



# 129th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2020

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Legislative Document

No. 2015

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H.P. 1436

House of Representatives, January 14, 2020

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**An Act To Provide for Leave from Work for Victims of Domestic  
Violence, Sexual Assault or Stalking**

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Labor and Housing suggested and ordered printed.

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

ROBERT B. HUNT  
Clerk

Presented by Representative DAUGHTRY of Brunswick.

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

2 **Sec. 1. 26 MRSA §42-B, sub-§1, ¶A-1** is enacted to read:

3 A-1. Leave under section 638-A.

4 **Sec. 2. 26 MRSA §638-A** is enacted to read:

5 **§638-A. Leave for victims of domestic violence, sexual assault or stalking**

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

8 A. "Dating partner" means an individual whom an employee is currently dating or  
9 formerly dated, whether or not the individual and the employee are or were sexual  
10 partners.

11 B. "Domestic violence" means conduct described in Title 17-A, chapters 9, 11, 12  
12 and 13; Title 17-A, sections 432, 433, 506, 506-A, 506-B, 758, 805, 806, 852 and  
13 853; and Title 19-A, section 4002, subsection 1, when the victim of that conduct is a  
14 family member or dating partner.

15 C. "Employee" means a person engaged to work on a regular basis, whether full time  
16 or part time.

17 D. "Employer" means a person, partnership, firm, association, corporation,  
18 employment agency, labor organization or other legal entity, public or private, that is  
19 located or doing business in the State. The term "employer" includes, but is not  
20 limited to:

21 (1) A person, partnership, firm, association or corporation acting in the interest  
22 of an employer, directly or indirectly; and

23 (2) The State in its capacity as an employer.

24 E. "Family member" means an employee's child, spouse, former spouse, domestic  
25 partner, former domestic partner, parent, mother-in-law, father-in-law, grandparent or  
26 dating partner.

27 F. "Sexual assault" means conduct described under Title 17-A, chapters 11, 12 and  
28 35 and Title 17-A, sections 852 and 853.

29 G. "Stalking" means conduct described in Title 17-A, section 210-A.

30 **2. Domestic violence, sexual assault or stalking leave.** An employee may take  
31 reasonable leave from work, with or without pay, including by reducing the employee's  
32 usual number of hours per work day or workweek, to:

33 A. Seek legal or law enforcement assistance or remedies to ensure the health and  
34 safety of the employee or a family member, including, but not limited to, preparing  
35 for or participating in any civil or criminal legal proceeding related to or derived from  
36 domestic violence, sexual assault or stalking;

1           B. Seek treatment by a health care provider for physical or mental injuries caused by  
2           domestic violence, sexual assault or stalking or to attend to health care treatment for a  
3           victim who is a family member;

4           C. Obtain, or assist a family member in obtaining, services from a domestic violence  
5           shelter, rape crisis center or other social services program for relief from domestic  
6           violence, sexual assault or stalking;

7           D. Obtain, or assist a family member in obtaining, mental health counseling related  
8           to an incident of domestic violence, sexual assault or stalking in which the employee  
9           or the family member was a victim; or

10          E. Participate in safety planning, temporarily or permanently relocate or take other  
11          actions to protect the employee or a family member from domestic violence, sexual  
12          assault or stalking.

13          **3. Advance notice to employer.** As a condition of taking leave for any purpose  
14          under subsection 2, an employee shall give an employer advance notice of the employee's  
15          intention to take leave. The timing of the notice must be consistent with the employer's  
16          stated policy for requesting such leave if the employer has such a policy. When advance  
17          notice cannot be given because of an emergency or unforeseen circumstance due to  
18          domestic violence, sexual assault or stalking, the employee shall give notice to the  
19          employer no later than the end of the first day that the employee takes such leave.

20          A. When an employee requests leave under subsection 2, the employer may require  
21          that the request be supported by verification that:

22                  (1) The employee or a family member is a victim of domestic violence, sexual  
23                  assault or stalking; and

24                  (2) The leave taken was for one of the purposes in subsection 2.

25          B. If an employer requires verification, the employee must provide verification in a  
26          timely manner. In the event that advance notice of the leave cannot be given because  
27          of an emergency or unforeseen circumstance due to domestic violence, sexual assault  
28          or stalking and the employer requires verification, the employee must provide  
29          verification to the employer within a reasonable time period during or after the leave.

30          C. An employee may satisfy the verification requirement of this subsection by  
31          providing the employer with one or more of the following:

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

34                  (2) A court order protecting or separating the employee or a family member from  
35                  the perpetrator of the act of domestic violence, sexual assault or stalking or other  
36                  evidence from the court or the prosecuting attorney that the employee or the  
37                  family member appeared, or is scheduled to appear, in court in connection with  
38                  an incident of domestic violence, sexual assault or stalking;

39                  (3) Documentation that the employee or a family member is a victim of domestic  
40                  violence, sexual assault or stalking from any of the following persons from whom  
41                  the employee or the family member sought assistance in addressing the domestic  
42                  violence, sexual assault or stalking;

- 1                    (a) An advocate for victims of domestic violence, sexual assault or stalking;
- 2                    (b) An attorney;
- 3                    (c) A member of the clergy; or
- 4                    (d) A medical or other health or mental or behavioral health professional.

5                    The provision of documentation under this subparagraph does not waive or  
6                    diminish the confidential or privileged nature of communications between a  
7                    victim of domestic violence, sexual assault or stalking with one or more of the  
8                    persons named in this subparagraph; or

9                    (4) An employee's written statement that the employee or a family member is a  
10                    victim of domestic violence, sexual assault or stalking and that the leave taken  
11                    was for one of the purposes described in subsection 2.

12                    D. If the victim of domestic violence, sexual assault or stalking is a family member,  
13                    verification of the relationship between the employee and the victim may include, but  
14                    is not limited to:

- 15                    (1) A statement from the employee;
- 16                    (2) A birth certificate; and
- 17                    (3) A court document or other similar documentation.

18                    E. An employee who is absent from work pursuant to subsection 2 may elect to use  
19                    the employee's paid leave, compensatory time or unpaid leave.

20                    F. An employee is required to provide only the information under paragraph A to  
21                    establish that the employee's leave is protected under this section. An employee is  
22                    not required to produce or discuss any information with the employer that is beyond  
23                    the scope of paragraph A or that would compromise the employee's safety or the  
24                    safety of a family member in any way, and an employer is prohibited from requiring  
25                    any such disclosure.

26                    G. An employer shall maintain the confidentiality of all information provided by the  
27                    employee under this section, including the fact that the employee or a family member  
28                    is a victim of domestic violence, sexual assault or stalking and that the employee has  
29                    requested or obtained leave under this chapter and any written or oral statement,  
30                    documentation, record or corroborating evidence provided by the employee, except  
31                    that information given by an employee may be disclosed by an employer if disclosure  
32                    is:

- 33                    (1) Requested or consented to by the employee;
- 34                    (2) Ordered by the court; or
- 35                    (3) Required by applicable state or federal law.

36                    **4. Effect on position held, compensation and health insurance and other**  
37                    **benefits.** The taking of leave under subsection 2 may not result in the loss of any pay or  
38                    benefits to the employee that accrued before the date on which the leave commenced.  
39                    Upon an employee's return, an employer shall either restore the employee to the position  
40                    of employment held by the employee when the leave commenced or restore the employee

1 to an equivalent position with equivalent employment benefits, pay and other terms and  
2 conditions of employment.

3 To the extent allowed by law, an employer shall maintain coverage under a health  
4 insurance plan for an employee who takes leave under subsection 2. The coverage must  
5 be maintained for the duration of the leave at the level and under the conditions at which  
6 coverage would have been provided if the employee had not taken the leave.

7 This subsection does not apply if the employment from which the employee takes leave is  
8 with an employment agency and the employee is assigned on a temporary basis to  
9 perform work at or services for another organization to support or supplement the other  
10 organization's workforce or to provide assistance in special work situations, including,  
11 but not limited to, employee absences, skill shortages, seasonal workloads or the  
12 performance of special assignments or projects under the direction and supervision of the  
13 organization to which the employee is assigned.

14 This subsection does not apply if an employee was hired for a specific term or only to  
15 perform work on a discrete project, the employment term or project is over and the  
16 employer would not otherwise have continued to employ the employee.

17 **5. Other rights.** The rights provided in this section are in addition to any other  
18 rights provided by state and federal law.

19 This section may not be construed to discourage employers from adopting policies that  
20 provide greater leave rights to employees who are victims of domestic violence, sexual  
21 assault or stalking than those required by this section.

22 This section may not be construed to diminish an employer's obligation to comply with a  
23 collective bargaining agreement or an employment benefit program or plan that provides  
24 greater leave rights to employees than the rights provided by this section.

25 **6. Confidentiality of complaint files.** Information contained in the Department of  
26 Labor's complaint files and records of employees under this chapter is confidential and is  
27 not a public record pursuant to Title 1, section 402, subsection 3 except that, as limited by  
28 state or federal law, rule or regulation:

29 A. The information may be provided to public employees in the performance of their  
30 official duties; and

31 B. A complainant or a representative of a complainant, whether an individual or an  
32 organization, may review a complaint file or receive specific information from a  
33 complaint file upon the presentation of the signed authorization of the complainant.

34 **7. Employee protections.** An employer may not discharge, threaten to discharge,  
35 demote, deny a promotion to, sanction, discipline, retaliate against, harass or otherwise  
36 discriminate against an employee with respect to compensation or terms, conditions or  
37 privileges of employment because the employee:

38 A. Exercised rights under subsection 2;

39 B. Filed or communicated to the employer an intent to file a complaint under  
40 subsection 8 or bring a civil action under subsection 9; or

1 C. Participated or assisted, as a witness or otherwise, in another employee's attempt  
2 to exercise rights under subsection 2, 8 or 9.

3 **8. Administrative enforcement.** Upon a complaint by an employee, the  
4 Department of Labor shall investigate to determine whether an employer has violated this  
5 section. If a violation has occurred, the department shall impose a fine of up to \$500 for  
6 the first violation and a fine of up to \$1,000 for each subsequent violation committed  
7 within 3 years of a previous violation. The department may order an employer found to  
8 have committed a violation to comply with subsection 4.

9 **9. Civil action.** An employee whose rights have been violated under this section  
10 may bring an action in Superior Court against an employer to seek injunctive or other  
11 equitable relief to enforce this section and compensatory damages, including lost wages,  
12 benefits or other compensation or damages suffered by the employee due to the violation.  
13 A plaintiff has a right to a jury trial in an action under this subsection, and the court shall  
14 award reasonable attorney's fees and costs to a prevailing plaintiff in addition to any other  
15 relief granted.

16 The remedy provided by this subsection is in addition to any other remedy that may be  
17 available to an employee.

18 An employee is not required to exhaust administrative remedies before filing a civil  
19 action to enforce this section.

20 **10. Rules.** The Department of Labor may adopt rules as necessary to implement this  
21 section. Rules adopted pursuant to this subsection are routine technical rules under Title  
22 5, chapter 375, subchapter 2-A.

23 **SUMMARY**

24 This bill allows an employee to take reasonable leave from work, with or without  
25 pay, including by reducing the employee's usual number of hours per work day or  
26 workweek:

27 1. To seek legal or law enforcement assistance or remedies to ensure the health and  
28 safety of the employee or employee's family members including, but not limited to,  
29 preparing for, or participating in, any civil or criminal legal proceeding related to or  
30 derived from domestic violence, sexual assault or stalking;

31 2. To seek treatment by a health care provider for physical or mental injuries caused  
32 by domestic violence, sexual assault or stalking or to attend to health care treatment for a  
33 victim who is the employee's family member;

34 3. To obtain, or assist a family member in obtaining, services from a domestic  
35 violence shelter, rape crisis center or other social services program for relief from  
36 domestic violence, sexual assault or stalking;

37 4. To obtain, or assist a family member in obtaining, mental health counseling  
38 related to an incident of domestic violence, sexual assault or stalking in which the  
39 employee or employee's family member was a victim; or

1           5. To participate in safety planning, temporarily or permanently relocate or take  
2 other actions to protect the employee or employee's family members from domestic  
3 violence, sexual assault or stalking.