

Maine Raises Discrimination Damages Caps and Expands Employee Protections

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Maine recently wrapped a busy 2023 legislative session that brought several significant legal changes relevant for employers. Those changes include increasing the cap on damages for violations of the Maine Human Rights Act (MHRA), expanding the protections of Maine Equal Pay Law to include race, amending the Workers' Compensation Act to permit individual liability for sexual harassment and sexual assault, allowing non-tipped restaurant workers to participate in tip pools, and prohibiting employers from requiring veterinarians to enter into noncompete agreements.

The new laws are part of several changes in recent years, including the passage of a Maine "CROWN Act," that will impact employers with employees in Maine and expose them to additional potential liability.

Additionally, Maine enacted a new statewide Paid Family and Medical Leave that is one of the most expansive of such programs in the country, and the most expansive in New England to date.

Quick Hits

- Maine enacts law to raise the damages caps for violations of the state's antidiscrimination law.
- Maine expands Equal Pay Law to include race.
- Maine Workers' Compensation Act is amended to permit individual liability.
- Maine ban on noncompete agreements for veterinarians takes effect on September 19, 2023.
- Maine enacts the most expansive paid family and medical leave program in New England, providing up to twelve weeks of paid leave per year to all eligible employees in the public and private sectors, regardless of size, effective January 1, 2026.

Maine Human Rights Act Damage Caps

On June 22, 2023, Governor Janet Mills signed [Legislative Document \(L.D.\) 1423](#), significantly increasing the limits on potential compensatory and punitive damages awards for violations of the MHRA. The MHRA generally prohibits discrimination in employment because of race, color, sex, sexual orientation, age, physical or mental disability, genetic predisposition, religion, ancestry, or national origin. The increases are substantial, in some cases more than doubling prior damages limits, and expose employers to greater financial risk in discrimination cases. The new legislation follows recent case law in Maine and the First Circuit Court of Appeals that allows “stacking” of state and federal statutory damages, meaning plaintiffs may be able to recover damages under both federal and state law for the same offense.

The increases to the maximum limits on compensatory and punitive damages under the MHRA are as follows:

- 15-100 employees: \$100,000, raised from \$50,000 (potentially \$150,000 if combined with the federal cap)
- 101-200 employees: \$300,000, raised from \$100,000 (potentially \$400,000 if combined with the federal cap)
- 201-500 employees: \$500,000, raised from \$300,000 (potentially \$700,000 if combined with the federal cap)
- More than 501 employees: \$1 million, raised from \$500,000 (potentially \$1.3 million if combined with the federal cap)

The bill passed after competing legislation that would have prohibited damage stacking in cases of intentional employment discrimination with employers that have more than fourteen employees did not gain traction. L.D. 1423 will become law and take effect on September 19, 2023.

Maine Equal Pay Law

Also on June 22, 2023, Governor Mills signed [L.D. 1703](#), expanding the Maine Equal Pay Law to prohibit discrimination in pay on the basis of race. The legislation prohibits employers from discriminating “between employees in the same establishment on the basis of race” by paying an employee less than what the employer pays to any other employee in the state “of another race for comparable work on jobs that have comparable requirements relating to skill, effort[,] and responsibility.” Prior to the legislation, the Maine Equal Pay Law only prohibited discrimination in pay between employees in the same establishment on the basis of sex.

Maine Workers’ Compensation Act

On June 4, 2023, Maine enacted changes to its workers’ compensation law without the governor’s signature, to make employees who sustain damages due to intentional acts and omissions no longer eligible for workers’ compensation for those injuries. Instead, such employees may pursue claims for intentional acts and omissions in civil actions. Previously, employees could not bring civil actions for

work-related intentional acts and omissions because they were covered under the workers' compensation law.

The law, [L.D. 53](#), states that this section is not to be “construed to impose liability on an employer for sexual harassment, sexual assault[,] or an intentional tort related to sexual harassment or sexual assault committed by an employee, supervisor, officer or director of the employer.” However, an “employee, supervisor, officer or director of an employer may be individually liable for sexual harassment, sexual assault or an intentional tort related to sexual harassment or sexual assault.” The amendment seemingly leaves the door open to vicarious liability for an employer for discriminatory conduct by supervisors and agents. The legislation states that it “does not prohibit or limit an action alleging employment discrimination” under the MHRA or Title VII of the Civil Rights Act of 1964.

Tip-Pooling for Non-Service Workers

Governor Mills signed [L.D. 903](#) into law on June 15, 2023, allowing nontipped restaurant employees, including non-service employees such as dishwashers and cooks, to participate in tip-pooling—as long as all participating employees are being paid the minimum hourly wage and employers are not using the Federal Insurance Contributions Act tip credit. This is in line with current federal regulations which allow for tip-pooling in these circumstances.

Maine Noncompete Ban for Veterinarians

On June 1, 2023, Governor Mills signed [L.D. 688](#), which will prohibit employers from requiring or permitting licensed veterinarian employees from entering into noncompete agreements, unless the veterinarian employee has an ownership interest in the business. The law will apply retroactively, prohibiting courts from enforcing such noncompete agreements entered into prior to the effective date of the legislation. The law is set to take effect on September 19, 2023.

Maine CROWN Act

The increased MHRA damage caps and Maine Equal Pay Law amendments come less than one year after Maine [amended the MHRA](#) to prohibit discrimination in employment and education based on hair or hairstyle. Specifically, the law, which took effect in August 2022, amends the MHRA's definition of “race” to include “traits associated with race, including hair texture, Afro hairstyles and protective hairstyles,” which includes “braids, twists and locks.”

The law was inspired by the model legislation known as the Creating a Respectful and Open World for Natural Hair (CROWN) Act. The goal of the CROWN Act is to provide protection against discrimination based on race-based hairstyles, and it has been enacted in a growing number of states across the country. Governor Mills signed L.D. 598 in April 2022 and the new law took effect in August 2022.

Maine Paid Family and Medical Leave

Under the Paid Family and Medical Leave program, [L.D. 1964](#), Maine will begin assessing a 1 percent payroll tax on January 1, 2025, split equally between employers and employees, and employees may begin taking paid family and medical leave on January 1, 2026. The Maine Department of Labor is responsible for administering this program and will develop additional and

more explicit guidance, procedures, and forms during its rulemaking process. Notably, Maine's paid family and medical leave law is not limited to leave to care for family members, but instead permits virtually all full- and part-time employees in the state of Maine to take paid leave to care for any individual with whom they have a "significant personal bond that is or is like a family relationship regardless of biological or legal relationship," immediately upon starting employment.

Next Steps

The recent legislative actions could have major implications for employers and increase potential liability for allegations of discrimination. Employers in Maine may want to consider updating their equal employment opportunity policies and their dress code and grooming policies in light of the new legal requirements and may further want to consider unconscious bias training for managers and supervisors. Employers may also want to review and stay up-to-date on the Maine Department of Labor's paid family and medical leave guidance and the forthcoming rules, regulations, and procedures as they are rolled out in the coming year.

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