



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
45 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0045

LAURA A. FORTMAN
COMMISSIONER

MICHAEL ROLAND
DIRECTOR

Bureau of Labor Standards, Wage and Hour Division
Interpretive Guidance Policy 22-01

Issued on: September 20, 2022

Subject: 26 M.R.S. 626 – Cessation of Employment

Purpose: This interpretive guidance addresses legislative changes to section 626 and its interaction with other parts of Chapter 7, including earned paid leave. This document is intended to guide MDOL staff, employees and employers in understanding the Wage and Hour Division’s (“WHD”) interpretation of the relevant statutes and rules for the purposes of statutory enforcement.

Background: Section 626, Cessation of Employment, was amended by P.L. 2022 Ch. 561, to address the circumstances in which vacation must be paid out on cessation of employment. This has raised a number of interpretive questions, including about the interaction with section 637, Earned Paid Leave and its related rules, 12-170 ch. 18.

Policy: At the outset, WHD notes what has not changed about section 626. First, this section applies only when “the terms of employment or the employer’s established practice includes provision for paid vacations[.]” The amended language applies only to private employers of 11 or more employees. Public employer is defined in the statute. However, in determining the application of the statute to private employers, WHD counts only employees who work in Maine. For example, if an employer has six workers in Maine and six workers in New Hampshire, WHD would consider this employer as having 10 or fewer employees for the purposes of section 626.

Second, section 626 does not obligate employers to allow employees to accrue vacation. What has changed is that if a covered employer’s policy or established practice **does** allow employees to accrue vacation, each employee must be paid for all unused, accrued vacation at the time of separation. The statute obligates covered employers to pay employees “vacation accrued pursuant to the employer’s vacation policy on and after January 1, 2023.” In investigating complaints, WHD will look to the employer’s vacation policy to determine whether vacation is accrued and how. In the absence of a written policy, WHD will look to the employer’s established practice. However, WHD strongly encourages employers to adopt a written vacation policy. Any vacation accrued prior to January 1, 2023 is not covered by the amended statutory language – however, if prior to that date, it was the employer’s established practice or policy to pay accrued vacation on cessation of employment, the employer is still obligated to do so.

The statute does not obligate employers to pay for any leave time other than vacation. Pursuant to the Earned Paid Leave rules, 12-170 ch. 18, section III(E), “Whenever the terms of employment or the employer’s established practice includes provisions to pay the balance of unused earned paid leave at the time of separation, earned paid leave on cessation of employment has the same status as wages earned in accordance with 26 MRS §626.” Employers may have separate vacation and earned paid leave policies. If an employer has no earned paid leave policy but has a policy or practice of paying out vacation, WHD will consider the employer’s policy or practice to cover earned paid leave as well.

PHONE: (207) 623-7900 (Voice)

PRINTED ON RECYCLED PAPER

FAX: (207) 623-7938

TTY USERS CALL MAINE RELAY 711

OFFICES LOCATED AT: CENTRAL MAINE COMMERCE CENTER, 45 COMMERCE DR., AUGUSTA, ME 04330



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
45 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0045

LAURA A. FORTMAN
COMMISSIONER

MICHAEL ROLAND
DIRECTOR

Pursuant to section 626, if a covered employer allows employees to accrue vacation, that employer **may not** have a policy or established practice that prohibits all unused, accrued vacation from being paid to an employee upon separation. However, employers **may** have a vacation policy which caps accruals and therefore only pays out up to the cap. If employees accrue vacation in any form, employers must pay out all of the unused vacation that is accrued at the time of separation. In the event that employees are covered by a collective bargaining agreement which “includes provisions addressing payment of vacation pay upon cessation of employment, the collective bargaining agreement supersedes” section 626. WHD may review the collective bargaining agreement to determine whether it includes such provisions but will not interpret or apply those provisions. If such provisions are found, that determination will conclude WHD’s investigation; otherwise, WHD will apply the statute consistent with the above interpretations.

Frequently Asked Questions

1. What does it mean for vacation to be “accrued?”

The statute does not define accrual or accrued. However, WHD considers vacation time to be accrued if the employee has a defined amount of time that is available to them at any given time, even if that amount may, at times, be zero. This may include employees who accrue a certain number of hours per pay period or days per month or other similar accrual systems.

2. Is “front-loaded” vacation considered to be accrued?

Whether vacation that is “front-loaded,” which WHD considers to mean vacation that is credited to an employee all at once for a set period of time such as a calendar or fiscal year, is considered to be accrued depends on the employer’s policy or established practice. If the policy states that employees are credited with vacation as an advance against future accruals, the employer will be obligated to pay out all unused vacation which would have accrued at the time of separation – the employer is not obligated to pay out for unused vacation which would not yet have been accrued. If the employee used more time than would have been accrued at the time of separation, in this limited circumstance, the employer may deduct the amount of used, unaccrued time that exceeded what would have been accrued at the time of separation from the employee’s last paycheck. In the absence of a clear policy or established practice establishing that front-loaded vacation is advanced against future accruals, however, WHD will presume that front-loaded vacation is accrued, in the full amount credited to the employee at the time that the vacation is credited. WHD strongly recommends that employers who use front-loading have a clear written policy.

3. If an employer offers unlimited vacation, does that constitute accrued vacation?

Unlimited vacation may be considered accrued if the employee has a defined amount of time that is available to them at any given time.

4. Does the statute require that accrued vacation roll over from year to year?

The statute only requires that employers pay accrued, unused vacation at the time of separation.



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF LABOR
BUREAU OF LABOR STANDARDS
45 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0045

LAURA A. FORTMAN
COMMISSIONER

MICHAEL ROLAND
DIRECTOR

Revision history: