

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND TWENTY-TWO

—
H.P. 580 - L.D. 775

**An Act To Include within the Definitions of "Public Employee" and
"Judicial Employee" Those Who Have Been Employed for Less Than 6
Months**

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

Sec. 1. 5 MRSA §7051, sub-§5, as amended by PL 1987, c. 240, §3, is further amended to read:

5. Probationary period; permanent appointments. All original appointments to the classified service and all subsequent promotional appointments within the classified service ~~shall~~ must be for a probationary period. The duration of the probationary period ~~shall be~~ is determined by the director in consultation with the director or commissioner of the agency, but in no case may it be for less than 6 months.

A. ~~Probationary employees shall~~ An employee during the probationary period must be reviewed at the end of their ~~the employee's 3rd month of employment by their supervisors~~ the employee's supervisor. The supervisor and the employee shall mutually discuss the job tasks and the performance of the employee, including any necessary improvements.

B. ~~Probationary employees shall~~ An employee during the probationary period must be included in the payroll of the department in which they have ~~the employee has~~ been hired at the time of the commencement of their ~~the employee's~~ duties. ~~Probationary employees shall~~ An employee during the probationary period must be compensated in the same manner as a permanent full-time employees employee, provided they have as long as the employee has ~~been hired in accordance with all applicable laws and procedures.~~

C. During the probationary period, an employee is not entitled to a pre-disciplinary hearing and may be dismissed, suspended or otherwise disciplined without cause. Dismissal, suspension or any other disciplinary action against an employee during the probationary period is not subject to the grievance and arbitration provision of the collective bargaining agreement.

Sec. 2. 5 MRSA §7051, sub-§7, as amended by PL 1987, c. 9, §3 and PL 1995, c. 560, Pt. K, §82, affected by §83 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689, Pt. B, §6, is further amended to read:

7. Dismissal and disciplinary action. ~~An~~ Except as provided in subsection 5, an appointing authority may dismiss, suspend or otherwise discipline an employee in the classified service for cause. This right is subject to the right of appeal and arbitration of grievances set forth in the applicable labor contract, in sections 7081 to 7084 or by civil service rule; and sections 7081 to 7084 ~~shall~~ apply to any employee who has satisfactorily completed an initial probationary period. This subsection does not apply to unclassified employees listed in section 931, nor does this subsection in any way limit the collective bargaining rights of classified and unclassified employees. This subsection does not apply to an employee appointed to a major policy-influencing position listed in sections 932 to 953.

Notwithstanding any ~~other~~ provision of law to the contrary, the head of any institution under the control of the Department of Health and Human Services as the appointing authority may suspend with pay any employee who is charged by indictment with the commission of a criminal offense involving acts alleged to have been perpetrated upon any resident or residents of any such institution. Any suspension with pay may be authorized by the appointing authority only when to permit the employee to remain on duty at the institution would be against the best interest of any one or more of the residents of the institution, and authorization for suspension with pay ~~shall apply~~ applies only during the pendency of the criminal proceedings in the trial court, but not longer than 30 working days. Sections 7081 to 7084 ~~shall do~~ not apply to suspension with pay ordered by the appointing authority under this paragraph.

Sec. 3. 26 MRSA §962, sub-§6, ¶F, as repealed and replaced by PL 1969, c. 578, §1, is repealed.

Sec. 4. 26 MRSA §979-A, sub-§6, ¶E, as enacted by PL 1973, c. 774, is repealed.

Sec. 5. 26 MRSA §979-D, sub-§1, ¶E, as amended by PL 1997, c. 741, §6 and affected by §12, is further amended by amending subparagraph (3) to read:

(3) Cost items ~~shall~~ must be submitted for inclusion in the Governor's next operating budget within 10 days after the date on which the agreement is ratified by the parties. If the Legislature rejects any of the cost items submitted to it, all cost items submitted ~~shall~~ must be returned to the parties for further bargaining. Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subparagraph ~~shall~~ may not be submitted in the same legislation that contains cost items for employees exempted from the definition of "state employee" under section 979-A, subsection 6, and employees of the legislative branch, except that cost items for those employees exempted under section 979-A, subsection 6, ~~paragraphs E and~~ paragraph F, need not be excluded.

Sec. 6. 26 MRSA §1282, sub-§5, ¶E, as enacted by PL 1983, c. 702, is amended to read:

E. Who is appointed to serve as a law clerk to a judge or a justice; or

Sec. 7. 26 MRSA §1282, sub-§5, ¶F, as enacted by PL 1983, c. 702, is amended to read:

F. Who is a temporary, seasonal or on-call employee, including interns; ~~or.~~

Sec. 8. 26 MRSA §1282, sub-§5, ¶G, as enacted by PL 1983, c. 702, is repealed.

Sec. 9. 26 MRSA §1283-A is enacted to read:

§1283-A. Judicial employees; probationary period

If the public employer requires a judicial employee to complete a probationary period, that judicial employee may be dismissed, suspended or otherwise disciplined without cause during that probationary period. Dismissal, suspension or any other disciplinary action against a judicial employee during the probationary period is not subject to the grievance and arbitration provision of the collective bargaining agreement.

Sec. 10. 26 MRSA §1285, sub-§1, ¶E, as amended by PL 1989, c. 596, Pt. N, §6, is further amended to read:

E. To confer and negotiate in good faith with respect to wages, hours, working conditions and contract grievance arbitration, except that by such obligation neither party may be compelled to agree to a proposal or be required to make a concession. All matters relating to the relationship between the employer and employees ~~shall be~~ are the subject of collective bargaining, except those matters ~~which that~~ that are prescribed or controlled by law. Such matters appropriate for collective bargaining, to the extent they are not prescribed or controlled by law, include, but are not limited to:

- (1) Wage and salary schedules to the extent they are inconsistent with rates prevailing in commerce and industry for comparable work within the State;
- (2) Work schedules relating to assigned hours and days of the week;
- (3) Use of vacation or sick leave, or both;
- (4) General working conditions;
- (5) Overtime practices; and
- (6) Rules for personnel administration, except for rules relating to applicants for employment and employees in an initial probationary status, including any extensions thereof, ~~provided that~~ as long as the rules are not discriminatory by reason of an applicant's race, color, creed, sex or national origin.

Cost items ~~shall~~ must be included in the Judicial Department's next operating budget in accordance with Title 4, section 24. If the Legislature rejects any of the cost items submitted to it, all cost items submitted ~~shall~~ must be returned to the parties for further bargaining. Cost items related to a collective bargaining agreement reached under this chapter and submitted to the Legislature for its approval under this subsection ~~shall~~ may not be submitted in the same legislation that contains cost items for employees exempted from the definition of "judicial employee" under section 1282, subsection 5, except that cost items for employees exempted under section 1282, subsection 5, ~~paragraphs~~ paragraph ~~F and G,~~ need not be excluded.

Sec. 11. 30-A MRSA §501, sub-§2-A, as enacted by PL 2009, c. 106, §1, is amended to read:

2-A. Probationary period for corrections officials. ~~Beginning October 1, 2009, a~~ A person who is hired as jailer, master, keeper or a subordinate assistant or employee under section 1501 must complete an employment probationary period that lasts for one year. During the probationary period, a person who is hired as jailer, master, keeper or a subordinate assistant or employee under section 1501 may be dismissed, suspended or otherwise disciplined without cause. Dismissal, suspension or any other disciplinary action against an employee during the probationary period is not subject to the grievance and arbitration provision of the collective bargaining agreement.

Sec. 12. 30-A MRSA §2701, amended by PL 1993, c. 744, §15, is further amended by adding at the end a new paragraph to read:

During the probationary period, an employee may be dismissed, suspended or otherwise disciplined without cause. Dismissal, suspension or any other disciplinary action against an employee during the probationary period is not subject to the grievance and arbitration provision of the collective bargaining agreement.