

Annual List of Rulemaking Activity
Rules Adopted January 1, 2020 to December 31, 2020
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Labor, **Bureau of Labor Standards**
Umbrella-Unit: **12-170**
Statutory authority: 26 MRS §§ 42, 637
Chapter number/title: **Ch. 18** (New), Rules Governing Earned Paid Leave
Filing number: **2020-203**
Effective date: 1/1/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

Department of Labor, Bureau of Labor Standards is responsible for drafting and implementing rules of this law. Therefore, the Department is adopting this rule pursuant to 26 MRS §637. This chapter provides definitions and procedures for implementing earned paid leave for specific employees.

Basis statement:

The purpose of this chapter is to provide definitions and procedures for implementing earned paid leave for certain employees pursuant to 26 MRS §637. This rule explains that the obligation for earned paid leave applies to employers that employ more than 10 employees in employment as defined by the *Maine Employment Security Act* for more than 120 days in any calendar year. The rule explains the coverage of the law, to include full-time, part-time and per diem workers. The rule explains the exceptions, such as employees who work in a seasonal industry for an employer registered as a seasonal employer with a Bureau of Unemployment Compensation, and employees covered by a collective bargaining agreement on January 1, 2021. Covered employers shall permit each employee to accrue earned paid leave based on the employee's base rate of pay as defined by existing law, 26 MRS §664(3). Unused hours of earned paid leave roll over to the following year of employment, but hours are only required to continue to accrue up to forty hours in the current year of employment. The balance of earned paid leave at the separation of employment is governed by the employer's established practice in accordance with existing law, 26 MRS §626. An employer may require up to four weeks' notice of an intention to use earned leave, but notice is not required for an emergency, illness or other sudden necessity if advance notice is not feasible. Employees may take leave in increments of at least one hour. The employer cannot require the employee to use earned paid leave when the employee closes the business, cancels a shift or otherwise causes the employee to be unable to perform their job. An employer shall not deny an employee the right to use earned paid leave, and such denial or other violation is subject to a penalty.

Fiscal impact of rule: N/A

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Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 2**, Occupational Safety and Health Standards for General Industry Employment in the Public Sector
Filing number: **2020-253**
Effective date: 12/26/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

To update the rule to incorporate changes to the Federal Occupational Safety and Health Administration regulations, 29 CFR part 1910, including modifications to silica and beryllium standards.

Basis statement:

(See Principal Reason)

Fiscal impact of rule:

(No response)

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Agency name: Department of Labor, Bureau of Labor Standards, **Board of Occupational Safety and Health**
Umbrella-Unit: **12-179**
Statutory authority: 26 MRS §565
Chapter number/title: **Ch. 3**, Occupational Safety and Health Standards for Construction Industry Employment in the Public Sector
Filing number: **2020-056**
Effective date: 3/22/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:
(See Basis Statement)

Basis statement:

The purpose of this chapter is to incorporate by reference certain rules governing Occupational Safety and Health in construction industry employment as promulgated by the Federal Occupational Safety and Health Administration at 29 CFR part 1926 as most recently amended as of December 5, 2019.

Fiscal impact of rule:
(No response)

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Agency name: Department of Labor, **Maine Labor Relations Board**
Umbrella-Unit: **12-180**
Statutory authority: 26 MRS §968(3)
Chapter number/title: **Ch. 10**, General Rules
Filing number: **2020-034**
Effective date: 4/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change is intended to improve the efficiency of the agency's processing of petitions and complaints filed by public sector employees, unions and employers through the mandated use of electronic filing to a designated email address. This change will also improve the ease with which parties may file petitions and complaints with the agency. The rule changes would also allow for service of documents on parties through email, provided that traditional service occurs on the same day, to further improve efficiency of the process through electronic means. The Board has changed its rules around the procurement of official transcripts in order to reflect its intention to outsource transcribing service to a private court reporter service. The rule change also eliminates reference to the *Agricultural Employees Labor Relations Act*, which was repealed in 2012, and corrects erroneous statutory citations.

Basis statement:

This rulemaking of the Maine Labor Relations Board is authorized by 26 MRS §968(3). The Board met and formally approved proposed rule changes on December 6, 2019. A public rulemaking hearing was held in Room 334 of the State House in Augusta on January 29, 2020. The Board met and formally adopted the rules on February 28, 2020. The rule changes will go into effect on April 1, 2020.

The Board has not updated its rules in approximately 20 years. Since that time, citizens have come to increasingly rely on electronic means to communicate and to receive information. The rule changes put forward by the Board attempt to accommodate that reality and, in the process, streamline the Board's processes for the benefit of parties engaging in Board-administered business as well as for the benefit of the agency itself. Electronic filing of documents is now common for most, if not all, state labor relations agencies and their federal counterparts. The Board reviewed several of these models for electronification but decided to base its system on that of New Hampshire's Public Employee Labor Relations Board. This model consists of a designated email address (in Maine's case mlrb@maine.gov) to which documents are submitted. Given the simplicity of this method, the low implementation cost and its ease of use for the parties, the Board concluded this was the best way to move its operations further into the digital sphere, given budget constraints and the current level of filings. Several other changes in the rules are intended to complement the Board's attempt at streamlining this electronic filing system and encouraging electronic communication. One change the Board had hoped to make in this area was partially thwarted due to a statutory complication. A provision of the *Maine Administrative Procedure Act* requires that service of documents between parties in an adjudicatory proceeding must take place by either mail or hand delivery. Service of documents by email therefore, though preferred by the Board, may not serve as sole service in such cases. The Board complies with this restriction in its rules, while also encouraging electronic service, by allowing parties to effectuate service by email provided that service by traditional means happens on the same day.

Another major impetus for the rule changes is the need to implement a recent amendment to the Municipal Employees Labor Relations Law enacted by Public Law 2019

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ch. 135. This law put into place a new process for employee bargaining units to determine their bargaining agent representative without the need for a secret ballot election. Under this "majority sign-up" process, once a majority of the employees in an unrepresented bargaining unit sign authorization cards designating a particular organization as the unit's exclusive bargaining agent, the Board will certify that organization as such.

The Board decided to amend its rules to clarify the Board's position as to reliance on attachments included with prohibited practice complaints. The Board also intended with these rule changes to clarify when a complaint may be amended, and to consolidate into one window of time an employer's initial response to a complaint. Together these changes will hopefully result in a lower rate of deficient filings and a reduced time frame for the resolution of prohibited practice cases filed with the Board.

The rule changes setting the estimated parties' share of mediation service costs serves to streamline the initiation of mediation services by eliminating a bureaucratic step in the process. The Board's recent challenges in maintaining a viable list of individuals for providing private fact-finding services is the basis for removing the rule-based restriction on otherwise eligible individuals who are employees or subcontractors of public management associations or public employee associations. The vast majority of the minor, miscellaneous rule changes made simply reflect the Board's desire to bring its rules up to modern drafting standards and to provide more clarity and consistency to parties engaging in the processes administered by the Board.

Fiscal impact of rule:

This adoption will not have a significant fiscal impact on the agency or members of the regulated community.

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Agency name: Department of Labor, **Maine Labor Relations Board**
Umbrella-Unit: **12-180**
Statutory authority: 26 MRS §968(3)
Chapter number/title: **Ch. 11**, Bargaining Unit Composition and Representation Matters
Filing number: **2020-035**
Effective date: 4/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change makes changes necessary to implement Public Law 2019 ch.135, which allows for a new process to designate a collective bargaining agent under the *Municipal Public Employees Labor Relations Law*. It also makes changes in order to improve the efficiency of the agency's processing of petitions and complaints filed by public sector employees, unions and employers through the mandated use of electronic filing to a designated email address. Other rule changes allow for similar efficiency gains through electronic communication by eliminating the requirement to have a petition signed before notary public and the Board's obligation to post documents on a physical bulletin board. The Board has changed its rules around the procurement of official transcripts in order to reflect its intention to outsource transcribing services to a private court reporter service, and proposes to streamline the election process by providing, in certain cases, an earlier deadline for employer submission of the list of employees eligible to vote. The rule change makes changes in order to improve the consistency of provisions regarding hearings. The rule change also eliminates reference to the *Agricultural Employees Labor Relations Act*, which was repealed in 2012, corrects erroneous internal references and makes miscellaneous non-substantive changes for the purpose of clarity.

Basis statement:

This rulemaking of the Maine Labor Relations Board is authorized by 26 MRS §968(3). The Board met and formally approved proposed rule changes on December 6, 2019. A public rulemaking hearing was held in Room 334 of the State House in Augusta on January 29, 2020. The Board met and formally adopted the rules on February 28, 2020. The rule changes will go into effect on April 1, 2020.

The Board has not updated its rules in approximately 20 years. Since that time, citizens have come to increasingly rely on electronic means to communicate and to receive information. The rule changes put forward by the Board attempt to accommodate that reality and, in the process, streamline the Board's processes for the benefit of parties engaging in Board-administered business as well as for the benefit of the agency itself. Electronic filing of documents is now common for most, if not all, state labor relations agencies and their federal counterparts. The Board reviewed several of these models for electronification but decided to base its system on that of New Hampshire's Public Employee Labor Relations Board. This model consists of a designated email address (in Maine's case mlrb@maine.gov) to which documents are submitted. Given the simplicity of this method, the low implementation cost and its ease of use for the parties, the Board concluded this was the best way to move its operations further into the digital sphere, given budget constraints and the current level of filings. Several other changes in the rules are intended to complement the Board's attempt at streamlining this electronic filing system and encouraging electronic communication. One change the Board had hoped to make in this area was partially thwarted due to a statutory complication. A provision of the *Maine Administrative Procedure Act* requires that service of documents between parties in an adjudicatory proceeding must take place by either mail or

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hand delivery. Service of documents by email therefore, though preferred by the Board, may not serve as sole service in such cases. The Board complies with this restriction in its rules, while also encouraging electronic service, by allowing parties to effectuate service by email provided that service by traditional means happens on the same day.

Another major impetus for the rule changes is the need to implement a recent amendment to the *Municipal Employees Labor Relations Law* enacted by Public Law 2019 ch. 135. This law put into place a new process for employee bargaining units to determine their bargaining agent representative without the need for a secret ballot election. Under this "majority sign-up" process, once a majority of the employees in an unrepresented bargaining unit sign authorization cards designating a particular organization as the unit's exclusive bargaining agent, the Board will certify that organization as such.

The Board decided to amend its rules to clarify the Board's position as to reliance on attachments included with prohibited practice complaints. The Board also intended with these rule changes to clarify when a complaint may be amended, and to consolidate into one window of time an employer's initial response to a complaint. Together these changes will hopefully result in a lower rate of deficient filings and a reduced time frame for the resolution of prohibited practice cases filed with the Board.

The rule changes setting the estimated parties' share of mediation service costs serves to streamline the initiation of mediation services by eliminating a bureaucratic step in the process. The Board's recent challenges in maintaining a viable list of individuals for providing private fact-finding services is the basis for removing the rule-based restriction on otherwise eligible individuals who are employees or subcontractors of public management associations or public employee associations. The vast majority of the minor, miscellaneous rule changes made simply reflect the Board's desire to bring its rules up to modern drafting standards and to provide more clarity and consistency to parties engaging in the processes administered by the Board.

Fiscal impact of rule:

This adoption will not have a significant fiscal impact on the agency or members of the regulated community.

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Agency name: Department of Labor, **Maine Labor Relations Board**
Umbrella-Unit: **12-180**
Statutory authority: 26 MRS §968(3)
Chapter number/title: **Ch. 12**, Prohibited Practice Complaints; Interpretive Rulings
Filing number: **2020-036**
Effective date: 4/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change makes changes intended to streamline the prohibited practice complaint process by requiring a respondent to file any motion regarding sufficiency within the same 20-day period required for providing an answer to a complaint. The rule also, for the purpose of providing clarity, addresses the permitted use of attachments with prohibited practice complaints and provides that a party has the right to file an amended complaint after receiving a notice of errors and insufficiencies from the executive director. It also makes changes in order to improve the efficiency of the agency's processing of petitions and complaints filed by public sector employees, unions and employers through the mandated use of electronic filing to a designated email address. Other changes allow for similar efficiency gains through electronic communication by eliminating the requirement to have a petition signed before notary public and the Board's obligation to post documents on a physical bulletin board. The Board has changed its rules around the procurement of official transcripts in order to reflect its intention to outsource transcribing services to a private court reporter service. The rule change also makes changes to allow an email to serve as proof of service, eliminates reference to the *Agricultural Employees Labor Relations Act*, which was repealed in 2012, and makes miscellaneous non-substantive changes for the purpose of clarity.

Basis statement:

This rulemaking of the Maine Labor Relations Board is authorized by 26 MRS §968(3). The Board met and formally approved proposed rule changes on December 6, 2019. A public rulemaking hearing was held in Room 334 of the State House in Augusta on January 29, 2020. The Board met and formally adopted the rules on February 28, 2020. The rule changes will go into effect on April 1, 2020.

The Board has not updated its rules in approximately 20 years. Since that time, citizens have come to increasingly rely on electronic means to communicate and to receive information. The rule changes put forward by the Board attempt to accommodate that reality and, in the process, streamline the Board's processes for the benefit of parties engaging in Board-administered business as well as for the benefit of the agency itself. Electronic filing of documents is now common for most, if not all, state labor relations agencies and their federal counterparts. The Board reviewed several of these models for electronification but decided to base its system on that of New Hampshire's Public Employee Labor Relations Board. This model consists of a designated email address (in Maine's case mlrb@maine.gov) to which documents are submitted. Given the simplicity of this method, the low implementation cost and its ease of use for the parties, the Board concluded this was the best way to move its operations further into the digital sphere, given budget constraints and the current level of filings. Several other changes in the rules are intended to complement the Board's attempt at streamlining this electronic filing system and encouraging electronic communication. One change the Board had hoped to make in this area was partially thwarted due to a statutory complication. A provision of the *Maine Administrative Procedure Act* requires that service of documents between parties in an adjudicatory proceeding must take place by either mail or

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Another major impetus for the rule changes is the need to implement a recent amendment to the Municipal Employees Labor Relations Law enacted by Public Law 2019 ch. 135. This law put into place a new process for employee bargaining units to determine their bargaining agent representative without the need for a secret ballot election. Under this "majority sign-up" process, once a majority of the employees in an unrepresented bargaining unit sign authorization cards designating a particular organization as the unit's exclusive bargaining agent, the Board will certify that organization as such.

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Agency name: Department of Labor, **Maine Labor Relations Board**
Umbrella-Unit: **12-180**
Statutory authority: 26 MRS §968(3)
Chapter number/title: **Ch. 13**, Resolution of Contract Negotiation Disputes
Filing number: **2020-037**
Effective date: 4/1/2020
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

This rule change is intended to streamline the provision of mediation services by designating an amount for the parties' estimated share of costs and directing a requesting to provide this payment. The rule change would also eliminate restrictions on employees or subcontractors of public management associations or public employee associations serving as private fact finders, in order to broaden the pool of available fact finders. It makes changes in order to improve the efficiency of the agency's processing of mediation and fact-finding requests filed by public sector employers and unions through the mandated use of electronic filing to a designated email address. It also makes miscellaneous non-substantive changes for the purpose of clarity.

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