

NO WORK BUT STILL PAY? MAINE'S NEW 'SHOW-UP PAY' LAW WILL REQUIRE YOU TO UPDATE YOUR WAGE AND HOUR PRACTICES

Insights
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A new Maine law set to take effect before the end of the month will require most employers with 10 or more employees to provide a minimum payment to employees called in for shifts that are cancelled or reduced. Starting September 24, Maine LD 598, "An Act to Require Minimum Pay for Reporting to Work," will require employers throughout the state to change their wage and hour practices to ensure compliance. But unanswered questions remain. What do you need to know about this law and what are some steps you can take to avoid violations?

Key Details

- **Employers Impacted:** [This bill](#) impacts employers with 10 or more employees in the usual and regular course of business for more than 120 days in a calendar year. [Seasonal employers](#), as determined by the Maine Unemployment Insurance Commission, and [public employers](#) are excluded from this law.
- **Employers must pay the lesser of two options:** If an employee reports to work for a scheduled shift, and the employer cancels or reduces their scheduled shift, the employee must be paid either: (1) two hours of pay at the employee's regular hourly rate of pay, or (2) the total pay for the shift for which the employee was initially scheduled, whichever is less.
- **Violations:** Employers violating this law may be subject to a fine of \$100 to \$500 per violation. The statute does not create a private right of action.

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- **Exceptions:** Minimum pay for reporting to work is not required in cases of natural disaster, civil emergency, extreme adverse weather conditions, or due to employee injury or illness.

Examples

- **An employee's eight-hour shift is canceled but not communicated to the employee.** The employee arrives at work and is sent home. The employer must pay the worker for eight hours of pay at their regular hourly rate.
- **An employee is sent home after one hour of their scheduled eight-hour shift.** The employer must pay the worker for eight hours of pay at their regular hourly rate.
- **An employee is scheduled to work for one hour but is sent home after 30 minutes.** The employer must pay the worker for the full one hour.

Employers Faced With Unanswered Questions

The new law has a partial exception if employers make a "documented good faith effort" to notify employees of the cancellation or reduction in advance. The law contemplates that, where an employer gives notice unsuccessfully, they may assign an employee who appears some duties to perform and compensate them for the amount of time it takes to perform those duties. If they have no duties to assign the employee, they must make the minimum payment under the statute.

But this partial exception creates a number of questions that the statute does not answer – at least at present. Some questions include:

- What constitutes a "documented good faith effort"?
- How long in advance employers must give notice?
- What duties employers must assign employees who appear?
- Is there a minimum amount of time employers must assign duties for?

The law authorizes the Maine Department of Labor to adopt rules designed to implement and enforce it. At present,

however, the Department has not begun the rulemaking process and employers will not have the benefit of rules in place before the law takes effect. We'll monitor the status of any rules that clear up this confusion, so make sure you are subscribed to [Fisher Phillips' Insights](#) to receive the most up-to-date information.

What Should You Do?

- Employers should revisit scheduling policies and review how changes in shift schedules are communicated to employees.
- You must also ensure you adequately train supervisors and managers on the law's requirements and that your business has established payroll tracking to ensure eligible employees receive pay.
- Finally, keep an eye out for guidance from the Department of Labor, which should address some of the current ambiguities in the law.

Conclusion

We will continue to monitor this new law and share updates as developments unfold. Make sure you are subscribed to [Fisher Phillips' Insights](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Portland, Maine, office](#).

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