

Maine HR in 2021

Presented by
Sarah E. Newell
and
Rebecca A. LaPierre

EARNED PAID LEAVE

Slide 2

LR1

LaPierre, Rebecca, 12/16/2020

The Basics

For businesses with 10 or more employees:

Who is entitled to Earned Paid Leave?

- Almost all employees are entitled to paid leave under the law. There are very limited exceptions for certain seasonal employees, certain student employees, etc.
- Generally, full-time, part-time, per diem, and temporary employees will all be eligible.
- Rule of thumb: If you list an employee on your quarterly report to the Bureau of Unemployment Compensation, that employee is covered by Earned Paid Leave.

When does the law go into effect?

- January 1, 2021

Is our current policy sufficient if we offer more than 40 hours of paid leave?

- Possibly, but probably not.

Seasonal Employee Exemption

The law expressly exempts seasonal employees as defined by the Employment Security Act. A business that operates for fewer than 365 days a year does not necessarily make it seasonal for purposes of this law. Employers that have been determined seasonal by the DOL will have two account numbers within the ReEmployME unemployment insurance system. One account number is for seasonal wages and the other for non-seasonal. If the employer is within any such industry and the employer has submitted the required report to the Bureau of Unemployment Compensation setting forth the seasonal period for the applicable year, then the employees working within that seasonal period will be exempt from coverage for EPL.

Per MDOL: Earned Paid Leave coverage can be determined using the following:

1. Is the business an employer as defined under 26 M.R.S.A § 1043, 9?
 - a. If no – Earned Paid Leave will not apply
 - b. If yes go to question 2
2. Does the business employ more than 10 employees in Maine for more than 120 days (Total days, not consecutive days) in any calendar year?
 - a. If no – Earned Paid Leave will not apply
 - b. If yes go to question 3
3. Is the work provided by the worker considered employment as defined under 26 M.R.S.A §1043, 11?
 - a. If no – Earned Paid Leave will not apply
 - b. If yes go to question 4
4. Is the employment included in a seasonal industry as defined in 26 M.R.S.A §1251?
 - a. If no – Earned Paid Leave will apply
 - b. If yes – go to question 5
5. Did the employer (excluding a predefined seasonal business) submit the required report to the Bureau of Unemployment Compensation?
 - a. If no – Earned Paid Leave will apply
 - b. If yes – go to question 6
6. Is the work performed only within that seasonal period?
 - a. If no – Earned Paid Leave will apply
 - b. If yes – Earned Paid Leave will not apply

Limited Student Employee Exceptions

There are limited exceptions for students who are working in the following type of services and who are not covered by unemployment insurance and therefore not eligible for Earned Paid Leave:

- Service performed by students participating in a cooperative program of education and occupational training or on-the-job training that is part of the school curriculum;
- Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law and service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law;
- Service performed in the employ of a school, college, or university if that service is performed by a student who is enrolled and is regularly attending classes at such a school, college or university; or
- Service performed by a full-time student employed by certain seasonal youth camps.

Do we need to change our current policy?

- Do we provide paid leave for employees who aren't full time?
- Do we permit use of leave after 120 days of employment?
- Do we front load or accrue leave at a rate equal to or greater than one hour of accrued leave for every forty hours worked?
- Do we offer leave that can be use for any reason and is not specifically designated to sick/vacation/other?
- Do we require more than four weeks' of notice to request leave?
- Do we allow use of leave for emergencies, illness, and sudden necessities without advance notice?
- Do we require documentation to support a request for leave (i.e. doctor's note)?
- Do we discipline employees for using paid leave?
- Do we permit accrued leave to roll over from year to year?

Policy Update Options

- Adapt your current leave policy to fully comply with the EPL provisions;
- Adapt a portion of your current leave to comply (i.e. adapt your sick leave only);
- Add a new category of leave for employees that complies while leaving your current policy untouched; or
- Add a new category of leave and reduce the amount of leave currently offered.

Sample Policy for EPL

All eligible non-exempt employees will accrue earned paid leave (“EPL”) at the rate of one hour of paid leave for every forty hours worked. Employees who work fewer than forty hours per pay period will accrue EPL at an equivalent prorated rate.

Exempt employees will accrue EPL at the rate of one hour of paid leave for every week worked. The total amount of EPL that an employee may accrue in any given calendar year is forty (40) hours.

EPL will begin to accrue on January 1, 2021 or at the start of employment, whichever comes later.

Employees may use EPL beginning on January 1, 2021 or after 120 calendar days of employment with the Employer, whichever comes later.

EPL may be used by the employee for any reason. Employees requesting to use EPL for a foreseeable reason must make the request at least four weeks in advance of the intended leave.

Employees requesting to use EPL in the event of an emergency, illness, or sudden necessity must notify the Employer of the need for leave in writing as soon as practicable.

At the end of the calendar year, all unused earned paid leave shall roll over for use in the next calendar year. EPL that rolls over will count towards the employee's maximum allotment of forty hours of EPL for that year.

Accrued but unused EPL [will or won't] be paid out at the time of separation from employment.

Requests for foreseeable leave may be denied in the event that permitting leave will result in an undue hardship on Employer.

Rates of Pay

- Exempt employees: Since exempt employees are typically paid a predetermined fixed amount (a salary), their base rate of pay for EPL is the hourly equivalent of their salary.
- Non-exempt employees:
 - Earned leave must be paid at least the same base rate of pay that the employee received immediately before taking earned leave and that employees must receive the same benefits as those provided under established policies of the employer pertaining to other types of paid leave.
 - The base rate will be calculated by reference to the week immediately prior to the leave taken. The base rate of pay is calculated by dividing the total straight time earnings which includes any addition compensation included in the definition of regular rate for the week by the total hours worked. The regular hourly rate includes all earnings, bonuses, commissions, and other compensation that is paid or due based on actual work performed and does not include any sums excluded from the definition of “regular rate” under the Fair Labor Standards Act such as overtime or premium pay and legally defined discretionary bonuses.
- For per diem employees, the base rate of pay is determined by looking at the most recent week worked by a per diem employee. The total earnings from that week, divided by the total hours worked will equal the base rate of pay.
- If all rates of pay are based on the tip credit then the base rate of pay will be the minimum wage. As long as the direct wages and tips received when combined at the end of the week total at least minimum wage, then the base rate of pay is minimum wage.

Common Questions

- What about union employees?
- Do we have to pay out EPL upon termination from employment?
- What if the employee is terminated from employment before 120 days have gone by?
- When can we deny a request for leave?
- What if I have a busy season or certain days of the year that it's practically impossible to allow employee leave?
- Can we frontload the earned paid leave at the beginning of the year?
- What about salaried/exempt employees who don't track their time?
- Do we have to base our policy on the calendar year?

Other helpful notes from MDOL FAQ

Undue hardship is defined as:

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.

Requiring use of accrued leave:


If an employee has accrued Earned Paid Leave, an employer may require that leave be used if the employee takes a planned absence, or if the employee is out due to an emergency, illness, or sudden necessity.

The employer can require the use of Earned Paid Leave in one-hour increments. An employer may choose to allow the use of Earned Paid Leave in smaller increments. Please note that an employer cannot require the use of Earned Paid Leave in larger increments.

Accrual rates: The minimum standard set by this law is that a covered employee must earn 1 hour of Earned Paid Leave for every 40 hours worked, accruing up to 40 hours of Earned Paid Leave per year. It is at the discretion of the employer if they will permit the accrual and use of leave in smaller increments.

Employees may not be disciplined for appropriately using EPL, however employers may discipline an employee if the employee exceeds the amount of leave available, or otherwise do not comply with the employer's notice requirements.

Regulation of Employment



Labor Laws of the State of Maine provide protection for people who work in Maine. The Maine Department of Labor administers the laws, which all employers must follow. Department representatives inspect workplaces to ensure compliance. Citations and penalties may be issued to employers who do not comply.

This poster describes some important parts of the laws. A copy of the actual laws or formal interpretations may be obtained from the Department of Labor, Bureau of Labor Standards, by calling 207-623-7900. (The laws are also on the Bureau's web site.)

Maine Law (Title 26 M.R.S.A. § 42-B) requires every employer to place this poster in the workplace where workers can easily see it.

This poster is available online at no charge and may be copied: <https://www.maine.gov/labor/posters/>

Time of Payment
Employees must be paid in full at least every 16 days. Employees must be notified of any decrease in wages or salary at least one day prior to the change.

Payment of Wages
Employees who leave a job must be paid in full on the next payday or within two weeks, whichever is earlier. This may also include the payment of accrued vacation pay and/or Earned Paid Leave if established in company policy or in practice.

Unfair Agreement
Employers cannot require that an employee pay for losses such as broken merchandise, bad checks, or bills not paid by customers, nor for special uniforms and certain tools of the trade.

Rest Breaks
Most employers must be offered a 30-minute paid or unpaid rest break after 6 hours of work.
Nursing mothers must be provided with unpaid break time or be permitted to use their paid break or meal time to express milk. The employer must make reasonable efforts to provide a clean room or location, other than a bathroom, where the milk can be expressed.

Family Medical Leave
An employee who has worked for the last 12 months at a workplace with 15 or more employees can have leave for up to 10 paid or unpaid weeks in 2 years for:

- Birth or adoption of a child or domestic partner's child;
- Serious illness of the employee or immediate family member, including domestic partner;
- Organ donation;
- Death or serious health condition of the employee's spouse, domestic partner, parent or child if it occurs while the spouse, domestic partner, parent or child is on active duty;
- Serious illness or death of a sibling who shares joint living and financial arrangements with the worker.

(Federal family medical leave is different, call 866-487-9243 for more information.)

Leave for Victims of Violence, Assault, Sexual Assault or Stalking
Must be allowed upon request if an employee (or a child, parent or spouse of an employee) is a victim of violence, assault, sexual assault or stalking or any act that would support an order for protection under Title 19-A M.R.S.A., c. 101 and the employee needs the time to:

- Prepare for and attend court proceedings; or
- Receive medical treatment; or
- Obtain necessary services to remedy crisis.

Leave to Care for Family
If the employer's policy provides for paid time off, the employee must be allowed to use up to 40 hours in a 12-month period to care for an immediate family member who is ill.

Earned Paid Leave (Effective 01.01.2021)
An employer that employs more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year shall permit each employee to earn paid leave based on the employee's base pay. An employee is entitled to earn one hour of paid leave from a single employer for every 40 hours worked, up to 40 hours in one year of employment. Accrual of leave begins at the start of employment, but the employer is not required to permit use of the leave before the employee has been employed by that employer for 120 days during a one-year period.

Earned Income Tax Credit
Employees may be eligible for federal and state earned income tax credits. Employees may apply for the tax credits on the employee's income tax return.
Note: Maine employers may also be covered under the Federal Fair Labor Standards Act. For more information, contact the U.S. Department of Labor Wage and Hour Office at 866-487-9243.

For more information, contact:
Maine Department of Labor
Bureau of Labor Standards
45 State House Station
Augusta, Maine 04333-0045
located at 45 Commerce Drive
Telephone: 207-623-7900 | TTY users call Maine Relay 711.
Web site: www.maine.gov/labor/bls
Email: bls.mdol@maine.gov

At-Will Employment - Under Maine law, an at-will employee may be terminated for any reason not specifically prohibited by law. In most instances, you are an at-will employee unless you are covered by a collective bargaining agreement or other contract that limits termination. If you have questions about at-will employment, contact your human resources department or the Bureau of Labor Standards.

rev. 10/20

The Poster requirement is met by downloading and posting the Bureau of Labor Standard's "Regulation of Employment" poster with a revision date of 10/2020. If all employees are working remotely, a business can meet this requirement by making this poster available for all employees to view on the business's intranet. However, if any employee is working in a physical location, this and all other required posters must also be physically displayed where employees can see it.

COVID-19 Concerns

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- FFCRA Paid Sick Leave – set to expire December 31, 2020
 - Current stimulus bill may extend or change if passed
- Testing employees
- Vaccines – New EEOC guidance published 12/15/2020

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