

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Allow a Tax-free Employee Illness Account

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

Sec. 1. 26 MRSA §1043, sub-§19, as amended by PL 1999, c. 464, §1, is further amended to read:

19. Wages. "Wages" means all remuneration for personal services, including commissions, bonuses, severance or terminal pay, gratuities and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall ~~shall~~**must** be estimated and determined in accordance with regulations prescribed by the commission, except that:

A. For purposes of section 1221, the term "wages" does not include remuneration that exceeds the first \$7,000 through December 31, 1999, and on and after January 1, 2000, the first \$12,000 that is paid in a calendar year to an individual by an employer or the employer's predecessor for employment during any calendar year, unless that remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The wages of an individual for employment with an employer are subject to this exception whether earned in this State or any other state when the employer-employee relationship is between the same legal entities;

B. For purposes of section 1191, subsection 2, section 1192, subsection 5 and section 1221, the term "wages" shall ~~shall~~**may** not include:

(1) The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of ~~his~~**the employee's** dependents under a plan or system established by an employer ~~which~~**that** makes provision for ~~his~~**the** employees generally, or for ~~his~~**the** employees generally and their dependents, or for a class or classes of ~~his~~ employees, or for a class or classes of ~~his~~ employees and their dependents, on account of:

(a) Sickness or accident disability, but, in the case of payments made to an employee or any of ~~his~~**the employee's** dependents, this subparagraph shall exclude from the term "wages" only payments ~~which~~**that** are received under a workers' compensation law;

(b) Medical or hospitalization expenses in connection with sickness or accident disability;
or

(c) Death;

(1-A) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer or a 3rd party to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for that employer;

(2) The payment by an employing unit, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Federal Insurance Contributions Act, as amended, with respect to service performed after July 26, 1940, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor; or

(3) The amount of any payment, other than vacation or sick pay, to an individual after the month in which ~~he~~ the individual attains the age of 62, if ~~he~~ the individual did not perform services for the employing unit in the period for which such payment is made and is not expected to perform service in the future for the payment;

C. With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this paragraph, the term "previously uncovered services" means services, except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services:

(1) ~~Which~~That were not employment as defined in subsection 11, and were not services covered pursuant to section 1222, at any time during the oneyear period ending December 31, 1975; and

(2) ~~Which~~That:

(a) Are agricultural labor, as defined in subsection 11, paragraph A2 or domestic service as defined in subsection 11, paragraph A3; or

(b) Are services performed by an employee of this State or a political subdivision thereof, or any of their instrumentalities as provided in subsection 11, paragraph A1, subparagraph (1), or by an employee of a nonprofit educational institution ~~which~~that is not an institution of higher education, as provided in subsection 11, paragraph F, subparagraph (21), division (i);

~~except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services;~~

D. Nothing in this subsection may be construed to include as wages any payment ~~which~~that is not included as wages under the Federal Unemployment Tax Act, 26 United States Code, ~~Section~~Sections 3306(b)(5) and 3306(r), as amended, as of January 1, 1985; ~~and~~

E. Nothing in this subsection may be construed to exclude from wages any remuneration ~~which~~that is:

(1) Taxable under any federal law that imposes a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or

(2) Required to be covered under this chapter as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act.; and

F. Funds deposited into an illness account under Title 36, section 5117 minus an amount equal to a withdrawal in violation of Title 36, section 5117, subsection 4 are not wages.

Sec. 2. 36 MRSA §5117 is enacted to read:

§ 5117. Illness account

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

A. "Employer" has the same meaning as in Title 26, section 1043, subsection 9.

B. "Income" means income that is included in Maine adjusted gross income as defined in section 5102, subsection 1C.

C. "Wages" has the same meaning as in Title 26, section 1043, subsection 19.

2. Illness account. If an employer does not provide compensated sick leave to an employee of the employer, the employer may establish an account to which the employer and the employee may contribute to compensate the employee for time lost at work due to illness. The account must be a dedicated account separate from the employer's other funds. The account may be an interest-bearing account, all proceeds of which accrue to the employee except for fees assessed to maintain the account by the financial institution in which the account is located. Except for an amount withdrawn from the account in violation of subsection 4, an amount deposited into an account under this section is not considered wages subject to the provisions of Title 26, chapter 13 or income subject to the tax imposed under this chapter. An employer is not obligated to contribute to the illness account.

3. Account limit. Funds in an illness account under subsection 2 may not exceed an amount equal to 40 hours at the employee's hourly rate of compensation if the employee is compensated on an hourly basis or one week of the employee's salary if the employee is a salaried employee.

4. Withdrawals. A withdrawal from an illness account in subsection 2 may be made:

A. To compensate an employee in the amount equal to one hour of the employee's hourly compensation or 1/40 of the weekly salary for a salaried employee for each hour the employee is unable to fulfill the employee's duties due to illness; and

B. Once every calendar year at the employee's option in an amount up to the full amount of funds in the account.

5. Rules. The State Tax Assessor shall adopt rules to carry out the purposes of this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2A.

Sec. 3. 36 MRSA §5122, sub-§2, ¶FF, as corrected by RR 2009, c. 2, §112, is amended to read:

FF. To the extent included in federal adjusted gross income, student loan payments made by the taxpayer's employer in accordance with section 5217-D; and

Sec. 4. 36 MRSA §5122, sub-§2, ¶GG, as reallocated by RR 2009, c. 2, §113, is amended to read:

GG. To the extent included in the taxpayer's federal adjusted gross income, the recovery of a portion of a federal standard deduction claimed in a prior year for which the taxpayer was not allowed under this Part to reduce federal adjusted gross income or Maine adjusted gross income for that year.; and

Sec. 5. 36 MRSA §5122, sub-§2, ¶HH is enacted to read:

HH. For income tax years beginning on or after January 1, 2012, an amount equal to the contributions made to an illness account under section 5117, except for an amount equal to a withdrawal from the illness account in violation of section 5117, subsection 4.

SUMMARY

This bill allows an employer to establish an illness account for employees who do not receive compensated sick leave. Both the employer and employee may contribute to the illness account up to an amount equal to one week of the employee's wages, and the employee may withdraw funds from the account equal to one hour of the employee's wages for every hour the employee is unable to perform the employee's duties due to illness. The employee may also withdraw an amount up to the entire amount in the illness account once every year. The funds contributed to the account are not subject to state unemployment tax or income tax.