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

Sec. 1. 26 MRSA §42‑B, sub-§1, ¶¶E and F, as enacted by PL 2017, c. 219, §2, are amended to read:

E. Video display terminal safety as described in section 252, subsection 1; and

F. Minimum wage and overtime provisions as described in section 664.; and

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

G. Earned paid sick leave as described in section 637.

Sec. 3. 26 MRSA §626-A, as amended by PL 1999, c. 465, §5, is further amended to read:

§626-A. Penalties

As used in this section, "earned paid sick leave" has the same meaning as in section 637, subsection 1, paragraph D.

Whoever violates any of the provisions of sections 621‑A to 623 or section 626, 628, 629 or, 629‑B or 637 is subject to a forfeiture of not less than $100 nor more than $500 for each violation.

Any employer is liable to the employee or employees for the amount of unpaid wages, earned paid sick leave and health benefits. Upon a judgment being rendered in favor of any employee or employees, in any action brought to recover unpaid wages, earned paid sick leave or health benefits under this subchapter, such judgment includes, in addition to the unpaid wages, earned paid sick leave or health benefits adjudged to be due, a reasonable rate of interest, costs of suit including a reasonable attorney's fee, and an additional amount equal to twice the amount of unpaid wages or earned paid sick leave as liquidated damages.

Remedies for unpaid wages or earned paid sick leave do not become available to the employee except as follows. If the wages are or earned paid sick leave is clearly due without a bona fide dispute, remedies are available to the employee 8 days after the due date for payment. If there is a bona fide dispute at the time payment or earned paid sick leave is due, remedies become available to the employee 8 days after demand when the wages are or earned paid sick leave is, in fact, due and remain remains unpaid.

The action for unpaid wages, earned paid sick leave or health benefits may be brought by either the affected employee or employees or by the Department of Labor. The Department of Labor is further authorized to supervise the payment of the judgment, collect the judgment on behalf of the employee or employees and collect fines incurred through violation of this subchapter. When the Department of Labor brings an action for unpaid wages, earned paid sick leave or health benefits, this action and an action to collect a civil forfeiture may both be joined in the same proceeding.

Sec. 4. 26 MRSA §636, sub‑§2, as enacted by PL 2005, c. 455, §1, is further amended to read:

2. Use of paid leave. If an employer, under the terms of a collective bargaining agreement or employment policy, provides paid leave in addition to that required under section 637, then the employer shall allow an employee to use the additional paid leave for the care of an immediate family member who is ill as provided in this section.

Sec. 5. 26 MRSA §637 is enacted to read:

§637. Earned paid sick leave

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

A. "Department" means the Department of Labor as described in section 1401‑A.

B. "Domestic partner" means a domestic partner as defined in Title 22, section 2710, subsection 2 or in a substantially equivalent law of another jurisdiction.

C. "Domestic violence" means conduct described in Title 17‑A, chapters 9, 11, 12 and 13; Title 17‑A, sections 432, 433, 506, 506‑A, 506‑B, 758, 805, 806, 852 and 853; and Title 19‑A, section 4002, subsection 1, when the victim of that conduct or threat is a family or household member, as defined in Title 19‑A, section 4002, subsection 4, or dating partner, as defined in Title 19‑A, section 4002, subsection 3‑A.

D. "Earned paid sick leave" means time off from work that is provided by an employer to an employee as calculated under subsections 4 and 5, that can be used for the purposes described in subsection 6, that is compensated at the same hourly rate and that includes the same benefits as the employee earns at the time the employee uses the earned paid sick leave.

E. "Employee" has the same meaning as in section 663, subsection 3. An individual exempt from the definition of "employee" pursuant to any of the provisions in section 663, subsection 3, paragraphs A to L is also exempt from this section.

F. "Employee's family member" means:

(1) Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of the employee's domestic partner, a child to whom the employee stands in loco parentis or an individual to whom the employee stood in loco parentis when the individual was a minor;

(2) A biological, foster or adoptive parent or stepparent or legal guardian of the employee or the employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor;

(3) A person to whom the employee is legally married under the laws of any state or a domestic partner of the employee;

(4) A grandparent, grandchild or sibling, whether of a biological, foster, adoptive or step relationship, of the employee or the employee's spouse or domestic partner; or

(5) Any other individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship.

G. "Employer" means a person in this State who employs individuals and includes the State and political subdivisions of the State. "Employer" includes a person acting in the interest of an employer directly or indirectly. For purposes of this section, 2 entities under common control, directly or through one or more intermediaries, are considered the same employer. "Employer" also includes any successor in interest to an entity referred to in this definition.

H. "Health emergency" has the same meaning as in Title 22, section 802, subsection 2.

I. "Sexual assault" means any conduct described under Title 17‑A, chapters 11, 12 and 35.

J. "Stalking" means any conduct described in Title 17‑A, section 210‑A.

K. "Victim" means an individual who has been subject to domestic violence, sexual assault or stalking.

L. "Year" means a regular and consecutive 12-month period.

2. Earned paid sick leave provided. An employer shall provide earned paid sick leave to employees as set forth in this section.

3. Relationship to collective bargaining. This section does not apply to employees covered by a collective bargaining agreement during the period between the effective date of this section and the expiration of such an agreement. This section applies after the expiration date of such an agreement unless a new collective bargaining agreement that expressly waives the requirements of this section by clear and unambiguous terms has been entered into and is in effect.

4. Accrual. An employee accrues earned paid sick leave at a rate of no less than one hour of earned paid sick leave for every 30 hours worked for the employer. Accrual begins at the later of the start of employment or the effective date of this section. When there is a separation in employment and an employee is rehired by the same employer within 6 months of separation, the employer must reinstate previously accrued but unused earned paid sick leave and the employee is entitled to use accrued earned paid sick leave and accrue additional earned paid sick leave at the time employment recommences. If an employer does not track the working hours of an employee, it must be presumed that the employee works 40 hours per week for purposes of this section absent clear and convincing evidence otherwise.

5. Carry forward. An employer shall permit an employee to carry forward at least 40 hours of that employee's unused accrued earned paid sick leave to the following year. An employer may also provide all earned paid sick leave that an employee is expected to accrue in a year at the beginning of the year.

6. Use of accrued earned paid sick leave. An employee may use accrued earned paid sick leave for any of the following:

A. An employee's mental or physical illness, injury or health condition, need for medical diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for preventive medical care;

B. Care of an employee's family member who has a mental or physical illness, injury or health condition; care of an employee's family member who needs medical diagnosis or treatment of a mental or physical illness, injury or health condition; or care of an employee's family member who needs preventive medical care;

C. Leave for an employee when the employee or the employee's family member is a victim; or

D. A health emergency resulting in the closure of the employer's business or the school attended by the employee's family member who resides with the employee.

An employer must allow employees to use accrued earned paid sick leave in the same increments that the employer uses for tracking other forms of leave taken by employees.

7. Notice. When the use of accrued earned paid sick leave is foreseeable, the employee shall make a good faith effort to provide advance notice to the employer, including the dates and duration of the expected absence. When the use of accrued earned paid sick leave is not foreseeable, the employee shall notify the employer as soon as reasonably possible. The employer must establish reasonable verbal, written or electronic notice procedures consistent with this subsection and must communicate all such procedures to employees.

8. Employer not required to allow use of earned paid sick leave until 90 days of employment. An employer is not required to allow the use of accrued earned paid sick leave by an employee until 90 calendar days after the employee commences employment with that employer.

9. Annual limit on use of earned paid sick leave. An employer is not required to allow an employee to use more than 40 hours of earned paid sick leave in one year.

10. Substitutes not required. An employer may not require an employee to secure a substitute or attempt to secure a substitute when that employee uses earned paid sick leave.

11. Documentation; confidentiality. When an employee uses 3 or more consecutive days of earned paid sick leave, an employer may require reasonable documentation of the purpose for which the earned paid sick leave was used. If the employee incurs costs to procure that documentation, the employer shall reimburse the employee for reasonable costs actually incurred. The employer shall maintain the confidentiality of information provided by the employee pursuant to this subsection and may not disclose such information except to the affected employee or with the permission of the affected employee or as required by law.

Documentation signed by a health care professional must be considered reasonable documentation for purposes of this subsection. In cases of domestic violence, sexual assault or stalking, one of the following types of documentation selected by the employee must be considered reasonable documentation:

A. A police report;

B. A signed statement from a victim advocate or witness; or

C. A court document.

An employer may not require that the documentation explain the nature of the illness, injury or health condition or details of the domestic violence, sexual assault or stalking as a condition of providing earned paid sick leave under this section.

An employer may not require documentation under this subsection unless the employer has provided advance notice to employees that such documentation will be required.

12. Employer's paid leave policies. Any employer with a paid leave policy, such as a paid time off policy, who makes available an amount of paid leave sufficient to meet the accrual requirements of this section that may be used for the same purposes and under the same conditions as earned paid sick leave under this section is not required to provide additional earned paid sick leave.

13. Employer records. An employer shall retain for a period of 3 years records documenting hours worked by employees and earned paid sick leave taken by employees and shall allow the department access to such records, with appropriate notice and at a mutually agreeable time, to monitor compliance with the requirements of this section. When an issue arises as to an employee's entitlement to earned paid sick leave under this section, if the employer does not maintain or retain adequate records documenting hours worked by the employee and earned paid sick leave taken by the employee, or does not allow the department reasonable access to such records, it must be presumed that the employer has violated this section absent clear and convincing evidence otherwise.

14. Unused accrued earned paid sick leave; separation. Nothing in this section may be construed to require an employer to provide financial or other reimbursement for unused accrued earned paid sick leave upon an employee's termination, resignation, retirement or other separation from employment.

15. Notice by employers. An employer shall give employees written notice of the following at the commencement of employment or by the effective date of this section, whichever is later:

A. That employees are entitled to earned paid sick leave and the amount of earned paid sick leave;

B. That the terms of use of earned paid sick leave are guaranteed under this section;

C. That retaliatory personnel action against employees who request or use earned paid sick leave is prohibited;

D. That each employee has the right to file a complaint or bring a civil action if earned paid sick leave is denied by the employer or the employee is subjected to retaliatory action for requesting or taking earned paid sick leave; and

E. The contact information for the office in the department where questions about rights and responsibilities under this section can be answered.

The department may provide and distribute to employers a uniform statement for notice purposes. The employer shall also provide employees access to outreach information, including translated versions, made available by the department pursuant to subsection 19.

16. Prohibited acts. An employer may not discharge, demote, suspend, discipline or otherwise discriminate against an employee or threaten to take any of these actions against an employee who exercises rights granted under this section or who files a complaint or testifies or assists in an action brought against the employer for a violation of this section. It is unlawful for any policy of the employer, including an absence control policy, to count earned paid sick leave taken under this section as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action. Nothing in this section prohibits an employer from taking employment action against an employee for taking leave that is not protected by this section or other applicable law.

17. Successor employers. When a different employer succeeds or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all earned paid sick leave they accrued when employed by the original employer and are entitled to use earned paid sick leave previously accrued.

18. Encouragement of more generous paid sick leave policies; no effect on more generous policies or laws. Nothing in this section may be construed to discourage or prohibit an employer from the adoption or retention of a policy more generous than the one required in this section. Nothing in this section may be construed as diminishing the obligation of an employer to comply with any contract or agreement providing more generous paid sick leave to an employee than required in this section. Nothing in this section may be construed as diminishing the rights of public employees regarding paid sick leave or use of paid sick leave. Nothing in this section may be construed to supersede any provision of any local law that provides greater rights to paid sick leave than the rights established under this section. This section provides minimum requirements pertaining to earned paid sick leave and may not be construed to preempt, limit or otherwise affect the applicability of any other law, regulation, requirement, policy or standard that provides for greater accrual or use by employees of paid sick leave or that extends other protections to employees.

19. Public education and outreach. The department shall implement a program to inform employees, parents and persons who are under the care of a health care provider about the availability of earned paid sick leave under this section. This program must make information available to child care and elder care providers, domestic violence shelters, schools and hospitals, community health centers and other health care providers. The department shall have outreach information translated into the 5 languages used most often by the population of this State as determined by the United States Department of Commerce, United States Census Bureau, the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services or a comparable source and shall make that information reasonably available to residents who use those languages. This public education and outreach program must be incorporated into the department's existing communication efforts using resources appropriated or otherwise available for those efforts.

20. Rules. The department shall adopt rules to implement and enforce the provisions of this section, including rules regarding the receipt, investigation and prosecution of complaints alleging violations of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2‑A.

summary

This initiated bill requires all private and public employers to provide eligible employees earned paid sick leave at a rate of no less than one hour for every 30 hours worked by an employee.  Eligible employees may use earned paid sick leave for illness or medical care of the employee or the employee’s family.  The initiated bill allows employees to take up to 40 hours of earned paid sick leave each year and requires employers to allow employees to carry forward at least 40 hours of unused earned paid sick leave to the following year.