



Government Affairs

Maine SHRM Government Affairs 125th Legislature Session 2 Update

February 17, 2012

This edition offers updates on the bills we are tracking this second session of the 125th Maine Legislature. Be sure to visit our [site](#) for more on these bills as well as other updates. You may also find the bills by visiting www.maine.gov/legis and typing the LD number in the top right box.

Since Our Last Update

There are a few bills of particular importance just now that we are already tracking. The first is LD 1603, An Act to Amend the Law Relating to Concealed Firearms Locked in Vehicles. This is the bill to allow state employees to keep guns in cars at work. We are watching this bill because it is so closely linked to LD 35, the bill we opposed last session allowing employees to keep guns in their cars at work throughout workplaces in Maine. Remember, many state employees work in privately owned buildings as the state leases much of its office space. Because the committee report is divided with majority recommending passage, CJPS Committee Minority Ranking Member Haskell is resurrecting Senator Saviello's amendment to LD 35 that was designed to give control back to employers by ensuring they could have policies in place to prevent this. This would mean employees could keep guns in their cars on company premises only in the absence of such a policy. This is great news! Here is the amendment:

<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP%2028&item=4&snum=125>

While this would represent the minority report only and can't repeal LD 35 and likely won't change LD 1603, what it will do is to show how important this is to employers so it can be brought up again in a subsequent session. **We join the State Chamber in recommending that HR professionals concerned about his issue show their support for this amendment and the concept by contacting their legislators as soon as possible expressing opposition to last session's law (PL 393) and strong support for the minority report for LD 1603.** Your legislator may be easily located here: <http://www.maine.gov/legis/legislature.htm> . If you wish to thank Representative Haskell, she may be reached at RepAnne.Haskell@legislature.maine.gov . If anyone needs a copy of our position statement on LD 35 to revisit the talking points before calling your legislator, please contact Sarah for a copy. The Chamber has also now posted a Chamber Minute on the topic here: <http://www.mainechamber.org/mx/hm.asp?id=ChamberMinute> . *

The second is LD 1571, An Act to Amend the Laws Governing Workers' Compensation. This bill will be heard in what is anticipated to be a well attended public hearing on Friday, February 17 at 1 pm. Labor is very opposed to this bill and there has been a lot of work underway behind the scenes since last session with a stakeholder group to come to some agreement on what concessions might be made. Because the Committee already expects to have to modify or possibly rewrite the bill because of this, Friday's session will cap those testifying at 3 minutes each and consider the testimony along side the recommendation submitted by Workers' Compensation Board Executive Director Sighinolfi summarizing the thinking of the stakeholder group. His recommendations also serve as a nice primer and can be found here: <http://meshrm.shrm.org/files/LD%201571%20LETTER%2002-06-12%20FINAL.pdf> .

The Chamber and our team believe that while the original bill was too broad in scope, the recommendations of the stakeholder group are appropriate. There are some unknowns with regard to costing the changes, but Section 213 must be addressed so that Maine will not continue to be a major outlier among states with regard to partial disability. Current law has become unworkable. Unless your duties include managing your workers' comp budget or trust, you will not likely be inclined to testify about this bill, but the outcome certainly concerns HR. Please stay tuned on this

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important bill, if there is clear place we might make a difference here, we will let you know after the Committee hears initial testimony and considers the stakeholder recommendations.

The third is LD 1314, An Act to Standardize the Definition of Independent Contractors. We are watching this one closely. There is much support for a common definition of IC and we are collaborating with the Chamber and others in supporting the effort. As of this update, the public hearing is underway on the subject and we will continue to monitor and call for your input depending on what emerges. The stakeholder group created with the passage of LD 1420 has been presented to the committee; the recommendations are not unanimous at this point, with business and labor having different expectations on such items as number of factors to be met in order to be considered an independent contractor. The report itself has an excellent executive summary on the history and findings to date:
<http://meshrm.shrm.org/files/Employment%20Standards%20Report%20-%20LD%201420.pdf> .

The Governor has been busy, not only with the budget proposal, but he also signed two bills into law on February 10th, LD 1150, An Act To Improve the Administration of the Legislative Ethics Laws and LD 1639, An Act To Allow the Adjutant General To Address a Joint Session of the Legislature (Emergency), which would have allowed General Libby to address the Legislature on February 16th and annually thereafter, but General Libby has postponed his address. We will let you know when it is rescheduled. The Governor has also submitted an Ethics bill for consideration:
http://content.govdelivery.com/attachments/MEGOV/2012/02/02/file_attachments/92390/Ethics%2BBill.pdf

*As you will recall, we are trying to help the Legislature better connect the dots on workplace violence, safety, the cost of security and property ownership and control. There are a number of bills addressing domestic violence in this legislature, so ensuring there is not a disconnect between this bill and those is a consideration. For example, LD 386 requires law enforcement agencies to create new policies to address gun ownership for those arrested on certain domestic violence related crimes. More on that bill here:
http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/HP031201.asp (For your information only, LD 1678 and LD 1760 are a couple of other new domestic violence-related bills and there are efforts from within both the Judicial Branch and the Legislature to strengthen the bail requirement for repeat domestic violence offenders.)

Other Bills of Note

- LD 1546 – An Act to Amend the Laws Governing the Deference Afforded to Agency Decisions. This bill requires a court, in an appeal of an agency’s interpretation of the statutes in making or administering rules under the Maine Administrative Procedure Act, to conduct a de novo review. The bill also clarifies that, on questions of fact, the court is required to defer to the agency unless the court finds that the agency’s findings of fact are unsupported by substantial evidence. The Committee’s report was divided. The bill matters to HR professionals as it may change the weight assigned to agency precedent and opinion upon which we often rely.
- LD 1497 and 1498 – Both were tabled because they are opposing approaches to the set up of the Maine insurance exchange required by ACA. As a reminder, the legislature went with recommendation from task group and approved ME based exchange with Utah model, BUT it’s not funded. Lots of disagreement on how to proceed until June SCOTUS decision on individual mandate. Utah model will not work with ACA, so there will have to be revisions. This is complicated by PL 90 integration. Here is the Gorman Actuarial report so you can see what the legislature learned about PL 90 projections as they consider broadening the bill to small businesses and making other changes.
http://www.maine.gov/pfr/insurance/legislative/PL90%20and%20ACA%20overview_Final.pdf
- LD 1702 - An Act to Correct Inconsistencies and Ambiguities in the Maine Guaranteed Access Reinsurance Association Act. This bill makes technical changes to PL 90 for the individual market and was heard on 02/15. The assessment of \$4 pmpm continues to be an issue and we will watch for the upcoming work session to learn more about how the bill might be amended. More on the testimony can be found here:
http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1702&PID=1456&num=125&sec3
- LD 1670 – An Act to Extend the Scope of the Maine Guaranteed Access Reinsurance Association. This is a related bill intended to extend PL 90 to the small group market, but with the anticipated cost to do so and the work on the budget, this is not likely to be adopted this session. There is ongoing will for premium relief for the small group and individual markets and we anticipate this will come in the form of tweaking geographic bands and the growth size

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adjustment if not the assessment. Testimony from the hearing on 2/15 has been posted at:

http://www.mainelegislature.org/legis/bills/display_ps.asp?id=1670&PID=1456&snum=125&sec3#

- LD 1800 – An Act to Conform Maine Apprenticeship Program Standards with the Federal Apprenticeship Regulations. This bill is mentioned as an FYI only, no action requested. Recent changes to federal regulations provide that only a state agency that can be held accountable may be responsible for oversight and administration of state apprenticeship programs. In order to comply with these changes, this bill eliminates the Maine Job Council's Standing Committee on Apprenticeship and creates the Maine Apprenticeship Program within the Department of Labor. The bill also creates the Maine Apprenticeship Council to assist and advise the department in administering the program.
- LD 1207 – An Act to Amend the Labor Laws Relating to Certain Agricultural Employees. This is the bill to make up suppliers with up to 500,000 laying birds not subject to Maine's FLSA provisions. Issue is that it's a slippery slope to take away worker protections especially at DeCoster which has had such a terrible record. This bill could cost a lot more than it offers in the removal of said provisions. This bill was voted majority ONTP on 1/24.
- LD 1725 – An Act to Strengthen the Unemployment Insurance Laws and Reduce Unemployment Fraud. We supported this bill because the change is moderate and would set us back in the right direction. Among its provisions, the bill would repeal the provision enacted 2 years ago which allowed vacation to not count toward UI waiting period. This bill was more controversial than expected and was tabled on 2/10, but it is expected that something will be passed and the Committee is open to consensus. The bill will likely be taken up again during the first week in March. The issues of contention are the weeks of unemployment available before a recipient must take a job outside their profession and the vacation pay waiting period offset. We anticipate the Committee will choose a number between 6 and 12 weeks as a compromise, but the cost of the vacation pay repeal in 2010 was quite high so to ensure solvency, the bill provision to repeal that change is anticipated.
- LD 1729 – An Act to Clarify the Minimum Wage Law as It Relates to People with Disabilities. This bill is of interest mostly to employers who might offer work in the supported employment realm and pay developmentally disabled individuals less than minimum wage. Although we did not have a lot of employers within our membership wishing to speak out on the issue, we have been tracking it for your information. The bill was read, accepted, and assigned for a second reading on 02/15, so it's well on its way to passage. For comparison, here is FLSA Section 14 c: http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1211&context=key_workplace
- LD 1685 – An Act to Conform Maine Law to Federal Law Regarding Payment of Overtime to Truck Drivers and Driver's Helpers. This bill seeks to sync FLSA OT for truckers for the federal standard. We had expressed concerns to the Chamber that a change in pay would need to be looked at with regard to pension, disability and retirement plan calculations besides lost wages. We had suggested our members support the bill without an official position statement. The bill was recommended as ought to pass as amended out of Committee on 02/10.
- LD 1700 – An Act to Provide an Alternative Method of Calculating Minimum Staffing Levels in Nursing Homes. This bill was tabled at a work session on 02/08 and will be taken up again at the HHS Committee on 02/21.
- LD 1600 - An Act To Provide That Persons Hiring Assistants To Provide Home Care for Relatives Are Not Employers for Purposes of Unemployment Compensation Laws. This bill provides that personal care services or health care services performed in the home for an individual by a person retained to provide those services by the individual, a family member of the individual or a person sharing a household with the individual are not considered employment for the purposes of the unemployment compensation laws. The bill also corrects cross-references and updates language to incorporate subsequent statutory changes. This bill was voted ONTP 02/17. The issues leading to the bill's creation were discussed and will be considered as applicable in the larger discussion surrounding independent contractor status under LD 1314.
- LD 1608 – An Act To Clarify the Laws Governing Pharmacy Interns. The bill defines a "pharmacy intern" as a person who is enrolled in or a graduate of a college or school of pharmacy, is authorized to engage in the practice of pharmacy while under the supervision of a licensed pharmacist and is registered with the Maine Board of Pharmacy. This bill also gives to the Maine Board of Pharmacy the responsibility to register pharmacy interns. The bill was voted OTP as amended on 01/26.

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- LD 1777 – An Act to Correct an Inconsistency in the Employment Security Law. This bill addresses an inconsistency in the treatment of unemployment benefits for persons receiving pensions. Under current law an individual who otherwise qualifies for unemployment benefits is completely denied benefits if the individual receives a pension that was contributed to solely by a base period employer. The complete denial of benefits is inconsistent with the treatment of individuals who contributed less than 50% to their pension, which results in only a partial reduction in benefits. This bill seeks to remedy this apparent inconsistency in the rare occurrences when the pension contributions were made solely by the base period employer by reducing unemployment benefits based on the amount of the pension. The bill was voted OTP as amended on 02/15.

Other Updates

Budget

As of this writing, the Maine budget proposal to close the gap failed to meet the two-thirds vote requirement in the Senate at a vote taken late the night of 02/16. It will be taken up again in the Senate on 02/21. For more on the budget, please see LD 1816 at: http://www.mainelegislature.org/legis/bills/bills_125th/billtexts/HP133901.asp

Judicial Branch

Chief Justice Saufley delivered her State of the Judiciary address on 02/09. You can read it here: http://www.courts.state.me.us/maine_courts/supreme/speeches/2012_soj.html

Election

- If you are following the election this year, you have likely heard about the GOP caucus results and the related challenges. The party has agreed to review the results to date and the returns from the Washington County caucus at their March 10th meeting with final results being issued after that review. In case you missed it, Mitt Romney was declared the winner, but this was challenged by Maine GOP party chairs where votes were not included. The Paul campaign is not officially challenging the results.
- Senator Trahan's seat (SD 20) went to Democrat Chris Johnson at Tuesday's special election. This seat had been Republican for some time, so this is being positioned as dissatisfaction with Republican control in Augusta.

We will do our best to continue to update you and support you in having your say.

So it's handy, here is all relevant contact information:

Sarah Conroy, SPHR, CEBS

SHRM Maine State Government Affairs Director

207.713.8337

seconroy@gmail.com

mainelegregupdate@gmail.com (to subscribe to updates like these)

<http://tinyurl.com/MaineSHRMLegNews> (our Maine State Government Affairs information page)

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