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## An Act To Amend and Clarify the Application of the Laws Regarding Severance Pay

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

**Sec. 1. 26 MRSA §625-B, sub-§1, ¶A,** as enacted by PL 1979, c. 663, §157, is amended to read:

A. "Covered establishment" means any industrial or commercial facility or part thereof ~~which of a facility in the State that~~ employs or has employed 100 or more persons at any time in the preceding ~~12-month~~36-month period ~~100 or more persons~~.

**Sec. 2. 26 MRSA §625-B, sub-§1, ¶B-1** is enacted to read:

B-1. "Employee" means a person employed at a covered establishment at the time a decision to terminate or relocate is made, whether or not that person is actively working at the time.

**Sec. 3. 26 MRSA §625-B, sub-§1, ¶E,** as enacted by PL 1979, c. 663, §157, is amended to read:

E. "Physical calamity" means any sudden calamity such as fire, flood or other natural disaster, or the final order of any federal, state or local governmental agency including adjudicated an involuntary bankruptcy petition filed under 11 United States Code, Section 303 (2007). A bankruptcy petition filed by the employer or its parent corporation is not a physical calamity.

**Sec. 4. 26 MRSA §625-B, sub-§1, ¶H,** as enacted by PL 1979, c. 663, §157, is repealed and the following enacted in its place:

H. "Week's pay" means the greater of:

(1) The employee's wage rate at the time of a decision to terminate or relocate a covered establishment times the number of hours in that employee's most recently scheduled workweek;

or

(2) An amount equal to the employee's gross earnings during the previous 12 months divided by the number of weeks in which the employee worked.

**Sec. 5. 26 MRSA §625-B, sub-§2,** as enacted by PL 1979, c. 663, §157, is amended to read:

**2. Severance pay.** ~~Any~~An employer who relocates or terminates a covered establishment shall ~~be~~ be liable to ~~his employees~~an employee for severance pay at the rate of one week's pay for each year of employment by the employee in that establishment. The severance pay to an eligible employees shall ~~be~~be employee is in addition to any final wage payment to the employee and ~~shall~~must be paid within one

regular pay period after the employee's last full day of work, notwithstanding any other provisions of law. The provisions of sections 621-A and 626 apply to the payment of severance pay, as do the penalties in section 626-A.

**Sec. 6. 26 MRSA §625-B, sub-§3, ¶D,** as enacted by PL 1979, c. 663, §157, is amended to read:

D. That employee has been employed ~~by the employer~~ at a covered establishment for less than 3 years. In determining the number of years an employee has worked at a covered establishment, it is immaterial whether or not the employee has been employed by the same person.

**Sec. 7. 26 MRSA §625-B, sub-§8,** as enacted by PL 2001, c. 625, §1, is amended to read:

**8. Rules.** The Department of Labor shall adopt rules to implement this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter H-A2-A. ~~Initial rules must be provisionally adopted and submitted to the Legislature not later than January 15, 2003.~~

**Sec. 8. 26 MRSA §625-B, sub-§10** is enacted to read:

**10. Mass layoff.** Whenever an employer lays off 100 or more employees at a covered establishment, it must be presumed that the layoff constitutes a termination of a part of that covered establishment within the meaning of subsection 1, paragraph G, and the affected employees are eligible for severance pay under this section. The employer has the burden of proof that the layoff is not permanent. The terms of a collective bargaining agreement, if negotiated after the effective date of this subsection, supercede the terms of this subsection.

**Sec. 9. 26 MRSA §632, sub-§1,** as amended by PL 1983, c. 172, is further amended to read:

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

An employee who is due severance pay under section 625-B is eligible for payment from the Maine Wage Assurance Fund of the severance pay due to that employee from any employer who fails to timely pay the severance pay.

## SUMMARY

This bill makes the following changes to the laws governing severance pay.

1. It makes changes to definitions.
2. It provides that certain provisions of the labor laws that apply to the payment of wages and penalties for the nonpayment of wages also apply to severance pay.
3. It provides a presumption that whenever an employer lays off 100 or more employees at a covered establishment, that layoff constitutes a termination of a part of that covered establishment.
4. It provides that severance pay may be paid from the Maine Wage Assurance Fund if an employer fails to timely pay severance pay.