

New Language is in red.

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An Act To Support Healthy Workplaces and Healthy Families by Providing Earned Paid Sick Leave to Certain Employees

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

Sec. 1. 26 MRSA §626, first ¶, as amended by PL 2017, c. 219, §11, is further amended to read:

An employee leaving employment must be paid in full no later than the employee's next established payday. Any overcompensation may be withheld if authorized under section 635 and any loan or advance against future earnings or wages may be deducted if evidenced by a statement in writing signed by the employee. Whenever the terms of employment or the employer's established practice includes provisions for paid vacations, vacation pay on cessation of employment has the same status as wages earned. Sick leave accrued pursuant to section 637 or section 638 does not have the same status as wages earned.

Sec. 2. 26 MRSA §636, sub-§2, as enacted by PL 2005, c. 455, §1, is amended to read:

2. Use of paid leave and paid sick leave. If an employer, under the terms of a collective bargaining agreement or employment policy or as required by section 637, provides paid leave, then the employer shall allow an employee to use the additional paid leave for the care of an immediate family member who is ill as provided in this section.

Sec. 3. 26 MRSA §§637 and 638 are enacted to read:

§ 637. Earned paid sick leave

An employer that employs more than 5 employees shall provide to each employee earned paid sick leave as provided by this section.

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

A. "Construction" means any construction, reconstruction, demolition, improvement, enlargement, painting, decorating or repair of any building, road, highway, bridge, street, alley, sewer, ditch, sewage disposal plant, demolition, waterwork, airport or any other

structure. The term "construction" shall not be construed to include engineering or architectural services, temporary or emergency repair.

B. "Construction industry" means that industry which is composed of employees and employers engaged in construction, demolition, repair or moving of buildings, roads, highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports and all other structures or works whether private or public on which construction work, as defined in subsection xx, is performed.

AC. "Department" means the Department of Labor.

BD. "Family member" means a family member of the employee, employee's spouse, or domestic partner, and includes:

(1) ~~The employee's, and the employee's spouse's or domestic partner's,~~ a child, whether a child whose parentage has been determined under the Maine Parentage Act, Title 19-A, chapter 61, or any other biological ~~child~~, adopted ~~child~~, or foster child, stepchild or ~~legal ward~~, a child to whom the employee ~~or the employee's spouse or domestic partner~~ stands as a de facto parent or in loco parentis, a child under legal guardianship, or is an individual to whom the employee or the employee's spouse or domestic partner stood in any of these relationships ~~loco parentis~~ when the individual was a minor;

(2) ~~The employee's, and the employee's spouse's or domestic partner's,~~ a parent, whether a legal parent, biological ~~parent~~, foster ~~parent~~, ~~stepparent~~, adoptive, de facto or foster ~~parent~~, stepparent, or legal guardian of the employee, spouse, or domestic partner, or a person who stood in loco parentis when the employee was a minor child;

(3) ~~A person to whom the employee is legally married under the laws of any state or a domestic partner of the employee;~~ a grandparent, whether a legal grandparent, biological grandparent, adoptive grandparent, foster grandparent, stepgrandparent, or de facto grandparent;

(4) ~~The employee's, and the employee's spouse's or domestic partner's, biological grandparent, foster grandparent, adoptive grandparent or stepgrandparent;~~ a sibling, whether a legal sibling, biological sibling, adoptive sibling, de facto sibling, foster sibling or stepsibling;

(5) The employee's, and the employee's spouse's or domestic partner's, biological sibling, foster sibling, adoptive sibling or stepsibling; A spouse or domestic partner of the employee; and

(6) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

E. "Spouse" has the same meaning as in Title 18-C, sec. 1-201 (54).

F. "Domestic partner" has the same meanings as in Title 18-C, sec. 1-201 (14) and (49).

G. "Stand in loco parentis" means an individual has day-to-day responsibilities to care for and financially support a child, and does not require a legal or biological relationship.

2. Accrual. An employee entitled to earned paid sick leave under this section accrues the leave at a rate of no less than one hour of earned paid sick leave for every 30 hours worked. Accrual begins at the start of employment, but the employer is not required to permit use of the leave before an employee has been employed for 90 days. The employer shall permit an employee to carry forward at least 40 hours of accrued earned paid sick leave to the following year, but an employer is not required to allow the use of more than 40 hours of earned paid sick leave in one year. An employer may provide all earned paid sick leave the employee is expected to earn in a year at the beginning of the year.

3. Use of accrued earned paid sick leave. Accrued earned paid sick leave may be used for the following:

A. An employee's:

(1) Mental or physical illness, injury or health condition;

(2) Medical diagnosis, care or treatment of the employee's mental or physical illness, injury or health condition; or

(3) Preventative medical care;

B. A family member's:

(1) Mental or physical illness, injury or health condition;

(2) Medical diagnosis, care or treatment of the family member's mental or physical illness, injury or health condition; or

(3) Preventative medical care; and

C. If an employee or a family member is a victim of domestic violence or sexual assault:

(1) Medical care or psychological or other counseling for physical or psychological injury or disability;

(2) Obtaining services from a victim services organization;

(3) Relocating due to domestic violence or sexual assault;

(4) Obtaining legal services or participating in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault; or

(5) Meetings at a child's school or place of care related to the child's health or disability or to the effects of domestic violence or sexual assault on the child.

When taking earned paid sick leave, an employee must be paid at least the same rate of pay that the employee received immediately prior to taking earned paid sick leave, and the same benefits as those provided under established policies of the employer pertaining to other types of leave.

Earned paid sick leave may be used in the smallest increment that the employer's payroll system uses to account for absences or use of other time. An employee is not required to secure a substitute when that employee uses earned paid sick leave.

4. Notice requirements. Accrued earned paid sick leave must be provided upon the request of an employee, pursuant to the following requirements.

A. The request may be made orally, in writing, by electronic means or by any other means acceptable to the employer. When possible, the request must include the expected duration of the absence.

B. When the use of earned paid sick leave is foreseeable, the employee shall make a good faith effort to provide notice of the need for the earned paid sick leave to the employer in advance of the use of the earned paid sick leave and shall make a reasonable effort to

schedule the use of earned paid sick leave in a manner that does not unduly disrupt the operations of the employer.

C. An employer that requires notice of the need to use earned paid sick leave when the need is not foreseeable shall provide a written policy that contains procedures for the employee to provide notice. An employer that has not provided to an employee a copy of its written policy for providing notice under this paragraph may not deny earned paid sick leave to the employee based on noncompliance with the policy.

5. Combined paid leave. An employer may meet the requirements of this section by providing paid leave that may be used by the employee interchangeably as either sick leave or vacation time, as long as this paid leave is in accordance with the accrual of earned paid sick leave in subsection 2 all provisions of this section.

6. Supporting documentation. For use of accrued earned paid sick leave for more than 3 consecutive days, an employer may require reasonable documentation from the employee in order to verify that the accrued earned paid sick leave has been used for a purpose described in subsection 3.

A. Upon the employer's request, the employee must provide the documentation to the employer in a timely manner. The employer may not delay the employee's use of accrued earned paid sick leave on the basis that the employer has not yet received documentation.

B. For use of accrued earned paid sick leave pursuant to subsection 3, paragraph A or B, reasonable documentation for purposes of this subsection includes, but is not limited to, a signed written statement from the employee or documentation signed by a health care professional indicating that the employee's or family member's use of accrued earned paid sick leave was based on one or more of the circumstances described in subsection 3, paragraph A or B. An employer may not require that the documentation explain the nature of the illness.

C. For use of earned paid sick leave pursuant to subsection 3, paragraph C, reasonable documentation is:

(1) A police report indicating that the employee or family member was a victim of domestic violence or sexual assault;

(2) A signed statement from a victim witness advocate affirming that the employee or family member is receiving services from a victim services organization;

(3) A court document indicating that the employee or family member is involved in legal action related to domestic violence or sexual assault; or

(4) A signed written statement from the employee.

An employer may not require that the documentation explain the details of the violence or assault.

D. If an employer chooses to require documentation from the employee in order to verify that the accrued earned paid sick leave has been used for a permissible purpose, and the employer does not offer health insurance, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employer does offer health insurance, the employer is responsible for paying any costs charged to the employee by the health care professional for providing the specific documentation required by the employer.

E. An employer may not require disclosure of details relating to domestic violence or sexual assault or the details of an employee's or a family member's medical condition as a condition of providing earned paid sick leave under this section. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or a family member, the employer shall treat that information as confidential and may not disclose that information except to the affected employee or as approved by the affected employee.

7. Notice of policies; posting. The following provisions govern notice and posting requirements.

A. An employer shall give employees written notice of the following at the commencement of employment or by January 1, 2021, whichever is later:

(1) Employees are entitled to earned paid sick leave;

(2) The accrual and amount of earned paid sick leave provided under this section;

(3) The terms of use for earned paid sick leave guaranteed under this section;

(4) That retaliatory personnel action against employees who request or use earned paid sick leave is prohibited by law;

(5) That each employee has the right to file a complaint or bring a civil action if earned paid sick leave as required by this section is denied by the employer or the employee is subjected to retaliatory personnel action for requesting or taking earned paid sick leave; and

(6) The contact information for the department from which questions about rights and responsibilities under this section can be answered.

This notice must be in English and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the notice has been provided by the department pursuant to paragraph D.

B. An employer shall record on the employee's regular pay stub, or an attachment to the pay stub, an accounting of the amount of earned paid sick leave available to the employee, the amount of earned paid sick leave taken by the employee to date in the year and the amount of pay the employee has received as earned paid sick leave.

C. An employer shall display a poster that contains the information required in paragraph A in a conspicuous and accessible place in each establishment where employees are employed. The poster displayed must be in English and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the poster has been provided by the department pursuant to paragraph D.

D. The department shall create and make available to employers, in all languages spoken by at least 10% of the State's workforce and any other language determined to be appropriate by the department, model notices and posters that contain the information required for employers' use in complying with paragraphs A and C.

8. Record keeping. An employer shall retain records for a period of 3 years documenting hours worked by employees and earned paid sick leave taken by employees, and shall allow the department access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this section. When a dispute arises as to an employee's entitlement to earned paid sick leave under this section, if the employer has not maintained adequate records documenting hours worked by the employee and earned paid sick leave taken by the employee, or does not allow the department reasonable access to such records, there is a presumption that the employer has violated this section, absent clear and convincing evidence to the contrary.

9. Exercise of rights protected; retaliation prohibited. An employee has the right to use earned paid sick leave pursuant to this section, the right to file a complaint or inform any person about any employer's alleged violation of this section, the right to cooperate with the department in its investigations of alleged violations of this section and the right to inform any person of that person's rights under this section. An employer or any other person may not interfere with, restrain or deny the exercise of, or the attempt to exercise, any of these rights.

An employer may not take retaliatory personnel action or otherwise discriminate against an employee because the employee has exercised a right protected under this section. An employer's absence control policy may not treat earned paid sick leave taken under this section as an absence that may lead to or result in retaliatory personnel action. The protections in this section apply to any person who mistakenly, but in good faith, alleges a violation of this section.

10. Violation; rebuttable presumption. There is a rebuttable presumption of a violation of this section if an employer takes adverse personnel action against an employee within 90 days after that employee does any of the following:

- A. Files a complaint with the department or a court alleging a violation of this section;
- B. Informs any person about an employer's alleged violation of this section;
- C. Cooperates with the department or another person in the investigation or prosecution of any alleged violation of this section;
- D. Opposes any policy, practice or act that is prohibited under this section; or
- E. Informs any person of that person's rights under this section.

11. Complaints and investigation. The department shall enforce the provisions of this section. The department shall establish a system that allows for multiple methods of communication by which it may receive complaints regarding any alleged violations of this section. Any person alleging a violation of this section may file a complaint with the department. To the maximum extent permitted by law, the name and other identifying information of the person reporting the alleged violation is confidential and may not be disclosed except that, with the authorization of the person reporting the alleged violation, the department may disclose the person's name and other identifying information as determined to be necessary to enforce this section or for other appropriate purposes. Filing a complaint with the department is neither a prerequisite nor a bar to bringing a civil action.

Upon receiving a complaint alleging a violation of this chapter, the department shall investigate the complaint in a timely manner and shall attempt to resolve the complaint through mediation between the complainant and the subject of the complaint or through other means. The department shall keep a complainant notified regarding the status of the complaint and any resultant investigation. If the department determines that a violation of this section has occurred, it shall issue to the person or entity it has determined has violated this section a notice of violation describing the relief required of the person or entity. The department shall prescribe the form and wording of such notices of violation and any method of appealing the decision of the department.

12. Civil violation. An employer that fails to provide earned paid sick leave in violation of this section or who takes retaliatory personnel action against an employee or former employee commits a civil violation for which a fine of not more than \$1,000 may be adjudged.

An employer that willfully violates the notice or posting requirements in subsection 7 commits a civil violation for which a fine of not more than \$100 may adjudged.

13. Private right of action. An employer that violates this section is liable to the individual affected by the violation for appropriate relief collectible in a civil action, including, but not limited, to the following relief:

- A. Payment for unpaid leave taken that should have been earned paid sick leave;
- B. Payment of back wages;
- C. An amount equal to the sum of the amounts under paragraphs A, B and D, if applicable, as liquidated damages;
- D. Costs and reasonable attorney's fees, at the discretion of the court;
- E. Rehiring or reinstatement to the individual's previous position with the employer; and
- F. Reestablishment of employee benefits to which the individual otherwise would have been eligible if the individual had not been subjected to retaliatory personnel action or discrimination.

An affected individual may bring a civil action to collect appropriate relief. An action taken by an affected individual under this subsection may be brought not later than 3 years after the date of the last event constituting the alleged violation for which the action is brought or the date when the individual knew of the violation, whichever is later. The right to bring an action

provided by this subsection terminates on the filing of a complaint by the Attorney General in an action under subsection 14 in which a recovery is sought related to the same violation or violations of an employer relating to the affected individual.

14. Civil action by the department. The department may impose penalties and may grant an employee or individual all appropriate relief, including, but not limited to, payment of all earned paid sick leave improperly withheld, all damages incurred by the complainant as the result of violation of this section, back pay and reinstatement in the case of job loss.

If the director determines that there is reasonable cause to believe that an employer violated this section and the department is subsequently unable to obtain voluntary compliance by the employer within a reasonable time, the department shall bring a civil action through the Attorney General on behalf of an affected individual or individuals as provided in subsection 13, except that a civil action may not be brought on behalf of an individual has filed an action under subsection 13 related to the same violation or violations of this section.

A civil action brought under this subsection may be joined with a civil action to collect fines under subsection 12.

~~**15. Effect on collective bargaining.** Except for a collective bargaining agreement as described in subsection 16, paragraph A, a contract or agreement between the employer and the employee or any acceptance by the employee of a paid leave policy that provides fewer rights or benefits than provided by this section is void and unenforceable.~~

15. Effect on existing employee benefits.

A. Benefit accrual. The taking of earned paid sick leave under this section shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

B. Effect on collective bargaining. Nothing in this section may be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater earned paid sick leave rights to employees than the rights provided under this section.

C. Rights not diminished. Except as provided in paragraph D, the earned paid sick leave rights mandated by this section may not be diminished by any collective bargaining agreement or by any employee benefit plan.

D. Application in the construction industry. This section does not apply to an employee in the construction industry covered by a collective bargaining agreement during the period between January 1, 2021 and the expiration of the agreement. This section does apply to employees in the construction industry covered by a collective bargaining agreement entered into and in effect on or after January 1, 2021, unless the collective bargaining agreement expressly waives the requirements of this section in clear and unambiguous terms.

E. Contract rights. Nothing in this section may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered by this section.

16. Application; construction; successor employer; reinstatement. This section applies subject to the following.

A. This section provides minimum requirements pertaining to earned paid sick leave and may not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy, standard or agreement that provides for greater use or accrual by employees of earned paid sick leave or that extends other protections to employees. ~~This section does not apply to an employee covered by a collective bargaining agreement during the period between January 1, 2021 and the expiration of the agreement. This section does apply to employees covered by a collective bargaining agreement entered into and in effect on or after January 1, 2021, unless the collective bargaining agreement expressly waives the requirements of this section in clear and unambiguous terms.~~

B. This section does not apply to an individual employed by the individual's parent, spouse or child.

C. Nothing in this section may be construed to require financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement or other separation from employment for accrued earned paid sick leave that has not been used.

D. A successor employer, or an employer over which there is substantial common ownership, management or control between the successor and predecessor employer, is responsible for the earned paid sick leave rights accrued by employees of the predecessor employer. These employees are entitled to use earned paid sick leave previously accrued pursuant to the terms provided in this section, irrespective of the 90-day period described in subsection 2.

E. If an employee separates from employment and is rehired by the same employer within 12 months of the separation, the employer shall reinstate previously accrued, unused earned paid sick leave and shall permit the reinstated employee to use that accrued earned paid sick leave and to accrue additional earned paid sick leave upon reinstatement.

17. Rules. The department shall adopt rules to implement and enforce the provisions of this section and section 638, including rules regarding the receipt, investigation and prosecution of complaints brought under this section. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

§ 638. Earned unpaid sick leave

An employer that employs 5 or fewer employees in the State shall implement a policy that allows an employee to accrue and use at least 40 hours of unpaid earned sick leave per year.

An employer may meet the requirements of this section by providing unpaid leave that may be used interchangeably as either sick leave or vacation time, as long as the accrual of this unpaid leave is otherwise in accordance with this section.

Sec. 4. Effective date. This Act takes effect January 1, 2021.

SUMMARY

This bill creates a right to earned paid sick leave for employees who are employed by an employer that employs more than 5 employees. The bill also creates a right to earned unpaid sick leave for employees of an employer that employs 5 or fewer employees. This bill takes effect January 1, 2021.

129th Legislature
Senate of
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Chair, Education and Cultural Affairs Committee

*Innovation, Development, Economic
Advancement and Business Committee*

February 25, 2019

Good morning Senator Bellows, Representative Sylvester and distinguished members of the Joint Standing Committee on Labor and Housing,

I am Senator Rebecca Millett, and I represent District 29, the communities of South Portland, Cape Elizabeth and part of Scarborough, in the Maine Senate.

I am pleased to present LD 369, "An Act To Support Healthy Workplaces and Healthy Families by Providing Earned Paid Sick Leave to Certain Employees."

Everyone gets sick, whether it's the common cold, the flu or something much more severe like bronchitis or pneumonia. Most salaried workers can afford to take the time off to care for a sick child, parent or their own health. However, for 198,000 Mainers, staying home to care for a sick child, an aging parent or their own health, means losing out on pay. This is unacceptable.

The bill before you is about basic economic fairness. A statewide earned paid sick time policy represents everything that Maine claims to value most: strong families, healthy communities, a quality workforce and a thriving economy.

It would ensure that no Mainer has to choose between their health and their economic security. It would guarantee that no mother or father is penalized for choosing to stay home to care for their sick child, that no child is punished for taking the time necessary to care for a sick parent. About 73 percent of children under the age of six live in households with all available parents in the workforce.¹ When these children fall sick, their parents are in a bind.

Even for Maine seniors, the lack of earned paid sick time can be a real challenge. About 178,000 Mainers provide care for a senior relative or loved one.² If an aging parent falls on the ice and needs a ride to the hospital, no adult child should feel like they cannot be there.

¹<https://datacenter.kidscount.org/data/tables/5057-children-under-age-6-with-all-available-parents-in-the-labor-force?loc=21&loct=2#detailed/2/21/false/871,870,573,869,36,868,867,133,38,35/any/11472,11473>

²<https://states.aarp.org/news-conference-celebrate-maine-family-caregivers-calls-for-legislative-leadership>

Earned paid sick days are not just about an individual's health but a matter of public health. Without earned paid sick days, many workers without sick time choose to soldier on and go to work. In doing so, they prolong their illness and, most likely, spread it to their coworkers and customers. The Centers for Disease Control and Prevention found more than half of all norovirus outbreaks can be traced back to sick food service workers.³ This is no surprise given that about 60 percent of restaurant workers have self-reported going to work sick.⁴

The lack of earned paid sick days also adversely impacts the productivity of our workforce which according to a recent study equates to an annual loss of \$160 billion to our economy.⁵ It's not surprising that people who go to work sick simply can't produce the same level of work as if they were in good health. In addition, going to work while sick means that it takes longer to get healthy, prolonging lower productivity levels. Allowing employees to earn paid sick time makes sense for businesses if they want to grow morale, company productivity and their bottom line.

Right now, Maine is competing with every other state to attract qualified workers and retain the workers who already live here. Fostering a supportive work environment would incentivize young people to relocate to Maine and call former Mainers home. Ten states have already led the charge in offering a variety of paid sick leave at the state-level, including our neighbors in Connecticut, Massachusetts, Rhode Island and Vermont. If we don't take action, we risk losing existing workers to states with more worker-friendly policies.

As Mainers, looking out for each other is a fundamental part of who we are. The lack of earned paid sick time in this state goes against everything we stand for. With this bill, I hope to change that.

LD 369, "An Act To Support Healthy Workplaces and Healthy Families by Providing Earned Paid Sick Leave to Certain Employees" would:

- Create a right to **earned paid sick time** for employees who are employed by an employer who employs more than 5 employees;
- Create the right to **unpaid sick time** for employees who work in an establishment with 5 employees or fewer.
- Allow employees to **earn one hour for every 30 hours** worked;
- Allow employees to use earned paid sick time for themselves or family;

³ <https://www.cdc.gov/norovirus/trends-outbreaks/outbreaks.html>

⁴ <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-improve-our-public-health.pdf>

⁵ National Partnership for Women and Families: Paid Sick Days: Good for business and workers. <http://www.nationalpartnership.org/our-work/resources/workplace/paid-sick-days/paid-sick-days-good-for-business-and-workers.pdf>

- Include an employee's or family member's mental or physical illness, injury, or health condition; treatment thereof; or for preventative care;
- Allow an employer to **require documentation** for the use of accrued earned paid sick time **for more than 3 consecutive days.**

If we truly care about our workers, our families and our seniors, our policies ought to reflect that. A statewide earned paid sick day policy would help grow our workforce, keep our families and communities healthy and benefit our businesses and economy. It's also what we owe our workers. They've earned it.

Thank you for your time. I look forward to working with you to pass this bill into law.

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