

**12 DEPARTMENT OF LABOR**

**170 BUREAU OF LABOR STANDARDS**

**Chapter X: RULES GOVERNING EARNED PAID LEAVE**

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**Summary:** The purpose of this chapter is to provide definitions and procedures for implementing earned paid leave for certain employees pursuant to 26 MRS §637.

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**Section I: Application**

These rules apply to employers that employ more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year, with certain exceptions. Covered employers shall permit each employee to accrue earned paid leave based on the employee's base rate of pay as defined in Section II.

**Section II: Definitions**

As set forth in 26 MRS §637 or in this chapter, the following terms have the following meanings.

- A. "120 days" for purposes of 26 MRS §637(2) and (3) means 120 *calendar* days (not business days).
- B. "Base rate of pay." The base rate of pay for purposes of earned paid leave required by this statute is identical to the regular rate of pay defined in section 26 MRS §664(3). The base rate will be calculated by reference to the week immediately prior to the leave taken.
- C. "Bureau" means the Bureau of Labor Standards, within the Department of Labor.
- D. "Calendar year" means January 1 through December 31 of any year.
- E. "Covered Employee." A covered employee is a person engaged in employment as defined in the Employment Security Act, 26 MRS §1043(11) for an employer as defined by 26 MRS §1043(9), except as otherwise set forth herein or in the Act Authorizing Earned Employee Leave. A covered employee may include a person who is employed full-time, part-time or per diem.
- F. "Covered Employer." A covered employer is an employer as defined by 26 MRS §1043(9) who employs more than 10 covered employees in the usual and regular course of business for more than 120 days in any calendar year.
- G. "Emergency" and "sudden necessity," which terms may be used interchangeably herein, mean a situation in which the need for leave is not reasonably foreseeable.

- H. "Employer" has the same meaning as in 26 MRS § 1043(9).
- I. "Employment" has the same meaning as in 26 MRS § 1043(11), but does not include employment in a seasonal industry as defined in 26 MRS § 1251.
- J. "Employment in a seasonal industry" means employment in an industry determined by the Unemployment Insurance Commission to be seasonal pursuant to 26 MRS §1251 and employment for an employer who has submitted the required report to the Bureau of Unemployment Compensation setting forth the seasonal period for the applicable year.
- K. "Hours Worked." For purposes of 26 MRS §637(3), for covered employees defined as exempt by federal regulations (29 CFR §541), in the absence of any other record, the presumption is that hours worked by such employees are 40 hours per week.
- L. "One-year period" means any period of 365 (366 in a leap year) consecutive days.
- M. "Start of Employment" means the first day the employee performed work for the employer.
- N. "Year of employment" means a period of 365 (366 in a leap year) consecutive days beginning with the employee's *start of employment*, or any subsequent period of 365 (366 in a leap year) consecutive days beginning on one of the following:
  - i. the anniversary date of the employee's start of employment; or
  - ii. such date as the employer may assign, provided that no loss of earned paid leave results for any employee not using the date identified in i. above.

**Section III: Accrual**

- A. An employee is entitled to earn one hour of earned paid leave from a single employer for every 40 hours worked, up to 40 hours in one year of employment.
- B. Accrual of earned paid 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.
- C. No more than forty hours of earned paid leave is required to be available for use by a covered employee during any one year period as established by section II. L. herein.
- D. Covered Employees with accrued and unused hours of earned paid leave from the previous year of employment will have those hours available for use by the employee in the current year of employment, up to a maximum of forty hours. Hours are only required to continue to accrue up to forty hours in the current year of employment.
- E. Whenever the terms of employment or the employer's established practice includes provisions to pay the balance of unused earned paid leave at the time of separation, earned paid leave on cessation of employment has the same status as wages earned in accordance with 26 MRS §626.

- F. An employee who returns to work within a one-year period of the last date of previous employment with the same employer is entitled to any unused balance of earned paid leave that was not paid out at the time of separation of employment.
- G. For the sole purpose of determining the accrual of earned paid leave for construction workers, the term “employer” includes all covered employers bound by a collective bargaining agreement negotiated by a multiemployer bargaining unit.

**Section IV: Greater Benefits and Exception**

- A. Nothing in this chapter may be construed to affect an employer’s obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater earned paid leave rights to employees than the rights provided by 26 MRS §637.
- B. 26 MRS §637 does not apply to an employee covered by a collective bargaining agreement during the period between January 1, 2021 and the expiration of the agreement.

**Section V: Notice and Use of Leave**

- A. Reasonable Notice. Absent an emergency, illness or other sudden necessity for taking earned paid leave, the employer may have a written policy requiring up to 4 weeks’ notice to the employer of the employee’s intent to use earned leave.
- B. Notice required for an emergency, illness or other sudden necessity must be reasonable under the circumstances, recognizing that advance notice may not be feasible. In such circumstances, a covered employee shall make a good faith effort to provide as much notice as is feasible under the circumstances to the employer of the employee’s intent to use earned paid leave.
- C. Scheduling of Leave. The Employer may place reasonable limits on the scheduling of earned paid leave for reasons other than emergency, illness or other sudden necessity, to prevent undue hardship on the employer as reasonably determined by the employer. 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.
- D. Employees may use earned paid leave in increments of at least one hour, unless the employer chooses to allow smaller increments.
- E. The employer cannot require the employee to use accrued earned paid leave when the employer causes the employee to be unable to perform their job, such as by closing the business or cancelling a shift.
- F. An employer shall not deny an employee the right to use paid leave available for use by that employee in accordance with the conditions of this section.

**Section VI: Penalties**

- A. Penalties for violations of this section are the same as those provided in section 26 MRS §53. Each denial of paid leave for each affected covered employee in violation of 26 MRS §637 and this Rule is a separate violation.

STATUTORY AUTHORITY: 26 MRS §42 and §637

EFFECTIVE DATE: January 1, 2021

AMENDED: