



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 610

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H.P. 446

House of Representatives, March 1, 2021

### **An Act To Amend the Laws Governing Employer Recovery of Overcompensation Paid to an Employee**

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Received by the Clerk of the House on February 25, 2021. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT  
Clerk

Presented by Representative DOORE of Augusta.

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

2 **Sec. 1. 26 MRSA §635**, as enacted by PL 1989, c. 804, is amended to read:

3 **§635. Overcompensation by employer**

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

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

9 A-1. "Employer" means a person in this State that employs individuals and includes  
10 the State and political subdivisions of the State. "Employer" includes a person acting  
11 in the interest of an employer directly or indirectly.

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

17 C. "Paid leave" has the same meaning as in section 636, subsection 1, paragraph C.

18 **2. Recovery of overcompensation; limitations.** An employer who has  
19 overcompensated an employee through employer error may not withhold more than 40%  
20 5% of the net amount of any subsequent pay without the employee's written permission,  
21 except that, if the employee voluntarily terminates employment, the employer may deduct  
22 the full amount of overcompensation from any wages due. An employer who has  
23 overcompensated an employee through employer error may not recover more than the  
24 amount of overcompensation paid to that employee in the 3 years preceding the date of  
25 discovery of the overcompensation.

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

28 If an employer with 25 or fewer employees knows of the ~~limitation~~ limitations established  
29 by subsection 2 and violates this section, that employer forfeits any claim to the  
30 overcompensation. ~~Employers~~ An employer of 25 or fewer employees who ~~do~~ does not  
31 know of the ~~limitation~~ limitations established by subsection 2 and who ~~violate~~ violates this  
32 section shall return all money withheld in excess of that permitted under subsection 2 within  
33 3 days of written or oral demand by the employee, or ~~forfeit~~ forfeits any claim to the  
34 overcompensation.

35 **4. Application.** This section is applied as follows.

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

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

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

4 **SUMMARY**

5 This bill amends the definition of "overcompensation" by an employer to exclude  
6 compensation in the form of paid leave. It provides a definition of "employer." It changes  
7 the maximum amount an employer may withhold from an employee's pay to recover  
8 overcompensation from 10% to 5%. It prohibits an employer from recovering more than  
9 the amount of overcompensation paid to an employee in the 3 years preceding the discovery  
10 of the overcompensation. The bill also specifies that the section of law regarding  
11 overcompensation by employers that includes these provisions does not limit or affect an  
12 employee's general civil remedies against an employer.