

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

AS PASSED BY THE

Eighty-seventh and Eighty-eighth  
Legislatures

OF THE

STATE OF MAINE

From April 7, 1935 to April 24, 1937

AND MISCELLANEOUS STATE PAPERS

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PUBLIC LAWS

OF THE

STATE OF MAINE

As Passed by the Eighty-Eighth Legislature

1937

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## Chapter 228

### AN ACT Amending the Law Relating to Unemployment Compensation.

**Emergency preamble.** Whereas on the 18th day of December, 1936, there was passed to be enacted by the legislature of Maine and approved by the governor an emergency measure entitled "An Act Relating to Unemployment Compensation," and

Whereas, through inadvertence, the object intended to be accomplished by said act is not fully possible without amendment of said act, and

Whereas, a failure to amend said act at once will result in depriving many individuals of substantial rights to which they are entitled, and

Whereas, to deprive such individuals of said rights would be a serious menace to the health, morals and welfare of the people of the state which constitute a subject of general interest and concern requiring appropriate and immediate action, and

Whereas, the foregoing facts in the judgment of the legislature constitute an emergency within the meaning of the constitution of this state and requires the following legislation as immediately necessary for the preservation of the public peace, health, and safety;

Now, therefore,

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

**Sec. 1.** P. L., 1935, c. 192, § 3, amended. Sub-sections (a), (d) and (e) of section 3 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(a) **Payment of benefits.** Twenty-four months after the date when contributions first accrue under this act, benefits shall become payable from the fund. All benefits shall be paid through public employment offices, or such other agencies ~~approved by the social security board as the commission may by regulation prescribe,~~ and in accordance with such regulations as the commission may prescribe.

(d) **Determination of full-time weekly wage.** (1) The full-time weekly wage of any individual means the weekly wages that such individual would receive if he were employed at the most recent wage rate earned by him ~~in~~ for employment by an employer ~~in his base period~~ during the period prescribed pursuant to paragraph (3) of this sub-section and for the customary scheduled full-time ~~week~~ weekly hours prevailing

for his occupation in the enterprise in which he last earned wages ~~in~~ for employment by an employer during ~~his base~~ the same period.

(2) If the commission finds that the full-time weekly wage, as above defined, would be unreasonable or arbitrary or not readily determinable with respect to any individual, the full-time weekly wage of such individual shall be deemed to be  $1/13$  of his total wages ~~in~~ for employment by ~~an em-~~ ~~ployer in~~ employers during that quarter in which such total wages were highest during ~~his base period~~ the period prescribed pursuant to paragraph (3) of this sub-section.

(3) The full-time weekly wage of any individual shall be determined and redetermined at such reasonable times as the commission may find necessary to administer this act and may by regulations prescribe. The period hereinabove referred to shall consist of the next to the last completed calendar quarter immediately preceding the date with respect to which an individual's full-time weekly wage is determined and such of the 7 immediately preceding consecutive calendar quarters as the commission may by regulations prescribe.

(e) Duration of benefits. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed the balance credited to his account with respect to wages earned in employment by an employer during his base period or  $16$  times his weekly benefit amount, whichever is the lesser. The commission shall maintain a separate account for each individual who subsequent to January 1, 1937, earns wages in employment by an employer. After the expiration of each calendar quarter, the commission shall credit each such account with  $1/6$  of such wages earned by such individual during such quarter, or \$65, whichever is the lesser. Benefits paid to an eligible individual shall be charged against amounts, which have been credited to his account on the basis of wages earned in employment by an employer during his base period, and which have not previously been charged hereunder, in the same chronological order as such wages were earned. The commission shall compute wage credits for each individual by crediting him with the wages earned by him for employment by employers during each quarter or \$390, whichever is the lesser. Benefits paid to any eligible individual shall be charged in the same chronological order as such wages were earned against  $1/6$  of his wage credits which are based upon wages earned during his base period and which have not been previously charged hereunder. The maximum total amount of benefits payable to any eligible individual during any benefit year shall not exceed whichever is the lesser of (1)  $16$  times his weekly benefit amount and (2)  $1/6$  of such uncharged wage credits with respect to his base period.

Sec. 2. P. L., 1935, c. 192, § 4, amended. Sub-section (e) of section 4

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of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(e) He has within the 1st ~~4~~ 3 out of the last ~~5~~ 4 completed calendar quarters immediately preceding the 1st day of his benefit year, earned wages ~~in~~ for employment by ~~an employer of~~ employers equal to not less than 16 times his weekly benefit amount.'

Sec. 3. P. L., 1935, c. 192, § 6, amended. Sub-sections (g) and (h) of section 6 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(g) **Witness fees.** Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission to be paid out of the unemployment compensation administration fund.

(h) **Appeal to courts.** Any decision of the commission in the absence of an appeal therefrom as herein provided shall become final 10 days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies before the commission as provided by this act. The commission shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of employed by the commission and has been designated by it for that purpose, or at the commission's request, by the attorney-general.'

Sec. 4. P. L., 1935, c. 192, § 8, amended. Sub-section (b) of section 8 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(b) Except as otherwise provided in sub-section (c) of this section, an employing unit shall cease to be an employer subject to this act only as of the 1st day of January of any calendar year, only if it files with the commission, prior to the 5th day of January of such year, a written application for termination of coverage, and the commission finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed 8 or more individuals in employment subject to this act. For the purpose purposes of this sub-section, the 2 or more employing units mentioned in paragraph (2) or (3) or (4) of section 19 (f) shall be treated as a single employing unit.'

Sec. 5. P. L., 1935, c. 192, § 9, amended. Sub-sections (b) and (c) of section 9 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(b) **Accounts and deposit.** The treasurer of state shall be the ex-officio treasurer and custodian of the fund and shall administer such fund in ac-

cordance with the directions of the commission and shall issue his warrants, vouchers or checks upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund 3 separate accounts: (1) a clearing account, (2) an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 14 of this act may be paid from the clearing account upon warrants, vouchers or checks issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund.

**Moneys Except as herein otherwise provided, moneys** in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the attorney-general. Premiums for said bond shall be paid from the administration fund.

(c) **Withdrawals.** Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to ~~its~~ this state's account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants, vouchers or checks for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants, vouchers or checks issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the countersignature of the commission or its duly

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authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in sub-section (b) of this section.'

**Sec. 6. P. L., 1935, c. 192, § 10, amended.** Sub-sections (a) and (b) of section 10 of chapter 192 of the public laws of 1935 is hereby amended to read:

'(a) **Commission created.** There is hereby created a commission to be known as the Maine unemployment compensation commission. The commission shall consist of 3 members, one of whom shall be a representative of labor, one of whom shall be a representative of employers, and one of whom shall be impartial and shall represent the public generally, and shall be chairman. Each of the 3 members of the commission shall be appointed by the governor, with the advice and consent of the council, after the effective date of this act, or after any vacancy occurs in the membership of the commission. Each member shall hold office for a term of 6 years, or during the pleasure of the governor and council, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and (2) the terms of office of the members first taking office after the date of the enactment of this act shall expire, as designated by the governor at the time of appointment, 1 at the end of 2 years, 1 at the end of 4 years, and 1 at the end of 6 years after the date of his appointment. During his or her term of membership on the commission, no member shall engage in any other business, vocation, or employment, or serve as an officer or committee member of any political party organization, and not more than 2 members of the commission shall be members of the same political party.'

'(b) **Salaries.** The chairman of the commission shall receive a fixed ~~monthly~~ weekly salary, at the rate of \$4500 per year, and each of the other members shall receive a fixed ~~monthly~~ weekly salary, at the rate of \$4000 per year, and shall be paid from the unemployment compensation administration fund.'

**Sec. 7. P. L., 1935, c. 192, § 11, amended.** Sub-sections (c), (g), (h), (i), (j) and (l) of section 11 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:



(c) **Publication.** The commission shall cause to be printed for distribution to the public the text of this act, the commission's regulations and general and special rules, its annual reports to the governor, and any other material the commission deems relevant and suitable, and shall furnish the same to any person upon application therefor.

(g) **Records and reports.** Each employing unit shall keep true and accurate work records, containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall, except to the extent necessary for proper presentation of a claim, be held confidential and shall not be published or be open to public inspection (other than to public employees in the performance of their public duties) in any manner revealing the individual's or employing unit's identity, but any claimant (or his legal representative) at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim. Any person who violates any provision of this section shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not more than 90 days, or both.

(h) **Oaths and witnesses.** In the discharge of the duties imposed by this act, the commission, the chairman of an appeal tribunal and any member or duly authorized representative of the commission either of them, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act. Oaths and affirmations required by reason of duties performed pursuant to this act may be administered by any of such persons as may be designated for the purpose by the commission.

(i) **Subpoenas.** In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission, the chairman of an appeal tribunal, or ~~its~~ the duly authorized representative of either of them, shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, the chairman of an appeal tribunal,

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or ~~its~~ the duly authorized representative of either of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question and any failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who shall without just cause fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the commission, the chairman of an appeal tribunal, or the duly authorized representative of either of them, shall be punished by a fine of not less than \$200 or by imprisonment for not longer than 60 days, or by both such fine and imprisonment.

(j) **Protection against self-incrimination.** No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission, the chairman of an appeal tribunal or ~~a member thereof~~ the duly authorized representative of either of them, or in obedience to the subpoena of the commission, ~~or the chairman of an appeal tribunal, or a member thereof,~~ ~~or any~~ the duly authorized representative of ~~the commission~~ either of them in any cause or proceeding before the commission, the chairman of ~~or~~ an appeal tribunal or ~~a member thereof~~ the duly authorized representative of either of them, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(l) **Reciprocal benefit arrangements.** The commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in section 19 (g) of this act or under similar provisions in the unemployment compensation laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment compensation laws of several states or under such a law of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.'

**Sec. 8. P. L., 1935, c. 192, § 12, amended.** Sub-sections (a) and (b) of section 12 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

'(a) **State employment service.** The commission shall establish and maintain, as a division thereof, free public employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing such duties as are within the purview of the act of congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U. S. C., Title 29, Sec. 49 (c) ), as amended. The said division shall be administered by a full-time salaried director. ~~who~~ It shall be ~~charged with~~ the duty of ~~the commission~~ to cooperate with any official or agency of the United States having powers or duties under the provision of the said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the said act of congress, as amended, in the promotion and maintenance of a system of public employment offices. The provisions of the said act of congress, as amended, are hereby accepted by this state, in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. ~~The Maine state employment service division~~ **commission** is hereby designated and constituted the agency of this state for the purpose of said act. The commission is directed to appoint and fix the compensation of the director, other officers, and employees of the Maine state employment service, subject to the approval of the governor and council. ~~Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service.~~

(b) **Financing.** All moneys received by this state under the said act of congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the ~~Maine State Employment Service~~ **commission** to be expended as provided by this section and by said act of congress. For the purpose of establishing and maintaining free public employment offices, ~~said division~~ **the commission** is authorized to enter into agreements with any political sub-division of this state or with any private, nonprofit organization, and as a part of any such agreement the commission may accept moneys, services or quarters as a contribution to the employment service account.'

**Sec. 9. P. L., 1935, c. 192, § 15, amended.** Section 15 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(a) **Waiver of rights void.** ~~No~~ Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under

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this act shall be ~~valid~~ void. ~~No~~ Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this act from such employer, shall be ~~valid~~ void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this sub-section shall, for each offense, be punished by a fine of not less than \$100 nor more than \$1000 or by imprisonment for not more than 6 months, or both.

(b) **Limitation of fees.** No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the commission or ~~his~~ its representatives or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the commission or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the commission. Any person who violates any provision of this sub-section shall, for each such offense, be punished by a fine of not less than \$50 nor more than \$500, or by imprisonment for not more than 6 months or both.

(c) **No assignment of benefits; exemptions.** ~~No~~ Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be ~~valid~~ void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this sub-section shall be valid.'

**Sec. 10. P. L., 1935, c. 192, § 17, amended.** Sub-section (a) of section 17 of chapter 192 of the public laws of 1935 is hereby amended to read as follows:

'(a) In any civil action to enforce the provisions of this act the commission and the state may be represented by any qualified attorney who is ~~a regular salaried employee of~~ employed by the commission and is designated by it for this purpose or at the commission's request, by the attorney-general.'

**Sec. 11. P. L., 1935, c. 192, § 19, amended.** Sub-sections (e), (f), (m), (n), (p) and (r) of section 19 of chapter 192 of the public laws of 1935 are hereby amended to read as follows:

(e) "Employing unit" means any individual or type of organization, including any partnership, association, trust, estate, **joint stock company, insurance company or corporation**, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1935, had in its employ 1 or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any ~~employ-~~**ment work** which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of section 19 (f) or section 8 (c) of this act, the employing unit shall for all the purposes of this act be deemed to employ each individual in the employ of each such contractor or subcontractor for each day during which such individual is engaged in performing such ~~employment~~ **work**; except that each such contractor or subcontractor who is an employer by reason of section 19 (f) or section 8 (c) of this act shall alone be liable for the **employer's** contributions measured by wages payable to individuals in his employ, and except that any employing unit who shall become liable for and pay contributions with respect to individuals in the employ of any such contractor or subcontractor who is not an employer by reason of section 19 (f) or section 8 (c) of this act, may recover the same from such contractor or subcontractor. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of such work.

(f) "Employer" means: (1) Any employing unit which for some portion of a day, but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within either the current or the preceding calendar year, has or had in employment, 8 or more individuals (irrespective of whether the same individuals are or were employed in each such day) ;

(2) Any **individual** or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act ;

(3) Any **individual** or employing unit which acquired the organization, trade or business, or substantially all the assets thereof, of another employ-

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ing unit not an employer subject to this act and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection:

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls 1 or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing unit, or interests, or both, would be an employer under paragraph (1) of this sub-section:

(5) Any employing unit which, with respect to employment herein defined, is liable to pay an excise tax under Title IX of the Social Security Act as amended.

(6) Any employing unit which, having become an employer under paragraph (1), (2), (3) or (4), has not, under section 8, ceased to be an employer subject to this act; or

(7) For the effective period of its election pursuant to section 8 (c) any other employing unit which has elected to become fully subject to this act.

(m) "Wages" means all ~~compensation~~ remuneration payable for personal services, including commissions and bonuses and the cash value of all ~~compensation~~ remuneration payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as remuneration payable by his employing unit. The reasonable cash value of ~~compensation~~ remuneration payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the commission.

(n) "Week" means such period or periods of 7 calendar days ~~ending at midnight~~, as the commission may by regulation prescribe.

(p) ~~The term "base~~ Base period" means the period beginning with the first 8 day of the ~~last~~ 9 completed calendar quarters immediately preceding the 1st day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding any week with respect to which benefits are payable.

(r) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment. ~~An individual's weekly benefit amount, as determined for the first week of his benefit year, shall constitute his weekly benefit amount throughout such benefit year.~~

**Emergency clause.** In view of the emergency set forth in the preamble hereof this act shall take effect when approved.

Approved April 24, 1937.