

# MAINE STATE LEGISLATURE

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# 129th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2020

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Legislative Document

No. 1911

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S.P. 658

In Senate, December 24, 2019

### An Act To Amend the Unemployment Compensation Laws

(EMERGENCY)

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Submitted by the Department of Labor pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 20, 2019. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BELLOWS of Kennebec.

1           **Emergency preamble. Whereas,** acts and resolves of the Legislature do not  
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3           **Whereas,** changes made to the laws governing unemployment compensation will  
4 have an adverse impact on the employer community if implemented; and

5           **Whereas,** this legislation makes changes to those laws that are necessary to  
6 eliminate the adverse impact; and

7           **Whereas,** in the judgment of the Legislature, these facts create an emergency within  
8 the meaning of the Constitution of Maine and require the following legislation as  
9 immediately necessary for the preservation of the public peace, health and safety; now,  
10 therefore,

11 **Be it enacted by the People of the State of Maine as follows:**

12           **Sec. 1. 26 MRSA §1221, sub-§3, ¶A,** as amended by PL 2019, c. 343, Pt. TTT,  
13 §1, is further amended to read:

14           A. At the time the status of an employing unit is ascertained to be that of an  
15 employer, the commissioner shall establish and maintain, until the employer status is  
16 terminated, for the employer an experience rating record, to which are credited all the  
17 contributions that the employer pays on the employer's own behalf. This chapter may  
18 not be construed to grant any employer or individuals in the employer's service prior  
19 claims or rights to the amounts paid by the employer into the fund. Benefits paid to  
20 an eligible individual under the Employment Security Law must be charged against  
21 the experience rating record of the claimant's most recent subject employer, ~~except~~  
22 ~~that, beginning January 1, 2022, benefits paid to an eligible individual under the~~  
23 ~~Employment Security Law must be charged against the experience rating record of~~  
24 ~~the claimant's employers in a ratio inversely proportional to the claimant's~~  
25 ~~employment beginning with the most recent employer, or to the General Fund if the~~  
26 otherwise chargeable experience rating record is that of an employer whose status as  
27 such has been terminated; except that no charge may be made to an individual  
28 employer but must be made to the General Fund if the commission finds that:

29           (1) The claimant's separation from the claimant's last employer was for  
30 misconduct in connection with the claimant's employment or was voluntary  
31 without good cause attributable to the employer;

32           (2) The claimant has refused to accept reemployment in suitable work when  
33 offered by a previous employer, without good cause attributable to the employer;

34           (3) Benefits paid are not chargeable against any employer's experience rating  
35 record in accordance with section 1194, subsection 11, paragraphs B and C;

36           (5) Reimbursements are made to a state, the Virgin Islands or Canada for  
37 benefits paid to a claimant under a reciprocal benefits arrangement as authorized  
38 in section 1082, subsection 12, as long as the wages of the claimant transferred to  
39 the other state, the Virgin Islands or Canada under such an arrangement are less

1 than the amount of wages for insured work required for benefit purposes by  
2 section 1192, subsection 5;

3 (6) The claimant was hired by the claimant's last employer to fill a position left  
4 open by a Legislator given a leave of absence under chapter 7, subchapter 5-A,  
5 and the claimant's separation from this employer was because the employer  
6 restored the Legislator to the position after the Legislator's leave of absence as  
7 required by chapter 7, subchapter 5-A;

8 (7) The claimant was hired by the claimant's last employer to fill a position left  
9 open by an individual who left to enter active duty in the United States military,  
10 and the claimant's separation from this employer was because the employer  
11 restored the military serviceperson to the person's former employment upon  
12 separation from military service;

13 (8) The claimant was hired by the claimant's last employer to fill a position left  
14 open by an individual given a leave of absence for family medical leave provided  
15 under Maine or federal law, and the claimant's separation from this employer was  
16 because the employer restored the individual to the position at the completion of  
17 the leave; or

18 (9) The claimant initiated a partial separation or reduction of hours and that  
19 partial separation or reduction of hours was agreed to by the employee and  
20 employer.

21 **Sec. 2. 26 MRSA §1221, sub-§3, ¶C-2** is enacted to read:

22 C-2. For the purposes of paragraph A, the experience rating record of the most recent  
23 subject employer may not be charged with benefits paid to a claimant whose work  
24 record with that employer totaled 5 consecutive weeks or less of total or partial  
25 employment, in which case the most recent subject employer with whom the  
26 claimant's work record exceeded 5 consecutive weeks of total or partial employment  
27 must be charged if that employer would have otherwise been chargeable had not  
28 subsequent employment intervened.

29 **Sec. 3. 26 MRSA §1221, sub-§4-A, ¶C,** as amended by PL 2007, c. 352, Pt. A,  
30 §2, is further amended to read:

31 C. The commissioner shall:

32 (1) Promptly notify each employer of the employer's rate of contributions as  
33 determined for the 12-month period commencing January 1st of each year. The  
34 determination is conclusive and binding upon the employer unless within 30 days  
35 after notice of the determination is mailed to the employer's last known address  
36 or, in the absence of mailing, within 30 days after the delivery of the notice, the  
37 employer files an application for review and redetermination, setting forth the  
38 employer's reasons. If the ~~commission~~ Division of Administrative Hearings  
39 grants the review, the employer must be promptly notified and must be granted  
40 an opportunity for a hearing. An employer does not have standing in any  
41 proceedings involving the employer's rate of contributions or contribution  
42 liability to contest the chargeability to the employer's experience rating record of

1 any benefits paid in accordance with a determination, redetermination or decision  
2 pursuant to section 1194, except upon the ground that the services for which  
3 benefits were found to be chargeable did not constitute services performed in  
4 employment for the employer and only when the employer was not a party to the  
5 determination, redetermination or decision or to any other proceedings under this  
6 chapter in which the character of the services was determined. The employer  
7 must be promptly notified of the ~~commission's~~ Division of Administrative  
8 Hearings' denial of the employer's application ~~or the commission's~~  
9 ~~redetermination, both of which are subject to appeal pursuant to Title 5, chapter~~  
10 ~~375, subchapter 7, which is subject to appeal pursuant to section 1226; and~~

11 (2) Provide each employer at least monthly with a notification of benefits paid  
12 and chargeable to the employer's experience rating record. In the absence of an  
13 application for redetermination filed ~~in the manner and within the period~~  
14 ~~prescribed by the commission~~ 30 days after the notification was mailed, a  
15 notification is conclusive and binding upon the employer for all purposes. A  
16 ~~redetermination made after notice and opportunity for hearing and the~~  
17 ~~commission's findings of fact may be introduced in subsequent administrative or~~  
18 ~~judicial proceedings involving the determination of the rate of contributions of an~~  
19 ~~employer for the 12-month period commencing January 1st of any year and has~~  
20 ~~the same finality as provided in this section with respect to the findings of fact~~  
21 ~~made by the commission in proceedings to redetermine the contribution rates of~~  
22 ~~an employer~~ Any request for reconsideration must be made in accordance with  
23 section 1226.

24 **Sec. 4. 26 MRSA §1221, sub-§11, ¶D**, as amended by PL 1979, c. 651, §28, is  
25 further amended to read:

26 D. The amount due specified in any assessment from the commissioner ~~shall be~~ is  
27 conclusive on the employer or governmental entity, unless not later than 15 days after  
28 the assessment was mailed to the last known address; the employer or governmental  
29 entity files an application for redetermination by the ~~commission~~ Division of  
30 Administrative Hearings setting forth the grounds for such application.

31 **Sec. 5. 26 MRSA §1225, sub-§2**, as amended by PL 1993, c. 312, §3, is further  
32 amended to read:

33 **2. Jeopardy assessment.** If the Director of Unemployment Compensation  
34 determines that the collection of any contribution, interest or penalty under this  
35 subchapter, as amended, will be jeopardized by delay, the director may immediately  
36 assess the contributions, interest or penalties, whether or not the time prescribed by law or  
37 any rules issued pursuant to section 1082, subsection 2; for making reports and paying the  
38 contributions has expired, and shall give written notice of the assessment to the employer.  
39 In these cases, the right to appeal to the ~~commission~~ Division of Administrative Hearings,  
40 as provided in section 1226, is conditioned upon payment of the contributions, interest or  
41 penalties so assessed, or upon giving appropriate security to the commissioner for the  
42 payment thereof.

1           **Sec. 6. 26 MRSA §1232, sub-§2**, as enacted by PL 1993, c. 312, §5, is amended  
2 to read:

3           **2. Failure to file or pay taxes; determination to prevent renewal, reissuance or**  
4 **other extension of license or certificate.** If the commissioner determines that an  
5 employer who holds a state-issued license or certificate of authority to conduct a  
6 profession, trade or business has failed to file a return at the time required under this  
7 chapter or has failed to pay a tax liability due under this chapter that has been demanded,  
8 and the employer continues to fail to file or pay after at least 2 specific written requests to  
9 do so, the commissioner shall notify the employer in writing by certified mail, return  
10 receipt requested, that refusal to file the required tax return or to pay the overdue tax  
11 liability may result in loss of license or certificate of authority.

12 This written notice must include information about the opportunity to request a fact-  
13 finding interview for the purpose of determining essential facts, negotiating a payment  
14 agreement and determining the appropriateness of further enforcement under this section.

15 If the employer requests a fact-finding interview within 30 days, the commissioner shall  
16 schedule the interview at which the commissioner shall attempt to negotiate a reasonable  
17 payment agreement. The employer must be notified in writing if the commissioner's  
18 determination is to prevent renewal, reissuance or extension of the license or certificate of  
19 authority by the issuing agency. If the employer enters into a payment agreement, a  
20 determination may not be made under this section until the employer fails to comply with  
21 the agreement.

22 If the employer continues, for a period in excess of 30 days from notice of possible denial  
23 of renewal or reissuance of a license or certificate of authority, to fail to file or show  
24 reason why the person is not required to file or if the employer continues not to pay, the  
25 commissioner shall notify the employer in writing of the determination to prevent  
26 renewal, reissuance or extension of the license or certificate of authority by the issuing  
27 agency.

28 A review of the determination is available by filing an appeal under section 1226 to the  
29 Maine Unemployment Insurance Commission Division of Administrative Hearings.  
30 Either by failure to proceed to the next step of appeal or by exhaustion of the steps of  
31 appeal, the determination of the commissioner's right to prevent renewal or reissuance  
32 becomes final unless otherwise determined by appeal.

33 In any event, the license or certificate of authority in question remains in effect until all  
34 appeals are taken to their final conclusion. This subsection may not be invoked for any  
35 tax liability under appeal.

36           **Emergency clause.** In view of the emergency cited in the preamble, this  
37 legislation takes effect when approved.

38   **SUMMARY**

39           This bill makes the following changes to the laws governing unemployment  
40 compensation.

1           1. Current law provides that, beginning January 1, 2022, benefits paid to an  
2 individual under the laws governing unemployment compensation must be charged  
3 against the experience rating record of the claimant's employers in a ratio inversely  
4 proportional to the claimant's employment beginning with the most recent employer.  
5 This bill strikes that language and instead restores the previous language governing the  
6 employer benefit charging model.

7           2. It provides that the experience rating record of the most recent subject employer  
8 may not be charged with benefits paid to a claimant whose work record with that  
9 employer totals 5 or fewer consecutive weeks.

10          3. It provides that, in the absence of an application for redetermination filed within  
11 30 days after the mailing of notification of benefits paid and chargeable to the employer's  
12 experience rating, the notification is conclusive and binding. Under the bill, any request  
13 for reconsideration must be made under the laws governing appeals of determination or  
14 assessment.

15          4. It replaces references to the Unemployment Insurance Commission with  
16 references to the Division of Administrative Hearings to conform with changes made in  
17 Public Law 2017, chapter 284, Part AAAAA.