

Mid-2024 Law Review and HR Best Practices

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**Presented By
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AGENDA

1) Share updates and new legislation IN 2024...so far.

2) Review best practices and share resources for business owners and HR Professionals

MERIT (Update)

REMINDER: Maine employers with 5+ employees has to either enroll in program or certify they are exempt.

Not exempt? Enroll employees and advise as to default contribution and Opt Out procedures although handled by MERIT.

Penalties start in July 2025—do it now!

Non-Compete Ban Status

FTC Final Rule Issued 4.23.24, effective 9.4.24 unless enjoined by litigation (*likely*)

What do to while we wait?

- **Non-competes entered into in connection with sale of business are still allowed as are those with “senior executives”**
- **Non-solicitation agreements also allowed unless they are so broad as to really be non-competes**
- **Assess who has a non-compete that would be repealed and prepare to notify employees**

DON'T FORGET ABOUT MAINE LAW IN PLACE REGARDLESS

Maine Paid FML

TIMELINE

5.20.24: Draft Rules Released by DOL:

https://www.maine.gov/labor/docs/2024/rule-making/12_702PFMLDraftRule.pdf

7.8.24: Comments Due to DOL ON Rules

**1.1.25: Final Rule Issued and PFML
Withholdings Begin**

**5.1.26: Benefits Become Available (+3 months
potentially)**

Maine Paid FML

Overview of Program

- **12 weeks of paid leave per year for family, military, medical or safety leave**
- **Benefits determined by SAWW but capped at that level (2023: \$1,103)**
- **Applies to all employees immediately (120 days for job restoration) and self-employed enrolled**
- **Can be continuous, intermittent (8 hour min. increment unless agreed) or reduced schedule**
- **Can run concurrently with FMLA/Maine FML but cannot require employees to use up other leave before using Maine Paid FML except 7 days**
- **No private right of action; Maine DOL enforces**

Maine Paid FML

Reasons for Leave

- **Family Leave:**
 - To care for a new child (birth, adoption, fostering); or
 - To care for a family with a serious health condition.
 - “Family” is defined more broadly than MFMLR and FMLA.
- **Medical Leave: To care for employee’s own serious health condition.**
- **Safe Leave: To obtain healthcare, counseling, legal services, protection from abuse order, or to secure the home or seeking new housing to address issues relating to the employee’s or their family member’s situation as a victim of violence, assault, sexual assault, stalking, or abuse. Broader than Leave for Victims of Violence law 26 M.R.S. § 850.**
- **Covered Service Member: To care for a family member who is a U.S. Armed Forces member**
- **Military Deployment: To attend to a “qualifying exigency” per FMLA.**
- **Otherwise Covered by MFMLR: Organ donation or death of a military service member while on active duty.**

Maine Paid FML

Notice and Job Restoration/Protection

- Employees apply for PFML to Administrator (State or Private). Administrator tells Employer w/in 5 business days; Employer has 10 business days to submit add'l facts. Interactive process may follow
- Notice by employee must be “reasonable” absent emergency and provided absent **UNDUE HARDSHIP**
- Employers have to post notice AND written notice to employee about PFML within 30 days of hire. If employer does not do this, employee notice provision waived. Employers must continue health insurance benefits at same level as if employee had continued to work.
- Taking PFML 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.
- Employers must return employees to the position held when PFML commenced or to an “equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.” (Unless employee worked < 120 days)

Maine Paid FML

What can we do now to prepare?

- 1. Review draft Rules and consider providing input to State.**
- 2. Review private plan/self-insurance options vs. tax option.**
- 3. Incorporate anticipated cost into budgets for 2025 and beyond**
- 4. Develop PFML policies and procedures.**

Final Regs for Pregnant Worker's Fairness Act

Effective 6.7.23. Final Rules 4.15.24, eff. 6.18.24

Which employers are covered? 15+ employees

Which employees are covered? Qualified employees—broader than ADA

Final Regs for Pregnant Worker's Fairness Act

IN A NUTSHELL

Requires a covered entity to provide reasonable accommodations to a qualified employee or applicant with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business or covered entity

125 pages of Regulations to consult.

Final Regs for Pregnant Worker's Fairness Act

Key Principles Similar to ADA/ADAAA

- Undue hardship
- Essential job functions
- Interactive process
- Reasonable accommodation
- Individualized assessment
- Qualified individual

Final Regs for Pregnant Worker's Fairness Act

Examples of reasonable accommodations?

1. Longer, or more flexible breaks to drink water, eat, rest, or use restroom;
2. Changing food or drink policies to allow for a water bottle or food;
3. Changing equipment, devices, or workstations, such as providing a stool to sit on, or a way to do work while standing;
4. Changing a uniform or dress code or providing safety equipment that fits;
5. Changing a work schedule, such as having shorter hours, part-time work, or a later start time;
6. Telework;
7. Temporary reassignment;
8. **Temporary suspension of one or more essential functions of a job;**
9. Leave for health care appointments;
10. Light duty or help with lifting or other manual labor; or
11. Leave to recover from childbirth or other medical conditions related to pregnancy or childbirth.

Maine Legislature Updates

MHRA Caps Increased

Maine Equal Pay Act Amended to Cover Race

**Workers' Compensation Law Amended to Allow
Suits against Individuals**

Case Updates

Religious Accommodation: Groff v. DeJoy (SCOTUS)

- Issued in 2023, involving Title VII claim of discrimination (15+ employees), a unanimous decision reversing case law from 1977.
- Under Title VII, employers are required to reasonably accommodate employees whose sincerely held religious beliefs or observances conflict with work requirements, unless doing so would create an undue hardship for the employer.
- From “de minimus” to “substantial increased costs in relation to the conduct of [an employer’s] particular business”. It’s not the “undue burden” from ADA.

Case Updates

Religious Accommodation: Groff v. DeJoy (SCOTUS)

What to do now?

1. Review, revise and draft policies to for religious accommodation requests; roll out to employees.
2. Train managers and HR on new policies and procedures.
3. Gather documentation and evidence regarding accommodation's impact on the "conduct of business."
4. Stay tuned!

Case Updates

Pay Discrimination under ME Law: *Mundell v. Acadia Hospital Group* (2.1.24)

Maine's Equal Pay Law (MEPL): Prohibits discrimination “in the same establishment on the basis of sex” by paying male and female employees differently for “comparable work on jobs that have comparable requirements.” **Now includes race.**

MEPL defenses: Established seniority systems, merit increase systems, or differences in shift times, so long as those systems “do not discriminate on the basis of sex” **Broader than Federal law!**

“[A]s a matter of the statute’s plain and unambiguous language, the [Maine Equal Pay Law]’s liability provision does not incorporate an intent element, and its affirmative defenses are limited to those specifically enumerated.”

Case Updates

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KEY TAKEAWAYS

Intent is irrelevant: “[A]s a matter of the statute’s plain and unambiguous language, the [Maine Equal Pay Law]’s liability provision does not incorporate an intent element, and its affirmative defenses are limited to those specifically enumerated.”

No other defenses: Courts are not going to read defenses into the statute that are not specifically listed.

Obligation is on employers to track pay differentials and make pay decisions and adjustments, not employees to ask for them.

Questions?



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