

**§663. Definitions**

Terms used in this subchapter shall be construed as follows, unless a different meaning is clearly apparent from the language or context:

1. **Director.** "Director," the Director of the Bureau of Labor Standards; [PL 1981, c. 168, §26 (AMD).]
2. **Employ.** "Employ," to suffer or permit to work;
3. **Employee.** "Employee," any individual employed or permitted to work by an employer but the following individuals shall be exempt from this subchapter:
  - A. Any individual employed in agriculture as defined in the Maine Employment Security Law and the Federal Unemployment Insurance Tax Law, except when that individual performs services for or on a farm with over 300,000 laying birds; [PL 1975, c. 717, §5 (AMD).]
  - B. [PL 2007, c. 640, §2 (RP).]
  - C. Those employees whose earnings are derived in whole or in part from sales commissions and whose hours and places of employment are not substantially controlled by the employer; [PL 1967, c. 466, §1 (AMD).]
  - D. Any individual employed as a taxicab driver;
  - E. [PL 2007, c. 640, §3 (RP).]
  - F. Those employees who are counselors or junior counselors or counselors-in-training at organized camps licensed under Title 22, section 2495 and those employees of organized camps and similar seasonal recreation programs not requiring such licensure that are operated as or by nonprofit organizations who are under 18 years of age; [PL 2009, c. 120, §1 (RPR); PL 2009, c. 211, Pt. B, §22 (RPR).]
  - F-1. [PL 1967, c. 466, §2 (RP).]
  - G. Any individual employed in the catching, taking, propagating, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as incident to, or in conjunction with, such fishing operations, including the going to and returning from work and including employment in the loading and unloading when performed by any such employee; [PL 1965, c. 410, §2 (AMD).]
  - H. [PL 2017, c. 219, §13 (RP).]
  - I. Any home worker who is not subject to any supervision or control by any person whomsoever, and who buys raw material and makes and completes any article and sells the same to any person, even though it is made according to specifications and the requirements of some single purchaser;
  - J. Members of the family of the employer who reside with and are dependent upon the employer; [PL 2009, c. 529, §1 (AMD).]
  - K. A salaried employee who works in a bona fide executive, administrative or professional capacity and whose regular compensation, when converted to an annual rate, exceeds 3000 times the State's minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher; and [PL 2009, c. 529, §2 (AMD).]
  - L. A person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except a prisoner who is:
    - (1) Employed by a private employer;

- (2) Participating in a work release program;
- (4) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761;
- (5) Employed while in a supervised community confinement program pursuant to Title 34-A, section 3036-A; or
- (6) Employed while in a community confinement monitoring program pursuant to Title 30-A, section 1659-A. [PL 2013, c. 133, §20 (AMD).]

[PL 2017, c. 219, §13 (AMD).]

**4. Occupation.** "Occupation," an industry, trade or business or branch thereof or class of work therein in which workers are gainfully employed;

**5. Wages.** "Wages" paid to any employee includes compensation paid to the employee in the form of legal tender of the United States and checks on banks convertible into cash on demand and includes the reasonable cost to the employer who furnishes the employee board or lodging. "Wages" also includes compensation paid through a direct deposit system, automated teller machine card or other means of electronic transfer as long as the employee either can make an initial withdrawal of the entire net pay without additional cost to the employee or the employee can choose another means of payment that involves no additional cost to the employee;

[PL 2005, c. 89, §1 (AMD).]

**6. Resort establishment.**  
[PL 1975, c. 623, §38 (RP).]

**7. Minimum wage for firemen.** Members of municipal fire fighting departments, other than volunteer or call-departments, who are paid salaries or regular wages, are deemed to be employees within the meaning of this section and are covered by this subchapter. Firemen's wages may be paid by the municipality based upon the average number of hours worked during any one work cycle which is not to exceed 12 weeks in duration. However, 1 1/2 times the hourly rate shall not be paid for all work done over 48 hours under this subsection;

[PL 1967, c. 385 (AMD).]

**8. Service employee.** "Service employee" means any employee engaged in an occupation in which the employee customarily and regularly receives more than:

- A. Prior to January 1, 2022, \$30 a month in tips; [PL 2021, c. 288, §1 (NEW).]
- B. Beginning January 1, 2022, \$100 a month in tips; or [PL 2021, c. 288, §1 (NEW).]
- C. Beginning January 1, 2023, \$175 a month in tips. [PL 2021, c. 288, §1 (NEW).]

On January 1, 2024, and every January 1st thereafter, the monetary amount over which an employee is considered a service employee under this subsection must be increased by the same percentage of the increase, if any, in the cost of living. The increase in the cost of living is measured by the percentage increase, if any, as of August of the previous year over the level as of August of the year preceding that year in the Consumer Price Index for Urban Wage Earners and Clerical Workers, CPI-W, for the Northeast Region, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics or its successor agency, with the amount of the increase rounded to the nearest multiple of \$1.

[PL 2021, c. 288, §1 (AMD).]

**9. Hotel.**  
[PL 2017, c. 219, §14 (RP).]

**10. Public employees.** "Public employees" are considered employees within the meaning of this section and include any person whose wages are paid by a state or local public employer, including the

State, a county, a municipality, the University of Maine System, a school administrative unit and any other political body or its political or administrative subdivision. "Public employee" does not include any officer or official elected by popular vote or appointed to office pursuant to law for a specified term or any person defined in subsection 7.

[PL 1985, c. 779, §69 (AMD).]

**11. Automobile salesperson.** "Automobile salesperson" means a person who is primarily engaged in selling automobiles or trucks as an employee of an establishment primarily engaged in the business of selling these vehicles to the ultimate purchaser. "Automobile salesperson" includes a person who is primarily engaged in assisting in the financing and providing of insurance products to the ultimate purchaser.

[PL 2007, c. 360, §1 (AMD).]

**12. Automobile mechanic.** "Automobile mechanic" means a person who is primarily engaged in the servicing of automobiles or trucks as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

[PL 2007, c. 360, §2 (AMD).]

**13. Automobile parts clerk.** "Automobile parts clerk" means a person employed for the purpose of and primarily engaged in requisitioning, stocking and dispensing automobile parts as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except when the employee is paid by the employer on an hourly basis.

[PL 2007, c. 360, §3 (AMD).]

**14. Automobile service writer.** "Automobile service writer" means a person employed for the purpose of and primarily engaged in receiving, analyzing and referencing requests for service, repair or analysis of motor vehicles as an employee of an establishment primarily engaged in the business of selling automobiles or trucks to the ultimate purchaser, as long as the person's annual compensation exceeds 3,000 times the state minimum hourly wage or the annualized rate established by the United States Department of Labor under the federal Fair Labor Standards Act, whichever is higher, except that "automobile service writer" does not include an employee who is paid by the employer on a hourly basis.

[PL 2007, c. 360, §4 (NEW).]

**15. Tip.** "Tip" means a sum presented by a customer in recognition of services performed by one or more service employees, including a charge automatically included in the customer's bill. "Tip" does not include a service charge added to a customer's bill in a banquet or private club setting by agreement between the customer and employer.

[PL 2011, c. 118, §2 (NEW).]

#### SECTION HISTORY

PL 1965, c. 399, §§1,2 (AMD). PL 1965, c. 410, §§2-4 (AMD). PL 1967, c. 385 (AMD). PL 1967, c. 466, §§1-4 (AMD). PL 1971, c. 620, §13 (AMD). PL 1971, c. 622, §87 (AMD). PL 1973, c. 504 (AMD). PL 1975, c. 48 (AMD). PL 1975, c. 59, §3 (AMD). PL 1975, c. 92, §3 (AMD). PL 1975, c. 623, §38 (AMD). PL 1975, c. 717, §5 (AMD). PL 1979, c. 516, §§1,2 (AMD). PL 1981, c. 168, §26 (AMD). PL 1981, c. 276 (AMD). PL 1985, c. 76, §1 (AMD). PL 1985, c. 779, §69 (AMD). PL 1991, c. 507, §1 (AMD). PL 1999, c. 465, §7 (AMD). PL 2005, c. 89, §1 (AMD). PL 2005, c. 255, §1 (AMD). PL 2007, c. 22, §§1, 2 (AMD). PL 2007, c. 360,

§§1-4 (AMD). PL 2007, c. 367, §1 (AMD). PL 2007, c. 640, §§2, 3 (AMD). PL 2009, c. 120, §1 (AMD). PL 2009, c. 211, Pt. B, §22 (AMD). PL 2009, c. 529, §§1-3 (AMD). PL 2011, c. 118, §§1, 2 (AMD). PL 2013, c. 133, §20 (AMD). PL 2017, c. 219, §§13, 14 (AMD). PL 2021, c. 288, §1 (AMD).

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