

# 2023 New England Human Resources Legislative Update

Presented by:

Peter Gore, Senior Government Relations Specialist

Maine Street Solutions

Elizabeth Johnston, Attorney Verrill

Tawny Alvarez, Attorney Verrill

## Agenda

- Opening Remarks
- Updates on Passed and Pending Legislation
  - Maine
  - New Hampshire
  - Connecticut
  - Vermont
- Questions

## Maine: The 131<sup>st</sup> Legislature's First Session

## Maine Newly Enacted Laws

- Expansion of Maine Severance Pay Law (L.D. 12)
  - Approved by Governor May 8, 2023
  - Effective 10/25/2023
  - Expanded to cover more employers and workers by removing “industrial or commercial” language before “facility as it relates to definitions of “covered establishment,” “closing,” and “relocation”
- Employee Free Speech Protections (L.D. 1756)
  - Approved by Governor July 11, 2023
  - Effective 10/25/2023
  - Prohibits adverse action against an employee who “declines to attend or participate in an employer-sponsored meeting or declines to receive or listen to a communication from the employer . . . if the meeting or communication is to communicate the opinion of the employer about religious matters or political matters”

## Maine Newly Enacted Laws

- Increase on Damages Limits under the MHRA (L.D. 1423)
  - Approved by Governor June 22, 2023
  - Effective September 19, 2023
  - Increases the amount of compensatory and punitive damages available in claims brought pursuant to MHRA

Employer Size	Prior Cap	New Cap
15-100 employees	\$50,000	\$100,000
101-200 employees	\$100,000	\$300,000
201-500 employees	\$300,000	\$500,000
501+ employees	\$500,000	\$1,000,000

## Maine Newly Enacted Laws

- Addition of Race to Maine Equal Pay Law (L.D. 1703)
  - Approved by Governor June 22, 2023
  - Effective October 25
  - Adds protections to Maine's Equal Pay Law related to race
    - "An employer may not discriminate between employees in the same establishment on the basis of race by paying wages to any employee in any occupation in this State at a rate less than the rate at which the employer pays any employee of another race for comparable work on jobs that have comparable requirements relating to skill, effort and responsibility."
- Right-to-Sue Letter Updates (L.D. 1001)
  - Approved by Governor April 24, 2023
  - Effective October 25
  - MHRC may issue right to sue letters after 180 days upon complainant's request, or earlier for good cause; issuance ends investigation
  - Plaintiff cannot recover fees/damages unless they received right-to-sue letter before filing the civil action

## Maine Newly Enacted Laws

- Individual Liability for Sexual Harassment/Assault (Workers' Compensation) (L.D. 53)
  - Approved by Governor May 8, 2023
  - Effective October 25
  - Amendment to Workers' Compensation Act providing that “[a]n employee, supervisor, officer or director of an employer is liable for sexual harassment, sexual assault or an intentional tort related to sexual harassment or sexual assault”

## Maine Newly Enacted Laws

- Timely Payment for Salaried Employees (L.D. 1278)
  - Approved by Governor June 1, 2023
  - Effective October 25
  - Clarifies wage payment law coverage for salaried employees
- Expansion of Permissible Tip Pools (L.D. 903)
  - Approved by Governor June 15, 2023
  - Effective October 25
  - Permits tip pool sharing arrangements with back of house employees to align with federal law



## Maine Newly Enacted Laws

- State Enforcement Action for Retaliation (L.D. 767)
  - Approved by Governor June 23, 2023
  - Effective October 25
  - Employers that retaliate against an individual exercising employment rights penalties and a cause of action for the DOL or AG
- Updates to Workers' Compensation Act (L.D. 1803 / L.D. 1372)
  - Approved by Governor June 16, 2023 / enacted July 6, 2023, without signature
  - Effective October 25
  - Various amendments to Workers' Compensation Act related to independent contractor determinations, insurer reimbursement, establishment of fronting companies

## Next Session – Maine

### Carried Over:

- An Act to Allow Employees to Request Flexible Work Schedules (L.D. 827)
- An Act to Ensure a Fair Workweek by Requiring Notice of Work Schedules (L.D. 1190)
- An Act Regarding Overtime Protections for Certain Maine Workers (L.D. 513)
- An Act to Require Disclosure of Pay Ranges and Record Keeping of Pay History (L.D. 936)
- An Act to Prohibit Training Repayment Agreements by Employers (L.D. 741)
- An Act to Prohibit Noncompete Clauses (L.D. 1496)
- An Act to Protect Workers from Employer Surveillance (L.D. 949)
- An Act to Support Family Caregivers by Expanding Family Medical Leave (L.D. 999)
- An Act to Create a Livable Wage by Increasing the Minimum Hourly Wage (L.D. 1376)
- An Act to Enhance the Predictability of Mandatory Overtime for Pulp or Paper Manufacturing Facility Employees (L.D. 1794)
- An Act to Remove the Waiting Period for Benefits Under Maine's Unemployment Insurance System (L.D. 1464)
- An Act to Index Workers' Compensation Benefits to the Rate of Inflation (L.D. 1896)

### Next Session:

- An Act to Create a Bill of Rights for Temporary Workers (L.D. 321)
- An Act to Improve the Unemployment Insurance System (L.D. 322)
- An Act to Prevent the Wrongful Firing of Maine Workers (L.D. 324)
- An Act to Increase Enforcement and Accountability for Wage and Hour Violations (L.D. 372)
- An Act to Improve Labor Conditions for Maine Workers (L.D. 373)
- An Act to Reduce Recurring Workplace Harassment and Provide Consequences for Serial Offenders (L.D. 856)

## Paid Family Medical Leave Act

- Definitions
  - Benefit Year: The 12-month period beginning on the first day of the calendar week immediately preceding the date on which family leave benefits or medical leave benefits commence.
  - Family Member: Includes child, parent, spouse, grandparent, grandchild, sibling and
    - *“As designated by the covered individual in accordance with rule, an individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.”*
- Eligibility
  - A. To bond with the covered individual's child during the first 12 months after the child's birth or the first 12 months after the placement of the child for adoption or foster care with the covered individual;
  - B. To care for a family member with a serious health condition or the employee's own serious health condition
  - C. To attend to a qualifying exigency;
  - D. To care for a family member of the covered individual who is a covered service member;
  - E. To take safe leave; or
  - F. Any other reason set forth in section 843, subsection 4. [Maine's current FMLA statute]
- Timeline:
  - October 2023: The budget goes into effect
  - January 2024: Maine Department of Labor begins rulemaking process
  - January 1, 2025: Initial rules necessary for implementation of the Paid Family and Medical Leave program must be adopted by the Maine Department of Labor
  - January 1, 2025: Contributions to the Paid Family Medical Leave fund will begin
  - May 1, 2026: Paid Family and Medical Leave benefits scheduled to begin

## Paid Family Medical Leave Act

- Amount of Leave
  - **4. Maximum leave requirements.** *The following requirements apply.*
    - A. *A covered individual is not eligible for more than 12 weeks of family leave in a benefit year.*
    - B. *A covered individual is not eligible for medical leave for more than 12 weeks in a benefit year.*
    - C. *A covered individual may not take more than 12 weeks, in the aggregate, of family leave and medical leave under this subchapter in the same application year.*
- This subsection does not prevent a covered individual from taking medical leave that is immediately followed by family leave when the medical leave is taken during pregnancy or recovery from childbirth and is supported by documentation from a health care provider.*
- Benefits During Leave
  - *The taking of family leave or medical leave may not affect an employee's right to accrue vacation time, sick time, bonuses, advancement, seniority, length of service credit or other employment benefits, plans or programs. During the duration of an employee's family leave or medical leave, the employer shall continue to provide for and contribute to the employee's employment-related health insurance benefits, if any, at the level and under the conditions coverage would have been provided if the employee had continued working continuously for the duration of leave.*
- Funding the Fund
  - *Beginning January 1, 2025, for each employee, an employer shall remit to the fund premiums in the form and manner determined by the administrator. Premiums must be remitted quarterly.*
  - *Beginning January 1, 2025, the premium amount may not be more than a combined rate of 1.0% of wages.*
  - *An employer with 15 or more employees may deduct up to 50% of the premium required for an employee by subsection 3 from that employee's wages and shall remit 100% of the premium required by subsection 3 to the fund.*
  - *An employer with fewer than 15 employees may deduct up to 50% of the premium and shall remit 50% of the premiums required by subsection 3 to the fund.*

## Paid Family Medical Leave Act

- Pay during Leave
  - **2. Determination of weekly benefit amount.** The weekly benefit amount paid to employees and self-employed individuals on family leave or medical leave is calculated as follows:
    - A. The portion of the covered individual's average weekly wage that is equal to or less than 50% of the state average weekly wage must be replaced at a rate of 90%; and
    - B. The portion of the covered individual's average weekly wage that is more than 50% of the state average weekly wage must be replaced at a rate of 66% up to the maximum weekly benefit.
  - **3. Maximum benefit amount adjustment.** The maximum weekly benefit amount calculated under subsection 2 is the state average weekly wage.
- Intermittent Leave
- Prohibits Retaliation (Hardship exemption in previous drafts excluded)
  - If employed for at least 120 days, must be restored to same position

## Legislative Updates throughout New England

## Connecticut

- Public Act No. 23-35, enacted on June 5, 2023, expanded the definition of “employee”. Now allows nearly all workers, beyond first responders, to claim workers’ compensation benefits as a result of certain qualifying events related to post-traumatic stress injuries.
- Revision of Non-discrimination Statutes – Public Act No. 23-145 Effective July 1, 2023.
  - amends discriminatory practice provision to make it a discriminatory practice to deprive someone of “any rights, privileges, or immunities secured or protected by Connecticut or federal laws or constitutions, or to cause such a deprivation,” so as to cover discrimination based upon age.
  - Also, further revises the state’s anti-discrimination statute changing the definition of “sexual orientation” so as to cover “a person’s identity in relation to the gender or genders to which they are romantically, emotionally, or sexually attracted, including any identity that a person may have previously expressed or is perceived by another person to hold.”
- Expansion of Uses for Paid Sick Leave –
  - Expands covered uses to include a “mental health wellness day,” and adds permissible leave to include when the employee is personally a victim of family violence or sexual assault, but also if they are a parent or guardian of a child who is a victim – provided the employee is not the (alleged) perpetrator – for medical care or psychological or other counseling for physical or psychological injury or disability, obtaining services from a victim services organization, relocating due to family violence or sexual assault, or participating in any civil or criminal proceedings related to or resulting from family violence or sexual assault.

## New Hampshire

- What was vetoed more telling:
  - **SB 193:** Relative to the obligation of collective bargaining units to negotiate in good faith
  - Proposed bill:
    - It is the obligation of the public employer and the employee organization certified by the board as the exclusive representative of the bargaining unit to negotiate in good faith. "Good faith" negotiation involves meeting at reasonable times and places in an effort to reach agreement on the terms of employment, and to cooperate in mediation and fact-finding required by this chapter, but the obligation to negotiate in good faith shall not compel either party to agree to a proposal or to make a concession. "Good faith" shall also mean to meet within 10 business days after receipt of a written request from the other party to meet to bargain. This 10-day requirement may be extended by mutual agreement but it shall not be considered negotiating in bad faith to refuse to extend the timeline.



## Vermont

- Act No. 80 (S. 103): An act relating to amending the prohibitions against discrimination
  - Prohibits pay discrimination on the basis of race, national origin, sexual orientation, gender identity, and disability
  - prohibit agreements to settle a claim of employment discrimination from including a provision that prevents the employee from working for the employer or an affiliate of the employer in the future;
  - provide that harassment and discrimination need not be severe or pervasive to be unlawful;
  - provide that, except when an employee is alleging pay discrimination or disparate impact discrimination, the employee is not required to identify another employee to whom the employee's treatment can be compared for purposes of showing that unlawful discrimination occurred; and
  - define and provide statutory direction on the interpretation of the term "harass" for purposes of employment discrimination.
- Effective July 1, 2023

Questions?

*Thank You*