



# 130th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2021

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Legislative Document

No. 775

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H.P. 580

House of Representatives, March 5, 2021

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

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Reference to the Committee on Labor and Housing suggested and ordered printed.

A handwritten signature in cursive script that reads 'R B. Hunt'.

ROBERT B. HUNT  
Clerk

Presented by Representative SYLVESTER of Portland.

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

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

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

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

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

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

25 **Sec. 2. 5 MRSA §7051, sub-§7**, as amended by PL 1987, c. 9, §3 and PL 1995, c.  
26 560, Pt. K, §82, affected by §83 and amended by PL 2001, c. 354, §3 and PL 2003, c. 689,  
27 Pt. B, §6, is further amended to read:

28 **7. Dismissal and disciplinary action.** ~~An~~ Except as provided in subsection 5, an  
29 appointing authority may dismiss, suspend or otherwise discipline an employee in the  
30 classified service for cause. This right is subject to the right of appeal and arbitration of  
31 grievances set forth in the applicable labor contract, in sections 7081 to 7084 or by civil  
32 service rule; and sections 7081 to 7084 ~~shall~~ apply to any employee who has satisfactorily  
33 completed an initial probationary period. This subsection does not apply to unclassified  
34 employees listed in section 931, nor does this subsection in any way limit the collective  
35 bargaining rights of classified and unclassified employees. This subsection does not apply  
36 to an employee appointed to a major policy-influencing position listed in sections 932 to  
37 953.

38 Notwithstanding any ~~other~~ provision of law to the contrary, the head of any institution  
39 under the control of the Department of Health and Human Services as the appointing  
40 authority may suspend with pay any employee who is charged by indictment with the  
41 commission of a criminal offense involving acts alleged to have been perpetrated upon any  
42 resident or residents of any such institution. Any suspension with pay may be authorized  
43 by the appointing authority only when to permit the employee to remain on duty at the  
44 institution would be against the best interest of any one or more of the residents of the

1 institution, and authorization for suspension with pay ~~shall apply~~ applies only during the  
2 pendency of the criminal proceedings in the trial court, but not longer than 30 working  
3 days. Sections 7081 to 7084 ~~shall do~~ not apply to suspension with pay ordered by the  
4 appointing authority under this paragraph.

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

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

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

10 (3) Cost items ~~shall~~ must be submitted for inclusion in the Governor's next  
11 operating budget within 10 days after the date on which the agreement is ratified  
12 by the parties. If the Legislature rejects any of the cost items submitted to it, all  
13 cost items submitted ~~shall~~ must be returned to the parties for further bargaining.  
14 Cost items related to a collective bargaining agreement reached under this chapter  
15 and submitted to the Legislature for its approval under this subparagraph ~~shall~~ may  
16 not be submitted in the same legislation that contains cost items for employees  
17 exempted from the definition of "state employee" under section 979-A, subsection  
18 6, and employees of the legislative branch, except that cost items for those  
19 employees exempted under section 979-A, subsection 6, ~~paragraphs E and~~  
20 paragraph F; need not be excluded.

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

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

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

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

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

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

29 **§1283-A. Judicial employees; probationary period**

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

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

37 E. To confer and negotiate in good faith with respect to wages, hours, working  
38 conditions and contract grievance arbitration, except that by such obligation neither  
39 party may be compelled to agree to a proposal or be required to make a concession.  
40 All matters relating to the relationship between the employer and employees ~~shall be~~  
41 are the subject of collective bargaining, except those matters ~~which~~ that are prescribed

1 or controlled by law. Such matters appropriate for collective bargaining, to the extent  
2 they are not prescribed or controlled by law, include, but are not limited to:

3 (1) Wage and salary schedules to the extent they are inconsistent with rates  
4 prevailing in commerce and industry for comparable work within the State;

5 (2) Work schedules relating to assigned hours and days of the week;

6 (3) Use of vacation or sick leave, or both;

7 (4) General working conditions;

8 (5) Overtime practices; and

9 (6) Rules for personnel administration, except for rules relating to applicants for  
10 employment and employees in an initial probationary status, including any  
11 extensions thereof, ~~provided that~~ as long as the rules are not discriminatory by  
12 reason of an applicant's race, color, creed, sex or national origin.

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

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

24 **2-A. Probationary period for corrections officials.** ~~Beginning October 1, 2009, a~~ A  
25 person who is hired as jailer, master, keeper or a subordinate assistant or employee under  
26 section 1501 must complete an employment probationary period that lasts for one year.  
27 During the probationary period, a person who is hired as jailer, master, keeper or a  
28 subordinate assistant or employee under section 1501 may be dismissed, suspended or  
29 otherwise disciplined without cause. Dismissal, suspension or any other disciplinary action  
30 against an employee during the probationary period is not subject to the grievance and  
31 arbitration provision of the collective bargaining agreement.

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

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

## 38 SUMMARY

39 This bill provides that, for the purposes of the public employees and judicial employees  
40 labor relations laws, a person who has been an employee of the State or another public  
41 employer for less than 6 months is considered a public employee and a person who has  
42 been an employee of the judicial branch for less than 6 months is considered a judicial

1 employee. A person who has been an employee of the State or another public employer  
2 for less than 6 months may be dismissed, suspended or otherwise disciplined without cause  
3 during the probationary period. Termination of an employee or any other disciplinary  
4 action against an employee during the probationary period is not subject to the grievance  
5 and arbitration provision of the collective bargaining agreement.