

The Legislature is in Session: Why it Matters to Employers

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Despite the increasing federalization of employment and benefits law, a great part of the employment relationship is governed by state law: legislative (statutes), administrative (regulations), and judicial (case law). Because both agencies and courts are generally constrained by what the Legislature puts into statutes, and because lawmaking is a political process open to public participation, employers can have the greatest impact in shaping the law at the critical legislative stages *before* a bill becomes law.

Maine businesses—directly, assisted by paid lobbyists, or through chambers of commerce and trade associations—participate in the lawmaking process in several ways: (1) pursuing legislative proposals of their own by approaching legislators who will sponsor them; (2) supporting bill sponsors at the drafting stage by providing practical and factual input; (3) providing testimony at public hearings and work sessions on bills that have been submitted; and (4) contacting legislators to voice support or opposition to bills prior to enactment, or in a rare case, (5) seeking a gubernatorial veto of legislation recently passed (or legislative override of a veto).

How Do We Know What's Happening?

Each Legislature considers literally thousands of proposals. The 121st Legislature that recently convened will be no exception. Of these, the media will track a handful, and the focus will be on matters of broadest or greatest impact as reporters identify them, or bills that generate the greatest controversy. Even when the media latches onto a bill, coverage often begins with a report of a recent public hearing, so that the best opportunity for input will already have passed by the time you read about it.

There are a wealth of resources to determine what matters are “in the pipeline” in Augusta. Among them:

- Legislative Session information is found at <http://janus.state.me.us/legis/session/> and the actual text of bills can be found at <http://www.mainelegislature.org/legis/bills/billtexts/>
- The Legislative Information Office web site contains a list by subject of bills that were submitted by “cloture” (the date when most legislative proposals had to be announced, but before final drafting): http://janus.state.me.us/legis/ljo/cloture121r1/subject_list_1.html

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- The Maine State Chamber of Commerce provides members with current legislative information and advocates for and against bills in response to member concerns
- Legislative Notices published in the newspaper identify bills that are scheduled for public hearing. Information is also available at <http://www.mainelegislature.org/legis/ljo/phSched.asp>.

In fact, there is so much information that it can be difficult to determine what is relevant and important to your business or to HR professionals generally. A couple of tools to help focus the search:

- **Committees:** Most employment matters will come before (the Joint Standing Committee on) **Labor**, including matters within the jurisdiction of the Maine Department of Labor (such as minimum wage, severance, and unemployment insurance) and Workers Compensation. However, employment-related legislation appears before other committees, as well. For example, the **Judiciary** Committee generally handles bills regarding the Maine Human Rights Act, and the Committee on **Insurance and Financial Services** (formerly, Banking and Insurance) is expected to address no fewer than **48 bills on health insurance benefits alone** this session (including mandated benefits—see, “An Act to Require Insurance Companies to Pay up to \$200 for Wigs for Individuals who have Lost Hair Due to Cancer Treatments”), as well as some Workers Compensation matters. For your industry, another committee may routinely address matters relevant to you, e.g., a trucking company may be affected—even in its HR Department—by matters heard by the Transportation Committee. For a list of committees and their members, see: <http://janus.state.me.us/house/jtcomlst.htm>. For a description of each committee’s jurisdiction: <http://www.state.me.us/legis/opla/committe.htm>.
- **Bill Search:** If there is a specific term you want to look for in all pending legislation, type it into <http://www.mainelegislature.org/legis/bills/>, and lists of the relevant bills appear, with hyperlinks to their text. Keep in mind that this is not a subject-matter search, but looks just for the **exact** text that you type. For example, a search for “workers comp” returned 41 references, while “workers compensation” returned 69.

Okay, So What Can We Do About It?

Suppose you diligently review pending bills on a weekly basis, and you notice that, for example, there is a bill entitled L.D. (Legislative Document) 6, “An Act to Amend the Child Labor Laws,” that is scheduled to go to the Labor Committee. You review the bill text (<http://www.mainelegislature.org/legis/bills/LD.asp?LD=6>) and you think that as written—**or as it may possibly be amended before enactment**—the bill could significantly affect your business. You check the hearing schedule (either generally at <http://www.mainelegislature.org/legis/ljo/phSched.asp> or for the specific bill at <http://janus.state.me.us/legis/status/gateway.asp?ld=6> by clicking on the “Short Title”

link) and see that the Committee will hold a hearing on February 4, 2003 at 1:30 pm. You can:

- **Attend and watch or testify.** This is open to the public, and input is encouraged. Those who choose to testify must identify themselves, whom they represent, and whether they are testifying “for,” “against,” or “neither for nor against” the bill. Written materials or remarks, prepared and copied in advance, can be most effective; they can be handed to the Committee Clerk in advance or at the hearing. After testifying, remain standing and available for questions from the members of the Committee.
- **Notify management.** Perhaps your organization has someone—a Public Affairs Officer, a lobbyist or the CEO—who routinely represents the company in legislative advocacy. They need to know when there’s a matter of interest, especially in matters like HR that may fall outside their usual areas of legislative concern.
- **Alert trade associations.** Similarly, many trade associations track and lobby legislation of interest to members, but they may need to be alerted to particular bills. For example, truckers’ associations may closely watch the hearing schedule for the Transportation Committee, and miss a bill before the Labor Committee entitled, “An Act to Clarify Employment Status of Owner-operators in the Trucking Industry.”
- **Call/Email Your Peers.** Let your co-workers, HRASM colleagues and leadership know what your concerns are—maybe there are others in the same boat who will help work toward a solution.
- **Contact Your Legislators.** Each of us has a State Representative and a State Senator. We can contact them in a variety of ways: primarily by telephone, email, or letter.
 - **Who are my Rep and Senator?** Find out at <http://janus.state.me.us/house/townlist.htm>.
 - **How do I reach them?**
 - To reach your Representative:
House of Representatives, 2 State House Station, Augusta, Maine 04333-0002 Tel: 1-800-423-2900
 - To reach your Senator:
Senate of Maine, 3 State House Station, Augusta, Maine 04333-0003 Tel: 1-800-423-6900
 - Email: http://janus.state.me.us/house/e_mail.htm (House);
<http://www.state.me.us/legis/senate/senators/email/maillst.htm> (Senate)
 - Home contact information is available online, too:
<http://janus.state.me.us/house/hbiolist.htm> (House);

<http://www.state.me.us/legis/senate/senators/candidates/elect2002.htm> (Senate)

- **Can I have any impact?** Absolutely. Because of the large volume of bills, most legislation goes through the process with only limited public input, especially from the front-line people it may affect most. Our citizen legislators are typically open to comments and suggestions that are thoughtful, not unduly emotional, and fact-based. Comments from personal constituents score extra points because they're working *for you*.

Be aware of activities that are considered “lobbying,” and could subject you to the Lobbyist Disclosure Act. Generally, trying to influence legislation constitutes “lobbying” under Maine law when the individual is being compensated, or their expenses reimbursed, for the activity. However, the registration and disclosure law applies generally only to “lobbyists,” who generally are people that lobby more than 8 hours in a calendar month, or people employed by a lobbyist. For a general guide to the law and its requirements, see <http://www.state.me.us/ethics/lobbyistguide2001.pdf>. The statute and related regulations can be accessed at <http://www.state.me.us/ethics/commnlaws®s.htm>.

121st Maine Legislature—What’s on Tap for Employers?

With the headlines focused on unprecedented budget shortfalls, employers might believe that the legislative agenda will be solely focused on fiscal matters. While the budget will consume much of the attention of Committees on Appropriations and Taxation and of legislative leadership, there are 15 other committees and over 100 legislators who don't belong to these groups. Most legislators feel a mandate to get things done while they are in Augusta, and if the budget precludes new programs, it does not limit the regulatory powers of lawmakers. There may actually be *greater* pressure on legislators to regulate conduct in sessions where the fiscal reach of the State is so limited.

Among the bill titles of interest to date (See also, <http://www.saufley.com/legistable.asp>):

- An Act to Increase Maine's Minimum Wage
- An Act to Ensure that Health Care Workers are Paid a Livable Wage
- An Act to Define and Revise Noncompete Employment Contracts
- An Act to Implement the Recommendations of the Committee to Continue to Study the Benefits and Costs for Increasing Access to Family and Medical Leave for Maine Families (**Paid FMLA**)
- An Act Regarding an Employee's Access to Personnel Files
- An Act Regarding Wrongful Discharge
- An Act to Allow for Employee Attorney's Fees and Costs in Cases When the Employee Prevails

- An Act to Require that Insurance Companies Provide Coverage for Medically Necessary Rehabilitation Services
- An Act To Assist Maine's Infertile Citizens
- An Act to Implement a Process That Provides for Sunsetting Health Insurance Mandates

For a more complete list, see the sites identified throughout this article. In addition, new bills may be introduced at any time during the session by the Governor, or on an exception basis if approved by legislative leadership. Finally, while legislative rules place some limits on amendments, some measures as they are initially drafted may be substantially transformed as they proceed through the Legislature, even after public hearings are over and the formal opportunities for testimony have been completed. For bills that appear relevant to your firm, it is important to track them through to enactment and signature or, on the other hand, final action killing the bill in both the House and Senate.

Want to know more?

A few more web resources. Materials are also available through the Law & Legislative Reference Library at the State House or your local public library.

- A brief description of how a bill becomes law in Maine:
<http://www.state.me.us/legis/lawlib/billpath.htm>
- More detailed information in the Legislator's Handbook:
<http://www.state.me.us/legis/opla/legghan02.PDF>
- Details of the bill drafting process:
<http://janus.state.me.us/legis/ros/manual/contents.htm>