621-A.

[339] ME. STAT. tit.26, § 626.

[340] ME. STAT. tit.26, § 626.

[341] ME. STAT. tit.26, § 665.

[342] ME. STAT. tit.26, § 665.

[343] ME. STAT. tit.26, § 665.

[344] ME. STAT. tit.26, § 628.

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3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Changing Regular Paydays. If wages are normally paid more frequently than every 16 days and an employer wants to pay wages every 16 days (*i.e.*, the least frequent wage payment interval allowed), it must give employees written notice at least 30 days before a change occurs. The wage payment interval also may not be increased without written notice to the employee at least 30 days in advance of the increase.[345] The statute generally requires that "[w]ages must be paid on an established day or date at regular intervals made known to the employee."[346]

Changing Pay Rate. Employers must give employees notice about a pay rate decrease at least one working day before a change occurs.[347]

However, if an employee's pay rate is temporary increased to comply with the federal Davis-Bacon Act or other federal or state laws, advance notice is not required before again paying the employee their pre-increase pay rate if the employer complies with all applicable laws' posting and notice requirements. Also, pay rate changes made under a collective bargaining agreement are exempt from the notice requirement.[348]

3.7(b)(vii) *Paying for Expenses Under State Law*

In Maine, there is no general obligation to indemnify an employee for business expenses. However, state law addresses whether an employee may be required to pay for uniforms, tools, and equipment.

Uniforms. An employer cannot deduct for uniforms or personal protective equipment. A *uniform* is defined as "shirts or other items of clothing bearing the company name or logo."[349] Moreover, an employer cannot require an employee to pay for uniform cleaning or maintenance. However, an employer may have a written agreement with the employee in which an employee chooses to have a payroll deduction for the cost of cleaning and maintenance.[350]

Tools & Equipment. An employer cannot deduct for tools of the trade that are considered to primarily benefit an employer.[351]

3.7(b)(viii) *Wage Deductions Under State Law*

Permissible Deductions. An employer cannot deduct from wages unless the deduction relates to:

- payment of a loan, debt, or advance made to the employee;
- payment for merchandise the employee purchased from the employer;
- sick or accident benefits, or life or group insurance premiums (excludes compensation insurance) that an employee has agreed to pay; and

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[345] ME. STAT. tit.26, § 621-A.

[346] ME. STAT. tit.26, § 621-A.

[347] ME. STAT. tit.26, § 621-A.

[348] ME. STAT. tit.26, § 621-A.

[349] ME. STAT. tit.26, § 629.

[350] ME. STAT. tit.26, § 629.

[351] ME. STAT. tit.26, § 629.

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- rent, light, or water expense of a company-owned house or building.[352]

Debt means a benefit to the employee, but does *not* include items incurred by the employee in the course of the employee's work or dealing with customers on the employer's behalf, such as cash shortages, inventory shortages, dishonored checks, dishonored credit cards, or damages to the employer's property in any form or any merchandise purchased by a customer.[353] Additionally, a debt does not include uniforms or personal protective equipment or other tools of the trade that are considered to be primarily for the employer's benefit or convenience.

Although an employer cannot mandate that an employee pays for uniform cleaning and maintenance, it may enter into a written agreement with an employee to deduct cleaning and maintenance costs.[354]

An employer is also permitted to recover overpayments made to an employee, subject to some procedural restrictions. *Overcompensation* is defined as compensation paid to an employee that exceeds the amount to which the employee is entitled under the employer's compensation system. However, the term 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, or paid leave.[355]

An employer that overpaid an employee through an employer error cannot deduct more than 5% of the employee's net wages of any subsequent wage payment without the employee's written permission. However, if an employee quits, an employer can deduct the full amount from the employee's final wages if the employee provides written authorization.[356] Failure to adhere to these limitations may result in the employer forfeiting any claim to an overpayment; different standards apply for employer with more than 24 employees, and those with 24 or less employees.[357]

An employer has the burden of proving that the employee knowingly accepted the overcompensation. However, if an employee knowingly accepts the overcompensation, the restrictions do not apply.

Prohibited Deductions. As discussed above, an employer cannot take deductions for costs the employee incurred in the course of the employee's work or dealing with customers on the employer's behalf, such as:

- cash shortages;
- inventory shortages;
- dishonored checks;
- dishonored credit cards; or

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352 ME. STAT. tit.26, § 629.

353 ME. STAT. tit.26, § 629.

354 ME. STAT. tit. 26, § 629.

355 ME. STAT. tit.26, § 635.

356 ME. STAT. tit.26, §§ 626, 635.

357 ME. STAT. tit.26, § 635.

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- damages to the employer's property in any form or any merchandise purchased by a customer.

Further, as noted in 3.7(b)(vii), an employer cannot take deductions for work uniforms, personal protective equipment, or other tools of the trade that are considered to be primarily for the employer's benefit or convenience.[358]

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Orders of Support. An employer that is served with an order to withhold and deliver wages in connection with an employee's child support obligation must begin withholding pursuant to the order beginning with the next wage payment.[359] The employer must pay over the withheld amounts within 10 days of the date of wage payment.[360] The amount to withhold cannot exceed:

- 50% of the employee's disposable income if the employee is supporting a spouse and/or dependent child; or
- 60% of the employee's disposable income if the employee is not supporting dependents.[361]

In no event may the amount withheld exceed the limitations imposed under the federal Consumer Credit Protection Act (CCPA).[362] The employer may also deduct an administrative fee of $2 for each child support withholding from the employee's wages.[363]

An employer is prohibited from discharging, refusing to employ, taking disciplinary action, or otherwise discriminating against an employee because the employee's wages are subject to an order of support. An employer that violates this provision may be held liable in an action by the employee for compensatory and punitive damages plus attorneys' fees and court costs, and may also incur a civil penalty of $5,000.[364]

Debt Collection. An employer that is served with a garnishment order (known as an *installment order* in Maine) must, with 20 days of service:

- calculate the maximum dollar amount of the employee's disposable earnings that may be applied to the debt by using the answer form provided with the installment order;
- file the completed answer form with the court that issued the order;
- serve copies of the answer on the employee and the creditor as required by the answer form; and
- withhold the required amounts from the employee's income and remit payment to the creditor in: (1) the full amount of debt; or (2) the maximum dollar amount of the employee's

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[358] ME. STAT. tit.26, § 629.

[359] ME. STAT. tit. 19-A, § 2358.

[360] ME. STAT. tit. 19-A, § 2359.

[361] ME. STAT. tit. 19-A, § 2356.

[362] ME. STAT. tit. 19-A, § 2356; 15 U.S.C. § 1673.

[363] ME. STAT. tit. 19-A, § 2370; 10-144-351 ME. CODE R. § 4(1).

[364] ME. STAT. tit. 19-A, §§ 2361, 2367.

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disposable earnings that may be applied to the debt, whichever is less, until the court orders otherwise or the debt is satisfied.[365]

The maximum amount of earnings for any workweek that is subject to an installment order may not exceed the lesser of:

- 25% of the sum of the judgment debtor's disposable earnings and exempt income for that week;
- the amount by which the total of the employee's disposable earnings and exempt income for that week exceeds 40 times the federal minimum wage.[366]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

In the event of a wage payment dispute, 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 eight days after the due date for payment; or
- if there is a *bona fide* dispute at the time payment is due, remedies become available to the employee eight days after demand when the wages are, in fact, due and remain unpaid.[367]

The Maine Department of Labor enforces the state's wage payment provisions.[368] An employer that violates these provisions—including timely wage payment, record keeping, payment of final wages, or failure to pay into promised health benefit plans—may incur a civil penalty between $100 and $500 for each violation.[369] Either an aggrieved employee or the department may bring an action for unpaid wages and/or health benefits against the employer. A prevailing employee may recover the amount of unpaid wages and health benefits plus a reasonable rate of interest, costs and reasonable attorneys' fees, and an additional amount of twice the amount of unpaid wages as liquidated damages.[370] The Department of Labor is authorized to supervise the payment of the judgment, collect the judgment on behalf of the employee or employees, and collect fines incurred.[371]

With respect to unpaid minimum wages or overtime pay, an employee may bring a civil action to recover unpaid wages, an additional amount equal to such wages as liquidated damages, and attorneys' fees and costs.[372] Further, violations of Maine's minimum wage or overtime provisions may result in a civil penalty

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[365] ME. STAT. tit.14, § 3127-B.

[366] ME. STAT. tit.14, § 3126-A.

[367] ME. STAT. tit.26, § 626-A.

[368] ME. STAT. tit.26, § 626-A.

[369] ME. STAT. tit.26, § 626-A. There are additional penalties for employers that violate the posting requirements. ME. STAT. tit.26, § 42-B (a fine of up to $25 per day after being notified by the state labor department for a first violation, not to exceed $1,000; a fine from $25 to $50 per day after being notified by the state labor department for a second violation within three years of a prior adjudication of a violation, not to exceed $2,500; and a fine from $25 to $100 per day after being notified by the state labor department of a third or subsequent violation within three years of two or more prior adjudications, not to exceed $5,000).

[370] ME. STAT. tit.26, § 626-A.

[371] ME. STAT. tit.26, § 626-A.

[372] ME. STAT. tit.26, § 670.

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between $50 and $200.[373] In addition to any other penalties, the Labor Director may assess a forfeiture for each violation against any employer, officer, agent, or other person who violates the minimum wage and/or overtime provisions. The forfeiture may not exceed $1,000, or the amount provided in law or rule as a penalty for the specific violation, whichever is less.[374]

An employee seeking to file a civil action against an employer for violation of the minimum wage, overtime, and/or wage payment laws must file suit within six years of the alleged violation.[375]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[376] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[377] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[378]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Maine's earned paid leave law (EPLL) applies to employers covered by the state's unemployment law that employ more than 10 covered employees in the usual and regular course of business for more than 120 calendar days in any calendar year. [379] Under EPLL, a covered employee is a person engaged in "employment," which is generally defined per the state's unemployment law but also excludes "seasonal employment" (also defined per the state's unemployment law). Additionally, the law does not apply to an

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[373] ME. STAT. tit.26, § 671.

[374] ME. STAT. tit.26, §53.

[375] ME. STAT. tit.14, § 752. Although the statutes provide a private right of action, they do not specify an applicable statute of limitations for filing suit. A generally applicable statute of limitations provides that all civil actions, except specific actions covered by other statutes, must be commenced within six years of the cause of action accruing.

[376] 29 U.S.C. § 1002.

[377] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A* (Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[378] 490 U.S.107, 119(1989).

[379] 26 ME. REV. STAT. § 637. *See 26* Me. Rev. Stat. §§ 1043 (What is or is not "employment), 1251 (Seasonal employment). *See also* 12-170-X ME. CODE R. §§ I *et seq.*, and *Frequently Asked Questions and Answers on Earned Paid Leave (LD369)*, *generally available at* https://www.maine.gov/labor/labor_laws/earnedpaidleave/.

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employee covered by a collective bargaining agreement during the period between January 1, 2021 and the CBA's expiration. However, the law will apply to CBAs negotiated after January 1, 2021.

Employers that already offer paid leave benefits might not need to provide additional benefits. To be able to use an existing paid leave program instead of providing standalone earned paid leave, employees must be able to use the paid leave benefit for any reason. For example, leave employees can only use for sick leave purposes does not qualify. Employees must be able to use leave in the same manner they can under the law. For example, policies that require more than 4 weeks' notice to use leave for foreseeable absences does not qualify. However, if some amount of leave does not qualify, but at least 40 hours do, the latter does qualify.

Otherwise, under EPLL, when employment begins, an employee is entitled to earn one hour of paid leave for every 40 hours worked. For accrual purposes, the law assumes that employees classified as exempt executive, administrative, professional, computer professional, outside sales, or highly compensated employees under the federal Fair Labor Standards Act work a 40-hour workweek. An employee is entitled to earn up to 40 paid leave hours in one year of employment. However, if an employee carries over leave from one year to the next, the preceding year's amount counts toward the 40 hours the employee can earn in the subsequent year. Alternatively, per the state labor department, rather than having employees accrue leave, employers can annually frontload 40 leave hours and avoid carry-over obligations for unused frontloaded leave

An employer is not required to permit paid leave use before an employee has been employed for 120 days during a one-year period. No more than 40 paid leave hours must be available for use during any one-year period. Employees may use paid leave in increments of at least one hour, unless an employer allows smaller increments.

For foreseeable absences, an employee must give reasonable notice to the employee's supervisor of the employee's intent to use leave, and an employer's written policy can require up to 4 weeks' notice. Moreover, in most cases, an employer's reasonable notice requirement can require a request for leave to be submitted in writing or electronically. Additionally, employees must schedule leave in a manner than prevent their employer undue hardship. Moreover, an employer may place reasonable limits on the scheduling of foreseeable leave to prevent undue hardship, *i.e.*, a significant impact on the operation of the business or significant expenses, considering the employer's financial resources, workforce's size, and the industry's nature.

However, for unforeseeable absences, an employee must give reasonable notice to the employee's supervisor of the employee's intent to use leave. What is reasonable depends on the circumstances; an employee must make a good faith effort to provide as much notice as is feasible. Per the state labor department, employees must provide notice as soon as practicable.

The law is silent on whether, and when, employers can request that employees verify or document their need for leave. However, the state labor department says employers can require a general description of the need for leave. Additionally, the department says that, if an employee uses leave for more than three consecutive days, an employer can require a medical note or other documentation.

EPLL requires that an employee must be paid at least the same base rate of pay the employee received in the week immediately before taking leave and must receive the same benefits provided under the employer's established policies pertaining to other types of paid leave. Although the statute uses "base" rate, corresponding rules say employers must calculate an employee's pay rate using the same rate

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calculation they would when calculating the regular rate for overtime purposes. If an employer applies a tip credit toward paying tipped employees' wages, when they use earned paid leave, these employees must receive the full minimum wage. For employees with two or more pay rates, employers must divide their total earnings by their total hours worked in the week preceding leave to calculate their earned paid leave pay rate. Taking leave cannot result in the loss of any employee benefits accrued before the date leave began and/or affect the employee's right to health insurance benefits on the same terms and conditions as applicable to similarly situated employees.

When employment ends, pre-EPLL standards concerning forfeiture and pay out of vacation pay (see below) and similar paid leave benefits will apply to earned paid leave (see above). Note, however, that there is more nuance with the issue for paid leave employees accrue on or after January 1, 2023 (see below).

An employer must post and keep posted in a place accessible to employees a copy of the state-created poster.

Finally, although the law itself does not contain an anti-retaliation provision, a statute outside the law – but within the same chapter – prohibits employers from taking action intended to prevent or penalize a person from exercising protected rights; violations constitute a civil violation and can subject the employer to a fine of not less than $500 nor more than $1,000 for each violation.[380]

Vacation Pay (Pre-EPLL)

For non-EPLL paid leave benefits an employer provides, like vacation and PTO, once an employer does establish a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice. Such benefits must be administered uniformly in accordance with the established policy or employment agreement.

State law currently does not address whether an employer may cap vacation accrual[381] or prohibit carryover of accrued vacation from year to year (a "use-it-or-lose-it" provision).[382] Generally, such matters are governed by the individual agreements made between employer and employee, and an employer's written vacation policy will generally be followed in court.[383] For example, the state labor department

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[380] ME. STAT. tit.26, § 620.

[381] *But see, e.g.*, *Richardson v. Winthrop Sch. Dep't*, 983 A.2d 400 (Me. 2009) and *Gagnon v. City of Presque Isle*, 2012 WL 3061799 (July 16, 2012). Both cases uphold caps on payout of vacation.

[382] *But see, e.g.*, *White v. Hewlett Packard Enter. Co.*, 2019 WL 2438780 (D. Me. June 11, 2019), *affirmed by* 985 F.3d 61(1st Cir. 2021) and *Snow v. Borden, Inc.*, 802 F. Supp. 550(D. Me. 1992). In both cases, the company had an annual use-it-or-lose-it policy, and the court upheld the company's other policy provisions concerning forfeiture when employment ended.

[383] *See Richardson v. Winthrop Sch. Dep't*, 983 A.2d 400 (Me. 2009) (where the court held that because the contract specified that only up to 30 days of accumulated vacation would be paid out, the former employee did not succeed on this argument that he had accrued 178 vacation days and should be paid for all those days); *Snow v. Borden, Inc.*, 802 F. Supp. 550(D. Me. 1992) (a former employee was not entitled to unused vacation when employment ended because the employer's policy provided that vacation earned in same year must be taken or it would be lost); *Gagnon v. City of Presque Isle*, 2012 WL 3061799 (Me. Super. Ct. July 16, 2012) (holding for the employer even though the employer's policy of limiting vacation accrual was unwritten).

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interprets the final wages statute that addresses vacation pay to mean that employers can cap vacation accrual and that vacation need not roll over from year to year; only that unused vacation accrued by an employee or provided by an employer on or after January 1, 2023 be paid out when employment ends unless an exception applies.[384]

For vacation accrued before January 1, 2023, Maine permits an employer's vacation policy to require forfeiture of accrued vacation upon termination. Employers are not required to pay employees for their accrued vacation time upon termination if they have a specific policy or contract with the employee stating that accrued vacation will not be paid at termination.[385] Whenever the terms of employment or the employer's established practice includes provisions for paid vacations, vacation pay has the same status as wages earned.[386] By statute, if the agreement between the employer and the employee is to pay the accrued vacation at termination, then this payment should be treated as wages.[387] If a policy does not address what happens to unused vacation when employment ends, the state labor department and at least one state trial court judge have reached opposite conclusions, with the former contending payout is not requirement without an express agreement requiring payout and the latter holding payout must occur.[388]

As noted, however, all unused paid vacation accrued pursuant to the employer's vacation policy on and after January 1, 2023 must be paid to the employee when employment ends unless:

- the employee is employed by an employer with 10 or fewer employees;
- the employee is employed by a public employer; or
- the employee's employment is governed by a collective bargaining agreement (CBA) that includes provisions addressing payment of vacation pay upon cessation of employment, in which can the CBA supersedes the statute.[389]

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[384] Maine Department of Labor, Wage and Hour Division, Interpretive Guidance Policy 22-01 (Sept.20, 2022), *available at* https://www.maine.gov/labor/docs/2022/laborlaws/BLSInterpretiveGuidancePolicy22-01.docx.

[385] *See White v. Hewlett Packard Enter. Co.*, 2019 WL 2438780 (D. Me. June 11, 2019), *affirmed by* 985 F.3d 61(1st Cir. 2021) (company's policy provided that unused vacation would be forfeited when employment ended, except for certain circumstances noted, but not expressly listed, by court, which did not apply; per appellate court, outcome did not change because company had an annual use-it-or-lose-it policy); *Gibson v. Power Maint. Int'l*, 2002 WL 31399791 (D. Me. Oct. 24, 2002) (the employer's policy that accrued vacation was forfeited if employee was fired for insubordination was upheld). *But see Devoid v. Clair Buick Cadillac, Inc.*, 1994 Me. Super. LEXIS 311 (Me. Super. Ct. July 21, 1994) (former employee was entitled to pay-out of vacation at termination because the employer did not have a policy prohibiting it; holding, "In the absence of a provision in the employment contract divesting the employee of the right to accrued vacation pay on termination, an employee is entitled to receive that pay on termination."). Therefore, it is important that employers in Maine have a policy that clearly states accrued vacation is not paid out at termination if that is what the employer wants to enforce.

[386] ME. STAT. tit.26, § 626.

[387] ME. STAT. tit.26, § 626.

[388] *Compare* Maine Department of Labor, Maine Labor Laws Frequently Asked Questions (Oct. 2021), available at https://www.maine.gov/labor/docs/2021/laborlaws/LaborLawsFAQ.pdf, *with Devoid v. Clair Buick Cadillac, Inc.*, 1994 Me. Super. LEXIS 311 (July 21, 1994).

[389] ME. STAT. tit.26, § 626.

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It appears that the state labor department might view vacation differently than other forms of paid leave: "The statute does not obligate employers to pay for any leave time other than vacation."[390] Whether a court will accept the department's interpretation, however, remains to be seen.

3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Although Maine law generally prohibits work on Sunday, there are over 30 types of occupations, industries and work exempted from the requirements. However, large retailers with more than 5,000 square feet of interior selling space cannot require employees to work on Sundays and must close on Easter, Thanksgiving, and Christmas.[391]

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[392] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[393] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[394] Here again, states may choose to

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[390] Maine Department of Labor, Wage and Hour Division, Interpretive Guidance Policy 22-01 (Sept.20, 2022), *available at* https://www.maine.gov/labor/docs/2022/laborlaws/BLSInterpretiveGuidancePolicy22-01.docx.

[391] ME. STAT. tit.17, § 3204.

[392] 29 U.S.C. § 1144.

[393] 29 U.S.C. § 1161.

[394] 29 U.S.C. § 1167(3).

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extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Maine has a statewide law that permits couples to register as domestic partners.[395] The domestic partnership statute provides certain statewide spousal rights to registered domestic partners within the state, but not identical rights.[396]

With respect to employee benefits, the state mandates that group health insurance arrangements, including health maintenance organizations (HMOs), must make available to policyholders the option for additional benefits for domestic partners, at appropriate rates and under the same terms and conditions as those provided to spouses of married policyholders.[397] Likewise, small group health insurance carriers that provide health insurance for companies with fewer than 20 employees are required to offer continuation coverage under Maine's mini-COBRA group health continuation law. If a domestic partner is covered as a dependent under a small group insurance plan, the individual is entitled to continuation coverage in the same manner as any other dependent for up to 12 months.[398]

In the leaves of absence context, an employee with a domestic partner has rights under Maine's Family and Medical Leave Act just as the employee would with a spouse as discussed in 3.9(a)(ii).

3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[399]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[400]
- to take medical leave when the employee is unable to work because of a serious health condition;[401]

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[395] ME. STAT. tit.22, § 2710.

[396] *See* ME. STAT. tit.22, § 2710.

[397] ME. STAT. tit. 24-A, §§ 2741-A, 2832-A, and 4249; *see also* ME. STAT. tit.24, § 2319-A.

[398] ME. STAT. tit. 24-A, § 2809-A(11).

[399] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[400] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[401] 29 C.F.R. §§ 825.112, 825.113.

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- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 49 employees in 20 or more workweeks in the current or preceding calendar year.[402] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[403] For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Maine Family and Medical Leave Act (MFMLA)

Coverage & Eligibility. The Maine Family and Medical Leave Act (MFMLA) applies to employers with 15 or more employees.[404] Employees are eligible for the MFMLA protections if they have been employed by the same employer for 12 consecutive months.[405]

Purpose & Length of Leave. Employees in Maine are entitled to up to 10 workweeks of family medical leave in any two years of employment[406] for the following reasons:

- the employee's serious health condition, which means an illness, injury, impairment, or physical or mental condition that involves:
  - inpatient care in a hospital, hospice, or residential medical care facility; or
  - continuing treatment by a health care provider;[407]
- the birth of the employee's child or the employee's domestic partner's child;
- the placement of a child 16 years of age or less with the employee or with the employee's domestic partner in connection with the adoption of the child by the employee or the employee's domestic partner;
- the serious health condition of a child, domestic partner's child, parent, domestic partner, sibling, spouse, grandchild, or domestic partner's grandchild;
- the donation of an organ of that employee for a human organ transplant; or
- the death or serious health condition of the employee's spouse, domestic partner, parent, sibling, or child if the spouse, domestic partner, parent, sibling, or child as a member of the

[402] 29 U.S.C. § 2611(4); 29C.F.R. §§ 825.104 to 825.109.

[403] 29 U.S.C. § 2611(2); 29C.F.R. §§ 825.110 to 825.111.

[404] ME. STAT. tit.26, § 843(3).

[405] ME. STAT. tit.26, § 844.

[406] ME. STAT. tit.26, § 844.

[407] ME. STAT. tit.26, § 843(6).

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state military forces, or the U.S. armed forces, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty.[408]

The MFMLA also allows employees to have a reduced leave schedule, which means a leave schedule that reduces the usual number of hours per workweek, or hours per workday.[409] If the employee takes a reduced leave schedule, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and has equivalent pay, equivalent benefits, and better accommodates recurring periods of leave than the regular position of the employee.[410]

Employer Obligations. Employers must provide the employees with up to 10 workweeks of leave in any two years, as described above. However, the employer may require certification from a physician to verify the amount of leave requested by the employee. It is possible for the employer and employee to negotiate for more or less leave, but both parties must agree.[411]

The employer is not required by law to provide 10 weeks of paid leave, however. If the employee's policy is to provide less than 10 weeks of paid leave, then employee does not have to be paid for the additional weeks that would equal 10 weeks in total.[412]

Employee Rights & Obligations. Employees who exercise their rights under the MFMLA have the right to come back to work after the leave to either the same position as before the leave or to a position that is similar in terms of seniority status, employee benefits, pay, and other terms and conditions of employment. However, if the employee is not returned to the same position for reasons unrelated to the MFMLA leave, the employee cannot demand to be given the same position upon return from leave. Additionally, while the employee is on MFMLA leave, the employer must make it possible for the employee to continue enjoying the same employee benefits as prior to the leave, at the employee's expense. However, the employer and employee may negotiate so that the employer is responsible for those expenses.[413]

It is important to note that the employee must give at least 30 days' notice of the intended date upon which the employee's family medical leave will commence and terminate, unless the employee is prevented from providing this notice because of a medical emergency.[414]

An employee who exercises the right to leave under MFMLA has the right to keep any benefits that were accrued before the date on which the leave commenced.[415] Employees in Maine have the right not to be

[408] ME. STAT. tit.26, § 843(4); An eligible claimant may receive unemployment benefits if the loss of employment was due to an unexpected loss of child or elder care, in certain circumstances. ME. STAT. tit.26, § 1193.

[409] ME. STAT. tit.26, § 843(4-B).

[410] ME. STAT. tit.26, § 844.

[411] ME. STAT. tit.26, § 844.

[412] ME. STAT. tit.26, § 844.

[413] ME. STAT. tit.26, § 845.

[414] ME. STAT. tit.26, § 844(A).

[415] ME. STAT. tit.26, § 846.

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discharged, fined, suspended, expelled, disciplined, or in any other way discriminated against for exercising their MFMLA rights.[416]

Paid Family and Medical Leave Program

Maine has enacted a law to provide paid family and medical leave to covered employees in the state. The law provides up to 12 weeks of paid leave per year to all eligible employees in the private and public sector, except for employees of the federal government, regardless of employer size. To pay for this new program, the state will impose a 1% payroll tax split evenly between the employer and employee.

The Maine Department of Labor will administer the program and will establish procedures and forms for filing claims for family and medical leave benefits, including specifying what supporting documentation is necessary to support a claim for benefits. Employers and employees (as well as self-employed individuals) must start paying the payroll tax beginning January 1, 2025. Covered individuals can start taking paid family and medical leave on May 1, 2026.

Covered Employees. All public and private full- and part-time employees (as well as self-employed individuals) who have earned at least six times the state average weekly wage in the first four calendar quarters immediately preceding the first day of an individual's benefit year are covered by the law. Using the current average weekly wage ($1,036.00), so long as the individual has earned at least $6,216.00 in the year before taking leave, they are covered. Independent contractors can elect coverage.[417]

Covered Employers. Employers of all sizes are covered by the program. Note that although employers with fewer than 15 employees need not contribute toward the payroll tax, these small employers must still collect and remit to the state their employees' portions of the tax. Eligible employees of small employers may still take paid family and medical leave – and can do so immediately upon commencing employment.[418]

Private employers that offer equivalent or greater paid leave benefits may apply to the state for a waiver to avoid participating in the state's program. For private employers that are a party to a collective bargaining agreement, the bill does not "[o]bviate an employer's obligations to comply with any employer policy, law or collective bargaining agreement that provides for rights to leave greater than or additional to those provided by" the new state program. Rulemaking should clarify the practical effects of this provision.[419]

Permissible Reasons for Leave and Length of Leave. Eligible employees or self-employed individuals may take up to 12 weeks of paid leave for any of the following reasons:

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[416] ME. STAT. tit.26, § 847.

[417] ME. STAT. tit.26, § 850-A; Maine Paid Family & Medical Leave Frequently Asked Questions (Sept. 2024), #17, available at https://www.maine.gov/paidleave/docs/2024/faqenglish.pdf.

[418] ME. STAT. tit.26, § 850-F. For more information about employer size calculations, see Maine Paid Family & Medical Leave Frequently Asked Questions (Sept. 2024), #13, 18, available at https://www.maine.gov/paidleave/docs/2024/faqenglish.pdf.

[419] ME. STAT. tit.26, § 850-A.

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- to bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;
- to care for a family member with a serious health condition;
- to attend to a *qualifying exigency*, which is defined as "a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the United States Armed Forces, including, but not limited to, providing for the care or other needs of the military member's child or other family member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during rest and recuperation leave or following return from deployment or making arrangements following the death of the military member;"
- to care for a family member of the covered individual who is a covered service member;
- safe leave, otherwise known as sexual assault victim leave; or
- any reason set forth in Maine's family and medical leave statute, which includes leave for individuals in the following situations:
  - for the serious health condition of the individual;
  - for the birth of the employee's child or the individual's domestic partner's child;
  - placing a child 16 years of age or under with the individual or the individual's domestic partner in connection with the adoption of the child;
  - for the death or serious health conditions of certain family members in the military who died or incurred a serious health condition while on active duty; or
  - for the donation of an organ of the individual for a human organ transplant.[420]

Note that the law defines *family member* as a biological, foster, step, or adopted child (regardless of age); grandparent; grandchild; sibling; spouse or domestic partner; or "an individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship."[421]

An employee may take up to 12 weeks of family leave and up to 12 weeks of medical leave in an application year, but may not take more than 12 weeks, in the aggregate, of family leave and medical leave in the same application year. *Application year* means the 12-month period beginning on the first day of the calendar year in which an individual applies for family leave benefits or medical leave benefits. Leave may be taken intermittently in increments equaling not less than one day, or if the employer and the employee agree, on a reduced leave schedule. However, they may not agree for leave to be taken in increments of less than one hour.[422]

Benefits. During the approved leave period, the program will replace 90% of an employee's wages for income earned that is equal to or less than 50% of Maine's average weekly wage, which is currently

[420] ME. STAT. tit.26, § 850-B.

[421] ME. STAT. tit.26, § 850-A.

[422] ME. STAT. tit.26, § 850-B.

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$1,036. The portion of the covered individual's average weekly wage that is over 50% of the state average weekly wage must be replaced at 66% up to the maximum weekly benefit. To calculate the benefit amount, the average weekly wages the individual earned over the preceding four calendar quarters will be used, but any earnings from bonuses will be excluded. The maximum weekly benefit is set at the state average weekly wage, which changes annually. Benefits are not subject to state income tax.[423]

Job Protection. So long as a covered employee has been employed for at least 120 days before taking leave, the employer must restore that employee to the same or equivalent position with the same or equivalent benefits, pay, and other conditions of employment. This requirement applies to all employers, regardless of size.

An employee who takes leave before working at least 120 days does not have the same job restoration rights. However, the law includes an express prohibition against retaliation for an employee exercising their right to paid family and medical leave. As a result, employers may potentially face retaliation claims from employees who take leave during their initial 120 days of employment who do not return to the same or similar job after their leave.[424]

Notice Requirements. An employer must post a workplace notice of the benefits available under the program. An employer must also issue written notice to each employee within 30 days of the start of employment that includes an explanation of benefits as well as information on employees' rights and obligations.[425]

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[426] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

There are no state law provisions requiring paid sick leave in Maine. However, employer with 25 or more employees that provides paid leave to its employees must allow employees to use the paid leave for the care of an immediate family member (*i.e.*, child, spouse, or parent) who is ill. *Paid leave* means time away from work for which an employee receives compensation. It includes, but is not limited to, sick time, vacation time, compensatory time, and paid time off (PTO). It does not include short- or long-term disability, catastrophic leave, or similar benefits.[427]

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[423] ME. STAT. tit.26, § 850-C.

[424] ME. STAT. tit.26, § 850-J.

[425] ME. STAT. tit.26, § 850-I.

[426] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[427] ME. STAT. tit.26, § 636.

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3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[428] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow individuals with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for her own serious health condition, such as severe morning sickness.[429] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the impairment.[430] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in

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[428] 42 U.S.C. § 2000e(k); *see also 29* C.F.R. § 1604.10.

[429] 29 C.F.R. § 825.202.

[430] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

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3.11(c). To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

Maine law does not require employers to provide sick leave, leaves of absence, or other benefits to female employees because of pregnancy or other medical conditions that result from pregnancy, if they do not also provide sick leave, leaves of absence, or other benefits for other employees and they are not otherwise required to provide these benefits under state or federal law. Reasonable accommodations for pregnancy-related conditions are not considered additional benefits.[431]

However, employment policies and practices involving such matters as the beginning and duration of leave, the availability of extensions, benefits, and reinstatement must be applied to disability due to pregnancy or childbirth on the same terms as they are applied to other disabilities.

Moreover, under Maine's Family Medical Leave Act, an eligible employee may take up to 10 consecutive weeks of leave in any two years for a variety of reasons including the employee's own serious health condition. It is likely that a disability caused by pregnancy would be considered a serious health condition under the MFMLA (as it is under the federal Family and Medical Leave Act), although this issue is not addressed in the statute or in case law.[432] For additional information on the MFMLA, see 3.9(a)(ii).

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the Maine Family and Medical Leave Act.[433] For additional information on the MFMLA, see 3.9(a)(ii).

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Maine law does not address school activities leave for private-sector employees.

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[431] ME. STAT. tit. 5, §§ 4553(4), 4572-A(3), (4); ME. CODE REGS. 94-348-003, § 3.06(E).

[432] ME. STAT. tit. 26, §§ 843 *et seq.*

[433] ME. STAT. tit. 26, §§ 843 *et seq*.

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3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

An eligible employee may take time off to donate an organ for human transplant as part of the employee's leave entitlement under the Maine Family and Medical Leave Act.[434] For additional information on the MFMLA, see 3.9(a)(ii).

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Maine law does not address time off to vote for private-sector employees.

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Leave to Serve as a Legislator. In Maine, an employee who provided their intent to become a candidate for the Legislature within 10 days of beginning their campaign must be granted a leave of absence. The leave may be unpaid and will be limited to one legislative term or two years. Following the leave, the employee must be restored to the employee's previous or similar position with the same status, pay, and seniority. Employers with five or fewer employees are exempt from this provision.[435]

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[436] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of

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[434] ME. STAT. tit. 26, §§ 843 *et seq*.

[435] ME. STAT. tit. 26, § 821.

[436] 28 U.S.C. § 1875.

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additional federal statutes.[437] For more information, see LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. An employer must not discharge an employee, or terminate, or threaten to terminate the health insurance coverage of an employee because the employee received a jury duty summons, responded to the summons, attends court for prospective jury duty service, or serves as a juror. An employer is not required to compensate an employee for time spent on jury service.[438]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Maine provides leave for both victims of crime in general and for victims of sexual assault, stalking, and related crimes. Specifically, an employee is eligible for leave if the employee or the employee's daughter, son, parent, or spouse is a victim of violence or assault or a victim of sexual assault, stalking, or any act that would support an order for protection under Maine law.[439]

An eligible employee may take reasonable and necessary leave from work for the following reasons:

- to prepare for and attend court proceedings;
- to receive medical treatment;
- to attend to medical treatment for a victim who is the employee's daughter, son, parent, or spouse; or
- to obtain necessary services to remedy a crisis caused by domestic violence, sexual assault, or stalking.[440]

An employee who needs leave must:

- communicate the request for leave as soon as possible after learning of the need; and
- provide the employer in a timely manner with the information necessary for the employer to make an informed decision on the request.[441]

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[437] *See, e.g.*, 29U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[438] ME. STAT. tit.14, § 1218.

[439] ME. STAT. tit.26, § 850.

[440] ME. STAT. tit.26, § 850.

[441] 12-170-010 ME. CODE R. § IV.

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An employer may seek a modification or deny a request for leave if:

- the employer would sustain undue hardship from the employee's absence;
- the request for leave is not communicated to the employer within a reasonable time under the circumstances; or
- the requested leave is impractical, unreasonable, or unnecessary based on the facts then made known to the employer.[442]

Leave may be without pay except that an employee who has earned leave time that would otherwise be applicable to the leave requested may use the earned leave at the employee's option.[443]

Paid Family and Medical Leave- Safety Leave. Effective May 1, 2026, employees may take up to 12 weeks of paid safety leave because the employee, or the employee's family member, is a victim of violence, assault, sexual assault, stalking, or any act that would support an order of protection.[444] Employees may use safety leave to seek an order of protection, obtain medical care or mental health counseling to address physical or psychological injuries, make the victim's home secure from the perpetrator or seek new housing, or seek legal assistance.[445] See **3.9(a)(ii)**.

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[446]

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[442] ME. STAT. tit.26, § 850.

[443] 12-170-010 ME. CODE R. § III.

[444] ME. STAT. tit.26, § 850-A.

[445] ME. STAT. tit.26, § 850-A(26).

[446] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and

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FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[447] An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.448 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.
2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Leave. Employees who are members of the National Guard or U.S. reserves may take a military leave of absence from a position with any private employer in response to federal or state orders.[449]

The military member must give prior reasonable notice of the anticipated absence for military duty, if reasonable under the military circumstances. If the employer so requests, the employee must 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.[450]

Leave may be with or without pay at the employer's discretion. The period of absence must be construed as an absence with leave. Absence for military training does not affect the employee's right to receive normal vacation, sick leave, bonuses, advancement, and other advantages of employment normally to be anticipated in the employee's position. The employer must continue, at no cost to the employee, the existing health, dental, and life insurance benefits for at least the first 30 days of the military duty. Thereafter, the employee has the option of continuing the health, dental, and life insurance benefits at the employee's own expense by paying the insurance premium at the same rates as paid by the employer.[451]

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(2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[447] 29 C.F.R. § 825.126(a).

[448] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29C.F.R. § 825.126(a)(3).

[449] ME. STAT. tit.26, § 811(2).

[450] ME. STAT. tit.26, § 811(2).

[451] ME. STAT. tit.26, §§ 811(3), 812.

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All employers must reinstate employees after conclusion of service provided they are still qualified to perform the duties of the job. An employee must be reinstated with the same pay, seniority, benefits, and status, and receive any other advantages of employment as if the employee had remained continuously employed.

An employee who incurs a disability during military service and who, after reasonable efforts by the employer to accommodate the disability, is not qualified for the position the employee would have been in but for the military leave, must be reinstated. The employee must be reinstated to another position without loss of seniority, benefits, status, and other advantages of employment. The position must be one with equal pay, seniority, benefits, and status for which the employee is qualified or could become qualified with reasonable employer efforts.[452]

Employers are prohibited from terminating or otherwise discriminating against employees because of membership in the National Guard or U.S. reserves.[453]

Family Military Leave. Employers of 15 or more employees must provide an employee with up to 10 workweeks of leave in any two years for the death or serious health condition of the employee's spouse, domestic partner, parent, sibling, or child, if the spouse, domestic partner, parent, sibling, or child dies or incurs a serious health condition while on active duty as a member of the state military forces, the U.S. armed forces, the National Guard, or the U.S. armed forces reserves.[454]

Additionally, employers of 15 or more employees must provide up to 15 days of family military leave per deployment to the spouse, domestic partner, or parent of a person ordered to active duty by the governor or president for a period of 180 days or longer to a duty assignment that is in a combat theater or an area where armed conflict is taking place. The servicemember must be a Maine resident. To be eligible, the employee must have been employed by the same employer for at least 12 months and have worked at least 1,250 hours during the 12-months immediately preceding the commencement of the employee's family military leave.

Leave may be taken during the 15 days immediately prior to deployment, the 15 days immediately following deployment, and/or during periods when the person is on leave during active duty.[455]

If leave will consist of five or more consecutive workdays, the employee must give the employer at least 14 days' notice of the intended date upon which the leave will commence. If leave is less than five days, the employee must give as much notice as is practicable. The employee must consult with the employer to attempt to schedule the leave so as to not unduly disrupt the employer's operations. The employer has the right to require written certification (*i.e.*, a copy of the military orders) that the employee is in fact eligible for the leave.[456]

Family military leave may consist of unpaid leave. An employer must make it possible for an employee to continue employee benefits at the employee's expense during any family military leave. The employer

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[452] ME. STAT. tit.26, § 811(3), (4).

[453] ME. STAT. tit.26, § 811(1); ME. STAT. tit. 37-B, § 342(5).

[454] ME. STAT. tit.26, §§ 843, 844.

[455] ME. STAT. tit.26, § 814.

[456] ME. STAT. tit.26, § 814.

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and employee may negotiate for the employer to maintain employee benefits at the employer's expense for the duration of the leave.[457]

An employee who exercises the right to family military leave is entitled, upon expiration of the leave, to be restored to the position held when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This does not apply if the employer proves that the employee was not restored as provided because of conditions unrelated to the employee's use of family military leave.[458]

An employer may not discharge, fine, suspend, expel, discipline, or in any other manner discriminate against any employee who exercises any right under Maine's Family Military Leave law.[459]

Time Off for Medical Appointments. An employer must allow a veteran to take time away from work to attend a scheduled appointment at a medical facility operated by the U.S. Department of Veterans Affairs, as long as the veteran gives the employer notice of the appointment as soon as is reasonably possible. Leave is not required to be paid. If an employer provides paid leave, the employer must allow a veteran to use available paid leave to attend the scheduled appointment. If a veteran has used all available paid leave, the employer must grant unpaid leave to the veteran to attend the appointment. If an employer does not provide paid leave, the employer must grant unpaid leave.[460]

Other Military-Related Protections: Unemployment. Although not restricted to just military families, a worker who voluntary leaves work will not be disqualified from unemployment benefits if the exit was caused by the illness or disability of an immediate family member and the worker took all reasonable precautions to protect the worker's employment status by promptly notifying the employer of the need for time off, a change or reduction in hours, or a shift change, and was advised by the employer that the time off, or change or reduction in hours, or shift change cannot or will not be accommodated.[461]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

Volunteer Emergency Responder Leave. An employer may not discharge or discipline an employee who fails to report to work at the beginning of the regular working hours because the employee was responding to an emergency as a volunteer firefighter and the employee reported for work as soon as reasonably possible after being released from the emergency. These protections also extend to municipal fire department members. An employer is also prohibited from discriminating against an employee under such circumstances, and these protections are extended to emergency medical services persons.

[457] ME. STAT. tit.26, § 814.

[458] ME. STAT. tit.26, § 814.

[459] ME. STAT. tit.26, § 814.

[460] ME. STAT. tit.26, § 637.

[461] ME. STAT. tit.26, § 1193(1)(A)(1).

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Emergency medical services person means any person who routinely provides emergency medical treatment to the sick or injured, and includes volunteers.

The leave may be unpaid. If time permits, the employee, their designee, or the fire department supervisor must notify the employer of the leave. An employee responding to an emergency must make every effort to notify their employer immediately. Notification may be provided by the employee, the fire department, or the emergency medical provider.

An employer may request a statement from the chief of the volunteer fire department stating that the employee was responding to an emergency call and the time of release from the call. The verification must specify the date, time, and duration of the emergency response.

The statute does not apply if the employer and employee have a written agreement outlining procedures for when an employee is called to an emergency. Further, the statute does not apply unless the chief of the fire department or emergency medical services provider has a written policy specifying the circumstances under which firefighters or emergency medical services persons are needed and affirms that they will be released as soon as practicable. The employee must provide a copy of the policy to their employer, along with notification to the employer of the employee's status as a firefighter or emergency medical services person, within 30 days of employment. An employee must also notify the employer of any change in firefighter or emergency medical service person status within 30 days of the change.

If the employer has designated the employee as essential, such that the employee's absence would cause significant disruption of the employer's business, then the employer is not required to allow emergency response leave for that employee. This designation must be in writing and signed by both the employer and employee.[462]

Public Health Emergency Leave. An employer must grant paid or unpaid leave from work, for the following reasons related to an extreme public health emergency:

- the employee is unable to work because the employee is under an individual public health investigation, supervision, or treatment related to an extreme public health emergency;
- the employee is unable to work because the employee is acting in accordance with an extreme public health emergency order;
- the employee is unable to work because the employee is in quarantine or isolation or is subject to a control measure in accordance with extreme public health emergency information or directions issued to the public or one or more individuals;
- the employee is unable to work because of a direction given by the employer in response to a concern of the employer that the employee may expose other individuals in the workplace to the extreme public health emergency threat; or
- the employee is unable to work because the employee is needed to provide care or assistance to one or more of the following individuals: the employee's spouse or domestic partner; the employee's parent; or the employee's child or child for whom the employee is the legal guardian.

[462] ME. STAT. tit.26, § 809.

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An *extreme public health emergency* means the occurrence or imminent threat of widespread exposure to a highly infectious or toxic agent that poses an imminent threat of substantial harm to the population of the state.

Leave must last for the duration of an extreme public health emergency and for a reasonable time period following the extreme public health emergency for diseases, conditions contracted, or exposures that occurred during the extreme public health emergency.

The employer has the right to request and receive written documentation from a physician or public health official supporting the employee's leave.

Employees may not lose any benefits or right to health insurance due to the leave. For any leave that extends beyond the time period of the emergency, the employer must allow an employee to continue the employee's 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 or any portion of this extended leave.

An employer is exempt from this leave if the employer would sustain undue hardship from the employee's absence, or the request for leave is not communicated to the employer within a reasonable time under the circumstances.[463]

Search & Rescue Volunteer Leave. An employer may not discharge, take disciplinary action against, or otherwise discriminate against an employee because of the employee's absence during the employee's regular working hours, if the employee was responding to a search and rescue operation requested by a law enforcement agency in the employee's capacity as a search and rescue volunteer.[464] *Search and rescue volunteer* means a person who is certified in search and rescue practices and procedures by a recognized organization.[465]

The statute applies only if:

- the recognized organization in charge of calling out search and rescue volunteers has a written policy that specifies the circumstances under which search and rescue volunteers will be ordered to remain at a search and rescue operation, and affirms that search and rescue volunteers will be released as soon as practicable; and
- the employee presents a copy of the policy to the employer upon notifying the employer of the employee's status as a search and rescue volunteer, within 30 days of employment.[466]

An employee must notify the employer of any change to the employee's status as a search and rescue volunteer, including termination of that status, within 30 days of the change.[467]

An employee responding as a search and rescue volunteer to a search and rescue operation, the employee's designee, or the search and rescue operation supervisor must make every effort to

463 ME. STAT. tit.26, § 875.

464 ME. STAT. tit.26, § 810(2).

465 ME. STAT. tit.26, § 810(1).

466 ME. STAT. tit.26, § 810(7).

467 ME. STAT. tit.26, § 810(7).

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immediately notify the employer that the employee may be late arriving to work or absent from work prior to or during the employee's regular working hours. The employee must report for work as soon as reasonably possible after being released from the search and rescue operation.[468]

If the employer requests, the employee must provide the employer with a statement from the official in charge of the recognized organization, the official's designee, or a law enforcement official responsible for the search and rescue operation verifying that the employee was responding to a search and rescue operation and specifying the date and time of release from the operation.[469]

Leave is unpaid. An employer may charge the lost time against the employee's regular pay or against the employee's available leave time.[470]

The statute is not applicable to employees designated as essential employees. Upon receiving notice of an employee's search and rescue volunteer status, an employer may designate the employee essential to the employer's operations if the absence of the employee would cause significant disruption of the employer's business. This designation must be made in writing and signed by both the employee and the employer.[471]

The statute also does not apply if the employer and the employee have entered into a written agreement, signed by the employer and the employee, that governs procedures to be followed when the employee is called to respond to a search and rescue operation as a search and rescue volunteer.[472]

Earned Paid Leave. In addition, as discussed at 3.8(a)(ii), employers with more than 10 employees must permit each employee to earn paid leave.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[473] Employers are also required to comply with all applicable occupational safety and health standards.[474] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping

[468] ME. STAT. tit.26, § 810(2), (3).

[469] ME. STAT. tit.26, § 810(3).

[470] ME. STAT. tit.26, § 810(2).

[471] ME. STAT. tit.26, § 810(2), (6).

[472] ME. STAT. tit.26, § 810(5).

[473] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[474] 29 U.S.C. § 654(a)(2).

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requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are comparable standards under the federal law.[475] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Maine has an approved state plan under the Fed-OSH Act, the Maine State Plan,[476] that covers all state and local government workers in the state. It does not cover federal government workers, nor does it cover private-sector employers. The Maine Plan generally follows, but is not necessarily identical to, the Fed-OSH Act standards. It differs in that it has a respiratory protection standard and a Video Display Terminal standard, which is required for employees who spend at least four hours per day on a computer.[477]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

Texting while driving is prohibited for all drivers in the state of Maine.[478]

Drivers may not operate a cellphone while driving. Specifically, this means that drivers may not manipulate, talk into, or otherwise interact with a cellphone or any handheld electronic device while driving the vehicle on a public way with the motor running or sitting stationary in the vehicle at a stoplight or because of traffic, or for any reason. However, if the driver pulls off of the public way and has halted in a location where the vehicle can safely remain stationary, then the driver is allowed to use their phone.[479]

These restrictions apply to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, state law.

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

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475 29 U.S.C. § 667(c)(2).

476 ME. STAT. tit.26, §§ 561-A *et seq*.

477 U.S. Dep't of Labor, *Occupational Safety and Health Administration*, *available at* https://www.osha.gov/dcsp/osp/stateprogs/maine.html.

478 ME. STAT. tit. 29-A, § 2119.

479 ME. STAT. tit. 29-A, § 1304(1)(I).

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3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

Firearms in the Workplace. Maine law does not specifically address firearms in the workplace.

Firearms in Company Parking Lots. An employer may not prohibit an employee with a valid concealed firearms permit from keeping a firearm in the employee's vehicle as long as the vehicle is locked and the firearm is not visible. An employer or an agent of an employer may not be held liable in any civil action for damages, injury, or death resulting from or arising out of another person's actions involving a firearm or ammunition transported or stored pursuant to the statute, including the theft of a firearm from an employee's vehicle, unless the employer or an agent of the employer intentionally solicited or procured the other person's injurious actions.[480]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

With a few exceptions, Maine prohibits smoking in places of employment, including inside company vehicles.[481] However, Maine law allows for the establishment of defined smoking areas and requires that employers establish a written policy concerning smoking and nonsmoking at the workplace. This policy can be negotiated, but the law requires both that the information in the policy be posted in a place where all employees can be made aware of the policy and that the employer monitor and enforce the provisions of the policy.[482] "No smoking" signs must be posted in all places where smoking is prohibited. Also, any smoking areas within a place of employment must have a sign posted stating, "Smoking Permitted," and the lettering for signs must be at least one inch in height.

The following provisions must be included in the policy:

- the policy shall prohibit smoking except in Designated Smoking Areas in order to protect the employer and employees from the detrimental effects of environmental tobacco smoke;
- smoking in workplaces shall only take place in Designated Smoking Areas. Designated Smoking Areas shall be described within the written policy; and
- smoking in the business facility must be in accordance with the written policy.[483]

Note that the policy may prohibit smoking throughout the entire business facility, but does not require it.

Requirements & Guidelines for Smoking Outdoors. An employer may designate an area outdoors for smoking provided that is a minimum twenty feet from windows, entryways, vents, doorways, or other openings and it is not in a location that will allow circulation of environmental tobacco smoke into the enclosed areas of the business facility, or a public place, in any way, *e.g.*, through the ventilation system, open windows, and open doors, or any outdoor area where smoking is prohibited by law. An area for

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480 ME. STAT. tit.26, § 600.

481 ME. STAT. tit.22, §§ 1580-A, 1541, and 1550; 10-144-250 ME. CODE R. §§ 250 *et seq*.

482 10-144-250 ME. CODE R. § 3.

483 10-144-250 ME. CODE R. § 3.

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smoking outdoors may be constructed to protect employees from the weather as long as it is not an "enclosed area."[484]

Antiretaliation Provisions. It is unlawful for any employer to discharge, discipline, or otherwise discriminate against any of its employees because that employee has assisted in the supervision or enforcement of the smoking policy.[485]

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Maine law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Under Maine law, an employer can be a victim of harassment and is able to file a complaint in court so that any person committing violence or threatening to commit violence may be forcibly removed from the premises and restrained from returning to the workplace.[486]

Under the statute, *harassment* means:

- three or more acts of intimidation, confrontation, physical force, or the threat of physical force directed against any person, family, or business that are made with the intention of causing fear, intimidation, or damage to personal property and that do in fact cause fear, intimidation, or damage to personal property;[487]
- intentionally interfering or attempting to intentionally interfere by physical force or violence against a person, damage or destruction of property or trespass on property or by the threat of physical force or violence against a person, damage, or destruction of property or trespass on property;[488] or

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[484] 10-144-250 ME. CODE R. §§ 2(D), 4.

[485] 10-144-250 ME. CODE R. § 5.

[486] ME. STAT. tit. 5, § 4653(1).

[487] ME. STAT. tit. 5, § 4651(2)(A).

[488] ME. STAT. tit. 5, §§ 4651(2)(C), 4681(1).

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- committing crimes such as assault, criminal threatening, stalking, etc.[489]

If an employer is faced with this situation, the employer may file a sworn complaint in court alleging the harassment in detail.[490] If it appears from the complaint that swift action must be taken because of an immediate danger, the court will issue a temporary restraining order. A temporary restraining order immediately goes into effect to enjoin a person from engaging in further harassment, and then shortly after there is an opportunity for a full hearing on the merits where a permanent order may be entered.[491]

3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[492] (2) the Americans with Disabilities Act (ADA);[493] (3) the Age Discrimination in Employment Act (ADEA);[494] (4) the Equal Pay Act;[495] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[496] (6) the Civil Rights Acts of 1866 and 1871;[497] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[498]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or

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[489] ME. STAT. tit. 5, §§ 4651(2)(C).

[490] ME. STAT. tit. 5, § 4653(1).

[491] ME. STAT. tit. 5, § 4654(2).

[492] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42U.S.C. § 2000e(b).

[493] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42U.S.C. § 12111(5).

[494] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29U.S.C. § 630.

[495] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. §203.

[496] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[497] 42 U.S.C. §§ 1981, 1983.

[498] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

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- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[499] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[500]

3.11(a)(ii) *State FEP Protections*

The Maine Human Rights Act (MHRA) makes it an unlawful employment practice for an employer to fail to or refuse to hire, to discharge, or otherwise discriminate against its employees on the basis of:

- race (includes traits associated with race, including hair texture, Afro hairstyles, and protective hairstyles, including braids, locs, and twists);
- color;
- sex (includes pregnancy and related medical conditions);
- sexual orientation (actual or perceived heterosexuality, bisexuality or homosexuality);
- physical or mental disability;
- religion;
- ancestry;
- national origin;
- age;
- filing a claim or asserting a right under the Worker's Compensation Act or the Whistleblower's Protection Act;[501]
- HIV Testing;
- genetic information / testing;
- National Guard or U.S. military status;[502]
- domestic violence victim status (seeking an order of protection, applies to employees and applicants);[503]
- gender identity; and
- familial status.

The MHRA applies to all employers in Maine. However, it does not apply to religious or fraternal corporations or associations with respect to the employment of its members of the same religion, sect, or

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[499] The EEOC's website is available at http://www.eeoc.gov/.

[500] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29C.F.R. § 1626.7.

[501] ME. STAT. tit. 5, §§ 4551 *et seq.*, 4571 *et seq.*; 94-348-3 ME. CODE R. §§ 3.01 *et seq*.

[502] ME. STAT. tit. 5, §§ 19201 *et seq.* (HIV), 19301 *et seq.* (genetic information/testing).

[503] ME. STAT. tit. 5, § 4572.

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fraternity. In all other respects the MHRA law applies to these organizations. The law defines *gender identity* as gender related identity, appearance, mannerisms, or other gender related characteristics, regardless of the individual's sex at birth. Gender identity is a sexual orientation discrimination exemption for religious employees who do not receive public funds.[504]

The MHRA was amended to clarify that *aggrieved person* means any person who claims to have been subject to unlawful discrimination on the basis of all protected class statuses, including discrimination based on a person's known relationship or association with a member of a protected class and discrimination based on perceived protected class status.

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

The MHRA is enforced by the Maine Human Rights Commission (MHRC), a state administrative agency. Complainants bringing claims under the MHRA must file a complaint with the MHRC before they are able to bring their claims in court. However, after 180 days has passed following the filing of the complaint with the MHRC, the complainant may ask for a right-to-sue letter from the MHRC and may proceed to sue in court, even if the MHRC has already begun an investigation.[505]

The MHRC will try to resolve the conflict before it makes its way to court. The resolution process centers around an investigator who is assigned to a case to investigate the facts and make a recommendation as to whether or not a violation of the MHRA occurred. The investigator may hold fact-finding or issues and resolutions conferences before issuing the recommendation, and there is the opportunity for oral argument before a board of commissioners before any recommendation becomes final.[506]

Note that individuals have up to 300 days from the date of an unlawful discriminatory act to file a complaint with Maine's Human Rights Commission.[507] After that, they can still file in court, but the damages they can collect will be limited. The law permits a civil suit to be filed by any person who claims to have been subject to unlawful discrimination on the basis of all protected class status, including discrimination based on a person's known relationship or association with a member of a protected class and discrimination based on the basis of perceived protected class status.[508]

Effective September 19, 2023, The Commission may issue a right-to-sue letter only:

- if 180 days has elapsed since the date the complaint was filed and the Commission has not filed a civil action or entered into a conciliation agreement, the complainant may submit a written request for a right-to-sue letter and the Commissioner must issue the right-to-sue letter;

[504] ME. STAT. tit. 5, §§ 4553(4); 4533(5-c).

[505] *See* https://www.maine.gov/mhrc/file/after.

[506] *See* http://www.maine.gov/mhrc/.

[507] 94-348-020 ME. CODE R. § 2.02.

[508] Attorneys' fees and civil penal damages or compensatory and punitive damages may not be awarded to a plaintiff unless the plaintiff alleges and establishes that, prior to the filing of the civil action, the plaintiff first filed a complaint with the commission and the commission either: (1) dismissed the case under section 4612, subsection 2; (2) failed, within 90 days after finding reasonable grounds to believe that unlawful discrimination occurred, to enter into a conciliation agreement to which the plaintiff was a party; (3) issued a right-to-sue letter; or (4) dismissed the case in error; ME. STAT. tit. 5, §§ 4553(1-D), 4621, as amended by L.S. 1701.

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- if a complainant submits a written request for a right-to-sue letter before the 180th day, the Commission must issue a right-to-sue letter if:
  - the executive director of the Commission determines that the complainant has demonstrated good cause for requesting the letter before the expiration of the 180 days; and
  - the executive director certified that it is probable that the Commission will not be able to conclude its investigation before the expiration of the 180-day period.[509]

3.11(a)(iv) *Additional Discrimination Protections*

Tobacco Products. Employers may not:

- require, as a condition of employment, that an employee or applicant refrain from using tobacco products outside the course of employment; or
- discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment, based on the use of tobacco products outside the course of employment.

Individuals must comply with any workplace policy concerning use of tobacco.[510] An employer is not prohibited from offering a voluntary wellness program for employees that incentivizes the cessation of tobacco use in compliance with the federal regulations applicable to wellness programs.[511] This law applies to all employers, employees, and applicants.[512]

Captive Audience: Employers are prohibited from taking adverse employment action against employees for declining to participate in employer sponsored meetings of listening to communications from the employer regarding the employer's opinion on religious or political matters. Employers may have such meetings, but employees' attendance must be wholly voluntary.[513]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act (FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[514] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

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[509] ME. STAT. tit. 5, § 4622.

[510] ME. STAT. tit.26, § 597.

[511] ME. STAT. tit.26, § 597.

[512] ME. STAT. tit.26, §§ 591, 597.

[513] ME. STAT. tit.26, § 600-B.

[514] 29 U.S.C. § 206(d)(1).

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An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[515]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

Maine law prohibits employers from paying employees of one sex at a rate less than it pays employees of the opposite sex for comparable work on jobs with comparable requirements of skill, effort, and responsibility. However, differences in pay are permitted where the difference is based on: (1) seniority systems; (2) merit increase systems; or (3) difference in the shift or time of day worked.[516] Beginning in September 2023, an employer is also prohibited from discrimination in the payment of wages based on race.[517]

An employee alleging a violation may bring a civil action for unpaid wages within six years of the alleged violation.[518] In addition to other remedies or penalties, an employer that violates the equal pay provisions is subject to a forfeiture between $100 and $500 for each violation.[519]

As discussed in **3.7(b)(v)**, Maine law prohibits employers from barring employees from disclosing their wages or inquiring about other employees' wages. Further, as discussed in **3.7(b)(v)**, state law prohibits employers from inquiring into an applicant's salary history prior to extending an offer of employment.[520] Violation of the prohibition on salary history inquiries is evidence of unlawful employment discrimination under the Maine Human Rights Act.[521]

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in **3.9(c)(i)**, the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

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[515] 42 U.S.C. § 2000e-5.

[516] ME. STAT. tit.26, § 628.

[517] L.D. 1703 (Me. 2023).

[518] ME. STAT. tit.14, § 752; ME. STAT. tit.26, §§ 626-A, 628-A.

[519] ME. STAT. tit.26, § 626-A.

[520] ME. STAT. tit. 5, § 4577; ME. STAT. tit.26, § 628-A.

[521] ME. STAT. tit. 5, § 4577.

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- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[522]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[523]

The PWFA also provides for reasonable accommodations related to lactation, as described in 3.4(a)(iii).

An employee seeking a reasonable accommodation must request an accommodation.[524] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine an effective reasonable accommodation.[525] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot

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[522] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[523] 29 C.F.R. § 1636.3.

[524] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

[525] 29 C.F.R. § 1636.3.

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perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[526]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[527]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[528]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in 3.9(c)(ii). For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

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[526] 29 C.F.R. § 1636.4.

[527] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[528] 29 C.F.R. § 1636.3.

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3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

It is unlawful employment discrimination on the basis of sex for an employer to fail upon request to provide a reasonable accommodation to any employee with a pregnancy-related condition, unless providing accommodation would impose an undue hardship on the employer's business operations. *Pregnancy-related condition* means a known limitation on an employee's ability to perform the functions of a job due to pregnancy, childbirth, or related medical conditions, including but not limited to lactation.[529] Reasonable accommodations for a pregnancy-related condition may include, but are not limited to:

- providing more frequent or longer breaks;
- temporary modification in work schedules, seating, or equipment;
- temporary relief from lifting requirements;
- temporary transfer to less strenuous or hazardous work; and
- provisions for lactation in compliance with Me. Stat. tit. 26, § 604.[530]

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[531] Multiple decisions of the U.S. Supreme Court[532] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[533] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see LITTLER ON HARASSMENT IN THE WORKPLACE and LITTLER ON EMPLOYEE TRAINING.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

Maine requires harassment training for all employers with 15 or more employees. The training must be conducted within one year of an employee's commencement of employment and must include:

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529 ME. STAT. tit. 5, §§ 4553(8-E), 4572-A(2-A).

530 ME. STAT. tit. 5, § 4572-A(2-A).

531 Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

532 *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

533 EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

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- the definition of sexual harassment, including the use of examples to illustrate forms of sexual harassment;
- information about the complaint process, legal recourse, and how to file a complaint; and
- protection against retaliation.

Employers must also conduct specialized training for supervisors and managers that addresses their specific roles and responsibilities. This training must be delivered within one year of the commencement of employment.[534]

In addition to the mandatory training, employers must provide written notice to employees on an annual basis 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 Maine Human Rights Commission;
- directions on how to contact the Commission; and
- the protection against retaliation.[535]

Employers must use a compliance checklist published by the Maine Department of Labor to develop a sexual harassment training program. Employers are required to keep a record of their mandatory training compliance, including a record of employees who have received the required training. Training records must be maintained for at least three years and must be made available for Department inspection upon request.[536]

The state also amended the statute to create penalties for violations of the law. Employers that violate the posting, notification, education, and training requirements may incur civil penalties of up to $5,000.[537]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies,

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[534] ME. STAT. tit. 26, § 807(3).

[535] ME. STAT. tit. 26, § 807(2).

[536] ME. STAT. tit. 26, § 807(4).

[537] ME. STAT. tit. 26, § 807(5).

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including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

Maine has enacted a statute to protect employees who engage in whistleblowing activity. The Maine Whistleblowers' Protection Act makes it unlawful for employers to "discharge, threaten or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location or privileges of employment" for any of the following reasons:

- the employee has reported 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 or a condition or practice that would put at risk the health or safety of that employee or any other individual;
- the employee is requested to participate in an investigation, hearing, or inquiry held by that public body, or in a court action;
- 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 or would expose the employee or any individual to a condition that would result in serious injury or death;[538] or
- the employee, acting in good faith and consistent with Maine and federal privacy laws, reports, 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 to any of the following:
  - a health care provider,
  - a health care practitioner,
  - a health care entity;
  - the patient involved; or
  - the appropriate licensing, regulating, or credentialing authority.[539]

Note that an employee is not protected under Maine's Whistleblowers' Protection Act if the employee goes directly to a public body to make a report. The employee must first bring any concerns to a supervisor and provide the employer with a reasonable opportunity to correct the violation, condition, or practice. However, this notice is not required if the employee can show the employee had specific reason to believe that reports to the employer would not result in a correction of the issue.[540]

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[538] Note that in this instance, the employee must first have attempted to correct the problem to no avail. *See* ME. STAT. tit. 26, § 833(1)(D).

[539] ME. STAT. tit. 26, § 833(1).

[540] ME. STAT. tit. 26, § 833(2).

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Additionally, the law has been clarified about whether an employee with the duty to report can make a report that is protected under the law. The employee's action can be protected and is dependent on the intention of the employee in making the report.[541]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[542] and the Railway Labor Act (RLA)[543] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see LITTLER ON UNION ORGANIZING and LITTLER ON COLLECTIVE BARGAINING.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Maine has not passed any right-to-work laws or other notable laws pertaining to private-sector unions or union activities.

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the

[541] In 2016, the First Circuit Court of Appeals clarified that a report is protected if it "was made to shed light on and in opposition to the defendant's potential illegal acts." *Pippin v. Boulevard Motel Corp.*, 835 F.3d 180, 184 (1st Cir. 2016).

[542] 29 U.S.C. §§ 151 to 169.

[543] 45 U.S.C. §§ 151 *et seq*.

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workforce they constitute).[544] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[545] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

In Maine, if a covered establishment (any industrial or commercial facility that employ 100 or more employees, or has in the last 12 months) (Effective September 19, 2023 any facility that employs 100 or more employees, or has in the last 12 months) is proposing to relocate or close, that employer must notify its employees and the municipal officers of the municipality where it is located in writing at least 90 days prior to the relocation or closing, unless this notice requirement is waived by the Maine Director of Labor.[546]

A *closing* means the permanent shutdown of industrial or commercial operations. A closing may occur due to relocation, termination, or consolidation of the employer's business.[547] *Relocation* is the removal of all or substantially all of industrial or commercial operations to a new location, within or outside Maine, 100 or more miles from the employer's original location.[548] Effective September 19, 2023 a *closing* means the permanent shutdown of any covered establishment. A closing may be due to relocation or termination of the business. Also, **effective September 19, 2023**, a relocation means the removal of all or substantially all of operations in a covered establishment to a new location, inside or outside of Maine, 100 or more miles away from its original location.[549]

Severance Pay. A covered employer that closes or engages in a mass layoff is liable to eligible employees[550] for severance pay at the rate of one week's pay for each year the employee worked, and partial pay for any partial year worked. The severance pay to eligible employees is in addition to any final wage payment to the employee and must be paid within one regular pay period after the employee's last full day of work, notwithstanding any other provisions of law.[551]

However, employers do not have to offer severance pay if:

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544 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100or more full-time employees; or (2) 100or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20C.F.R. § 639.3.

545 20 C.F.R. §§ 639.4, 639.6.

546 ME. STAT. tit.26, § 625-B(1)(C-2), (6)-(6-A).

547 ME. STAT. tit.26, § 625-B(1)(A-1).

548 ME. STAT. tit.26, § 625-B(1)(F).

549 ME. STAT. tit.26, § 625-B(1).

550 *Eligible employee* means any employee who: (1) has been continuously employed at the covered establishment at the time of the closing or mass layoff for at least three years, including any period when the employee was on a leave of absence; (2) has not been terminated for cause; and (3) has not accepted employment at another or relocated establishment operated by the employer or remains employed at the covered establishment. ME. STAT. tit. 26, § 625-B(1)(B-1).

551 ME. STAT. tit.26, § 625-B(2).

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- the closing or a mass layoff is necessitated by a physical calamity or the final order of a federal, state, or local government agency;
- the employee is covered by, and has actually been paid under the terms of, an express contract providing for severance pay that is in an amount that is greater than the severance pay required by this section. An employer must demonstrate, to the satisfaction of the director, that the severance pay provided under the terms of an express contract provides a greater benefit to the employee than provided in this section; or
- the employee has been employed by the employer for less than three years.[552]

4.1(c) *State Mass Layoff Notification Requirements*

Maine does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff.

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under federal law.

Table 11. Federal Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[553] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[554]

[552] ME. STAT. tit.26, § 625-B(3).

[553] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[554] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

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4.2(b) *State Guidelines on Documentation at End of Employment*

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits, Mini-COBRA, etc.	Maine law requires employers of fewer than 20 employees to provide post-termination continued coverage for up to one year. However, the law does not require such employers to provide notification of continued coverage to an employee upon termination.[555]
Unemployment Notice	**Generally.** Maine employers must post and maintain notice, in places readily accessible, informing employees about unemployment benefits, eligibility requirements, and how to file a claim. Employers must also give this notice to employees when they become unemployed.[556] **Multistate Workers.** Maine does not require that employees be notified as to the jurisdiction under whose unemployment compensation law services have been covered. It is recommended, however, that an employer provide notice of the jurisdiction where services will be covered for unemployment purposes. Additionally, employers should follow that state's general notice requirement, if applicable.[557]

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

References. Maine law provides immunity from civil liability to employers that disclose information about a former employee's job performance or work record to a prospective employee. The law presumes that such disclosures are made in good faith and grants immunity for any consequences. The immunity does not apply if a lack of good faith can be shown by clear and convincing evidence. For this purpose, *clear and convincing evidence* refers to "evidence that clearly shows the knowing disclosure, with malicious intent, of false or deliberately misleading information."[558]

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[555] ME. STAT. tit.24, § 2809A(11).

[556] ME. STAT. tit.26, § 1194(1); 12-172-2 ME. CODE R. § 1. This poster is available at https://www.maine.gov/labor/posters/index.shtml.

[557] *See* ME. STAT. tit.26, § 1082 (Powers and Duties Include Reciprocal Benefit Arrangements); *see also* 12-172-002 ME. CODE R. § 1 (Unemployment Benefits, Interstate).

[558] ME. STAT. tit.26, § 598.

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Reasons for Firing. An employer must respond if it receives a written request from a terminated employee, inquiring as to the reasons for the discharge. Employers must respond to any such request within 15 days and must provide the written reasons for the individual's termination. Failure to comply may result in forfeiture of not less than $50 and not more than $500. Moreover, an employee may bring suit to seek equitable relief as well as costs and attorneys' fees.[559]

[559] ME. STAT. tit.26, § 630.

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