

Employment Discrimination Remedies Desk Aid (with cites)*

LAW • COVERED	EMOTIONAL	PUNITIVE	PENALTIES	LOST WAGES	ATTY FEES/JURY
<p>Maine Human Rights Act, 5 M.R.S. §§4551, et seq.</p> <ul style="list-style-type: none"> • Race or color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin, WPA, prior Workers' Comp. • Nearly all employers, regardless of size. 5 M.R.S. §4553(4). 	<ul style="list-style-type: none"> • Yes, if 15 or more employees. 5 M.R.S. §4613(2)(B)(8)(e). • Caps: \$50K for <101 ees \$100K for <201 ees \$300K for <501 ees \$500K for >500 ees • If cannot recover under §1981. 5 M.R.S. §4613(2)(B)(8)(a). • Good faith defense for reasonable accommodation. 5 M.R.S. §4613(2)(B)(8)(b). 	<ul style="list-style-type: none"> • Yes, if 15 or more employees. 5 M.R.S. §4613(2)(B)(8)(e). • Caps: \$50K for <101 ees \$100K for <201 ees \$300K for <501 ees \$500K for >500 ees • Clear and convincing evidence. <i>Batchelder v. Realty Res. Hospitality, LLC</i>, 2007 ME 17, ¶ 22. • If cannot recover under §1981. 5 M.R.S. §4613(2)(B)(8)(a). • Good faith defense for reasonable accommodation. 5 M.R.S. §4613(2)(B)(8)(b). 	<ul style="list-style-type: none"> • Civil penal damages if under 15 employees. 5 M.R.S. §4613(2)(B)(7). • Caps: \$20K 1st Order \$50K 2nd Order \$100K 3rd Order 	<ul style="list-style-type: none"> • Yes. 5 M.R.S. §4613(2)(B)(2). 	<ul style="list-style-type: none"> • Yes, fees. 5 M.R.S. §4614. • Jury trial if 15 or more employees and claim for compensatory or punitive damages. 5 M.R.S. §4613(2)(B)(8)(g); <i>DiCentes v. Michaud</i>, 1998 ME 227, ¶10.
<p>42 U.S.C. §1981</p> <ul style="list-style-type: none"> • Race or color discrimination (includes ancestry or ethnicity, e.g., Arab, Jewish). <i>St. Francis College v.</i> 	<ul style="list-style-type: none"> • Yes. <i>Johnson v. Railway Exp. Agency, Inc.</i>, 421 U.S. 454, 460 (1975); 42 U.S.C. § 1981a(b)(4); <i>Hawkins v. 1115</i> 	<ul style="list-style-type: none"> • Yes. <i>Johnson v. Railway Exp. Agency, Inc.</i>, 421 U.S. 454, 460 (1975); 42 U.S.C. § 1981a(b)(4); <i>Hawkins v. 1115</i> <i>Legal Service Care</i>, 	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • Yes. <i>Johnson v. Railway Exp. Agency, Inc.</i>, 421 U.S. 454, 460 (1975). 	<ul style="list-style-type: none"> • Yes, attorney's fees. 42 U.S.C. §1988(b). • Jury trial. <i>Setser v. Novack Investment Co.</i>, 638 F.2d 1137 (8th Cir. 1981).

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<p><i>Al-Khazrai</i>, 481 U.S. 604 (1987).</p> <ul style="list-style-type: none"> Nearly all private and public employers. 	<p><i>Legal Service Care</i>, 163 F.3d 684, 691-692 (2nd Cir. 1998).</p> <ul style="list-style-type: none"> No caps. 	<p>163 F.3d 684, 691-692 (2nd Cir. 1998).</p> <ul style="list-style-type: none"> No caps. 			
<p>42 U.S.C. §1983</p> <ul style="list-style-type: none"> Equal Protection, Due Process, First Amendment State and local governmental employers and private employers acting under color of state or local law. <i>Lugar v. Edmondson Oil Company</i>, 457 U.S. 922, 940 (1982). 	<ul style="list-style-type: none"> Yes. <i>Memphis Community School District v. Stachura</i>, 477 U.S. 299, 307 (1986). No caps. 	<ul style="list-style-type: none"> Yes. <i>Smith v. Wade</i>, 461 U.S. 30, 56 (1983). No caps. 	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> Yes. <i>Santiago-Negron v. Castro-Davila</i>, 865 F.2d 431, 440-41 (1st Cir. 1989). 	<ul style="list-style-type: none"> Yes, attorney's fees. 42 U.S.C. §1988(b). Jury trial. See <i>Monterey v. Del Monte Dunes at Monterey</i>, 526 U.S. 687 (1999).
<p>Title VII, 42 U.S.C. §§2000e, et seq.</p> <ul style="list-style-type: none"> Race, color, religion, sex, national origin. 15 or more employees. 42 U.S.C. §2000e(b). 	<ul style="list-style-type: none"> Yes. 42 U.S.C. §1981a(a)(1), (b)(3). Caps: \$50K for <101 ees \$100K for <201 ees \$200K for <501 ees \$300K for >500 ees Only available if cannot recover under §1981. 42 U.S.C. §1981a(a)(1). 	<ul style="list-style-type: none"> Yes. 42 U.S.C. §1981a(a)(1), (b)(3). Caps: \$50K for <101 ees \$100K for <201 ees \$200K for <501 ees \$300K for >501 ees Preponderance. <i>Karnes v. SCI Colo. Funeral Servs., Inc.</i>, 162 F.3d 1077, 1081-82 (10th Cir.1998). 	<ul style="list-style-type: none"> No. 	<ul style="list-style-type: none"> Yes. 42 U.S.C. § 2000e-5(g)(1). Back pay capped at two years prior to filing with EEOC. 42 U.S.C. § 2000e-5(g)(1). 	<ul style="list-style-type: none"> Yes, fees. 42 U.S.C. § 2000e-5(k). Jury trial. 42 U.S.C. §1981a(c).

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		<ul style="list-style-type: none"> • Only available if cannot recover under §1981. 42 U.S.C. §1981a(a)(1). 			
<p>ADA, 42 U.S.C. §§12111, et seq.</p> <ul style="list-style-type: none"> • Disability. • 15 or more employees. 42 U.S.C. § 12111(5). • States 11th Amendment immunity. <i>Board of Trustees of the University of Alabama v. Garrett</i>, 531 U.S. 356 (2001). 	<ul style="list-style-type: none"> • Yes. 42 U.S.C. §1981a(a)(2), (b)(3). • Caps: \$50K for <101 ees \$100K for <201 ees \$200K for <501 ees \$300K for >500 ees • Good faith defense for reasonable accommodation. 42 U.S.C. §1981a(a)(3). 	<ul style="list-style-type: none"> • Yes. 42 U.S.C. §1981a(a)(2), (b)(3). • Caps: \$50K for <101 ees \$100K for <201 ees \$200K for <501 ees \$300K for >500 ees • Good faith defense for reasonable accommodation. 42 U.S.C. §1981a(a)(3). 	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • Same as Title VII. 42 U.S.C. § 12117(a). 	<ul style="list-style-type: none"> • Yes, fees. 42 U.S.C. § 12205. • Same as Title VII. 42 U.S.C. § 12117(a).
<p>ADEA, 29 U.S.C. §§621, et seq.</p> <ul style="list-style-type: none"> • Age – 40 and over. 29 U.S.C. §631(a). • 20 or more employees. 29 U.S.C. §630(b). • States have 11th Amendment immunity. <i>Kimel v. Florida Bd. Of Regents</i>, 528 U.S. 62 (2000). 	<ul style="list-style-type: none"> • No. <i>Collazo v. Nicholson</i>, 535 F.3d 41, 44-45 (1st Cir. 2008). 	<ul style="list-style-type: none"> • No. <i>Kolb v. Goldring, Inc.</i>, 694 F.2d 869, 872 (1st Cir. 1982). 	<ul style="list-style-type: none"> • Yes, liquidated damages equal to lost wages, if violation was willful. 29 U.S.C. §§ 216(b), 626(b). • “Willful” means knew conduct illegal or reckless disregard. <i>Trans World Airlines, Inc. v. Thurston</i>, 469 U.S. 111, 128-129 (1985). 	<ul style="list-style-type: none"> • Yes. 29 U.S.C. §§ 216(b), 626(b). 	<ul style="list-style-type: none"> • Yes, attorney’s fees. 29 U.S.C. §§ 216(b), 626(b). • Jury trial. 29 U.S.C. § 626(C)(2).

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<p>EPA, 29 U.S.C. §206(d)</p> <ul style="list-style-type: none"> • Unequal pay between sexes. • Nearly all employers regardless of size. 29 U.S.C. § 203(d). 	<ul style="list-style-type: none"> • No. 29 U.S.C. §§ 216(b), 206(d). 	<ul style="list-style-type: none"> • No. 29 U.S.C. §§ 216(b), 206(d). 	<ul style="list-style-type: none"> • Yes, liquidated damages equal to lost wages. 29 U.S.C. §§ 216(b), 206(d). • “Willful” means “employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute.” <i>McLaughlin v. Richland Shoe Co.</i>, 486 U.S. 128, 133 (1988). 	<ul style="list-style-type: none"> • Yes. 29 U.S.C. §§ 216(b), 206(d). 	<ul style="list-style-type: none"> • Yes, attorney’s fees. 29 U.S.C. §§ 216(b), 206(d). • Jury trial. <i>See E.E.O.C. v. Sizes Unlimited, Inc.</i>, 723 F.Supp. 1195, 1196-97 (E.D.Mich. 1989).
<p>FMLA, 29 U.S.C. §§2601, et seq.</p> <ul style="list-style-type: none"> • 12 weeks of leave for childbirth, adoption, serious health condition. 29 U.S.C. § 2612(a). • 50 or more employees. 29 U.S.C. § 2611(4). 	<ul style="list-style-type: none"> • No. 29 U.S.C. § 2617. 	<ul style="list-style-type: none"> • No. 29 U.S.C. § 2617. 	<ul style="list-style-type: none"> • Liquidated damages equal to lost wages or money losses, unless good faith shown. 29 U.S.C. §2617(a)(1)(A)(iii). 	<ul style="list-style-type: none"> • Lost wages, or actual money losses up to 12 weeks. 29 U.S.C. § 2617(a)(1)(A)(i). 	<ul style="list-style-type: none"> • Yes, attorney’s fees. 29 U.S.C. §2617(a)(3). • Jury trial. <i>Frizzell v. Southwest Motor Freight</i>, 154 F.3d 641, 642 (6th Cir. 1998).
<p>Title IX, 20 U.S.C. §1681(a)</p> <ul style="list-style-type: none"> • Sex discrimination 	<ul style="list-style-type: none"> • Yes. <i>Franklin v. Gwinnett County Public Schools</i>, 503 	<ul style="list-style-type: none"> • No. <i>Mercer v. Duke University</i>, 50 Fed.Appx. 643, 644 	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • Yes. <i>Nelson v. University of Maine System</i>, 944 F.Supp. 	<ul style="list-style-type: none"> • Yes, attorney’s fees. 42 U.S.C. §1988(b). • Jury trial when

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<p>in education program or activity receiving Federal financial assistance. 20 U.S.C. §1681(a).</p>	<p>U.S. 60 (1992).</p> <ul style="list-style-type: none"> • No caps. 	<p>(4th Cir. 2002).</p>		<p>44, 50 (D.Me. 1996).</p>	<p>seeking money damages. <i>Cf. Smith v. Barton</i>, 914 F.2d 1330, 1338 (9th Cir. 1990) (504 claim).</p>
<p>Rehab Act §504, 29 U.S.C. § 794(a)</p> <ul style="list-style-type: none"> • Qualified individual with a disability. • Recipients of federal financial assistance. 	<ul style="list-style-type: none"> • Yes. <i>Sheely v. MRI Radiology Network, P.A.</i>, 505 F.3d 1173, 1204 (11th Cir. 2007). • No caps. 	<ul style="list-style-type: none"> • No. <i>Barnes v. Gorman</i>, 536 U.S. 181, 189 (2002). 	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • Yes. <i>Doe v. District of Columbia</i>, 796 F.Supp. 559, 571 (D.D.C. 1992). 	<ul style="list-style-type: none"> • Yes, attorney's fees. 29 U.S.C. § 794a(b). • Jury trial when seeking money damages. <i>Smith v. Barton</i>, 914 F.2d 1330, 1338 (9th Cir. 1990).
<p>Title VI, 42 U.S.C. § 2000d</p> <ul style="list-style-type: none"> • No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 	<ul style="list-style-type: none"> • Yes. <i>Nieves-Marquez v. Puerto Rico</i>, 353 F.3d 108, 126 n.20 (1st Cir. 2003). • No caps. 	<ul style="list-style-type: none"> • No. <i>Cf. Barnes v. Gorman</i>, 536 U.S. 181, 189 (2002)(Rehab Act). 	<ul style="list-style-type: none"> • No. 	<ul style="list-style-type: none"> • Yes. <i>Consolidated Rail Corp. v. Darrone</i>, 465 U.S. 624, 630 (1984). 	<ul style="list-style-type: none"> • Yes, attorney's fees. 42 U.S.C. §1988(b). • Jury trial when seeking money damages. <i>Cf. Smith v. Barton</i>, 914 F.2d 1330, 1338 (9th Cir. 1990) (504 claim).

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<p>NLRA, 29 U.S.C. §158(a)</p> <ul style="list-style-type: none"> • Right to collective bargaining. • Most private employers (not government). 29 U.S.C. §152(2). 	<ul style="list-style-type: none"> • No. 29 U.S.C. §160. 	<ul style="list-style-type: none"> • No. 29 U.S.C. §160. 	<ul style="list-style-type: none"> • No. 29 U.S.C. §160. 	<ul style="list-style-type: none"> • NLRB ordered remedies including reinstatement and back pay. 29 U.S.C. §160. 	<ul style="list-style-type: none"> • No jury trial. 29 U.S.C. §160.
<p>Maine Medical Leave, 26 M.R.S. §§843, et seq.</p> <ul style="list-style-type: none"> • 10 weeks of leave per 2 years if employed for 12 consecutive months, unless fewer than 15 employees at job site. 26 M.R.S. §844(1). 	<ul style="list-style-type: none"> • No. 26 M.R.S. § 848. 	<ul style="list-style-type: none"> • No. 26 M.R.S. § 848. 	<ul style="list-style-type: none"> • Yes. \$100 per day the violation continues. 26 M.R.S. § 848(1)(B). • If willful, liquidated damages equal to lost wages or \$100 per day penalty. 26 M.R.S. § 848(2). 	<ul style="list-style-type: none"> • Yes. 26 M.R.S. § 848(1)(A). 	<ul style="list-style-type: none"> • Yes, attorney's fees. 26 M.R.S. § 848(3). • Unclear if jury trial.
<p>Maine Workers' Compensation Act, 39-A M.R.S. §353</p> <ul style="list-style-type: none"> • Retaliation for asserting rights. 	<ul style="list-style-type: none"> • No. 39-A M.R.S. §353. 	<ul style="list-style-type: none"> • No. 39-A M.R.S. §353. 	<ul style="list-style-type: none"> • No. 39-A M.R.S. §353. 	<ul style="list-style-type: none"> • Yes. 39-A M.R.S. §353. 	<ul style="list-style-type: none"> • Yes. 39-A M.R.S. §353.

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