



**W**ORKING



**O**RGANIZING



**R**ESOURCES



**K**NOWLEDGE

**A GUIDE FOR WORKER JUSTICE IN MAINE**



## Human Rights Principles<sup>1</sup>

All of our work at the Southern Maine Workers' Center is guided by the following human rights principles:

**Equity:** All people put in what they can and get the care they need. Every person is entitled to the same ability to enjoy human rights.

**Accountability:** It is not enough merely to recognize human rights. There must be means of holding the government and other power holders accountable for failing to meet human rights standards.

**Transparency:** Government and other power holders must be open with regard to information and decision-making processes. People must know how public institutions protecting human rights are managed and run.

**Universality:** Human rights must be afforded to everyone, without exception. It is by virtue of being human, alone, that every person is entitled to human rights.

**Participation:** Government and other power holders must engage people and support people's participation in decisions about how their human rights are ensured.

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<sup>1</sup> The Southern Maine Workers' Center adapted these human rights principles from our allies at the Vermont Workers Center (VWC) and the National Economic and Social Rights Initiative (NESRI).

## Southern Maine Workers' Center

The Southern Maine Workers' Center is a nonprofit membership organization committed to creating a grassroots, people-powered movement that improves the lives, working conditions, and terms of employment for working and poor people in Maine. We believe that we must organize together to ensure our human rights.

[www.maineworkers.org](http://www.maineworkers.org)



**LEGAL DISCLAIMER:** This manual is designed to provide general information about rights related to work and employment. It is not intended to provide legal advice and should not be used as a substitute for obtaining legal guidance from a licensed attorney. If you need to speak to an attorney, please call us for a referral or contact one of the sources at the end of this manual.

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# **PART I: Introduction**

## **Why this Manual?**

Do you wonder if your legal rights are being honored in the workplace? Do you feel that the way you are being treated at work isn't fair? Many of us do. Our legal rights as workers can be hard to understand, and responding to violations can be confusing and feel very risky. Additionally, even when our employers are acting within the law, many of us know that the way we are treated at work doesn't feel right or good.

We at the Southern Maine Workers' Center believe all workers are entitled to work with dignity—with both our legal and human rights respected in the workplace. We can claim our right to work with dignity—even when the law doesn't give us specific legal protection—when we organize together with our co-workers and take collective action.

The goals of this manual are to help you claim your right to a fair, respectful, and dignified workplace. This guide will address:

**Your legal rights in the workplace and what you can do when they are violated.** Navigating the legal rights we do have can be complicated. We want to provide a map to help you find out what your rights are and what you can do when they are violated.

**The idea of human rights and how we can take action to protect our rights beyond our legal rights.** Sometimes our human rights are violated in the workplace, but not our legal rights. Most of our legal rights as workers are the result of people organizing to address violations of their human rights—the idea that we should not have to work unreasonably long hours, that we should be paid a fair wage, that we should be treated with respect, and that our lives beyond our jobs are worthwhile. Because workers got together and organized, we now have the 8-hour workday and a legally protected minimum wage. We can continue to demand that more of our human rights are met.

**The power of organizing.** The best results for workers come out of taking collective action to address injustice in the workplace. While sometimes it is possible to win a legal victory for ourselves as individuals, our co-workers are often facing the same injustices that we are. When we take action together we can improve conditions for everyone. We also have more power when we act collectively. When bosses see all of their workers united in a demand, they are more likely to negotiate. Throughout this manual are examples of worker-organized victories as well as tools to help you organize in your workplace.



## What's in this Manual, and What's Not

This manual does not cover every area of employment law. It offers a general overview of rights broadly related to work, as well as specific concerns that workers and community organizations have raised with us. This project differs from other workers' rights manuals because, in addition to information about legal rights, we've also included context about why the laws are important, some history of workers organizing to improve the law, and some of the strengths and weaknesses of the current laws. We've included sections on how workers continue to organize to address violations of their rights in the workplace. Established legal rights are important, but people often find they must take action in order to make the law work for them.

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### Work With Dignity: Human Rights Principles<sup>2</sup>

The Southern Maine Workers' Center believes that there is a fundamental human right to work with dignity. We define that right with the following principles:

**Universality:** The building-blocks of a life with dignity are food, housing, education, health care, safety, and leisure. Everyone who is working must receive wages and benefits sufficient to secure these necessities. Our government has an obligation to ensure the availability and creation of good, safe, healthy jobs for all that benefit both workers and their communities, and it must ensure that people who are not working have other means of maintaining their dignity.

**Equity:** All workers must receive equal pay for equal work; a safe and healthy work environment; freedom from harassment, retaliation, and unjust termination; paid vacation and sick leave; and supplementary public supports including compensation and support for unemployment, occupational injuries and illnesses, and disabilities. Education, training and career advancement opportunities must be available to everyone, not based on wealth, personal connections or privilege.

Good jobs must be accessible regardless of race, gender, immigration status, sexual orientation, physical ability, religion, history of incarceration, and all other personal characteristics, and opportunities for underrepresented groups must be maximized.

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<sup>2</sup> These principles were drafted in consultation with the National Economic and Social Rights Initiative (NESRI).

**Participation:** Workplaces must generally reflect democratic principles. In particular, workers must have a say in workplace decisions that affect terms and conditions of employment and production; have the opportunity to associate with one another, including forming unions; have the right to strike; be free to challenge conditions or decisions without fear of retaliation; and have meaningful participation in shaping the laws and regulations that govern and affect their work and their ability to meet their needs.

**Accountability:** Employers and the government must be accountable to workers' human rights. Our government is obligated to provide clear and comprehensive regulations that enable the effective enforcement of worker's rights, including safe, accessible, and effective ways for workers to report grievances, receive redress, and contribute to monitoring all aspects of their work conditions.

**Transparency:** Workers' rights and all laws and regulations governing workers, employers, workplaces, and public support systems must be clear and made accessible to all workers and employers. Communication of information must be linguistically and culturally appropriate, and must reach workers regardless of where they work and live.

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**PART II:**  
**Some Fundamental Principles**  
**about Work**

## **What is Organizing?**

As the previous section explains, this manual can't provide specific advice for what you and your co-workers should do to gain more dignity and better working conditions for yourselves. Each situation is different and will require a different approach. You and your co-workers are the people who will know best what that approach is. As you consider making a change in your workplace, there are some basic principles we've found helpful. These likely apply most directly to situations where you interact regularly with co-workers and managers, but we hope that some of the ideas will apply in other scenarios as well.

**We're stronger when we act together.** Organizing with your co-workers gives you greater legal protection. The most fundamental protection in the National Labor Relations Act is the protection of "concerted activity" for "mutual aid and protection". This means that the federal government, through the National Labor Relations Board, legally should defend your right to act together with your co-workers to address workplace problems. If you alone complain to your supervisor about an issue, you can be fired. If two of you complain together, you are protected by the law. Sometimes it's possible to improve our individual wages or working conditions through relationships with supervisors, promotions, or even individual legal battles. However, if you're facing an obstacle at work, the chances are good that your co-workers are facing the same struggles. We have more power when we act collectively. When employers see that all of their workers are united in a demand, they are under far more pressure to concede than they would be from an individual request

**Unity is power.** The more unity that exists between any group of workers and the community surrounding them, the stronger those workers will be in relationship to the employer. Owners and bosses have always benefited from divisions among workers. These divisions are often along lines of race, gender, specific job title, etc. and are often reinforced by workers themselves. Building unity across these lines will always favor the workers and limit the power of the boss. Unity isn't always easy but comes through building trust with each other and addressing differences of privilege and oppression within your group.

**Power concedes nothing without a demand.** There are some owners and bosses who consistently make attempts to empower their employees and provide dignified working conditions. However, structurally, employers are trained to think more about the well-being of their business or organization than about the situation of their individual employees. They will generally not make any meaningful concessions to an entire workforce without demands from below. Making demands can be an empowering activity for a group of workers or any group of people with common goals.

**There are many ways to organize for work with dignity.** Labor unions have been an important vehicle for working people to organize for better wages and working conditions for a long time. With a union, the employer has a legal obligation to negotiate with employees, through their elected representatives, to get a contract. Getting a contract creates an entirely different power relationship in the workplace, and is usually the best protection workers can get in the workplace. However, it is often difficult to organize a full-fledged union due to weak labor laws and hostile employers. With less than 10% of workers in the private sector belonging to unions, the vast majority will be organizing without the basic protections that unions offer. Even in this context, workers can support each other to make the changes they seek at their jobs, whether those changes to do with scheduling, pay, unequal treatment or something else. The best solutions will be the ones that you and your co-workers come up with together. The most important thing is to build a strong base of support amongst co-workers and community members before attempting to demand any changes. This will help protect you from retaliation.

**The fight isn't over when you win your rights.** Any change in your working conditions is a victory to be celebrated. However, victories are easily lost if a group of workers isn't vigilant in protecting them. The real victory comes when it becomes totally unacceptable to treat workers with less than full dignity in your workplace!

**We are all leaders.** One of the great things about organizing is that it reveals the strength and determination of people who are taught to quietly put up with mistreatment. All of your co-workers are workplace leaders just waiting for an opportunity to contribute to something meaningful like a campaign to win back their rights.

**Organizing involves taking risks.** Fighting for dignity at work can be scary because owners and bosses have the power to fire you or retaliate against you. Change doesn't always happen overnight, but don't give up! Given the right conditions and some smart organizing, some changes can happen very quickly. However, generally the fight for fairness and dignity at work takes time. Don't let a setback discourage you from staying the course. If you build a base of solid relationships with co-workers and you continue to focus on the changes that you want to see, you've already won an important battle and you're on your way to making real change.

## **Who is a Worker?**

Many of the legally-recognized rights (laws) in this manual apply to those of us in the formal economy as opposed to those who work as part of barter arrangements, for free, or

“under the table.” When we talk about the SMWC’s organizing for racial and economic justice, we use the term “worker” in its broadest sense, thus including workers who are not part of the formal economy. All who are struggling with the impacts of the global economy—the political and social system that attempts to deny us our basic human rights—are, in essence, workers. This includes many people that would commonly be identified as “workers”—people who produce, assemble and distribute goods, as well as people who provide the basic services that society needs and wants. However, it also includes many other types of people who aren’t typically thought of as “workers,” such as those who are caretakers of others, volunteers, or who have been unable to work or find work.

Many of us work in the “informal” or unregulated economy, and we do so for many reasons: because our immigration status or criminal history make finding work hard; to avoid wages being garnished; because our work is prohibited by law or others. The downside of working off the books is that it can undermine your ability to collect unemployment or social security benefits, and it can get you into tax trouble if you don’t report your earnings. But you can still hold your employer responsible if they break many of the laws described in the pages that follow. With people power, you, your coworkers, and your community can decide what is fair—whether the law says so or not—and then organize to achieve your rights.

### **Can We Trust the Law to be Fair in Defining Who is a Worker?**

In the United States, at different times and in different places, various types of workers have been excluded from employment laws. Most often, those were workers in jobs predominantly held by women and people of color. For example, since 1974, domestic workers - predominantly women of color - have been considered “companions” under the federal Fair Labor Standards Act, which lumps them in with babysitters and excludes them from federal minimum wage and overtime protections. Other groups of workers excluded from labor protections have been farm workers, incarcerated workers, students, and disabled workers. Workers from all these industries and contexts have fought and won battles to be treated with dignity at work, and the struggle continues.

**Agricultural Workers:** State and federal law do not give agricultural workers the right to overtime pay (or workers’ compensation for many agricultural workers in Maine), and workers on smaller farms - generally, farms that have fewer than about seven workers in a calendar quarter, i.e. four month period - don’t have minimum wage protections, either.<sup>3</sup>

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<sup>3</sup> “Fact Sheet #12,” *United States Department of Labor, Wage and Hour Division*, last modified July 2008, <http://www.dol.gov/whd/regs/compliance/whdfs12.htm>.

Farm workers do have the right to accurate information, in writing, about a job when recruited; to accurate and complete wage statements every time they get paid; to clean and safe housing; and to safe, employer-provided transportation. These rights and others are set out in the Migrant and Seasonal Agricultural Worker Protection Act, which also says that contractors and employers have to keep all their promises to workers and prospective workers.<sup>4</sup> Pine Tree Legal Assistance ([see page 77 for contact information](#)) has many resources with more details about rights and advice for agricultural workers.

**Domestic Workers:** Although many kinds of people are “domestic workers” in the sense that they work in another person’s home - like nannies, gardeners, house cleaners - here we refer to those who care for elderly or disabled clients in their homes, employed directly by the client, the clients’ family, or an agency. This growing field includes direct care workers, personal support specialists and home health aides, among others. For years, domestic workers have been excluded from federal minimum wage and overtime laws, because they are deemed “companions,” like babysitters.<sup>5</sup> After years of grassroots organizing by nannies, eldercare workers, and those who care for disabled people, the Department of Labor agreed to reverse this historic injustice, but a recent legal challenge by the \$90 billion home health care industry has made the change uncertain. The federal law currently allows domestic workers to be paid less than minimum wage, though some states, including Maine, cover most domestic workers within their wage and hour laws. If you work for an agency in Maine, you’re also entitled to be paid at least minimum wage for the time you spend traveling from one client’s house to another, and those hours count toward your total hours for the week. So if they put you above 40 hours, the agency has to pay you time and a half for every additional hour.<sup>6</sup> Maine law excludes many domestic workers from workers’ compensation.

**Incarcerated Workers:** When the Thirteenth Amendment abolished slavery in 1865, one exception remained: labor as punishment for a crime. While “convict leasing” - the inhumane system by which the state leased out prisoners to private companies - was outlawed by the 1920s, to this day inmates still work for wages far below the regular minimum wage. Under current law, all physically able inmates in federal prison who are not a security risk or do not have a health exception are required to work.<sup>7</sup> Federal inmates

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<sup>4</sup> “Farm Workers Rights,” *Pine Tree Legal Assistance*, accessed January 2015, <http://www.ptla.org/farm-worker-rights>.

<sup>5</sup> Fact Sheet: Final Rule,” *United States Department of Labor, Wage and Hour Division*, last modified September 2013, <http://www.dol.gov/whd/regs/compliance/whdfsFinalRule.htm>.

<sup>6</sup> Fact Sheet: #79D,” *United States Department of Labor, Wage and Hour Division*, last modified September 2013, <http://www.dol.gov/whd/regs/compliance/whdfs79d.htm>.

<sup>7</sup> “Prison Labor,” *Prison Policy Initiative*, accessed January 2015, <http://www.prisonpolicy.org/prisonindex/prisonlabor.html>.

earn from \$0.23 per hour up to a maximum of \$1.15 per hour. Inmates with court-ordered financial obligations must use at least 50% of their earnings to satisfy those debts.<sup>8</sup> In Maine, an incarcerated worker can appeal a work decision to the Chief Administrative Officer within five working days. Some advocates for prisoners see jobs for inmates as providing purpose and training, regardless of the extreme low wages, while others argue that it's unjust for the government or private prison corporations to profit in any way from people who are forced to work.

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### **ORGANIZING VICTORY: *The Human Right to Rest***

*As told by Edulfo, a member of the Workers' Center of Central New York*

*I think that people like us can be like a mirror in which other people can look into and hopefully see themselves in us, and maybe think that if we could achieve things like that, so can they.*

*It was almost two years ago when some other workers and I were talking about finally asking the owners for a day off every week. We thought that it was not going to be a big deal given all the workers he had in his farm at that point. But when I mentioned to him that we wanted to rest more often he said, "You guys don't need to rest, it would be better for me if you didn't rest at all." After that we knew that he was not going to give us a day off. Originally we thought that he didn't want to give us the day off just because we are undocumented, but later on we found out that as agricultural workers we don't have the right to a day off.*

*My brother and I started talking with the other workers, even with the ones that we didn't get along with that well, and everybody agreed that we needed to demand the day off because we were all tired, because our bodies needed to rest. One evening, two months after he made that comment to me, all of us walked down to the owner's house (the guys from the night shift entered late that day so they could join everybody). When he opened the door we asked him: "Do you know why we are here?" He said, "No, I don't know why." We said, "We are here because we want a day off per week. We have made up our minds: if you don't give it to us we are all leaving. If we leave you can hire more people but eventually they are going to leave too; people can't work like this for this long." Even though he hesitated a little bit, at the end he said: "Okay, you are right, but only because you guys are good workers." His response was quick; within the week he hired one new person and started giving everybody a day off every week.*

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<sup>8</sup> James, N., "Federal prison industries (RL32380)," *Washington, DC: Congressional Research Service*, 2007, [http://digitalcommons.ilr.cornell.edu/key\\_workplace/309/](http://digitalcommons.ilr.cornell.edu/key_workplace/309/).



*We were sure that he was going to give it to us because we knew that he had enough people to cover the shifts, but if he would have said no, then all of us were going to leave right there; we also agreed amongst us that if he were to say yes, but took too long to give it to us, two people were going to quit every week until we had our day off per week. We knew that we had to do it that way because the law does not protect us; we knew that we had to take the risk and make a decision. It's very clear to me that if it hadn't been all of us asking for it, it would not have happened. In order to achieve something like that we had to be united and willing to face whatever happened. We all have the right to a day off, we all need rest no matter what the law says; we all need to find ways to help ourselves and demand better working conditions because the law is not going to do it for us; the owner knows that we are taking care of ourselves.*

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# **Part III: Your Rights at Work**

## **Getting, Keeping, & Leaving a Job**

# Discrimination in the Workplace

Many of us, regardless of our race, gender, sexual orientation, age, or gender identity, have experienced discrimination at some point in our work lives. That's because racism, sexism, ageism, homophobia and other forms of prejudice are, sadly, ingrained in our society. Most of us will likely never respond to discrimination by filing a lawsuit, but that doesn't mean that we should ignore or accept discrimination. This section will explain some of the legal protections against discrimination for those of us who choose to fight—whether it be in court through a lawyer, in the breakroom with our co-workers, or with the aid of an organization like the Workers' Center.

As long as discrimination has existed, there have been people who have fought against it. Many of the protections against discrimination at work in the U.S. are the outcome of the brave organizing and activism of the hundreds of thousands of participants in the Civil Rights Movement in the 1950s and 1960s. In 1964, the federal government passed the Civil Rights Act. Maine passed its own Human Rights Act in 1971, adding protections beyond those provided by the federal law. Activists from different communities have continued to work over the years to expand protections to more people.

The Maine Human Rights Act (MHRA) makes it illegal for an employer to discriminate on the basis of race, color, sex, sexual orientation, gender and gender expression, age, physical or mental disability, genetic predisposition, religion, and ancestry or national origin.

Federal law only covers employers with 15 or more employees. The Maine law covers businesses of any size.

## **What Do all These Types of Discrimination Mean?**

**Race and/or Color:** Race discrimination means treating an applicant or employee unfavorably because they are of a certain race or because they have physical characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Race and color discrimination also can involve treating someone unfavorably because the person is married to, or associated with, a person of a certain race or color or because of a person's connection or association with a race-based organization or social group.

Discrimination can occur when the the person who inflicted the discrimination is the same race or color as the person being discriminated against.<sup>9</sup>

**Sex:** Sex discrimination means treating an applicant or employee unfavorably because of that person’s sex or gender. Sex discrimination also can involve treating someone less favorably because of his or her connection with an organization or group that is generally associated with people of a certain sex. Sexual harassment can be unwelcome sexual advances, requests for sexual favors, or other verbal or physical harassment of a sexual nature. It can be offensive remarks about a person’s sex in general. Sexual harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment.<sup>10</sup>

**Sexual Orientation and Gender Expression:** Sexual orientation discrimination means treating applicants or employees differently because of their actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression, which includes transgender, androgynous, and gender non-conforming workers.<sup>11</sup>

**Age:** Age discrimination means treating applicants or employees less favorably because of their age.

**Physical or Mental Disability:** Disability discrimination occurs when a covered employer treats a qualified employee or applicant with a disability unfavorably because they have a disability. It also occurs where the applicant or employee is treated less favorably because they have a history of a disability (such as cancer that is controlled or in remission) or because they are regarded as having or likely to develop a disability.<sup>1213</sup>

**Genetic Predisposition:** It is illegal for an employer to discriminate against employees or applicants because of genetic information, including family medical history, or to use of genetic information in making employment decisions. Except under very narrow

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<sup>9</sup> “Race/Color Discrimination” *U.S. Equal Employment Opportunity Commission*, accessed March 2015, [http://www.eeoc.gov/laws/types/race\\_color.cfm](http://www.eeoc.gov/laws/types/race_color.cfm)

<sup>10</sup> “Sex-based Discrimination” *U.S. Equal Employment Opportunity Commission*, accessed March 2015, <http://www.eeoc.gov/laws/types/sex.cfm>

<sup>11</sup> “94-348- Adopted Changes to Rules,” *Maine Human Rights Commission, Ch. 3, Section 3.02*, accessed January 2015, <https://www1.maine.gov/mhrc/laws/changes/archive/Sexual%20Orientation%20Adopted%20Rule.pdf>.

<sup>12</sup> “Disability Discrimination,” *U.S. Equal Employment Opportunity Commission*, accessed January 2015, <http://www.eeoc.gov/laws/types/disability.cfm>.

<sup>13</sup> “§4553-A. Physical or mental disability,” *Office of the Revisor of Statutes, Maine Legislature*, accessed October 2014, <http://legislature.maine.gov/legis/statutes/5/title5sec4553-A.html>.

circumstances, employers can't request, require, or purchase genetic information about applicants or employees.<sup>1415</sup>

**Religion:** Religious discrimination means treating applicants or employees unfavorably because of their religious beliefs or practices. The law protects not only people who belong to traditional, organized religions (Buddhism, Christianity, Hinduism, Islam, and Judaism, etc.) but also people with any sincerely held religious, ethical or moral beliefs. Religious discrimination can also involve treating someone differently because that person is married to, or associated with, someone of a particular religion, or because of their connection with a religious organization or group.<sup>16</sup>

**Ancestry or National Origin:** National origin discrimination involves treating applicants or employees unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background, even if they aren't. Treating persons unfavorably because they are married to (or associated with) those of a certain national origin or because of their connection with an ethnic organization or group can also be national origin discrimination. Discrimination can occur when the victim and the person who inflicted the discrimination are the same national origin.<sup>17</sup>

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### ***ORGANIZING VICTORY: Fighting Racism in the Workplace***

*"After nearly two years, she was finally gone. My co-workers and I got rid of the bad, racist manager, and came out stronger."*

*—Laverne Wrenn, grocery store worker and member of United Food and Commercial Workers Local 400<sup>18</sup>*

*While some acts of racism are public and draw media attention and community responses, many occur in our own workplaces and are kept hidden unless we fight back against them.*

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<sup>14</sup> "Facts About the Genetic Information Nondiscrimination Act," *U.S. Equal Employment Opportunity Commission*, accessed January 2015, <http://www.eeoc.gov/eeoc/publications/fs-gina.cfm>.

<sup>15</sup> "Genetic Information Discrimination," *U.S. Equal Employment Opportunity Commission*, accessed January 2015, <http://www.eeoc.gov/laws/types/genetic.cfm>.

<sup>16</sup> "Religious Discrimination," *U.S. Equal Employment Opportunity Commission*, accessed January 2015, <http://www.eeoc.gov/laws/types/religion.cfm>.

<sup>17</sup> "National Origin Discrimination," *U.S. Equal Employment Opportunity Commission*, accessed January 2015, <http://www.eeoc.gov/laws/types/nationalorigin.cfm>.

<sup>18</sup> "In a 'Right to Work' State, Union Grows by Fighting Racism," *Common Dreams*, accessed April 2015, <http://www.commondreams.org/views/2015/03/14/right-work-state-union-grows-fighting-racism>

*Laverne Wrenn, a longtime worker at the Kroger grocery store in Virginia and a member of the United Food and Commercial Workers labor union, was in a situation recently where she had to choose between putting up with the racism of her manager and fighting back against it.*

*Shortly after a new manager showed up to Wrenn's store in 2011, discrimination against the black workers at the store became evident. According to Wrenn, the manager "would target black workers, disciplining us for things that white workers would not get in trouble for. Simple things, like not signing off when you cleaned the bathroom, would result in a write-up for anyone who was black—but not for white workers who did the same thing."<sup>19</sup>*

*When Wrenn brought up the discriminatory treatment to her manager and others at the company, nothing changed, so she consulted with her union and started to document each act of discrimination, noting who was there to witness it and their contact information. And she recruited her co-workers to help.*

*"We continued to document everything she did. We put together a team of people from different departments and shifts to make sure we caught every incident. We filed grievances every time we could, so that Kroger would recognize it had a problem manager."<sup>20</sup>*

*As the workers built strength and unity, the manager got more desperate to get rid of them. "Finally she made a mistake even Kroger could not ignore. She was trying to get some of the 'black girls' fired for not signing their names properly after cleaning the deli. To make them look worse, she forged a customer comment card with a complaint."<sup>21</sup>*

*The manager was fired, and Wrenn and her co-workers had won a workplace battle against racism, building strength amongst themselves and involving new people in the process. "When people saw we could stand up to our racist manager and be protected, many who'd never been interested in the union before came to me and signed up. They wanted to join me in fighting back."*

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## **That's Illegal, Too: What Discrimination Sometimes Looks Like**

**English-Only Rules:** Many of us who were born outside the United States find work alongside other people from our home country, and we may speak to each other in our

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<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

native language while at work. The only time an employer can require English in the workplace is if it meets either of two important criteria: 1) there must be a business justification, in other words there has to be something about the work that makes speaking English important, for example communication with customers, supervisors or coworkers; or 2) speaking English must be important to maintaining safety in the workplace.<sup>22</sup>

Like many issues related to discrimination, the law is not perfectly clear-cut, but generally an English-only rule is illegal if it:

- Bans use of specific languages, for example if your employer allows French but not Spanish;
- Is not based on a real business need, but rather the preference of the employer;
- Requires English even on breaks;
- Requires English even when customers and co-workers speak other languages.

It's a good idea to talk to coworkers about their experiences with the rules about speaking English. If the rules feel unfair, it might be possible to change them by getting together with co-workers and talking to the boss. The Workers' Center can also help by giving advice, a place to meet, and more information. You can also contact the Maine Human Rights Commission ([see page 79 for contact information](#)). Just as with other kinds of discrimination, it is illegal under the Maine Human Rights Act for the employer to retaliate against you for speaking up about this.

**Citizen-Only Hiring, and Illegal Document Requirements:** Sometimes employers will refuse to hire you because your work authorization is temporary rather than permanent. There are lots of reasons why you might have a temporary work permit, such as having a green card application pending or being granted "Deferred Action." But an employer who does this is breaking federal law and may be required to pay a fine, hire the person it first refused to hire, and/or pay any wages that person would have earned in the time that has passed.

If you have a work permit, even if it is temporary, you are eligible to work, and an employer cannot refuse to hire you because of that permit. If someone does not hire you or someone you know because your or their work permit is temporary, contact the Workers' Center or the US Department of Justice ([see page 78 for contact information](#)).

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<sup>22</sup> "In a 'Right to Work' State, Union Grows by Fighting Racism," *Common Dreams*, accessed April 2015, <http://www.commondreams.org/views/2015/03/14/right-work-state-union-grows-fighting-racism>

**Unequal Pay on the Basis of Gender:** In Maine, women still earn \$0.80 for every dollar earned by men. Some of this is the result of a lack of pay equity, meaning the system undervalues work historically performed by women. For example, a housekeeper earns less than a janitor, even though the tasks are largely the same. It is also the result of sex discrimination in pay, meaning women who perform the same jobs as men are sometimes paid less.<sup>23</sup>

In order to know if you're being discriminated against, it's important to be free to discuss your wages with co-workers. Although many employers discourage or even prohibit those conversations, it is your legal right to share your wage information with others, and ask for theirs.<sup>24</sup> An employer who prohibits this is breaking the Maine Equal Pay law as well as the National Labor Relations Act.<sup>25</sup> For more on this, [see page 39](#), Organizing with Your Co-Workers.

If you think you or someone you know is being discriminated against for reasons of gender, contact the Workers' Center or the Maine Human Rights Commission ([see page 78 for contact information](#)).

**Pregnancy Discrimination:** It is illegal for an employer to not hire you or to fire you because you are pregnant. As a pregnant worker, you are entitled to be treated the same as an employee who has a temporary disability. You cannot be forced to take a leave of absence if you can still physically do your job. ([See pg 68 for info on maternity leave](#)). After delivery, breastfeeding is also protected by the pregnancy discrimination laws. Maine law requires that your employer allow you to use your paid break time, lunch period, or unpaid break time to express milk. Your employer also must make a reasonable effort to find you a clean place where you can do so. The space cannot be a bathroom.<sup>26</sup>

**Discriminatory Uniform Requirements/Dress Codes:** Although employers have a very broad right to require workers to wear uniforms, and they can set specific clothing, grooming, and appearance standards for employees, they have to do so in an even and fair way. Your boss cannot single you or another worker out for different dress requirements;

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<sup>23</sup> "Know Your Rights: Pay Equity," *Maine Women's Policy Center*, published 2011, [http://www.mainewomenspolicycenter.org/assets/files/KnowYourRights/Layout\\_PayEquity.pdf](http://www.mainewomenspolicycenter.org/assets/files/KnowYourRights/Layout_PayEquity.pdf).

<sup>24</sup> NLRB Office of Public Affairs, "Board finds Houston engineering firm unlawfully fired employee for discussing salaries with coworkers" accessed April 2015, <http://nrlb.gov/news-outreach/news-story/board-finds-houston-engineering-firm-unlawfully-fired-employee-discussing>

<sup>25</sup> <http://legislature.maine.gov/statutes/26/title26sec628.html>

<sup>26</sup> "Maine Employee Rights Guide," *Maine Department of Labor*, accessed January 2015, [http://www.maine.gov/labor/labor\\_laws/publications/employeeightsguide.html#Moms](http://www.maine.gov/labor/labor_laws/publications/employeeightsguide.html#Moms).



dress requirements must be the same for all employees, or for everyone in the same position.

**Gender:** An employer is not allowed to have a dress code for only one gender. However an employer can require different standards for men and women, as long as the difference does not put an extra burden on one gender. Workers can only be required to wear the clothes for the gender they identify with.

**Religion:** If you have a “sincerely held” religious belief, you can ask for an accommodation or an exception to dress and appearance requirements at work. Your boss must provide you with an accommodation unless it would cause “undue hardship” on the business. Employers must allow employees to have head-coverings, facial hair, and clothing that is consistent with religious beliefs if it will not cause undue hardship on the employer or pose a health and safety risk to the employee or others. Also, you have the right to a customer-service position just as much as anyone else; it is illegal for an employer to reassign you on the assumption that customers object to interacting with workers in religious clothing.<sup>27</sup>

**Disability Discrimination:** The law protects you against discrimination if you are qualified for a job, meaning you have the skill, experience, and/or education that the employer says they need, and have a physical or mental impairment. In order to qualify for legal protection, that impairment or disability must substantially limit your ability to engage in major life activities, such as to see, hear, speak, walk, breathe, perform manual tasks, learn, care for yourself, or work. In Maine, certain impairments are protected by statute, regardless of whether the impairment substantially limits a major life activity. Such impairments include, among others, cancer, diabetes, epilepsy, and major depressive disorders. The law also protects you if people just regard you as having such a disability.

If you have a disability and can still do the essential parts of a job with some accommodation, meaning some rearranging of the work, the boss must consider whether you could perform these functions with a reasonable accommodation. Some examples of a reasonable accommodation are allowing an employee to take time off from work for medical appointments or visits to a therapist; restructuring the job description to eliminate non-essential functions; providing a wheelchair-accessible work site or a sign language interpreter; or simply educating and reshaping co-worker attitudes. An employer is not

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<sup>27</sup> “Religious Garb and Grooming in the Workplace: Rights and Responsibilities,” *U.S. Equal Employment Opportunity Commission*, accessed January 2015, [http://www.eeoc.gov/eeoc/publications/ga\\_religious\\_garb\\_grooming.cfm](http://www.eeoc.gov/eeoc/publications/ga_religious_garb_grooming.cfm).

required to provide a reasonable accommodation if it can establish that doing so would create an undue burden.

If you are asking for a reasonable accommodation, it's not necessary to mention the law by name or even to use the phrase "reasonable accommodation."

The federal law—the Americans with Disabilities Act (ADA)—applies to employers with 15 or more workers only, but the Maine law, the Maine Human Rights Act (MHRA) applies to all employers. These laws cover all phases of employment, from hiring to termination.

**Mental Illness and Addiction Discrimination:** Mental illness and addiction are often "invisible" disabilities, not always readily apparent to others. Your employer has to provide reasonable accommodation only if it knows of your disability. Therefore, if your condition or disability is not obvious, you must disclose it in order to be legally entitled to a reasonable accommodation.

Many choose not to disclose this kind of disability, for fear of discrimination or retaliation, and this fear is understandable given the stigma that often exists in the workplace and beyond. While staying quiet about the condition may be the right choice for some people, there may be times when you should consider disclosing your condition for your own job protection. If you need a reasonable accommodation to do your job because of addiction or mental illness, this disclosure and request for accommodation might be urgent.

For example, an employee with bipolar disorder might undergo a medication change that causes increased lethargy, resulting in a very late arrival to work most days. An employee who has not disclosed the disability may be fired for being late, because the boss was unaware of the disability. In this case, it would be unlikely that the worker can prove that the employer was discriminating based on disability. Rather, the employer fired the worker for being late. If the worker had told the employer about the disability and asked for a reasonable accommodation - for example, a schedule modification or reasonable leave for treatment - the worker might not have been fired, or the dismissal might have been illegal.

For more information on taking leave to cope with a disability, mental illness or addiction, see ["Long Breaks \(Days, Weeks, Months Away from Work\)" on page 66.](#)

## Challenging Discrimination Through the Courts

**Legal Complaints:** If you experience discrimination, you can contact the Maine Human Rights Commission (MHRC), the state agency that helps workers file legal complaints. Its role is to both investigate the claim and also to help reach a settlement.

- **When do I have to file?** You should file your complaint as soon as possible after learning of the discrimination. The law says you have no more than 300 days to file.
- **How long will it take?** The process for resolving a discrimination case may be time-consuming, taking up to two years.
- **Can I skip the MHRC?** If you want to file a lawsuit against the employer directly instead of having the MHRC pursue the case, you can ask for a “right-to-sue” letter after your complaint has been at the MHRC for 180 days.
- **Should I get a lawyer?** You do not need a lawyer to bring a charge of discrimination before the MHRC, although you may decide that you are better off with one. Many lawyers will handle your case on a contingent fee basis, which means they only get paid if you recover something (i.e. get money from the discriminatory employer). If you don’t recover anything, the lawyer does not get paid.
- **What can I get if I win?** The value of a settlement in your case or a jury verdict in your favor if you go to court depends on a number of factors including the size of the employer, the severity of your complaint, and the pain and suffering or other negative consequences that you prove you experienced. The amount you recover could include back pay, money for pain and suffering, punitive damages to deter the employer from discriminating again, reinstatement to your job if you no longer work there, interest, and legal fees.

For more information on the process of pursuing a case, see MHRC’s website: [http://www.maine.gov/mhrc/file\\_a\\_complaint/index.htm](http://www.maine.gov/mhrc/file_a_complaint/index.htm)

**Retaliation:** Your right as a worker to challenge discrimination or other violations of your rights is also protected under the law. Retaliation happens, first, when you do something like file a workers comp claim, complain about about discrimination, or try to talk to coworkers about how to form a union or improve things at work - activities protected by the Worker’s Compensation Act, the Maine Human Rights Act, the Whistleblowers Protection Act, or a state or federal Labor Relations Act. If your boss then fires you, disciplines you, moves you to a worse position, or even doesn’t hire you in the first place, and the impact is that you and coworkers get the message not to complain in the future, that is retaliation.

# Rights when Seeking a Job

## **Interview and Application Questions**

There are several types of questions that an employer cannot ask you when deciding whether or not to hire you. That's because these questions ask for information the employer may not lawfully consider when making a hiring decision. Here are some examples of prohibited questions:

- Are you married?
- What religious holidays do you celebrate?
- Do you have kids?
- What country are you from?
- What type of discharge did you receive from the military?

Prospective employers are also not allowed to ask interviewees or job applicants about disability-related issues such as medical history, past medical leave, Workers' Compensation claims, or medications. When you're applying for a job, you're under no obligation to disclose your disability. The employer should judge you on your ability to do the job, not on the fact that you may or may not have a disability. Once you are hired, your employer may only ask about a disability if the questions are job related and have to do with a business necessity.

Although employers are prohibited from asking you, the job applicant, about disabilities, they may ask questions about your ability to do certain things that are related to the job. If an employer has reasonable concerns about your ability to perform certain job duties, it can require you to describe or demonstrate how you will do those duties.

If the disability is obvious, or if you bring it up, the employer can ask reasonable questions about accommodations (for example, what changes to the job would allow you to do the work).

The Maine Human Rights Commission publishes a "Pre-Employment Inquiry Guide" which lists the types of questions that employers are allowed to ask applicants, and also the questions employers are prohibited from asking:

[http://www.maine.gov/mhrc/guidance/pre-employment\\_inquiry\\_guide.htm](http://www.maine.gov/mhrc/guidance/pre-employment_inquiry_guide.htm)

If an employer asks any of the prohibited questions, it may be evidence of discrimination against you or other applicants. You may decide to politely decline to answer the question (“I’d rather not answer that question”), and speak with the Workers’ Center or the Maine Human Rights Commission ([see page 78 for contact information](#)). If you are not hired because of the way you answered the illegal question or for declining to answer it you may be able to prove unlawful discrimination.

## **Criminal History Information**

We live in an over-criminalized society, where one in three adults has an arrest or conviction on record. For many people, having been convicted of a crime makes it nearly impossible to find a job. Although there are some regulations regarding how an employer can learn about criminal history and what they can do with that information, the protections are very weak. Luckily, organizers have made real progress passing “Ban the Box” laws ([see Organizing Victory, below](#)), and some large employers have voluntarily decided to stop asking applicants about criminal history.

In Maine, the law currently allows employers to do a criminal history check if they ask you, the applicant, first. However, if you refuse, they are free to not hire you as a result. If employers refuse to hire you because of what they see on your criminal record, they have to give you a copy of the record and give you a chance to challenge what it says. That’s really important because very often criminal records are wrong.<sup>28</sup>

Also, employers can’t automatically refuse to hire every person with a criminal history. To deny you a job because of a criminal record, an employer has to believe that your criminal record is related to the job you’re applying for and that it’s related to something that is necessary for the business. Employers have to consider factors like the amount of time that has passed since the criminal conduct. Also, employers who do criminal background checks have to do them in a non-discriminatory way. For example, employers can’t only do background checks on people of color, or women, etc. If you have reason to think that an employer is doing criminal background checks in a discriminatory way, contact the Workers’ Center or the Maine Human Rights Commission ([see page 79 for contact information](#)).

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<sup>28</sup> Neighly, Madeline, Maurice Emsellem, and Anastasia Christmas, “A Healthy Balance: Expanding Health Care Job Opportunities to Californians with a Criminal Record while Ensuring Patient Safety and Security,” *National Employment Law Project*, published May 2014, <http://www.nelp.org/page/-/SCLP/2014/Healthy-Balance-Full-Report.pdf?nocdn=1>, and “Fair Credit Reporting Act,” *Federal Trade Commission*, accessed January 2015, <http://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/fair-credit-reporting-act>.

If you have a reason to think that employers are getting incorrect information about you from a criminal background search, you can request a review of your criminal record with the police. If you see something on your record that shouldn't be there, you can request that the State Bureau of Identification (SBI) remove it ([see page 80 for contact information](#)).

If you got a criminal record as a juvenile in Maine, you can ask the court in which you were convicted to seal the conviction. A sealed record is not open to public inspection.

Some large employers, including Walmart, Target, Bed Bath & Beyond and Home Depot, do not ask about criminal history on the initial job application, though they may ask about it later in the interview process. That could make it easier for those with a past conviction to get fair opportunity for employment.

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*ORGANIZING VICTORY: Fighting for a Fair Chance*

*"I didn't think I could get a job either with the past history and stuff like that. Now, I'm just here trying to help my community out and seeing what we can do to get rid of this box."*

*—Shane Johnson, formerly incarcerated activist<sup>29</sup>*

*In 2004 the national organization All of us of None began to organize people with criminal records through "Ban the Box" campaigns. Dorsey Nunn, a formerly incarcerated activist and one of the organization's founders explains, "we did not organize people with records to only pass Ban the Box policies. That was not our primary objective. For us the larger objective was to get people with criminal records to become organized and active in the fight against mass incarceration and the 2nd class status that comes with a criminal record."<sup>30</sup>*

*"The Box" refers to the check box on most job applications that asks if an applicant has any prior criminal convictions. In this country, one in four people has a prior conviction, and many employers will not consider anyone who checks the box. These campaigns aim to remove the box from initial applications, so that applicants can at least get a foot in the door before their records become an issue.*

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<sup>29</sup> "Council Bill Aims to Give People With Criminal Records a Better Chance in Job Market," accessed March 2015, <https://fairchancenyc.wordpress.com/2014/06/12/council-bill-aims-to-give-people-with-criminal-records-a-better-chance-in-job-market/>.

<sup>30</sup> "Southern Coalition for Social Justice: A Case Study of Durham, NC," accessed March 2015, [http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox\\_WhitePaper-2.pdf](http://www.southerncoalition.org/wp-content/uploads/2014/10/BantheBox_WhitePaper-2.pdf)

*The stories of people who have experienced discrimination based on criminal records are central to Ban the Box campaigns, like this one from New York City: “Twenty-five years ago, I was released from prison to a work-release program. I spent a year sorting mail. Back then, there were these programs that helped you while you were in prison—I got training and was able to get a job when I came home. But after my year in the program, they didn’t renew me to continue working because of my felony. I had done my time and was ready to work, but I kept getting denied. Since I’ve been home, I’ve applied to many jobs. Being Black and having a felony, you don’t get hired.”<sup>31</sup>*

*Ten years into the fight, organizations with members who have firsthand experiences with discrimination based on their criminal records have won victories in over 70 cities and counties, and 13 states, finally giving millions of workers a fair chance at getting hired.<sup>32</sup>*

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## **Credit History**

Studies have shown what most of us already know: credit information can’t predict how well someone will do at a job, or the risk of crime in the workplace. Despite that, more and more employers are requiring people to agree to credit checks when applying for work. Bad credit happens for all kinds of reasons—like job loss, medical costs, and divorce—and it is often the result of errors in the reports themselves. Not only that, credit checks disproportionately impact communities of color, and therefore some courts have found this practice illegal under Title VII of the Civil Rights Act of 1964, which prohibits employers from using a practice that disproportionately screens out people of color or women, unless the employer has a “business need” to use the practice. Still, employers do it.

If you have reason to think that an employer is using credit checks in a discriminatory way (for example, only doing credit checks of people of certain races or genders), contact the Workers’ Center or the Maine Human Rights Commission ([see page 79 for contact information](#)).

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<sup>31</sup> “Being Black and having a felony, you don’t get hired,” posted June 4, 2014, <https://fairchancenyc.wordpress.com/2014/06/04/being-black-and-having-a-felony-you-dont-get-hired/>.

<sup>32</sup> National Employment Law Project, “Ban the Box is a Fair Change for Workers With Records,” accessed [March 2015](#), <http://www.nelp.org/page/-/SCLP/2014/NELP-Fair-Chance-Factsheet-0914.pdf?nocdn=1>.

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## ORGANIZING VICTORY: *Stop the Credit Catch-22*

*“I’m the sole breadwinner for my family, and that’s a lot of responsibility. Just because I have a ding here and there in my credit shouldn’t determine whether or not I’m a good worker.”*

—Oneika O., Manhattan

*Over the last few years, progressive groups like the labor union UNITE HERE and the public policy organization Demos have mobilized to ban the use of credit checks in employment, seeking legislation on the federal, state and local level. As of 2015, eight states and a number of municipalities had banned the practice.*

*Stuart Appelbaum, President of the Retail, Wholesale and Department Store Union explained the situation members of his union face: “People want to pay off loans, but because of their troubles, they can’t even get a job.”<sup>33</sup>*

*Recently an exciting coalition of labor and community organizations formed to carry that momentum to New York City. The campaign highlights the stories of people who face discrimination because of their credit history and uses creative actions to draw attention to the issue. After filming testimonies and meeting with legislators, the coalition decided that, leading up to the 2014 holiday season, credit check-themed caroling was in order. Dressed in Santa hats, workers sang songs like “Walking in a jobless wonderland” as they urged the mayor to prioritize this issue.*

*The fight in NYC hasn’t been won yet, but the coalition is determined to make it happen.<sup>34</sup>*

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## **Work Permits**

All employers in the United States are required to confirm that the people they hire are eligible to work in the United States. An employer can ask you for identification to prove that you can legally be an employee. You are only required to show documents listed in the employee verification I-9 form. That list documents is available here: <http://www.uscis.gov/i-9-central/acceptable-documents>.

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<sup>33</sup> Stewart, Nikita, “Group Urges New York City to End Credit Checks by Employers” *The New York Times*. The New York Times, 15 Jan. 2015, accessed March 2015.  
[http://www.nytimes.com/2015/01/16/nyregion/group-urges-city-to-end-credit-checks-by-employers.html?\\_r=1](http://www.nytimes.com/2015/01/16/nyregion/group-urges-city-to-end-credit-checks-by-employers.html?_r=1).

<sup>34</sup> “Credit Checks In The News,” *NYC Coalition to Stop Credit Checks in Employment*, accessed January 2015, [www.creditcatch22.org](http://www.creditcatch22.org).



It is discrimination if your employer asks for more or different documentation or will only hire citizens. [See page 23 on Citizen-Only Hiring, and Illegal Document Requirements.](#)

## **Youth Workers**

During the early 1900s it was common for young people to be employed in factories, working long hours in dangerous conditions. Some factory owners preferred child workers because they were less like to organize unions or go on strike. Unions, workers, and middle class reformers advocated to create standards for young workers alongside movements for universal public school. Today there are federal and state laws that regulate how and when people under 18 can work. Below are some of the guidelines for young workers in Maine.

### **Workers Age 16-17**

If you're a student in this age group, there are restrictions on the hours you can work. If you are enrolled in school, generally you are not allowed to work:

- before 7:00 a.m. on a school day;
- before 5:00 a.m. on a non-school day;
- after 10:15 p.m. the night before a school day;
- more than 6 days in a row when schools is in session;
- more than 6 hours on a school day;
- more than 10 hours on any holiday, vacation, or workshop day; or
- more than 24 hours in a week when school is in session.

When school is not in session the requirements change slightly. At those times, you may not work:

- more than 10 hours in any one day (weekend, holiday, vacation, or workshop); and
- more than 50 hours in a week.

When you're 16 or 17, the law says you can work for any kind of business as long as the job is not considered hazardous.

### **Workers Under Age 16**

If you are under age 16, there are additional restrictions on the hours you are allowed to work. When school is in session you may not work:

- more than 3 hours on a school day, including Friday;
- more than 18 hours in a week that school is in session one or more days;
- after 7:00 p.m. during the school year.

When school is not in session workers you may not work

- more than 8 hours in any one day (weekend, holiday, vacation or workshop);
- more than 40 hours in a week (school must be out entire week);
- after 9:00 p.m. during summer vacation.

There are also many kinds of jobs workers under age 16 are not allow to do. For example, 14 and 15 year olds cannot work in most manufacturing, mechanical, dry cleaners, bakeries, hotels/motels, and some other service industry businesses.

### **Workers Under Age 14**

If you are under 14, you may not work unless you have a permit and the superintendent of schools has certified your academic standing. By federal law, workers under 14 years old may not work in most businesses. There are exemptions that allow for some agricultural workers to work more hours.

If you have questions about specific industries or business, exemptions, hours, or how to obtain permits contact the Bureau of Labor Standards at the Maine Department of Labor ([contact information on page 79](#)) or see this website:

<https://www1.maine.gov/labor/posters/childlabor.pdf>

### **Drugs and Drug Testing**

**Drug Testing:** In general, Maine employers must have permission from the state Department of Labor (DOL) to conduct drug tests. Most employers have permission to test applicants only, but some employers also have permission to conduct random drug tests of employees, and/or drug tests on employees in the event of two “probable cause incidents.” Want to know if your employer or potential employer has permission to drug test? The Maine DOL publishes an annual report about drug testing in Maine, which includes a list of employers who have permission to conduct drug testing. It is available here: [http://www.maine.gov/labor/labor\\_stats/publications/substanceabuse/index.html](http://www.maine.gov/labor/labor_stats/publications/substanceabuse/index.html)

It may be a violation of the Americans with Disabilities Act for an employer to deny you a job because you are taking methadone prescribed by a doctor. Many people are on methadone, suboxone, or take marijuana.

**Drug use:** People who are addicted to drugs but who are no longer using drugs illegally are protected by the Americans with Disability Act from discrimination on the basis of past drug addiction. It would be illegal for an employer to refuse to hire you solely because you

are taking methadone or suboxone for past drug addiction. Also, the Americans with Disability Act and the Maine Human Rights Act make it illegal to fire employees or refuse to hire applicants because the employer wrongly believes they are addicts or using drugs illegally.<sup>35</sup>

What about medical marijuana?: While Maine passed a law legalizing the use of medical marijuana in 2008, marijuana is still illegal under federal law. Given that the Americans with Disability Act (ADA) says that current illegal drug users are not considered “individuals with disabilities” and do not have the protection of the ADA, it is unlikely that the ADA would protect the use of marijuana, even for medicinal purposes. Maine law is still somewhat unsettled; as of this writing, courts have generally decided in favor of employers.

<sup>36</sup>

Still, many agree that it isn't fair to deny someone a job because they use marijuana, or medical marijuana. Those workers who are protected by a union can often rely on the union to defend them against discrimination on this basis. For the rest of us, we can organize with co-workers and community members to convince an employer that use of marijuana outside of work should not be the concern of an employer.

If you feel you have been discriminated against in the hiring process because you take methadone, suboxone, or medical marijuana, you should consult with an attorney and consider filing a charge of discrimination with the Maine Human Rights Commission (MHRC).

## Transportation and Childcare

Getting to work and having safe affordable care for your children while you're at work are fundamental requirements of being able to get and keep a job, but these are not necessarily simple or easy matters to arrange. An inconsistent schedule—a problem we discuss on [page 41](#) — can make these even harder to arrange.

**Childcare:** Many workers in Maine who don't make high wages qualify for support in the form of child care vouchers from the Department of Health and Human Services (DHHS), which includes a parent payment, calculated on a sliding scale. You can apply online, and there is often no waiting list.<sup>37</sup> <http://www.maine.gov/dhhs/ocfs/ec/occhs/step.htm>

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<sup>35</sup> Kristin Aiello, personal conversation, November 13, 2014.

<sup>36</sup> Kristin Aiello, personal conversation, November 13, 2014.

<sup>37</sup> “Paying for Childcare,” *Child and Family Services*, accessed January 28 2015, <http://www.maine.gov/dhhs/ocfs/ec/occhs/payingchildcare.htm>.

**Transportation:** If you are on TANF/ASPIRE while working or going to school, you can receive transportation support from the government through the Parents as Scholars program. The program is run by the Maine Department of Labor and provides monthly benefits for parents in two or four year college programs get transportation support.<sup>38</sup> For more information on the program, go to:

<http://www.mejp.org/sites/default/files/PAS.pdf/>.

Page 17 of that resource has information about how to apply.

Transportation and childcare support are also among the many benefits that workers who have organized into unions sometimes negotiate to receive from employers.

**Rights when stopped by law enforcement:** Getting to and from work, or just to the grocery store, can be especially stressful for those of us without immigration authorization. Even if you are just a passenger in a vehicle that is stopped by the police, the officers may try to ask you questions about who you are, where you come from, where you live, and where you're going. Although it may feel very uncomfortable, you have the right to not answer these questions. Instead, you can ask the officer if you are free to go. If they say yes, walk - don't run - away.

If you decide to answer the officer's questions, remember that you have the right to answer some questions and not others. Anything that you tell the officer can be used against you. It is never a good idea to say you are a US citizen if you are not; likewise, it is never a good idea to use someone else's immigration documents or fake documents.<sup>39</sup> Lying to a government official is a crime—staying silent is not.<sup>40</sup>

\*Note that if you are a non-citizen with authorization to be in the US, you may have to show an officer your immigration documents if asked. For more information about this, as well as what to do if you are the driver of a vehicle stopped by law enforcement, see the ACLU's "Know Your Rights" booklet, available in nine languages here: <https://www.aclu.org/national-security/know-your-rights-when-encountering-law-enforcement>

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<sup>38</sup> "Parents as Scholars," *Maine Equal Justice Partners*, accessed January 28 2015, <http://www.mejp.org/library/parents-scholars>.

<sup>39</sup> ACLU's "Know Your Rights" booklet Section IV: Advice for Non-Citizens, accessed March 16, 2015, <https://www.aclu.org/national-security/know-your-rights-when-encountering-law-enforcement>

<sup>40</sup> ACLU's "Know Your Rights" booklet Section I: Questioning, accessed March 16, 2015, [https://www.aclu.org/files/kyr/kyr\\_english\\_1.pdf](https://www.aclu.org/files/kyr/kyr_english_1.pdf)

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## **ORGANIZING VICTORY: Driving Towards Human Rights**

*“Whether licenses or citizenship, our drive is not a piece of paper; it’s our rights and dignity.”*

*—Alberto Madrigal, Migrant Justice Member*

*After a campaign demanding the right to freedom of movement, members of Migrant Justice celebrated a major victory in 2013 with the passage of legislation that extends access to driving and a state-issued ID to residents regardless of immigration status.*

*Migrant dairy farm workers, who are often isolated on rural Vermont farms without access to public transportation, initiated the campaign. Before the victory, workers had to drive without a Vermont license, or pay for expensive rides just to run errands, see the doctor, or simply go anywhere away from the farms where they live and work.*

*The program eliminates the requirement of a Social Security Number in order to access state-issued IDs, allowing undocumented workers, refugees, and asylum-seekers to legally acquire an ID and driving privileges. Having access to a Vermont ID provides a new level of safety to farm workers who can now move more freely with less fear of racial profiling and deportation. Campaign leader Danilo Lopez, who has worked on a dairy farm since moving to Vermont explained, “We left fear behind and we left the shadows to come out and organize for our rights.”*

*“Put yourself in our community’s shoes,” Lopez told legislators. “We work hard and at the end of the day we can’t go anywhere. . . [T]he milk moves freely, but the people can’t. . . [T]he road [to comprehensive federal immigration reform] could be years out. We need to get to the doctors and buy our food today.”<sup>41</sup>*

*After over a year of advocacy by farmworkers and their allies, Migrant Justice was able to move a majority of Vermont legislators to support expanded access to driving privileges for all Vermont residents. One of Migrant Justice’s members, Freddy Carrillo, shared at the victory celebration: “This win was possible thanks to the hard work of our organizers, volunteers, drivers, and my fellow workers. I have learned that I’m not alone. Since I joined Migrant*

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<sup>41</sup> “Driving Towards Human Rights in Vermont,” <http://migrantjustice.net/node/200>, accessed March 2015.

*Justice, I have learned that when we unite and speak up, we are unstoppable. Let this be the beginning of many victories to come.*<sup>42</sup>

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<sup>42</sup> “Migrant Justice takes it to DC: Joining our voices for Comprehensive Immigration Reform”, <http://migrantjustice.net/node/201>, accessed March 2015, and “We Won! Freedom of Movement is a Human Right in Vermont!” Migrant Justice, accessed March 2015, <http://www.migrantjustice.net/node/206>.

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# Rights on the Job

## Organizing with Your Co-Workers

The law understands that workers have the most power to change things by getting together and acting as a group. The law also understands that, for that very reason, many bosses will be nervous when this happens and might try to stop it from happening by punishing workers who support a union or otherwise try to get together to support each other. For example, the employer might reduce their hours, change their schedules, or even fire someone. If the boss does something like that in retaliation for the workers trying to change their working conditions, it's illegal. Of course, when workers act together to try to change something, often the employer will listen and negotiate with workers rather than break the law. The more workers are united, and the more allies they have in the community, the better the chances are that the boss won't retaliate. [For more on organizing see page 12.](#)

**Your right to talk about wages:** The same law that protects you from retaliation when you act together to improve things at work also says you have the right to talk to your co-workers about your pay. That means that employers are breaking the law if they try to prohibit you from discussing your pay with your co-workers. The penalties aren't generally huge; often the boss will just have to hang up a poster saying they won't try to prevent those conversations. But the logic is very clear: if you can't talk to your co-workers about what you're all earning, than it's going to be hard to confront your employer about any unfairness.

**Your right to talk about forming or joining a union:** The AFL-CIO defines a union as “ a democratic organization of employees in a workplace who choose to join together to achieve common goals. By forming unions, employees can work collectively to improve working conditions, including wages, benefits, hours and job safety, to resolve disagreements between employees and employers, and to find the best ways to get the work done.”<sup>43</sup>

Workers are legally protected when they talk to their co-workers about the idea of forming a union. As long as workers are allowed to talk about non-work matters while at work, then they're allowed to talk about forming a union.

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<sup>43</sup> “Learn About Unions,” *AFL-CIO*, accessed January 28 2015, <http://www.aflcio.org/Learn-About-Unions>.

If you think your employer is violating your right to talk about forming or joining a union, contact the Workers' Center or the National Labor Relations Board Region 1 ([see page 80](#)). If you work for a public employer (a town, city, county or state government) contact the Maine Labor Relations Board ([see page 80](#)); and if you work for the federal government, contact the Federal Labor Relations Authority ([see page 80](#)).

Workers in all different kinds of jobs have come together to form unions. Here in Maine in 2013, 600 lobstermen came together and formed the Maine Lobstering Union. Maine unions are also organized into regional bodies that work together to promote the interests of workers and union members all over the state. In southern Maine, that's the Southern Maine Labor Council or the Western Maine Labor Council, depending on your location.

If you're interested in joining a union or organizing a union with your co-workers, contact the Workers' Center or the Maine AFL-CIO, which also helps workers find and connect with existing unions ([see page 76 for contact information](#)).

**A Note on So-Called "Right to Work":** Many people have heard the term "right to work," especially describing states - as in Texas is a "right to work" state. But most people don't really know what it means. To understand what "right to work" is all about, you need to understand a little bit of how unions work.

If your workplace is unionized, you can choose whether to be a union member or not. Union members own the union, and can help lead the it by serving in leadership roles, negotiating contracts, or voting for co-workers to do those things. Non-members are more like consumers, and can't vote in union elections or run for office themselves, but they still are covered by any contract that the union negotiates, and still get all the benefits of having the union. That means they get union representation if they face discipline or termination or want to argue for a better interpretation of the contract. It means they get all the raises and vacation time and rights to be heard at work that are negotiated by the union and set out in the contract.

Because unions represent all workers in a workplace or under a contract—members and non-members alike—unions are in a much stronger position to support workers when they have financial support from all workers. To get this support, unions frequently try to negotiate a contract provision, often called "union security clause," which requires non-members who file objections to pay a fee (some percentage of dues) reflecting the what the union spends for them on things like bargaining, representation, and governance. (Workers with religious objections can sometimes pay the fee to a different organization



instead of to the union.) Some states have banned this practice, making it illegal for a union and an employer to negotiate and agree to include such a clause. Those are “right to work” states.

Although the name implies that the laws protect the workers’ individual freedom, many argue that the real goal is to destroy the power of unions. Unions are still the strongest counterbalance to corporate power in the US, and generally staunch defenders of the rights of workers. In an effort to communicate the true purpose of these laws, many use the term “right to work for less.” They point to evidence that such laws drive down wages and do nothing to help a state’s economy.<sup>44</sup> For example, workers in states with “right to work” laws earn an average of \$5,680 less a year than workers in other states.<sup>45</sup>

## Scheduling

Your work schedule is one of the most important aspects of your job, since it can impact childcare, transportation, time with your family or loved ones, when and how much you sleep, and what else you can do with your day. However, in certain industries like retail and food service, workers are often left guessing whether or how much they’ll end up working on a given day. By Maine law, employers can change workers’ schedules at any time, and there are no laws requiring a certain amount of time between shifts.<sup>46</sup> (Nurses are an exception, with a required 10-hour break after any 12-hour shift.)<sup>47</sup> Employers can also require overtime, although they cannot require more than 80 hours of overtime in any two-week period. There is much organizing left to do for workers in Maine to have control over their schedules. Organizing elsewhere has already led to some victories.

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### ***ORGANIZING VICTORY: Retail Workers Bill of Rights***

*“Now that this bill is going to pass, it will change my quality of life.... Having a more regular schedule will allow me to not only work for a living but also pursue my academic goals.”*

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<sup>44</sup> “EPI Research on ‘Right to Work’,” *Economic Policy Institute*, accessed January 28 2015, <http://www.epi.org/publication/right-to-work-research/>.

<sup>45</sup> “Right to Work,” *AFL-CIO*, accessed January 28 2015, <http://www.aflcio.org/Legislation-and-Politics/State-Legislative-Battles/Ongoing-State-Legislative-Attacks/Right-to-Work>.

<sup>46</sup> “Frequently Asked Questions,” *Maine Department of Labor*, accessed January 2015, [http://www.maine.gov/labor/labor\\_laws/faqs.html](http://www.maine.gov/labor/labor_laws/faqs.html).

<sup>47</sup> “Maine Employee Rights Guide,” *Maine Department of Labor*, accessed April 2015, [http://www.maine.gov/labor/labor\\_laws/publications/employeeightsguide.html](http://www.maine.gov/labor/labor_laws/publications/employeeightsguide.html).

*In 2014, San Francisco Jobs With Justice decided to challenge abusive working conditions at retail businesses in the city, focusing especially on “just-in-time scheduling” which allows employers to change workers’ schedules with no advance notice. Organizer Gordon Mar explained, “In the past year, we’ve heard loud and clear from the community that a higher minimum wage is not enough to survive in San Francisco—people also need access to fair and predictable hours on the job.”<sup>49</sup>*

*With support from unions and community groups, Jobs with Justice introduced the Retail Workers Bill of Rights, which was passed unanimously by the San Francisco Board of Supervisors. The Bill of Rights requires employers to post schedules two weeks in advance. Employers who change a worker’s schedule less than a week in advance are required to pay that worker an hour’s pay at their normal rate of pay, with two hours’ pay for a schedule change less than 24 hours in advance. Employers who cancel a worker’s shift with less than 24 hours of notice are required to pay that worker two to four hours’ worth of wages. The Bill of Rights also requires retailers increase the hours of existing part-time workers before hiring more part-time workers. They also must retain current workers for at least a 90-day trial period if their company is bought or sold.<sup>50</sup>*

*Workers fought preemptively with this campaign, guided by a vision of fairness. “It’s really exciting to be part of something that’s like, hey, we’re not just going to wait for the company to do something, we’re going to put our foot down here,” said Michelle Lim of Jobs With Justice.<sup>51</sup>*

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## **Temp and Perma-Temp Workers**

The second largest employer in the United States today is a company that many people have never heard of. It’s called Kelly Services,<sup>52</sup> and it is a temp agency that sends people to work at all different kinds of jobs for anywhere from a day to several years. Since the 2008

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<sup>48</sup> Chen, Michelle, “Want to Exploit Retail Workers? In San Francisco, It’ll Cost You,” *The Nation*, December 5, 2014, accessed March 2015, <http://www.thenation.com/blog/192001/retail-workers-rising-bay#>

<sup>49</sup> Williams, Jonathan, “New Bill in San Francisco Takes Aim at Abusive Work Schedules” Oct 1, 2014, accessed March 2015, <http://www.jwj.org/new-bill-in-san-francisco-takes-aim-at-abusive-work-schedules>

<sup>50</sup> “Everything You Need To Know About San Francisco’s Retail Workers Bill of Rights,” *Retail Workers Bill of Rights*, accessed January 2015, <http://retailworkerrights.com/everything-you-need-to-know-about-san-franciscos-retail-workers-bill-of-rights>.

<sup>51</sup> “How Workers in One City Won the Fight Against Too Few Hours on Too Short Notice,” *Alternet*, Accessed March 2015, <http://www.alternet.org/labor/how-workers-one-city-won-fight-against-too-few-hours-too-short-notice>.

<sup>52</sup> “The iPhone Economy.” *The New York Times*. The New York Times, 19 Jan. 2012. Web. 16 Mar. 2015. <http://www.nytimes.com/interactive/2012/01/20/business/the-iphone-economy.html?ref=business>.

great recession, temp jobs have grown 10 times faster than private-sector jobs as a whole.<sup>53</sup> Even stable, decent-paying manufacturing jobs are disappearing and being replaced with poorly-paid temp jobs.

Unfortunately, Maine is part of this trend. From 2007 to 2012, temp jobs in Maine increased by 31%.<sup>54</sup> Temp jobs generally have lower pay and fewer or no benefits like sick leave, vacation days, health insurance or retirement plans. One study showed that temp workers are twice as likely as permanent employees to suffer injuries doing the same work.

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**Rights as a Temp:** If you're working as a temp, there are some basic things you should know. First, you still have all the same legal rights—to be paid the minimum wage and overtime pay, to be free from discrimination, and to organize for better working conditions—as permanent workers. Depending on the job, you may be considered an employee of the temp agency, or the company you're sent to work for, or both as joint employers. No matter who your employer is legally, that employer is still subject to all the wage, safety, and anti-discrimination laws as other employers.

Also, if you need to take a leave because of your own serious illness, to care for a seriously ill family member, to have a baby or adopt a child, you may be entitled to protection under the Family and Medical Leave laws ([see "Family and Medical Leave" on page 69](#)). Though you won't get paid while you're out, your job should be there for you when you're ready to come back. Whether you qualify for this kind of leave depends, among other things, on how much control the company you're working for has over your hiring and working conditions. It also depends on whether you have worked for the minimum hours or months required. For help navigating these questions, [see section on page 68](#), contact the Workers' Center or Pine Tree Legal Assistance ([see page 77 for contact information](#)).

Temps are also entitled to unemployment compensation, just like regular workers. It may be harder for you to qualify for unemployment compensation benefits as a temp worker, though, because you may not have worked enough hours or earned enough money to qualify. ([For more information on unemployment insurance, see page 73.](#)) If you lose a job

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<sup>53</sup> Grabell, Michael, "The Expendables: How the Temps who Power Corporate Giants are Getting Crushed," *ProPublica*, published June 27, 2013, <http://www.propublica.org/article/the-expendables-how-the-temps-who-power-corporate-giants-are-getting-crushed>.

<sup>54</sup> Anderson, J. Craig, "High Demand for Temp Jobs in Maine has Mixed Meaning," *Portland Press Herald*, published September 2, 2013, <http://www.pressherald.com>.

<sup>55</sup> Smith, CK, et al, "Temporary Workers in Washington State," *American Journal of Industrial Medicine*, February 2010, 53(2):135-45.

that you got through a temp agency, be sure to report back to the agency; otherwise your unemployment claim may be denied on the basis of you not being available for work.

**Having a Say in Your Wages:** Just because you're a temp doesn't mean you can't negotiate for a higher wage. A temp agency typically charges the employer that hires you between 20%-50% of what you're paid, even though you're the one doing the work. Since the worksite company is paying a lot more for you than you're getting, if you want to negotiate for a higher rate, you can tell the temp agency you deserve some of that money.

In some places temps are getting together with permanent employees to try to unionize.

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### ***ORGANIZING VICTORY: Temp Workers Have Rights Too!***

*"With this victory, we forced the company to respect our rights. We showed that when workers are united we can stand up to the biggest corporations in the world and win."*

*- Striking Roadlink worker Ted Ledwa<sup>56</sup>*

*Increasingly, major retailers like Walmart and Target use third party temporary staffing companies to provide workers for their warehouse and distribution operations. Temporary staffing in warehouses allows big corporations to distance themselves from the conditions of their low wage workers who disproportionately experience wage theft, payment under the minimum wage, unstable hours, and health and safety violations.*

*Organizations like Warehouse Workers for Justice in Illinois have been supporting workers to recover lost wages and organize for better wages. Roberto Gutierrez is an undocumented warehouse worker who was paid only \$57 for 12 hours of work when he received his first check from Eclipse Staffing in 2011. "I was legitimately pissed," he explained. "I get pretty sick of hearing that employers can do whatever they want, and we [Mexicans] will sit back and take it. That didn't sit well with me." He worked with Warehouse Workers for Justice to file a lawsuit.<sup>57</sup>*

*Apart from lawsuits, warehouse workers are also taking collective action to address injustices in their workplaces. In 2012, Warehouse Workers for Justice members went on strike and won*

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<sup>56</sup> "Walmart Warehouse Strikers to Return to Work with Full Back Pay," *Warehouse Workers for Justice*, accessed March 2015, <http://www.warehouseworker.org/news/2012/10/walmart-warehouse-strikers-to-return-to-work-with-full-back-pay/>.

<sup>57</sup> "Reclaiming Wages a Tough Road for Temp Workers," *Chicago Reporter*, accessed March 2015, <http://chicagoreporter.com/best-of-2014-reclaiming-wages-a-tough-road-for-temp-workers/>.

*a historic victory against Walmart and its subcontractor Roadlink. Workers went out on a one-day strike supported by hundreds of thousands of people nationwide, demanding that Walmart take responsibility for working conditions throughout its supply chain. The action brought to light the conditions of warehouse workers and better-positioned workers to fight for better wages and conditions.*<sup>58</sup>

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## **Keeping Safe at Work**

All work impacts our physical health, whether we spend eight hours a day in front of a computer, on our feet at a restaurant, or lifting boxes in a warehouse. Sometimes the impact can lead to serious or long term injury or illness. Maine has one of the highest rates of workplace injury in the country.<sup>59</sup>

The law requires employers to take certain measures to maintain safe, healthy work places, but employers don't always comply. It's up to you, as a worker, to watch out for your own safety and keep your worksite safe for your co-workers.

**Right to a "Safe and Healthful Workplace":** According the Maine Department of Labor,<sup>60</sup> you have the right to a safe and healthful workplace, which in practice means that you have a right to:

- information your employer has about any chemicals, toxins, noise, or other job related hazards in your workplace;
- report dangerous conditions to your employer or report your employer for health and safety violations without retaliation;
- refuse work that puts you in immediate danger of serious harm as long as you ask for the employer to fix the situation first and can document the hazard; and
- file a complaint about workplace hazards.
  - **Private sector workers:** In Maine call OSHA at 207-626-9160
  - **Public Sector Workers:** Call the Bureau of Labor Standards of the Maine Department of Labor at 207-623-7900

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<sup>58</sup> "Walmart Warehouse Strikers to Return to Work with Full Back Pay," *Warehouse Workers for Justice*, accessed March 2015, <http://www.warehouseworker.org/news/2012/10/walmart-warehouse-strikers-to-return-to-work-with-full-back-pay/>.

<sup>59</sup> "Maine Recorded 19 Workplace Deaths in 2013; All Victims Were Male," *Bangor Daily News*, Accessed April 2015, <http://bangordailynews.com/2014/12/08/business/maine-recorded-19-workplace-deaths-in-2013-all-victims-were-male/>.

<sup>60</sup> "Employee Rights and Responsibilities," *SafetyWorks!*, Accessed April 2015, [http://www.safetyworksmaine.com/safe\\_workplace/rights-responsibilities.html](http://www.safetyworksmaine.com/safe_workplace/rights-responsibilities.html).

If you are concerned about health and safety in the workplace you may want to learn more about the rights you have in relationship the specific conditions. Contact the Workers' Center or The Maine Department of Labor's SafetyWorks! program (1-877-SAFE-345, 1-877-723-3345).

It is always a good idea to keep detailed documentation of any violations of health and safety codes in order to make sure your rights are enforced.

**Sanitation:** One toilet facility and a place to wash your hands must be available for each 20 workers. They must be within 1/4 mile from where you are working. Toilets must work and be kept clean. Hand washing facilities must be filled with potable (drinkable) water and kept clean. There must also be soap and single-use towels.<sup>61</sup>

**Water:** You must have drinking water available near where you are working. The water must be cool and there must be enough for everyone. Your employer must tell each worker where the toilets, drinking water, and handwashing facilities are and let you use them when you need to.<sup>62</sup>

**Injury or Illness:** If you are injured at work or become ill because of the environment at your workplace you may be eligible for Workers' Compensation benefits to cover your medical bills and and lost wages. [See page 63 for more information.](#)

If you are a farm worker and you need help seeing a doctor, getting your bills paid or receiving wage benefits, contact Pine Tree Legal Assistance ([see page 77 for contact information](#)). Otherwise, you can contact the Workers' Compensation Board ([see page 79 for contact information](#)).

Attorneys in Maine frequently take workers' compensation cases on behalf of clients who cannot afford to pay a fee upfront. Contact the Workers' Center for a referral to an attorney.

## Social Media Rights

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<sup>61</sup> "Farmworker News," *Pine Tree Legal Assistance*, accessed January 28 2015, <http://www.ptla.org/farmworker-news>.

<sup>62</sup> Ibid.

Your Facebook, Twitter, SnapChat, Instagram, and other social media accounts may seem private to you, but your employer might think differently. Employers may want to have full access to your accounts in order to monitor what you say about the company to your social networks, to make sure you are really sick when you call out of work, or to investigate allegations of sexual harassment and other violations of the law or workplace policy. Whatever their reasons, many employers are monitoring social media and making decisions about who to hire and who to fire based on what they learn from workers' online presence. Because social media is a relatively new area of employment law, the rights of employees in this area are also relatively uncharted.

**Posting on Social Media:** Employers generally have a right to monitor any activity taking place on their own electronic devices, including computers, tablets, and cell phones. Employees should be aware of that when using employer-owned devices. Many employers have social media or computer or internet use policies, and if so, it's a good idea to understand what those are.

The law is still developing regarding whether you can be fired for what you say about your employer on social media—even if you are using your own device. For now, you should assume that anything you say on social media is public, that your employer is going to find out what you say, and that you can be fired for it.

The one exception to this is that an employer cannot discharge an employee for speech that is considered “concerted activity,” which the National Labor Relations Board (NLRB) describes as two or more workers acting together to improve their conditions, or sometimes even a single worker acting alone if they consult with other workers first.<sup>63</sup> The NLRB protects the right of most workers to organize, and in so doing would likely protect your right to post about overall conditions in your workplace. The courts have recently ruled in favor of employees who were fired for posts on Facebook when the posts concerned multiple workers or were commented on by other employees with the same issues. In other words, to be protected, the post can't be a personal gripe; rather, it has to be in consultation with or seeking the support of other workers, ideally about something that affects more than one person.

**Being Required to Give Your Social Media Password:** In Maine it is currently legal for your employer to require that you give it the password to your social media accounts so that it has full access to your posts. Since 2012, eight states have banned this practice and

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<sup>63</sup> “Protected Concerted Activity,” *National Labor Relations Board*, accessed April 2015, <http://www.nlr.gov/rights-we-protect/protected-concerted-activity>.

20 more are considering legislation. In 2014 Maine voted to conduct a study on the impact of a ban. With support of workers, a ban could pass in Maine.<sup>64</sup>

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<sup>64</sup> Stinson, Jeffrey, "Password Protected: States Pass Anti-Snooping Laws" July 8, 2014, accessed March 2015, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/07/08/password-protected-states-pass-anti-snooping-laws>



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## Getting Paid

The laws governing how much we get paid and how we get paid are products of years of struggle by working people. While many people never work less than 40 hours per week because they rely on multiple jobs to make ends meet and still don't get overtime, legal standards such as overtime pay and the minimum wage are important protections to build upon, and the laws governing these standards are hotly contested.

### Not Getting Paid all You Are Owed

Unfortunately, wage theft—employers taking or withholding wages, tips or benefits earned by workers—is very common. While some laws exist to prevent wage theft, it's often up to individual workers to make sure it doesn't happen to them. Some common forms of wage theft are minimum wage violations, failure to pay overtime, working off the clock, working through breaks, misclassification as independent contractors, illegal deductions from wages or tips, or not paying workers at all.

It's a very good idea to keep a written record of when you work, what you're paid, and when. Writing down the details of when you work, what you are paid, and when can make an enormous difference in your ability to challenge any wage theft. If it comes down to it, a written record also helps convince a decision-maker that your side of the story is true.

There are also two Departments of Labor that have authority in Maine—a state and a federal one. Although both enforce wage and hour laws, in reality they often fail to help employees who have been victims of wage theft. Sometimes they focus primarily on large employers or on cases with many victims. And each agency has priorities that can shift over time, as administrations change.

If you suspect that your wages are being stolen, contact the Workers' Center or an attorney. Attorneys will often represent workers for free, taking their fee out from any wages they recover. If you were to sue your employer for wage theft and win, they would have to pay you twice the amount of wages they owed you, and they would also have to pay your lawyer's fees.<sup>65</sup>

It is illegal for your employer to retaliate against you—demote, fire, or harass you, etc.—for claiming your rights described in this section. [See page 72, Whistleblower Protections.](#)

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<sup>65</sup> "Title 26, §670: Employees' Remedies," *Office of the Revisor of Statutes*, accessed January 28 2015, <http://www.mainelegislature.org/legis/statutes/26/title26sec670.html>.

**Deductions:** Aside from government taxes and insurance, there are only a few reasons your boss can make deductions from your pay. Federal law says employees can be required to pay for uniforms and their upkeep as long as the deduction of these costs doesn't reduce the employee's earnings to below the minimum wage. And if you live in housing owned by your employer, it can deduct rent, lights and water. If you're an agricultural worker, your employer is supposed to tell you in advance how much it plans to deduct for housing.<sup>66</sup>

Sometimes employers will try to deduct things that they're not authorized to deduct. Cash shortages, inventory shortages, bounced checks or declined credit cards, and damage to the employer's property—none of those are things that the boss can take out of your pay.

**When the work clock starts running:** Your employer is required to pay you for all of your all time that is spent on activities that are necessary for you to fulfill your job duties. Generally, you must be paid when you are at your work location and your employer controls your time. This means you must be paid for activities such as trainings and meetings. You must also be paid for activities that take place before or after you perform the main duties of your job if those activities are clearly linked to the performance of your job. For example, the US Supreme Court ruled in 1956 that workers who worked with toxic chemicals had to be paid for time spent changing clothes and showering because those activities were necessary parts of the job. However, in 2014 the US Supreme Court ruled that workers at an Amazon distribution center did not have to be paid time spent going through a required security check at the end of their shift because that was not a task related to actually performing the job.<sup>67</sup>

If you think you may not be getting paid for all the hours you're working, contact the Workers' Center or the Maine Dept. of Labor ([see page 79 for contact information](#)).

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<sup>66</sup> "Recordkeeping, Reporting, Notices and Posters," *Employment Law Guide, United States Department of Labor*, accessed January 28 2015, <http://www.dol.gov/compliance/guide/mspa.htm#RRN>.

<sup>67</sup> Liptak, Adam, "Supreme Court Rules Against Worker Pay for Screenings in Amazon Warehouse Case" Dec 9, 2014, accessed March 2015, <http://www.nytimes.com/2014/12/10/business/supreme-court-rules-against-worker-pay-for-security-screenings.html>

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## **ORGANIZING VICTORY: Wash Away Injustice**

*"We must unite or we will be mistreated."*

—Jose Rolando Cuestas, CLEAN Car Wash Member<sup>68</sup>

*CLEAN Carwash Workers' Center has been winning gains for carwash workers in Los Angeles for over a decade. It was workers themselves in the largely unregulated carwash industry that started the organization, to combat highly exploitative working conditions. Massive wage theft, constant exposure to toxic chemicals, a lack of drinking water or meal breaks, and intimidation by management is common in the industry.*

*"I remember in my last job the owner made us work 11 hours and we would only get paid \$35 per day. . . With my lost wages, I would be able to improve my family's quality of life," says Carlos Cuestas, a member of the CLEAN Car Wash Campaign.*

*The CLEAN Carwash Campaign is a unique joint project of CLEAN (Community Labor Environmental Action Network) and the United Steelworkers Union Local 675, and it's uniting car wash workers across the city. There are approximately 10,000 car wash workers in LA alone, with 20,000 in Southern California, most of whom are Latino immigrants. Through strong organizing, they are winning gains in employment standards and industry practices.*

*In a series of victories, car wash workers have signed collective bargaining agreements at 23 carwashes across the Los Angeles. And the movement is growing: In 2013, a carwash in New York signed their first contract. The organizing drives have garnered the support of community groups and religious congregations, and organizers have used tactics including a candlelight vigil at the home of a carwash owner, numerous picket lines, and car caravans leading consumers to "Better Carwash" union businesses.*

*At the center of the effort is the CLEAN Carwash Workers' Center, a space that is creating "a culture of solidarity," where workers can "exercise their right to belong." The Center offers educational support, assistance in filing complaints against exploitative employers, and access to health care for carwash workers and their families. And to make sure the worker-led movement continues to grow, the Center trains car washers to be organizers.*

*"[Car wash owners] want hard-working people, but many do not want to provide healthy, safe working conditions for their employees. We're starting to turn that around but policies that*

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<sup>68</sup> Crisostomo, Ed, "Union-backed car wash workers fight for more pay, shade," Orange County Register, Aug. 31, 2014, accessed March 2015, <http://www.ocregister.com/articles/car-633355-workers-wash.html>

support the workers would be a big step forward,” explains Rosemarie Molina of the campaign.<sup>69</sup>

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## Not Getting Paid All You Deserve

**Living Wage:** Low wages affect all kinds of people: young workers struggling to repay student loans or find housing, parents working multiple jobs to support their kids, older workers who cannot afford to retire, and many others. In 2012 and 2013, fast food and retail workers, with the help of the Service Employees International Union (SEIU), began organizing for \$15 an hour and the right to organize. Across the country, workers went out on strike, stood up for each other to prevent retaliation, and fought racism and sexual harassment at work. They won battles and also learned about their strength in numbers. As much as it was about raising wages, for many this organizing was about building power, dignity and respect, as well as building on movements that came before, like Occupy. It has also helped to further those movements that have come since, like Black Lives Matter.<sup>70</sup>

## Minimum Wage and Overtime Laws

**Minimum Wage:** In Maine, like most places, minimum wage is not a living wage. As of 2015, the Maine minimum wage is \$7.50 per hour for non-tipped workers, and \$3.75 per hour for tipped workers. According to one study, it takes \$10 an hour in 2013 for a single adult with no kids to cover living expenses in Portland. For a single person with a child, the living wage jumps to \$22.75.<sup>71</sup>

**Overtime:** For most employees who work more than 40 hours in a given week, ([see the next section for exceptions](#)) your employer has to pay you 1.5 times (time and one-half) your normal hourly wage for each of those extra hours over 40. The “normal wage” is the wage you actually earn, and includes any bonuses or commissions. It is legal for an employer to require that employees work mandatory overtime. However, by Maine law an employer may not require an employee to work more than 80 hours of overtime in any consecutive 2-week period.<sup>72</sup> Some practices, such as paying workers per shift or day,

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<sup>69</sup> “Carlos Cuestas: Administrative Relief can Save My Career, Life and Family,” accessed March 2015, <http://www.cleancarwashcampaign.org/carlos-cuestas-administrative-relief-can-save-my-career-life-and-family/>

<sup>70</sup> Jaffe, Sarah, “Black poverty is state violence, too: Why struggles for living wage and criminal justice are uniting,” *Salon*, December 5 2014.

<sup>71</sup> “Living Wage Calculation for Portland city, Cumberland County, Maine,” *Poverty in America Living Wage Calculator*, accessed January 28 2015, <http://livingwage.mit.edu/places/2300560545>.

<sup>72</sup> “Wages,” *Maine Department of Labor*, accessed January 28 2015, [http://www.maine.gov/labor/labor\\_laws/publications/employeeightsguide.html#Wages](http://www.maine.gov/labor/labor_laws/publications/employeeightsguide.html#Wages).

independent of the number of hours worked, can be common in the restaurant and construction industries and may violate overtime laws if workers exceed 40 hours in a given week.

**Exemptions from minimum wage and overtime laws - Salaried workers:** People who work in executive, professional or administrative roles can be paid a fixed salary instead of an hourly wage and can be exempt from overtime laws. This includes supervisors, managers, directors and certain workers who have a college degree relevant to their job. But at the same time, many workers in these categories cannot lawfully be treated as exempt. By Maine law, salaried workers must be paid at least \$455 per week before taxes.

It is not uncommon for a dishonest employer to adjust workers' classifications and put them on salary to avoid paying overtime wages even though they are not in legitimate executive, professional or administrative roles. This is illegal.

If you think you should not be exempt and may be entitled to hourly wages and overtime, you should contact the Workers' Center, the Maine Department of Labor, or the U.S. Department of Labor for help.<sup>73</sup> ([See page 78 for contact info](#)).

**Other Exceptions:** Certain other workers may be exempt from minimum wage and overtime laws. According to the Maine Department of Labor, if you fall into one of the following categories, you may be exempt from minimum wage, overtime pay, or both:<sup>74</sup>

- People who work in agriculture or in food processing plants
- Workers whose earnings are from sales commissions
- Cab drivers
- Camp counselors
- People who catch or farm fish or marine life
- Switchboard operators in public telephone exchanges
- Some workers who make and sell goods from their homes
- Dependent members of the employer's family
- Public employees, including firefighters and police officers
- Automobile salespeople, auto mechanics, service writers, and auto parts clerks who are paid on a commission or flat-rate basis
- Drivers and drivers' helpers

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<sup>73</sup> "Frequently Asked Questions," *Maine Department of Labor*, accessed January 28 2015, [http://www.maine.gov/labor/labor\\_laws/faqs.html](http://www.maine.gov/labor/labor_laws/faqs.html).

<sup>74</sup> "Minimum Wage," *Maine Department of Labor*, accessed January 28 2015, <http://www.maine.gov/labor/posters/minimumwage.pdf>.

## Independent Contractors

One common way that employers try to keep down labor costs is by classifying workers as independent contractors rather than employees. This allows the employer to avoid paying overtime, workers' compensation insurance, unemployment coverage, Social Security contributions, and taxes. It also means the people doing the work are not protected by the National Labor Relations Act, making it much more difficult to form a union.

Often, employers claim their workers are independent contractors when they really are not. That "misclassification" is one of the most common violations of wage and hour laws and costs our nation billions of dollars. According to one estimate, misclassification cost the federal government \$2.72 billion in 2006 in lost income, Social Security, Medicare and unemployment insurance taxes and \$200 million in lost unemployment contributions.<sup>75</sup>

State and federal law determine whether workers are employees or independent contractors. This means that even if an employer asks you to sign something saying that you agree to be an independent contractor, they may still be violating the law and can be fined up to \$10,000.

Under Maine law, updated in 2013, a workers may only be considered an independent contractor if they meet the criteria in the following two lists:<sup>76</sup>

### **List A - Workers must meet all of the following:**

- have the essential right to control the means and progress of their work except as to final results;
- engage in an independently established trade, occupation, profession or business;
- have the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
- hire, pay, and supervise any assistants; and
- make their services available to some client or customer community.

### **List B - Workers must additionally meet three of the following:**

- Have substantive investment in the facilities, tools, instruments, materials, and knowledge used complete their work;

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<sup>75</sup> "Misclassification of Employees as Independent Contractors," *Department of Professional Employees, AFL-CIO*, accessed January 28 2015, <http://dpeaflcio.org/programs-publications/issue-fact-sheets/misclassification-of-employees-as-independent-contractors/>.

<sup>76</sup> "Employment Standard Defining Employee vs Independent Contractor," *Maine Department of Labor*, accessed January 28 2015, [http://www.maine.gov/labor/misclass/employment\\_standard.shtml](http://www.maine.gov/labor/misclass/employment_standard.shtml).

- are not required to work exclusively for the other individual or entity;
- are responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- have a contract that defines the relationship with the person paying them and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- their pay is based on factors directly related to the work performed and not solely on the amount of time expended by them;
- the work is outside the usual course of the business for which the service is performed; or
- they been determined to be an independent contractor by the federal Internal Revenue Service.

If you think you may have been misclassified as an independent contractor, contact the Worker’s Center, the Maine Department of Labor, the U.S. Department of Labor or a private attorney ([see Maine Department of Labor on page 79](#)).

[See page 54](#) for more information on paying taxes as an independent contractor.

### **Tipped Workers**

Many workers in Maine rely on tips as their primary source of income, making their livelihood dependent on the level of business at their workplace. However, under Maine law, even these workers are entitled to earn the state minimum wage (\$7.50 per hour), with a slightly more complicated pay structure than that of non-tipped workers.

The Maine minimum wage for a tipped worker - a worker who normally receives tips as part of their regular work duties - is set as half the minimum wage for non-tipped workers, so it is currently \$3.75 per hour. That is because it is assumed you’ll make up the rest in tips. But if you don’t, and your wage plus tips ends up being less than \$7.50 per hour in any week, your employer must make up the rest in wages.<sup>77</sup> And under federal law, if you spend more than 20% of your time doing non-tipped activities (activities that don’t earn you tips, such as working in the kitchen), your employer is required to pay you at least the non-tipped minimum wage, \$7.50 per hour, for those hours.<sup>78</sup>

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<sup>77</sup> “Frequently Asked Questions,” *Maine Department of Labor*, accessed January 28 2015, [http://www.maine.gov/labor/labor\\_laws/faqs.html](http://www.maine.gov/labor/labor_laws/faqs.html).

<sup>78</sup> “Fact Sheet #15: Tipped Employees Under the Fair Labor Standards Act,” *United States Department of Labor Wage and Hour Division*, accessed January 28 2015, <http://www.dol.gov/whd/regs/compliance/whdfs15.pdf>.

Some employers require their workers to pool their tips or “tip out” their co-workers. In this case, the following rules apply:<sup>79</sup>

- Your boss must notify you that your tips are being pooled.
- You can’t be required to share your tips with employees who don’t normally receive tips, like cooks, dishwashers and managers who do not serve customers.
- By federal law, managers who do not serve customers may not take a percentage of the tips. However, supervisors who don’t have hiring and firing power and who serve customers alongside the workers they supervise - sometimes called “shift leaders” or “managers on duty” - may take a percentage of the tips.
- If you tip out a co-worker, your boss cannot count that “tip out” as part of your earnings for the day for the purposes of making up the rest in wages.

If you’re a tipped worker in a restaurant, you’re entitled to service charges that customers pay, such as a 20% gratuity for large parties, since those have to be treated as tips, whether pooled or not.

Employers in Maine are also required to treat credit card tips as cash tips, and pay them in their entirety to the workers receiving tips.<sup>80</sup>

### **Your Right to a Pay Stub**

Pay stubs are typically the main way that workers track their earnings and hours worked, and for that reason they are very important in making sure that wage theft doesn’t occur. You have the right to be given a written pay stub every time you’re paid. One way to protect your right to fair compensation for your work is to familiarize yourself with each part of your pay stub and to check it for accuracy every time you are paid.

The pay stub should show the dates that the pay is for (the pay period), the total hours worked, your total earnings (“gross wages”—before anything is taken out), and a list of what, if anything, is taken out of your earnings (deductions).

If you are paid by direct deposit, you also have the right to get an accurate record of the transfer of money into your account, when the transfer is made, and all the information

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<sup>79</sup> Ibid.

<sup>80</sup> “Maine Laws for Tipped Employees,” *Nolo: Law for All*, accessed March 2015, <http://www.nolo.com/legal-encyclopedia/maine-laws-tipped-employees.html>.



required in a pay stub. If your boss gives you the statement electronically, by email or on a computer, you have to be able to print it out for free.<sup>81</sup>

## Getting Paid on Payroll Cards

A disturbing new trend among employers in Maine is to pay workers on payroll cards, which function like debit cards, but with fewer protections. Regular credit and debit cards carry protections like government insurance, theft reimbursement, overdraft protections and low-cost or free card replacement. Not so with payroll cards. While the cards may provide some convenience, they also mean workers carry more risk. For example, if you don't spend all of the money on your card, you can lose part of your pay. Or the bank can make you pay a fee for withdrawals after the first one. If your employer uses payroll cards, you have certain rights that you should know about.

First, in Maine you have the right to get paid without any cost to you. This means that at least on the first withdrawal, you must be able to withdraw all of your money from the payroll card for free.

Also keep in mind the following advice from the Pine Tree Legal Assistance publication *Do You Get Paid By Payroll Card? Know Your Rights Under Maine and Federal Law*:

- If you choose to get paid by payroll card, your employer must give you a written explanation of all the fees, limits, and protections that apply to use of the payroll card. The written explanation must be clear and easy to understand.
- The payroll card must give you a way to look at your account balance and the last 60 days of transactions. If you ask verbally or in writing, the payroll card company has to give you a written history of the last 60 days of your account.
- If someone steals money from your payroll card account and you report it within two business days, you must be protected against all but \$50 of the loss. The payroll card must also give you other theft protections if you report within 60 days.
- The payroll card company must have a way to resolve any mistakes you find in your account history if you report the mistake within 60 days of getting the history, as long as you report the mistake no more than 120 days after it happened.

If your employer violates one of these rules, you can report it to the Consumer Financial Protection Bureau ([see page 79 for contact information](#)). If your employer doesn't provide a free way for you to get paid on your payroll card, you can file a complaint with the Maine

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<sup>81</sup> "Title 26, §670: Employees' Remedies," *Office of the Revisor of Statutes*, accessed January 28 2015, <http://www.mainelegislature.org/legis/statutes/26/title26sec670.html>.

Department of Labor's Wage and Hour Division. You may also want to speak with the Workers' Center or Pine Tree Legal Assistance.<sup>82</sup>

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### ***ORGANIZING VICTORY: Overcoming Fear to Win Respect***

*"Low-wage workers are often afraid to speak out. But thanks to my co-workers' unity and collective action, we have made big changes in our workplace. . . through our campaign, the employer listened to workers' voices and now, we have higher wages and benefits such as healthcare and paid vacation. Most importantly, we are treated with greater respect."*

*—Mrs. Wu, a Yank Sing Worker<sup>83</sup>*

*In 2013 a group of immigrant workers approached the Chinese Progressive Association, a community-based organization in San Francisco, for help addressing wage theft and other labor issues at Yank Sing, a nationally-rated dim sum restaurant, and launched a workplace campaign to change these practices. Supported by community organizations, the campaign grew to nearly 100 workers in just a few months.*

*Organizer Shaw San Liu said the months-long campaign "took real direct organizing of workers, talking to workers, imagining something better, doing a lot of education. . . and then together taking steps where they had to face their biggest fears, which was risking their jobs to take on workplace actions."<sup>84</sup> Workers talked with each other to identify problems, created a set of demands, and took actions to encourage the management to negotiate with them. Workers staged a strategic work stoppage and walkout during business-friendly hours to catch the attention of management without a public disruption.*

*The landmark \$4 million settlement, affecting almost 300 workers, not only compensates for past wrongs, but provides workers with pay and benefits beyond what the law requires, including base wage increases, holiday and vacation pay, fully paid health care for full-time employees, a workers compliance committee, commitments to further strengthen and empower workers through workers' rights education, and more.*

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<sup>82</sup> "Do You Get Paid by Payroll Card?," *Pine Tree Legal Assistance*, accessed January 28 2015, <http://www.ptla.org/do-you-get-paid-payroll-card-know-your-rights-under-maine-and-federal-law>.

<sup>83</sup> "Press Release: Immigrant Workers Negotiate \$4 Million Settlement," *Chinese Progressive Association*, accessed March 2015, <http://cpasf.org/press/settlement-yank-sing>.

<sup>84</sup> "\$4 Million. That's How Much These Dim Sum Restaurant Workers Won in Back Pay," *The Nation*, accessed March 2015, <http://www.thenation.com/blog/192897/4-million-thats-how-much-these-dim-sum-restaurant-workers-won-back-pay#>.

*“Don’t be afraid; you can do it”, advises organizer Shaw San Liu. “There are laws to protect you, and when you come forward, you have a chance to win.”<sup>85</sup>*

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## **Interns are Workers**

It’s very common for businesses and organizations to hire interns, sometimes paying them and sometimes asking them to work for free. As you would expect, an internship can be a great opportunity for a person starting out in a field, but an internship can also be abused by an employer wanting cheap or free labor. Another problem with unpaid internships is that they tend to give an advantage to people (especially young people) from higher income families, since they are usually the ones who can afford to spend their time interning for free, rather than working a less prestigious job which pays.

If you’re an intern for a for-profit company, you should be getting paid, unless the internship is actually for your benefit. The Department of Labor sets out several more specific rules for classifying and internships.

## **Workfare Workers**

Over time some governments have experimented with and implemented policies of guaranteeing basic income to all residents.<sup>86</sup> Most others, including Maine, instead have only welfare systems where people must meet a number of requirements in order to receive aid. Some towns in Maine require people to participate in workfare as a condition of receiving general assistance.<sup>87</sup> Workfare is a government program that requires people to work in order to receive public benefits. To find out if your town has such a requirement, call your municipal social services office.

Even if your town requires you to participate in workfare, there are still some protections for you. For example, if you need emergency general assistance, such as for food, you cannot be required to participate in workfare before receiving aid. Also, if you cannot work

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<sup>85</sup> Ibid.

<sup>86</sup> For five years in the late 1970’s, every person living below the poverty line in Dauphin, Manitoba automatically got a monthly check from the government under a program called “mincome.” Unlike welfare, these payments went to low-income workers and others who didn’t qualify for welfare. Most people kept working (teenagers and new mothers were the only groups that sometimes stopped); most people simply carried on with a little more financial stability. Similar programs to provide a guaranteed basic income to all people have been used in Alaska, India, Uganda, and Switzerland. Shingler, Benjamin, “Money for nothing: Mincome experiment could pay dividends 40 years on,” published Aug. 26, 2014, <http://america.aljazeera.com/articles/2014/8/26/dauphin-canada-cash.html>.

<sup>87</sup> “General Assistance in Maine,” *Pine Tree Legal Assistance*, Accessed April 2015, <http://www.ptla.org/general-assistance-maine>. All information about workfare in this section refers to the same.

due to health problems, full-time childcare or a full-time job, you may be able to collect assistance without participating in workfare. By law, work done for workfare cannot interfere with paid work, interviews for paid work, or education such as high school or GED classes.

The general assistance that you receive should equal at least the minimum wage for the workfare hours that you work. The town is responsible for paying any expenses associated with your workfare work. If you don't finish your workfare job, you can lose your general assistance for 120 days. However, if your absence is excused or you make up the time that you missed, you should become eligible for general assistance again. If your town won't let you finish your workfare job, call DHHS at 1-800-442-6003. You can also call Pine Tree Legal Assistance if you are having trouble with workfare<sup>88</sup> ([see page 77 for contact information](#)).

### **If You Work, You Probably Pay Taxes**

Most people who are making any money have to pay taxes on it. Understanding how to navigate paying your state and federal taxes could be the subject of another entire manual. Paying taxes can be more complicated for some workers and a few examples are highlighted below. For other questions see Pine Tree Legal's Tax Tips. <http://www.ptla.org/tax-tips> or [tax resources on page 77](#).

**Tax Reporting for Tipped Workers:** Tipped workers and their employers are required to report 100% of workers' tips to the government to be taxed. However, it is common for workers in the service industry to report less than 100% of their tips, which may leave them vulnerable to a government audit and potentially owing the government back taxes, interest and penalties.

If you are a tipped worker, be aware that your hourly wage (\$3.75 is the tipped minimum wage) may not be enough to cover the taxes on all your tips. If this is the case, you will receive a paycheck for \$0 and the employer may take those taxes from your next paycheck. If you consistently receive paychecks of \$0, you may end up owing more than you expect when you file your taxes. To offset this, you may choose to pay extra in taxes up front so you won't face unexpected taxes later on.<sup>89</sup>

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<sup>88</sup> All information in this section from "General Assistance in Maine," *Pine Tree Legal Assistance*, accessed January 2015, <http://www.ptla.org/general-assistance-maine>.

<sup>89</sup> "Eight tips for employers and employees about reporting tips," *Hospitality Guild*, accessed January 28 2015, <http://hospitalityguild.com/GuidePro/Management/Taxtips.htm>.

**Taxes Reporting for People Who are Ineligible for Social Security Numbers:** Even if you do not have a social security number, you can still file your taxes. There are many reasons to consider doing this, including that it may one day be a way of proving you were in the United States and working. That could be helpful if the government reforms the immigration system to allow people status here. Given that, in addition to paying taxes, you should keep any documentation of your work, especially old paycheck stubs, even if they're in another name.

You can file a tax return without a social security number using an Individual Tax Identification Number (ITIN) instead. To get an ITIN number, you will need proof of identification, like a foreign passport. You must fill out a form called a W-7 (available at [irs.gov](http://irs.gov)) for each person in the family who needs a number, and bring it with your tax return to the IRS office in Portland. (If you would like future letters to you from the tax office to be in Spanish, you can submit the same form in Spanish. It's called the W-7[SP].) The people in that office will look at your passport, take the forms you filled out, and then after about 6 weeks, mail you a letter with your ITIN number. If you don't have a passport, you can submit two other documents.<sup>90</sup>

When you file your taxes, you may get credit for ("claim") dependents living outside the US, and you may be eligible for certain tax credits, and/or a tax refund. It's also possible you would have to pay some taxes.

To get free help preparing tax returns in southern Maine, [see page 76](#).

**Tax Reporting for Independent Contractors:** Independent contractors are considered "self employed" and pay taxes as such. One of the consequences of being misclassified, or illegally classified as an independent contractor, is that its more complicated and expensive to pay your taxes. If you were classified as an employee, your employer would withhold income, Social Security and Medicare taxes from your wages. As an independent contractor you are responsible for paying the full burden of taxes through the self-employment tax ([for more information on misclassification see page 54](#)).

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<sup>90</sup> See instructions here: <http://www.irs.gov/pub/irs-pdf/iw7.pdf> or instructions in Spanish here: <http://www.irs.gov/pub/irs-pdf/iw7sp.pdf>.

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# When You're Injured on the Job

For many of us, our jobs are strenuous or expose us to dangerous substances, and they take a toll on our bodies and our health. By one estimate, as many as 12.3 million workers are injured or ill due to work each year in the US.<sup>91</sup> In a just world, our jobs wouldn't lead to illness or injury, and if they did our employers would prioritize our health over our ability to produce profit.

## Workers' Compensation

One partial protection that most employees have is Workers' Compensation. "Workers' comp" is a type of insurance that Maine requires most employers to carry to provide for medical and wage replacement benefits in the event an employee suffers a work-related injury. Even employers who are not legally required to carry workers' comp, like some agricultural and domestic work employers, carry it anyway. (And if your employer does not carry workers' comp, that means you can sue them for injuries you get from work.)

Worker's comp has not always been around. Before the 1930s, injured workers had to prove their employers' negligence in individual lawsuits, making it very hard to get compensation. Workers' comp laws changed that, and now workers no longer need to prove their employers' fault, which is meant to make it easier for workers to get compensation. However, like many worker protections, in practice the workers' compensation system can be difficult to navigate successfully. Knowing your rights can help you claim your right to compensation more successfully.<sup>92</sup>

If you are injured or become ill at work because of the condition in your workplace, tell your employer or supervisor right away; if you don't do so within 30 days, your right to workers' compensation benefits may be lost. Specifically, tell them the date, time, place, and the cause and nature of the injury or illness. It is best to do this in writing. Even if the injury or illness is one that came on gradually over time, you still could be entitled to benefits.

If you are injured at work, get medical care—don't wait. Tell your doctor that you were injured at work. You shouldn't have to pay for medical care. It's important that you follow the doctor's orders and keep a record of medical visits, the doctor's name and address, and any costs, such as transportation and prescriptions.

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<sup>91</sup> "Rethinking Workers' Compensation," *National Economic and Social Rights Initiative*, accessed March 2015, <https://www.nesri.org/programs/rethinking-workers-compensation>

<sup>92</sup> Ibid.

When you report an injury or illness, your employer must file a “first report” of injury form within seven days with the Workers’ Compensation Board. If an employer refuses to pay your claim (though it would be their insurance carrier paying), that employer is required within 14 days to file a Notice of Controversy (NOC) to the Workers’ Compensation Board. After that a “Troubleshooter” from the Board should contact you to hear your side of the story. If your employer does not respond to your request within 14 days, it is required to begin paying you weekly compensation.

If your employer agrees to pay the claim, it has the right to refer you to a specific doctor for the first ten days of medical treatment. After that, you have the right to see a different doctor of your choosing. You are entitled to reimbursement for medicine, medical devices such as wheelchairs, and mileage for your visits to health care providers. If you miss more than 7 days of work, you are entitled to compensation for at least some of your days missed.<sup>93</sup>

In practice, many employers avoid taking the appropriate actions regarding Workers’ Compensation because they don’t want their insurance premiums to go up. The process can be time consuming and frustrating, and you may need advocates or support in the process. If you have any doubt about whether your employer is doing what it should, you should call your local Workers’ Compensation Board and ask to speak to the Troubleshooter. You may need the help of a lawyer. Contact the Workers’ Center for a referral to a lawyer, or with any questions about the process.

One resource for approaching the workers’ compensation system from a human rights perspective is the “Rethinking Workers’ Compensation” campaign at the National Economic and Social Rights Initiative (NESRI): [www.workerscomphub.org](http://www.workerscomphub.org).

## **Accessing Health Care Through Your Employer**

**Health Care is a Human Right:** Access to health care is also a basic human right, yet millions of people in the United States do not have access to any or enough medical insurance or the care that they need. Most people who have health insurance have access through and contingent upon their employer. One of the problems with this system is that people do not have continuous coverage and may lose coverage or be forced to change doctors when they change or lose their jobs, even if they are sick and require ongoing care. Private insurance and an employment-based health care system have created a health care

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<sup>93</sup> “Facts About Maine’s Workers’ Compensation Laws,” *Maine Workers’ Compensation Board*, accessed January 28 2015, <https://www1.maine.gov/wcb/facts%20workers%20comp11-12.pdf>.

crisis in which medical bills are the number one cause of debt and bankruptcies in the United States.<sup>94</sup>

Over the past 100 years, a system of employee-based health care developed alongside the private health insurance industry, creating our current crisis. The catalyst for this system was government policies that provided exemptions from wage controls and made health care a non-taxable business expense during World War II.<sup>95</sup> From that time until the passage of the Affordable Care Act in 2009, there have been numerous attempts to change the health care system to guarantee continuous access to health care for everyone, including the necessary step of separating health care from employment.

The Southern Maine Workers' Center is part of a coalition of organizations in Maine who are fighting for the human right to health care by advocating for a universal, publicly-funded health care system that would make health care a public good equitably accessible to every resident in the state. Health care is a worker justice issue, and organizing for our rights is the solution to our problem. Learn more about our campaign at: <http://www.maineworkers.org/what-we-do/health-care-is-a-human-right/>

**The Affordable Care Act:** The Affordable Care Act (ACA), also known as “Obamacare” has offered opportunities for more people to gain access to health insurance, but does not solve the fundamental problems with the health care system in the United States. The ACA may improve your chances of receiving health insurance from your employer because it requires employers with 50 or more full-time employees to offer health care to employees or pay a penalty. Small businesses with fewer than 50 employees have no such requirement.<sup>96</sup>

Some workers who do not get insurance through their employer qualify for a tax credit that may make buying health insurance more affordable. To get an estimate of your tax credit or see if you qualify visit: <http://kff.org/interactive/subsidy-calculator/> or sign up during open enrolment periods online at [www.healthcare.gov](http://www.healthcare.gov).

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<sup>94</sup> “Why Americans are Drowning in Medical Debt,” *The Atlantic*, accessed April 2015,

<http://www.theatlantic.com/health/archive/2014/10/why-americans-are-drowning-in-medical-debt/381163/>

<sup>95</sup> “How did America end up with this health care system?” *Pittsburgh Post-Gazette*, accessed April 2015, <http://www.post-gazette.com/healthypgh/2014/04/27/VITALS-How-did-U-S-employer-based-health-care-history-become-what-it-is-today/stories/201404150167>. Also see “Is Employer-Based Health Insurance Worth Saving?” *New York Times Economix Blog*, accessed April 2015,

<http://economix.blogs.nytimes.com/2009/05/22/is-employer-based-health-insurance-worth-saving/>

<sup>96</sup> “Employer Responsibility Under the Affordable Care Act,” *Henry J. Kaiser Family Foundation*, accessed April 2015, <http://kff.org/infographic/employer-responsibility-under-the-affordable-care-act/>.



# The Right to Rest

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The eight-hour workday was the result of many years of dangerous and often deadly organizing by workers in the late 1800s and early 1900s. However, a century later, many of us still work well over 8 hours per day, often between multiple jobs. We all need time away from work for various reasons. There is no law, however, that requires Maine employers to allow employees to take vacation time away from work, either paid or unpaid.

## Short Breaks (Minutes Away from Work)

Everyone deserves periodic breaks from work for food, water, trips to the bathroom, or just a few minutes of rest, no matter what job they're doing. There are not many laws that protect the right to a break. Employer practices on giving breaks vary, with some employers denying breaks altogether and others openly requiring workers to "clock out" but keep working. The U.S. Department of Labor does state that it counts short breaks, of five to 20 minutes maximum, as work time that you should be paid for.<sup>97</sup> Many unions include additional breaks in their contracts to protect their workers' right to rest.

**30-Minute Breaks:** Under Maine law, most workers have a right to a 30-minute unpaid break after 6 hours of work in a row, which can be used as a mealtime. However this law doesn't apply if:

- fewer than three employees are working at the same time at your workplace;
- there is an emergency "in which there is danger to property, life, public safety or public health";<sup>98</sup> or
- the specific type of work allows for frequent breaks<sup>99</sup>

Employers may require workers to take their 30-minute break. However, it is not uncommon for employers to illegally deny breaks even after 6 hours of consecutive work, particularly in the service and retail industries.

**Breaks for Prayer or Days off for Religious Holidays:** According to the Maine Human Rights Act, if the schedule of the workplace is flexible, workers with "sincerely held" religious beliefs should be allowed extra unpaid time during existing breaks or additional

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<sup>97</sup> "Work Hours: Breaks and Meal Periods," *US Department of Labor*, accessed March 2015, <http://www.dol.gov/dol/topic/workhours/breaks.htm>.

<sup>98</sup> "Title 26, §601: Rest Breaks," *Office of the Revisor of Statutes*, accessed January 28 2015, <http://www.mainelegislature.org/legis/statutes/26/title26sec601.html>.

<sup>99</sup> *Ibid.*

breaks for worship. You can also ask for space for worship, but employers do not have to provide it if there are not the resources to support it. The law says that business use of space is a priority over religious use.

**Breaks to Accommodate a Disability:** The Maine Human Rights Act also says that a worker with a disabling condition may request break times from certain types of work activity as a reasonable accommodation for the disability.

You can ask your boss or supervisor to not schedule you for certain days or times, but employers do not have to give you paid time off. Employers can require you to make up hours or may not give you additional hours-reducing your pay.

Employers are required to make accommodations as long as they do not cause undue hardship or burden that cannot be easily resolved. The vagueness of the term “undue hardship” can make it difficult to always get an accommodation, but you have the right to ask, and to advocate for it.

### **Long Breaks (Days, Weeks, Months Away from Work)**

**Paid Leave - Vacation, Sick Leave and Family Sick Leave:** Some employers also offer workers paid vacation, paid sick days, compensatory time, or paid leave such as sabbatical. While all workers deserve these benefits, employers are under no legal obligation to offer them unless there is a collective bargaining agreement such as a union contract covering these items.

If your public or private employer does provide any of those types of paid leave, and has more than 25 employees, Maine’s Family Sick Leave law says your employer must let you use at least 40 hours of that paid leave in a 12-month period to care for a sick child, spouse or parent.<sup>100</sup> Unless your employer has a policy that says which type of leave you must use first (for example, that you have to use vacation time before sick leave) you should be able to decide which leave to use.<sup>101</sup>

For problems getting your paid leave, contact the Workers’ Center or the Department of Labor Wage and Hour Division ([see Maine Department of Labor on page 79](#)).

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<sup>100</sup> “Title 26, §636: Family Sick Leave,” *Office of the Revisor of Statutes*, accessed January 5 2015, <http://www.mainelegislature.org/legis/statutes/26/title26sec636.html>

<sup>101</sup> Killian, Erin, WBUR, Parental Leave: The Swedes Are The Most Generous, accessed April 2015, <http://www.wbur.org/npr/139121410/parental-leave-the-swedes-are-the-most-generous>

**Domestic Violence:** In the world that we're fighting for, domestic violence would never interfere with work because it wouldn't exist. However, given domestic violence does impact many people in their personal and working lives, there are some limited legal rights that have been established. Specifically, the Maine Department of Labor lists the following:

"An employee who is a victim of domestic violence must be allowed time off from work with or without pay to prepare for and attend court proceedings; receive medical treatment; or obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking. The employee must request the time off. Leave must also be allowed if the employee's child, parent or spouse is the victim."<sup>102</sup>

Whether someone is legally deemed a "victim" of domestic violence is sensitive and often contested, and workers who feel comfortable may want to contact the Workers' Center about how to most effectively fight for this time off.

**Military Leave:** Maine has the highest rate of enlistment in the US military in the country,<sup>103</sup> perhaps due to the disproportionate rate of military service by people who live in rural areas and who are working class or poor.<sup>104</sup> Many of those who are employed at the time of enlistment will be able to return to their jobs when they leave the military.

By Federal law, most employees who are honorably discharged from the US military are entitled to take up to five years of leave from work while on active duty, and are entitled to return to the same or a similar position at the end of their service. They must be given the same benefits and seniority they would have if they had they not joined the military. Workers who were injured while in the service have up to two years after leaving the military to return to work.<sup>105</sup>

For more information about the The Uniformed Services Employment and Reemployment Rights Act of 1994 and your rights as a returning veteran visit: the following resource from

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<sup>102</sup> "Domestic Violence, Employee Rights Guide," *Maine Department of Labor*, accessed January 28 2015, [http://www.maine.gov/labor/labor\\_laws/publications/employeerightsguide.html#Domestic](http://www.maine.gov/labor/labor_laws/publications/employeerightsguide.html#Domestic)

<sup>103</sup> Bender, Jeremy. "Some States Have Much Higher Enlistment Rates Than Others." *Business Insider*. Business Insider, Inc, 20 July 2014. Web. 24 Aug.2015. <http://www.businessinsider.com/us-military-is-not-representative-of-country-2014-7>

<sup>104</sup> Tyson, Ann Scott. "Youths in Rural U.S. Are Drawn To Military." *Washington Post*. The Washington Post, 04 Nov. 2005. Web. 24 Aug. 2015. <http://www.washingtonpost.com/wp-dyn/content/article/2005/11/03/AR2005110302528.html>

<sup>105</sup> "U.S. Department of Labor -- Veterans' Employment and Training Service (VETS) -- Fact Sheet 3." U.S. Department of Labor, n.d. Web. 24 Aug. 2015. [http://www.dol.gov/vets/programs/userra/userra\\_fs.htm](http://www.dol.gov/vets/programs/userra/userra_fs.htm)

the US Department of Labor: [http://www.dol.gov/vets/programs/userra/userra\\_fs.htm](http://www.dol.gov/vets/programs/userra/userra_fs.htm) or <http://www.dol.gov/vets/veterans/generalfaq.htm>.

**Maternity leave:** The US is among just a tiny handful of countries that do not have paid maternity leave for new mothers. In fact, most other countries require some form of paid leave to both parents of a newborn - to be paid by employers, or the government, or both. In Sweden, parents get 480 days of leave per child, which they can share between the two parents. They get paid 80% of their salary during the leave, and can take the leave days at any time until the child turns 8 years old. Sixty of these days are specifically for the father.

106

In the US, though, only 13% of employers offer any paid maternity leave to new mothers or parents, and there is no public program that helps new parents make ends meet while taking leave from work. That means most of us have to rely on a Family Medical Leave law, which for many reasons is a poor substitute (see below).

## Family and Medical Leave

As Maine Equal Justice Partners explains:

“There are two Family and Medical Leave laws that affect Maine workers—a state law and a federal law. They both give certain workers the right to take time off from work because of a serious health condition (yours or a family member’s) or the birth or adoption of a child. Neither of these laws requires that you be paid during the leave, unless you use benefits you have earned (like sick or vacation time) for some or all of your leave.

In general, the Maine law covers more people, but the federal law gives better coverage, if it applies to you. When there is a difference between the state and federal law, you can use the one that is more generous, as long as you qualify under that law. But, you can’t add your state and federal leave time together to take the maximum amount of time under both laws. Any leave time you take under one law is offset against the other.”<sup>107</sup>

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<sup>106</sup> "Parental Leave: The Swedes Are The Most Generous." *WBUR: Boston's NPR News Station*. WBUR, 8 Aug. 2011. Web. 24 Aug. 2015.

<http://www.wbur.org/npr/139121410/parental-leave-the-swedes-are-the-most-generous>

<sup>107</sup> Maine Equal Justice Partners, "Ten Ways to Get By and Get Ahead" accessed April 2015, <http://www.mejp.org/sites/default/files/worker-guide.pdf>

Both types of leave allow you to leave your job to deal with your own serious medical condition, or that of your spouse, parent, or child. The Maine law also covers serious medical conditions of domestic partners, children of domestic partners, and siblings with whom you live and share finances. Both laws allow leave to either parent of a newborn or newly adopted child, and the federal law allows leave when becoming a foster parent. Both laws' definitions of "serious medical condition" include conditions that require hospital stays and recurring conditions like asthma, diabetes or mental illness.

Maine's Family Medical Leave Law applies to any worker who has been employed for at least 12 months in a row at a business with more than 15 employees. It also applies to employees of towns and cities as long as those have at least 25 workers. Under this law, you can take up to 10 weeks of unpaid leave during a two-year period. Your employer has to continue your health insurance only if you can pay the full premium, which is usually hefty.

The Federal Family Medical Leave Act, on the other hand, applies only to workers at businesses or public agencies that employ 50 or more people all within 75 miles of each other. To qualify, you must have worked at least 1,250 hours during the 12 months before your leave (about 24 hours a week for a year) but they do not have to be consecutive. If you do qualify, you're entitled to 12 weeks of unpaid leave within a single year. Furthermore, your employer has to continue to contribute to your health insurance just as it did when you were working.

You should let your employer know as soon as you can that you'll need to take medical leave. Ideally this would be 30 days before the leave would start.

Under either the state or federal law, you may be able to take Family Medical Leave intermittently - a little bit at a time. In that case you would have to be able to show that dividing your leave time up is medically necessary.

For more detailed information about Family Medical Leave, see Pine Tree Legal Assistance webpage on the subject: [www.ptla.org/family-medical-leave-maine](http://www.ptla.org/family-medical-leave-maine) or Maine Equal Justice Partners "Ten Ways to Get By and Get Ahead"

<http://www.mejp.org/sites/default/files/worker-guide.pdf>

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# Losing Employment

## Getting Fired & Losing Work When Your Employer Shuts Down

Employment in Maine is considered “at will,” meaning you have the right to leave your job at any time, and your employer has the right to fire you at any time. While this sounds balanced legally, in practice this means that you can lose your job at any moment, for nearly any reason, as long as your employer doesn’t discriminate or retaliate against you. For many workers, having their livelihood depend almost entirely on the whims of their employers is hardly reassuring, and it makes speaking up at work even more intimidating.

To balance this power difference, workers in unions have negotiated contracts that create what is called “just cause” protection. This means that the employer can’t fire a worker or even impose lesser discipline (like warnings or suspensions) for an arbitrary reason. When workers have just cause protection, the employer may only discipline them for violating the employer’s rules, which must be reasonable and must have been communicated to the workers. Just cause protection requires the employer to discipline a worker only to the extent needed to make sure the worker will follow the rules and usually allows workers an opportunity to defend themselves. Only one state, Montana, affords just cause protection to all workers.<sup>108</sup>

Even if you don’t belong to a union, there are some restrictions on when your boss can fire you:

- You may not be fired as a result of discrimination or retaliation. ([See pg 27](#))
- You may not be fired for complaining about being owed overtime or minimum wages ([see pg 72](#)).
- You may not be fired for reporting a workers’ compensation injury or filing a workers’ compensation claim.
- You may not be fired if a government agency asks your employer for information about you for determining your eligibility for public benefits such as General Assistance.
- Positions covered by a union contract often place limitations on the reasons you can be fired, and the process that must be followed by your employer before you are fired.

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<sup>108</sup> Blumgart, Jake, “It’s All Too Easy to Get Fired in America: In 49 of 50 States, You Can Be Fired for Any Reason” April 30, 2013, accessed March 2015, <http://www.alternet.org/economy/its-all-too-easy-get-fired-america-49-50-states-you-can-be-fired-any-reason>

- If you have an employment contract agreed upon by you and your employer, it may identify specific instances where the employer has the right to fire you—“just cause,” for example.
- If you work for a public sector employer - for example, a town, city, county or state government - your employer is required to provide you with a “due process” hearing before you may be fired or suspended without pay. The idea is the employer has to tell you the reason for its decision, and give you an opportunity to respond.
- You may be covered by various state and federal laws that provide protections for being absent from work for being sick, caring for a sick child, being a victim of domestic violence, or taking leave related to military service ([see Family and Medical Leave on page 68](#))
- In some cases, employers may be obligated to follow policies that are stated in a policy or personnel handbook as well.

You have rights if you are fired, such as being paid your entire earnings within two weeks of your termination. Pine Tree Legal Assistance provides a comprehensive list of your rights in this process, as well as suggestions for how to protect these rights, on their website: <http://www.ptla.org/if-you-lose-your-job>.

**Severance:** You may be eligible for “severance” pay under Maine law if you worked for an industrial or commercial facility that employed 100 or more people (or employed 100 or more in the last year), and the facility shut down or relocated to a new location. To be eligible under the Maine severance pay law, you must have worked for that facility for at least three years. Statutory Maine severance pay is equal to one week’s pay for each year of employment at the covered facility. For more information about determining your eligibility for severance pay under this Maine law you may want to seek legal advice ([see pg 79](#)) and then contact the Maine Department of Labor. You may also, or instead, be eligible for severance pay under a union contract or under an individual employment contract. Your eligibility would be determined by the terms of the contract.

## **Discipline**

As stated above, unless you have a just cause agreement through a union contract or an individual contract, your employer has the right to fire you at any time for any reason, as long as the termination isn’t discriminatory or retaliatory. There are no laws that require any prior, lesser discipline, before your employer fires you. Still, it’s important to watch for illegal, discriminatory discipline. For example, it would likely be illegal for an employer to give a woman a written warning or unpaid suspension the first time she is late to work if the employer only disciplines men after they are late to work several times. If you suspect

that you have been disciplined in a discriminatory or retaliatory way, you should seek legal assistance and/or contact the Maine Department of Labor. [See page 39 for information about retaliation in the cases of collectively organizing](#), and whistleblowing (reporting unsafe or illegal activity) below.

## **Whistleblower Protections**

Whistleblower protections mean that, in general, if you learn of something happening at work that is illegal or unsafe and you choose to report it to the government or to your boss, you cannot be fired or punished in any way for having done so.

The Maine Department of Labor's publication on the Whistleblower's Protection Act lists actions protected from retaliation and necessary conditions:<sup>109</sup>

It is illegal for your boss to fire you, threaten you, retaliate against you or treat you differently because:

- You reported a violation of the law;
- You are a health care worker and you reported a medical error;
- You reported something that risks someone's health or safety;
- You have refused to do something that will endanger your life or someone else's life and you have asked your employer to correct it; or
- You have been involved in an investigation or hearing held by the government.

You are protected by this law only if

- You tell your boss about the problem and allow a reasonable time for it to be corrected; or
- You have good reason to believe that your boss will not correct the problem or the situation poses an imminent risk of death or serious bodily injury to yourself or others.

It's important to remember that whistleblower protections only apply if you are reporting a violation of the law or an unsafe working condition. If you report to your boss something that seems unfair to you - a change in your schedule or working conditions, for example - but does not violate the law, you are not likely to be protected from retaliation. In those situations, it's a good idea to talk with co-workers and come up with a plan about how to confront the boss. If you have questions about whistleblower protection, contact the Workers' Center or the Bureau of Labor Standards at the Maine Department of Labor.

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<sup>109</sup> "Whistleblower's Protection Act," *Maine Department of Labor*, accessed January 28 2015, <http://www.maine.gov/labor/posters/whistleblowerprotection.pdf>.



## Unemployment Insurance

In this economy, any job loss creates a hardship that is difficult to rebound from. In limited circumstances, you're entitled to compensation if you're "let go." Specifically, you are entitled to unemployment benefits if you lose your job through no fault of your own, including if you are fired but not for "misconduct," or if you quit your job for "good cause." This is an example of an area in which the legal understanding of whose fault your job loss was or whether you had "good cause" to quit are obviously different from an understanding based on human rights.

Unemployment benefits are often available for up to 26 weeks, and sometimes longer. To be eligible, you must

- be partially or totally unemployed (so if you are working a part-time job you may be able to receive some unemployment benefits);
- be able and willing to work; and
- be willing to accept work that you are able to do.

**Eligibility for Unemployment Benefits if You Quit:** Generally, if you choose to quit your job you cannot then collect unemployment insurance. However, you should be eligible for benefits if you had "good cause" to leave your job. For example, you can be eligible for benefits if you quit

- to avoid unsafe working conditions or other legal violations (sexual harassment, for example);
- because you or a member of your immediate family became ill or disabled and you took reasonable steps to protect your job by notifying your employer that you needed time off, or a change in your work hours, and the employer did not agree;
- to follow your spouse to a job;
- to accept a new job and the new job fell through because of reasons caused by the new employer; or
- to protect yourself or any member of your immediate family from domestic violence.

**Eligibility for unemployment benefits if you're fired.** Being fired does not automatically disqualify you from unemployment benefits. Before you will be disqualified, your former employer has to prove that you were fired for "misconduct connected with the work." Luckily, that's not usually easy to do. Misconduct cannot be based only on a single mistake. Likewise, as long as you were making a good-faith effort, poor performance does not count as misconduct. Last, if you were absent from work because you were sick, and you made a

reason reasonable effort to inform your employer, that does not count as misconduct either.

Scenarios that may be considered misconduct include being late to work after being warned, being drunk or drinking on the job, destroying or stealing the property of others, dishonesty about your training, qualifications, or experience or other acts of dishonesty that could hurt your employer, knowingly or repeatedly disregarding instructions or refusing to perform reasonable tasks or violating rules that are commonly known and enforced fairly and evenly.

Two resources that may be useful in navigating the ins and outs of applying for and collecting unemployment insurance are the following:

\* Pine Tree Legal Assistance's online resource for when you lose your job:

<http://www.ptla.org/if-you-lose-your-job>

\* The Maine Department of Labor's unemployment FAQ:

<http://www.maine.gov/labor/unemployment/faqs.html>

**PART IV:**  
**Resources and Contact**  
**Information for Support**

### **Southern Maine Workers' Center**

68 Washington Avenue  
Portland, ME 04101  
207-200-SMWC (7692)  
[info@maineworkers.org](mailto:info@maineworkers.org)  
[www.maineworkers.org](http://www.maineworkers.org)

### **Career Centers in Southern Maine**

#### **Portland Career Center**

185 Lancaster Street  
Portland, ME 04101-2453  
Phone: (207) 822-3300 or 1-877-594-5627  
[portland.careercenter@maine.gov](mailto:portland.careercenter@maine.gov)

#### **Springvale Career Center**

9 Bodwell Court  
Springvale, ME 04083  
Phone: (207) 324-5460 or 1-800-343-0151  
[springvale.careercenter@maine.gov](mailto:springvale.careercenter@maine.gov)

### **Maine Labor Organizations**

#### **Maine AFL-CIO**

21 Gabriel Drive, Augusta, ME 04330  
Phone: (207) 622 9675  
[info@maineaflcio.org](mailto:info@maineaflcio.org)  
<http://www.maineaflcio.org/>

#### **Southern Maine Labor Council**

Phone: 207 892-4067  
<http://somalc.org/>

### **Tax Preparation Help**

#### **AARP Tax-Aide**

To find the nearest office to get tax help call 1-888-687-2277  
Or: <http://www.aarp.org/applications/VMISLocator/searchTaxAideLocations.action>

**MyFreeTaxes**

1-855-698-9435

If your 2014 household income was less than \$60,000, you can file without a fee at:

<http://www.myfreetaxes.com/>

**Legal Representation and Advice**

If you're looking for a private attorney, you can call the Southern Maine Workers' Center for a referral:

207-200-SMWC (7692)

**Disability Rights Maine**

24 Stone Street, Ste. 204

Augusta, Maine 04330

800.452.1948 (V/TTY)

207.626.2774 (V/TTY)

207.621.1419 (FAX)

[advocate@drcme.org](mailto:advocate@drcme.org)

<http://www.drcme.org/home.php>

**Pine Tree Legal Assistance**

Farmworker Unit and Employment Law Unit

115 Main Street, 2nd floor

Bangor ME 04401

Phone: (207) 942-0673

TTY: (207) 942-1060

Advice for farmworkers: <http://www.ptla.org/farmworker-news>

**Maine State Monitor Advocate**

Hotline for Migrant and Seasonal Farmworkers: 1-888-307-9800

**Maine Employment Lawyers' Association**

Phone: (207) 623-5110

E-mail: [dwebbert@johnsonwebbert.com](mailto:dwebbert@johnsonwebbert.com)

**Maine Volunteer Lawyers' Project**

88 Federal Street

Portland, ME 04101

Phone: (207) 774-4348

Toll Free: 800-442-4293

**Maine Lawyer Referral Service (of the Maine Bar Association)**

P.O. Box 788

Augusta, ME 04332-0788

Phone: 800-860-1460

E-mail: [lrs@mainebar.org](mailto:lrs@mainebar.org)

**Government Agencies that Enforce the Law**

Discrimination against non-citizens:

**Department of Justice, Office of Special Counsel for Immigration-Related Unfair Employment Practices**

Worker Hotline: 1-800-255-7688

Other forms of discrimination:

**Maine Human Rights Commission**

51 State House Station

Augusta, ME 04333-0051

PH: (207) 624-6290

TTY: Maine Relay 711

Unpaid wages or misclassification as exempt from overtime:

**U.S. Department of Labor**

**Wage and Hour Division**

P.O. Box 554

Portland, Maine 04112

Tel: (207) 780-3344

[www.dol.gov](http://www.dol.gov)

Health and safety concerns, and some types of whistleblower retaliation:

**U.S. Department of Labor/OSHA**

40 Western Avenue

Augusta, Maine 04330

Tel: (207) 626-9160

[www.osha.gov](http://www.osha.gov)

[http://www.dol.gov/compliance/laws/comp-whistleblower.htm#DOL\\_contacts](http://www.dol.gov/compliance/laws/comp-whistleblower.htm#DOL_contacts)

Unpaid wages, misclassification, safety violations and other employment related questions:

**Maine Department of Labor**

**Bureau of Labor Standards**

45 State House Station

Augusta, Maine 04333-0045

(207) 623-7900

TTY users call Maine Relay 711

Web site: [www.maine.gov/labor/bls](http://www.maine.gov/labor/bls)

E-mail: [webmaster.blb@maine.gov](mailto:webmaster.blb@maine.gov)

Unemployment claims:

**ME Department of Labor - Bureau of Unemployment Compensation**

<http://www.maine.gov/labor/unemployment/index.html>

Toll-Free: 1-800-593-7660

TTY/Relay for Deaf and hard of hearing: Maine relay 711

Mailing address for unemployment claims centers:

Augusta Claim Center

97 State House Station

Augusta, ME 04333-0097

Payroll cards and credit reports:

**Consumer Financial Protection Bureau**

(855) 411-CFPB (2372)

TTY/TDD (855) 729-CFPB (2372)

Fax (855) 237-2392

8 a.m. – 8 p.m. Eastern, Monday–Friday

180+ languages available

<http://www.consumerfinance.gov/complaint/>

Workers Compensation Claims:

**Workers' Compensation Board**

27 State House Station

Augusta, ME 04333-0027

Telephone: (207) 287-3751

Fax: (207) 287-7198

TTY: 877-832-5525

Toll Free (Maine Only) 1-888-801-9087

<http://www.maine.gov/wcb/index.html>

Rights to organize collectively in the private sector:

**National Labor Relations Board - Region 1**

10 Causeway Street, 6th Floor

Boston, MA 02222-1072

Phone: (617) 565-6700

TTY: (617) 565-6470

<http://www.nlr.gov/region/boston>

In the public sector (state or local government):

**Maine Labor Relations Board**

90 State House Station

Augusta, ME 04333

Phone: (207) 287-2015

In the public sector (federal government):

**Federal Labor Relations Authority**

1400 K Street, NW

Washington, DC 20424

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Correcting mistaken criminal records:

**State Bureau of Identification**

State House Station #42

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