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An Act To Prevent the Spread of H1N1

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

Whereas, the world health community continues to monitor the emergence of the pandemic influenza arising from the H1N1 virus; and

Whereas, the federal Centers for Disease Control and Prevention and the Department of Health and Human Services, Maine Center for Disease Control and Prevention have developed guidelines for employers to minimize the spread of the virus in the workplace; and

Whereas, in order to restrict spread of the virus in the workplace, it is important to provide standards for paid sick leave for employees; and

Whereas, these measures must take effect as soon as possible to address the immediate threat of this pandemic; and

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

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

Sec. 1. 26 MRSA §636, as enacted by PL 2005, c. 455, §1, is repealed.

Sec. 2. 26 MRSA §637 is enacted to read:

§ 637. Paid sick leave

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

A. "Employee" means a person who may be permitted, required or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment but does not include an independent contractor.

B. "Employer" means a large business employer or a small business employer.

C. "Family member" means:

(1) A biological, adopted or foster child, stepchild or ward of the employee or of the employee's spouse or domestic partner;

(2) A biological, foster or adoptive parent, stepparent or guardian of an employee or of the employee's spouse or a person who served in the place of a parent to the employee when the employee was a minor;

(3) A spouse;

(4) A grandparent or spouse of a grandparent;

(5) A grandchild;

(6) A biological, foster or adoptive sibling or spouse of a biological, foster or adoptive sibling;
and

(7) A domestic partner as defined in section 843, subsection 7.

D. "Large business employer" means a public or private employer who employs 25 or more employees during the calendar year. For businesses in which the number of persons who are employed by the employer fluctuates above and below 25 during a year, the number of employees for the current calendar year is the average number of persons who were employed per week when the business was in operation during the preceding calendar year.

E. "Paid sick leave" means compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for the purposes described in subsection 3. "Paid sick leave" does not include paid disability benefits.

F. "Small business employer" means a public or private employer who employs 24 or fewer employees during a calendar year. For businesses in which the number of persons who are employed by the employer fluctuates above and below 24 during a year, the number of employees for the current calendar year is the average number of persons who were employed per week when the business was in operation during the preceding calendar year.

2. Accrual of hours; amount; process. All employees have the right to paid sick leave as provided in this section.

A. A large business employer shall provide a minimum of one hour of paid sick leave for every 40 hours worked by an employee. The employer is not required to provide more than 52 hours paid sick leave in a calendar year. The employer shall allow an employee to carry over up to 52 hours paid sick leave to a subsequent calendar year, to the extent that they were not used by the employee.

B. A small business employer shall provide a minimum of one hour of paid sick leave for every 80 hours worked by an employee. The employer is not required to provide more than 26 hours paid sick leave in a calendar year. The employer shall allow an employee to carry over up to 26 hours paid sick leave to a subsequent calendar year, to the extent that they were not used by the employee.

C. An employer shall allow an employee to accrue paid sick leave beginning on the first day of employment. An employee may use accrued paid sick leave beginning on the 90th day after the employee's first day of employment, unless the employer agrees to an earlier date.

D. For a period of paid sick leave that is shorter than a normal work day, leave must be counted on an hourly basis or in the smallest increment that the employer's payroll system uses to account for absences or use of leave.

3. Use of paid sick leave. An employee may use paid sick leave accrued under this section for any of the following:

A. An absence resulting from a physical or mental illness, injury or medical condition of the employee;

B. An absence resulting from obtaining professional medical diagnosis or care, or preventive medical care, for the employee. An employee must make a reasonable effort to schedule leave in a manner that does not unduly disrupt the operations of the employer;

C. An absence resulting from closure of the employee's place of business by order of a public official due to a health emergency declared under Title 22, section 802 or an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a health emergency;

D. An absence for the purpose of caring for a family member who has any of the conditions or needs for diagnosis or care described in paragraph A or B; and

E. An absence for the purpose of obtaining social or legal services pertaining to stalking, domestic violence or sexual abuse if the employee or the employee's family member is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11, stalking or any act that would support an order for protection from abuse under Title 19-A, chapter 101, including:

(1) Preparing for and attending court proceedings;

(2) Receiving medical treatment or assisting with medical treatment for a victim who is the employee's family member; or

(3) Obtaining necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

4. Equivalent compensation. An employer providing an employee with compensated leave for reasons consistent with this section that is equal to or greater in amount than the paid sick leave required by this section is deemed to have satisfied all of the obligations imposed by this section.

5. Relationship to collective bargaining. This section applies to employees covered by a collective bargaining agreement unless the agreement provides paid sick leave benefits that may be used for reasons consistent with and that are equal to or greater than those provided in this section.

6. Prohibited actions by employer. An employer may not discharge, demote, suspend, discipline or otherwise discriminate against an employee or threaten to take any of these actions against an employee who requests paid sick leave required by this section, or otherwise exercises rights granted under this section, or who files a complaint or testifies or assists in an action brought against the employer for a violation of this section. This section does not prohibit an employer from taking employment action against an employee for taking leave that is not required by this section or other applicable law.

7. Enforcement; rules. The Department of Labor shall adopt rules to implement and enforce the provisions of this section including carry-over provisions for earned paid sick leave from year to year and to provide for reinstatement, back pay or other equitable remedies for violations of this section. The rules may also set forth procedures for the receipt, investigation and prosecution of complaints brought under this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

SUMMARY

This bill requires an employer to give a maximum of 52 accrued hours of paid sick leave per year to any employee who is employed by a large business employer and a maximum of 26 accrued paid sick leave hours per year to any employee who is employed by a small business employer. Paid sick leave is accrued from the first day of employment and can be used on the 90th day and thereafter. Earned paid sick leave may be used by an employee during an absence from employment due to the illness of an employee or illness of an employee's family member, if the employee's place of business is closed due to a public health emergency, if an employee needs to care for a dependent whose school or place of care has been closed due to a public health emergency, for the purpose of an employee accessing necessary preventive health care or an employee's family member accessing necessary preventive health care or due to the employee or the employee's family member being a victim of stalking, domestic violence or sexual abuse.