

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-ONE

—  
H.P. 446 - L.D. 610

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

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

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

**§635. Overcompensation by employer**

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

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

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

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

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

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

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

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

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

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

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

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