

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND FIFTEEN

—  
H.P. 640 - L.D. 921

**An Act To Strengthen the Right of a Victim of Sexual Assault or Domestic  
Violence To Take Necessary Leave from Employment and To Promote  
Employee Social Media Privacy**

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

**PART A**

**Sec. A-1. 26 MRSA §850, sub-§3**, as enacted by PL 1999, c. 435, §1, is amended to read:

**3. Penalties.** ~~The~~ If notice of a violation of this section is given to the employer and the Department of Labor within 6 months of the occurrence, the Department of Labor may assess civil penalties of up to \$200 for each violation of this section, if notice of the violation was given to the employer and the department within 6 months of the occurrence. as follows:

A. For denial of leave in violation of this section, a fine of up to \$1,000 for each violation of this section may be assessed. A fine assessed under this paragraph must be paid to the Treasurer of State. Additionally, the employer shall pay liquidated damages to the affected individual in an amount equal to 3 times the amount of total assessed fines; and

B. For termination in connection with an individual exercising a right granted by this section, the affected individual may elect to receive:

- (1) Liquidated damages pursuant to paragraph A; or
- (2) Reemployment with the employer with back wages.

**PART B**

**Sec. B-1. 26 MRSA c. 7, sub-c. 1-C** is enacted to read:

**SUBCHAPTER 1-C**

## EMPLOYEE SOCIAL MEDIA PRIVACY

### §615. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. **Applicant.** "Applicant" means an applicant for employment.
2. **Employee.** "Employee" means an individual who provides services or labor for an employer for wages or other remuneration.
3. **Employer.** "Employer" means a person in this State who employs individuals and includes the State and political subdivisions of the State. "Employer" includes a person acting in the interest of an employer directly or indirectly.
4. **Social media account.** "Social media account" means an account with an electronic medium or service through which users create, share and view user-generated content including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant and text messages, e-mail, online service accounts and Internet website profiles and locations. "Social media account" does not include an account opened at an employer's behest or provided by an employer or intended to be used primarily on behalf of an employer.

### §616. Prohibitions

An employer may not:

1. **Passwords.** Require or coerce an employee or applicant to disclose, or request that an employee or applicant disclose, the password or any other means for accessing a personal social media account;
2. **Access in presence.** Require or coerce an employee or applicant to access, or request that an employee or applicant access, a personal social media account in the presence of the employer or an agent of the employer;
3. **Information.** Require or coerce an employee or applicant to disclose any personal social media account information;
4. **Contacts.** Require or cause an employee or applicant to add anyone, including the employer or an agent of the employer, to the employee's or applicant's list of contacts associated with a personal social media account;
5. **Settings.** Require or cause an employee or applicant to alter, or request that an employee or applicant alter, settings that affect a 3rd party's ability to view the contents of a personal social media account;
6. **Employees.** Discharge, discipline or otherwise penalize or threaten to discharge, discipline or otherwise penalize an employee for the employee's refusal to disclose or provide access to information as specified in subsection 1, 2 or 3 or for refusal to add

anyone to the employee's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5; or

7. Applicants. Fail or refuse to hire an applicant as a result of the applicant's refusal to disclose or provide access to information specified in subsection 1, 2 or 3 or refusal to add anyone to the applicant's list of contacts associated with a personal social media account as specified in subsection 4 or to alter the settings associated with a personal social media account as specified in subsection 5.

### **§617. Exceptions**

1. Publicly available information. This subchapter does not apply to information about an applicant or employee that is publicly available.

2. Duty to screen or supervise. This subchapter does not prohibit or restrict an employer from complying with a duty to screen employees or applicants before hiring or to monitor or retain employee communications that is established by a self-regulatory organization as defined by the federal Securities Exchange Act of 1934, 15 United States Code, Section 78c(a)(26) or under state or federal law, regulation or rule to the extent necessary to supervise communications of regulated financial institutions or insurance or securities licensees for banking-related, insurance-related or securities-related business purposes.

3. Investigation. This subchapter does not prohibit or restrict an employer from requiring an employee to disclose personal social media account information that the employer reasonably believes to be relevant to an investigation of allegations of employee misconduct or a workplace-related violation of applicable laws, rules or regulations if requiring the disclosure is not otherwise prohibited by law, as long as the information disclosed is accessed and used solely to the extent necessary for purposes of that investigation or a related proceeding.

### **§618. Workplace policies**

This subchapter does not limit an employer's right to promulgate and maintain lawful workplace policies governing the use of the employer's electronic equipment, including a requirement that an employee disclose to the employer the employee's user name, password or other information necessary to access employer-issued electronic devices, including but not limited to cellular telephones and computers, or to access employer-provided software or e-mail accounts.

### **§619. Penalties for violation**

An employer who violates this subchapter is subject to a fine imposed by the Department of Labor of not less than \$100 for the first violation, not less than \$250 for the 2nd violation and not less than \$500 for each subsequent violation.

**PART C**

**Sec. C-1. Appropriations and allocations.** The following appropriations and allocations are made.

**LABOR, DEPARTMENT OF**

**Regulation and Enforcement 0159**

Initiative: Provides funds for a 1/2-time Labor and Safety Inspector position and related All Other costs for the additional enforcement requirements associated with the disclosure of personal social media account information and with employee rights regarding a leave of absence when the employee is a victim of violence.

<b>GENERAL FUND</b>	<b>2015-16</b>	<b>2016-17</b>
POSITIONS - LEGISLATIVE COUNT	0.500	0.500
Personal Services	\$23,867	\$32,372
All Other	\$22,600	\$22,600
<b>GENERAL FUND TOTAL</b>	<b>\$46,467</b>	<b>\$54,972</b>