

# An Act Authorizing Paid Employee Leave

## Earned Paid Leave

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Maine Department of Labor  
Bureau of Labor Standards



# What is the Earned Paid Leave Law?

In May 2019, Governor Janet Mills signed the Earned Paid Leave Law after working with a diverse group of stakeholders to create a consensus to support Maine workers who lacked paid leave.

## Overview

- In effect on January 1, 2021
- Employees earn 1 hour of paid leave for every 40 hours worked
- Employees may earn up to 40 hours of leave in a defined year
- Applies to most businesses who employ more than 10 employees in Maine for more than 120 days in a calendar year
- Earned Paid Leave can be used for any reason such as emergency, illness, sudden necessity, planned vacation, etc.



# Key Definitions

## **One-Year Period**

- Any period of 365 (366 in a leap year) consecutive days

## **120 Days**

- 120 calendar days and not 120 business days

## **Emergency or Sudden Necessity**

- A situation in which the need for leave is not reasonably foreseeable

## **Undue Hardship**

- 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

## **Start of Employment**

- The first day an employee performed work for an employer

## **Calendar Year**

- January 1 through December 31 of any year

## **Seasonal Industry**

- An industry in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in a calendar year



# Who is Covered by Earned Paid Leave?

## Covered Employer

- Defined by 26 MRS §1043(9)
- Employs at least 11 covered employees in the usual and regular course of business for more than 120 days in any calendar year

## Covered Employee

- Defined in the Employment Security Act, 26 MRS §1043(11)
- Working for an employer as defined by 26 MRS §1043(9)
- Except as otherwise set forth in the Rules or in the Act Authorizing Earned Employee Leave
- Includes full-time, part-time or per diem employment



*If you have questions about whether you are a covered employer or the work performed is covered employment, contact the Wage & Hour Division at **207-623-7900** for guidance.*

# Who is Exempt?

*Approximately 85% of Maine workers will be entitled to accrue and use paid leave under this law.*

*However, there are some exemptions...*

## **Exemptions Include:**

- Businesses with 10 or fewer employees in Maine
- Properly classified independent contractors
- Employees who are covered by a collective bargaining agreement as of 01/01/2021, until that agreement expires
- Employees who work in another state and do not perform any service in Maine
- Seasonal industries as defined by 26 M.R.S. sub-section 1251 sec. 1

## **Seasonal Employee Exemption Criteria:**

- Industry must be predefined as seasonal by the Unemployment Insurance Commission OR
- Have submitted an approvable Determination of Seasonal Status to the Bureau of Unemployment Compensation setting forth the seasonal period for the applicable year

If criteria is met, then employees working **only** within that seasonal period will be exempt from coverage for Earned Paid Leave.

# Workplace Requirements



## Regulation of Employment Poster

- Required in every workplace
- Must be visible to all workers
- Must be displayed even if a business or workers are exempt from coverage under the Earned Paid Leave Law
- Recently updated to include information on Earned Paid Leave
- Available in 8 languages and should be posted in language(s) of employees
- Download for free on our website:  
<https://www.maine.gov/labor/posters/index.html>

### 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 employees 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](http://www.maine.gov/labor/bls)  
Email: [bls.mdol@maine.gov](mailto: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.**

The Maine Department of Labor provides equal opportunity in employment and programs. Auxiliary aids and services are available to people with disabilities upon request.

rev. 10/20

# Accrual of Earned Paid Leave

- Accrual begins at the start of employment
- Covered employee earns 1 hour of Earned Paid Leave for every 40 hours worked for a single employer
- No more than 40 hours of leave are required to be available for use during one year
- Employer may front-load up to 40 hours of Earned Paid Leave each year
- Unused accrued leave will roll over and be available to the employee in their next year of employment, unless the employer front-loads
- If a covered employee returns to work for the same employer within 365 days of their last date of employment, that employee is entitled to any unused balance of Earned Paid Leave if it was not previously paid out



# Notice and Use of Leave

## Planned Leave

- Employer may require up to 4 weeks notice for the use of planned leave
- Employer may restrict the use of planned leave during certain times of year to ensure that there no impact on operations
- Employers must be able to prove undue hardship if leave is denied for any reason

The logo for the Maine Department of Labor is centered within a white circle on a dark teal background. The text "MAINE" is at the top in a large, black, serif font. Below it, "DEPARTMENT OF" is written in a smaller, black, sans-serif font inside a dark teal rectangular box. At the bottom, "LABOR" is written in the same large, black, serif font as "MAINE".

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# Notice and Use of Leave

## Emergency Leave

- May always be used in the event of emergency, illness, or sudden necessity
- Employee must inform their employer as soon as possible when using accrued Earned Paid Leave in this situation
- Employer may not ask for medical note or documentation unless leave is for 3 or more consecutive days
- Employer may require a general description in the event of emergency, illness, or sudden necessity

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# Notice and Use of Leave

## Additional Employer Discretion

- Employer may apply a 120 day wait period before new employees can use their accrued leave
- Employer may require that Earned Paid Leave be used in increments of at least one hour

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# Payment of Leave

## The Earned Paid Leave Law States:

- Employee must be paid at least the same base rate of pay that the employee received immediately before taking Earned Paid Leave
- The taking of Earned Paid Leave may not result in the loss of any employee benefit up to the date in which the leave commenced.

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# Calculating the Base Rate of Pay

## Non-Exempt Employees

- Divide total straight-time earnings for the week, which includes any additional compensation included in the definition of the regular rate, by the total hours worked

## Salaried Exempt Employees

- Paid a predetermined fixed amount so the base rate of pay is the hourly equivalent of their salary

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# Base Rate of Pay – Example

**Example:** *If you are nonexempt and worked 15 hours at \$13.00 per hour and 25 hours at \$15.00 per hour the week before using your earned paid leave, your base rate will be calculated as follows:*

15 hours x \$13 = \$195

25 hours x \$15 = \$375

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Total earnings = \$570

$\$570 \div 40 \text{ hours} = \$14.25 \text{ per hour base rate of pay}$



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# Base Rate of Pay - Tip Credit Jobs

- As of January 1<sup>st</sup> 2021, the minimum direct service wage for tipped employees is \$6.08 per hour
- If all rates of pay are based on the tip credit then the base rate of pay is the minimum wage

**Example:** *An employee works in the restaurant industry in the following positions during the week:*

- Server at \$6.08 per hour plus tips
- Host at \$7.00 per hour plus tips
- Bartender at \$10.00 per hour plus tips

*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.*

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# Bonuses and Commissions

- Factored into the base rate for non-exempt employees only
- Only the amount associated with the week immediately prior to the employee using Earned Paid Leave will apply
- Discretionary bonuses are not factored into the base rate calculation

## Weekly Bonus

- Employee is paid on a weekly basis
- Bonus or commission is also paid on a weekly basis
- Total amount of the bonus or commission will apply to that week

## Deferred Bonus (i.e., paid on a monthly, quarterly, annual, or other specific timeframes)

- Bonus or commission can be prorated to a weekly amount

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# Bonuses and Commissions - Examples

## Example 1:

- Employee worked 40 hours at \$15 per hour = \$600
- Employee received a weekly bonus of \$100.
- Total earnings for the week are  $\$600 + \$100 = \$700$
- $\$700 \div 40 \text{ hours} = \$17.50$  base rate.

## Example 2:

- Employee worked 40 hours at \$15 per hour = \$600
- Employee received a monthly bonus of \$100. (in this example the bonus applies to a month with 30 days)
- $\$100 \div 30 \text{ days} = \$3.33$  per day x 7 days in the week = \$23.31 bonus applies to one week Page 4
- Total earnings for the week are  $\$600 + \$23.31 = \$623.31$
- $\$623.31 \div 40 \text{ hours} = \$15.58$  base rate.

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# Enforcement

- The Bureau of Labor Standards is responsible for enforcing the Earned Paid Leave law
- Each denial of paid leave for each affected covered employee in violation of the Earned Paid Leave law and the Rules is a separate violation
- Each individual violation carries a fine of up to \$1000

Employers should consider creating an Earned Paid Leave policy that outlines the notice requirements for employees intending to use their accrued Earned Paid Leave and what will happen to any unused balance of Earned Paid Leave when employment ends.

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# Navigating EPL Resources

- [Bureau of Labor Standards Web Page](#)
  - [Earned Paid Leave Web Page](#)
- [Detailed Frequently Asked Questions \(PDF\)](#)
- [Rules Governing Earned Paid Leave \(PDF\)](#)
- [26 MRS §637](#)
- [Final Responses to Public Comments on Earned Paid Leave \(PDF\)](#)
- [Regulation of Employment Poster \(PDF\)](#)
- [List of Seasonal Industries](#)

## **Contact Us**

**Email:** [bls.mdol@maine.gov](mailto:bls.mdol@maine.gov)

**Telephone:** 207-623-7900

**FAX:** 207-623-7934

**TTY users call Maine Relay 711**



# FAQ – Undue Hardship

**Question:** What constitutes undue hardship for the purposes of restricting planned employee leave and how does a business prove undue hardship?

**Answer:** Undue hardship is defined in the Rules 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. This language is a summation of an already existing definition of “undue hardship” currently used in our Rules Governing Employment Leave for Victims of Violence.

The law permits employers to require 4 weeks of notice for planned employee absence, as well as restrict planned leave for specific times of the year where employee absence would cause undue hardship to their business.

A written policy outlining when planned leave is restricted for use, as well as how much notice employees are required to give is the best method to ensure that a business is in compliance with this part of the Earned Paid Leave law.



# FAQ – Pre-Existing Leave Policies

**Question:** My business currently provides sick and vacation days. If those total 5 days or more, am I in compliance with the law?

**Answer:** In order for an existing policy to be in compliance with the Earned Paid Leave law, the existing policy must allow an employee to use up to 40 hours of paid leave per year for any reason. A leave policy must have the following characteristics to be in compliance:

- Up to 40 hours of paid leave are available for use per year;
- Leave may be taken for any reason;

*(Example: An existing leave policy that only provides 20 hours of sick time and 20 hours of vacation time per year does not meet the requirements of the Earned Paid Leave law because the employee must be allowed to use up to 40 hours of accrued Earned Paid Leave for either sick or vacation, or a combination thereof.)*

- No more than 4 weeks of notice are required for a planned employee absence; The employee may take the leave, with only the amount of notice feasible under the circumstances, in the event of an emergency, illness, or sudden necessity;

*(Example: Employee is allowed to take the leave when a daycare provider is ill, and the employee notifies the employer when the employee first learns of the babysitter's unavailability, such leave will count toward the 40 hours required).*

- Leave can be used for emergency, illness, or sudden necessity even when a policy restricts scheduling leave during certain times to prevent undue hardship to the business.

*(Example: a retailer may not allow vacation time to be taken on Black Friday, but an employee may take Earned Paid Leave during that time to care for a sick family member.)*

## **+40 Hours of Leave Provided**

- If an employer provides more than 40 hours of leave to full-time employees, only 40 hours of leave needs to meet the characteristics of the Earned Paid Leave law.

*(Example: The employer may allow 40 hours of leave for any reason but allow additional time that may only be used with advance notice (i.e. vacation time).)*

- The first 40 hours of leave available each year must be paid at the employee's base rate of pay as defined in the Rules.



# FAQ – Payout of Unused Leave

**Question:** What happens if I leave work with an unused balance of Earned Paid Leave?

**Answer:** You may lose it unless the employer has a policy that states the balance of unused Earned Paid Leave is paid when employment ends. If the employer does not have a policy for Earned Paid Leave, but has a policy regarding unused vacation time, then the policy on unused vacation time will apply to the unused Earned Paid Leave. In all cases, if the employer does not compensate you for the unused balance of Earned Paid Leave, they will need to make the leave available to you if you return to work with that employer within a one-year period.

**Question:** Can employers establish an Earned Paid Leave policy that is separate from sick leave or vacation policies?

**Answer:** Yes. Employers can have separate policies for the different types of leave they offer. The Earned Paid Leave policy should explain what the notice requirements will be for employees intending to use their accrued Earned Paid Leave as well as what will happen to any unused balance when employment ends.

If an employer does not have a policy for Earned Paid Leave, but has a policy regarding unused vacation time, then the policy on unused vacation time will apply to the unused Earned Paid Leave. In all cases, if the unused balance of Earned Paid Leave is not paid out when employment ends, the employer will need to make the unused/unpaid balance of leave available to the employee if the employee returns to work with that employer within a one-year period.

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