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H.P. 398

House of Representatives, February 24, 2021

An Act To End At-will Employment

Received by the Clerk of the House on February 22, 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 "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative SYLVESTER of Portland.

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

2 **Sec. 1. 26 MRSA §42-B, sub-§2**, as amended by PL 2003, c. 442, §1, is repealed.

3 **Sec. 2. 26 MRSA c. 47** is enacted to read:

4 **CHAPTER 47**

5 **EMPLOYMENT TERMINATION**

6 **§3701. Definitions**

7 As used in this chapter, unless the context otherwise indicates, the following terms
8 have the following meanings.

9 **1. Cause.** "Cause" means a reasonable basis related to an employee for termination
10 of the employee's employment in view of relevant factors and circumstances, which may
11 include the employee's conduct on the job or violation of the employer's policies governing
12 employment.

13 **2. Employee.** "Employee" means an individual who works for hire, including an
14 individual employed in a supervisory, managerial or confidential position, but not an
15 independent contractor.

16 **3. Employer.** "Employer" means a person that has employed 5 or more employees
17 for each working day in each of 20 or more calendar weeks in the 2-year period next
18 preceding a termination excluding a parent, spouse, child or other member of the
19 employer's immediate family or of the immediate family of an individual having a
20 controlling interest in the employer.

21 **§3702. Termination for cause**

22 Notwithstanding any provision of law to the contrary, an employer may not terminate
23 the employment of an employee without cause. An employer may terminate an employee
24 for cause only if the employer has followed a progressive discipline policy in accordance
25 with section 3703, except that if an employee has violated any state law an employer is not
26 required to follow a progressive discipline policy and may proceed to immediate
27 termination with notice as required under section 3703, subsection 2.

28 **§3703. Progressive discipline policy and termination**

29 Except as provided in section 3702, an employer shall apply a progressive discipline
30 policy and provide notice of termination in accordance with this section.

31 **1. Progressive discipline policy.** An employer shall adopt and implement a
32 progressive discipline policy for its employees. If an employer has not adopted a
33 progressive discipline policy, the employer must implement the model progressive
34 discipline policy provided by the department under section 3704. A progressive discipline
35 policy adopted by an employer must:

36 A. Include a 3-step disciplinary process prior to termination, including a verbal warning
37 as step one, a written warning as step 2 and a final written warning as step 3;

1 B. Provide that each warning, whether verbal or written, must be accompanied by
2 written documentation of the specific basis for the warning, which may include, but is
3 not limited to, the employee's conduct on the job or a violation of the employer's
4 policies;

5 C. Include language in the final written warning stating that any further instance of the
6 employee conduct or violation of policy identified in documentation required under
7 paragraph B will lead to the immediate termination of the employee's employment;

8 D. Require the employee to sign a copy of the final written warning; and

9 E. Provide that the failure of the employee to sign the final written warning is
10 considered a violation of the employer's progressive discipline policy.

11 **2. Notice of termination.** An employer shall provide a written notice of termination
12 to inform an employee that the employee is being terminated from employment. The
13 written notice must include, but is not limited to, an explanation of the cause or causes for
14 termination and the effective date of the termination of employment. A copy of the written
15 notice of termination must be mailed to the employee on the date it is signed by the
16 employer.

17 **§3704. Model progressive discipline policy and forms**

18 The department shall develop and make available to employers a model progressive
19 discipline policy in accordance with the requirements of section 3703 and model forms for
20 use at each step in the discipline process including termination. The model progressive
21 discipline policy must include guidance for employers and employees at each step of the
22 progressive discipline process, as outlined in section 3703, subsection 1, and for
23 termination. Model forms must include space to document the cause for the discipline and
24 proof of cause for termination. The model progressive discipline policy and model forms
25 must be available on the department's publicly accessible website.

26 **§3705. Private right of action**

27 **1. Limit on private right of action.** An employee has no private right of action under
28 this chapter, except that an employee may bring a private right of action if the employee
29 was terminated and the employer violated the employer's progressive discipline policy or,
30 if the employer has not adopted such a policy, the model progressive discipline policy
31 provided by the department under section 3704, with that employee. In a private right of
32 action authorized under this section, an employee must prove that a substantive violation
33 of the employer or model progressive discipline policy occurred with respect to the
34 employee. An employee who is aggrieved by an employer's violation of the progressive
35 discipline policy may appeal to the director, who may conduct a nonbinding review to
36 determine whether there has been a violation of the policy by the employer, or the employee
37 may bring a civil action in court against the employer.

38 **2. Construction.** Except as specifically provided in this section, this chapter provides
39 no express or implied private right of action.

40 **SUMMARY**

41 This bill prohibits an employer from terminating the employment of an employee
42 without cause. The bill specifies that an employer may terminate an employee for cause
43 only after applying a 3-step progressive discipline policy and providing notice of

1 termination in accordance with certain requirements. The bill also eliminates references to
2 at-will employment in current law.