

Maine Labor Department Releases Final Rules for Earned Paid Leave Law

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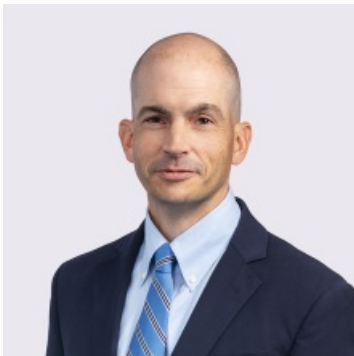
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As the January 1, 2021, effective date of Maine's Earned Paid Employee Leave Law approaches, the state Department of Labor (DOL) has promulgated the much-anticipated [final regulations](#) for implementing the statute.

Under the law, private employers with at least 10 employees in Maine must provide employees one hour of paid leave for every 40 hours worked, up to a maximum of 40 hours of paid leave per year, for any reason. (See our article, [New Maine Law Requires Employers to Provide Employees Paid Leave to Use for 'Any Reason.'](#))

As is often the case, the DOL's regulations answer some questions, but leave others unaddressed.

Coverage

Maine employers with at least 10 employees who work more than 120 hours in a calendar year, other than seasonal workers, are covered by the law.

A covered employee may include full-time, part-time, or per diem employees. This includes students and noncitizens authorized to work in the United States. If a worker is a covered employee for unemployment insurance purposes, that worker counts toward the 10-employee threshold and is covered by the law.

The law does not apply to an employee subject to a collective bargaining agreement (CBA) during the period between January 1, 2021, and the expiration of the agreement. New CBAs, subsequent to January 1, 2021, will have to address the law.

Accrual

Employees will begin accruing earned pay leave at the start of employment and at the rate of one hour per 40 hours worked, up to a maximum of 40 hours of paid leave per year. They may start using the leave after 120 days of employment.

Employers may front-load the 40 hours of leave at the beginning of a calendar year or on an employee's anniversary date. If an employer front-loads the time and an employee terminates their employment prior to working sufficient hours to earn the time already taken, the employer may deduct the unearned leave from the last paycheck.

Employers are not obligated to provide more than 40 hours of paid leave.

Carryover

Accrued but unused paid leave can be carried over to the next year, but only up to the 40-hour cap.

Pay Out at Termination

If the employer has an established policy or practice of paying out vacation time upon

termination of employment or separation, then the same policy will apply to earned paid leave benefits.

Notice

Where there is an emergency or other sudden necessity, the employee must exercise “good faith” in providing reasonable notice under the circumstances. In other circumstances, employees are required to provide “reasonable notice” of the intent to take leave.

The regulations provide that an employer may adopt a policy requiring up to four weeks’ notice of the intent to take leave.

Employers must post the [Bureau of Labor Standard’s “Regulation of Employment” poster](#) with a revision date of “09/20” at the bottom.

Scheduling

The law allows employers to place reasonable limits on the scheduling of paid leave because of undue hardship on the employer “as reasonably determined by the employer.”

The regulations provide that undue hardship means “a significant impact on the operation of the business or significant expenses, considering the financial resources of the employer, the size of the workforce, and the nature of the industry.”

Minimum Amount Paid Leave Taken

Paid leave must be taken in increments of at least one hour, unless the employer agrees to a lesser amount of time.

Applicable Rate of Pay

During the paid leave, employers must pay employees their regular base rate of pay, including bonuses and commissions.

This, of course, may be subject to abuse by an employee who just received a bonus or commission. The regulations do not address this concern.

Employees on paid leave must receive the same benefits as provided to other types of paid leave pursuant to the employer’s “established” policies. The taking of paid leave may not result in the loss of any accrued employee benefits.

Tip Credit

Employers in the service industry, whose employees use the tip credit, will use the state’s minimum wage as the base rate of pay.

Penalties for Non-Compliance

Employers who violate the law will be subject to penalties of up to \$1,000 per violation.

Other Resources

The Maine DOL has a useful [FAQs section](#) on its website addressing the paid leave law.

Employers should take this opportunity to review and update their policies to ensure compliance.

For additional guidance, please contact a Jackson Lewis attorney.

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