

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE

1954

1955 SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 1

**Place in Pocket of Corresponding
Volume of Main Set**

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1955

pay the amount determined, in whole or in part, waive such payment or so much thereof as the circumstances appear to warrant. All income from this source shall be paid to the treasurer of state and shall be credited to the general fund. (R. S. c. 23, § 174. 1955, c. 415.)

Effect of amendment.—The 1955 amendment deleted the word “gratuitously” after the word “educating” in line five, and added the second paragraph.

Chapter 29.

Maine Employment Security Law.

Definitions.

Sec. 3. Definitions.

IX. “Employer” means:

A. Prior to January 1, 1956, 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; (1955, c. 421, § 1)

A-1. On and after January 1, 1956, 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 4 or more individuals, irrespective of whether the same individuals are or were employed in each such day. However, no contributions shall become due and payable from those employers covered by this paragraph for the calendar year 1955; (1955, c. 421, § 1)

E. Any employing unit not an employer by reason of any other paragraph of this subsection, for which within either the current or preceding calendar year service in employment is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment fund; (1947, c. 375, § 12. 1955, c. 421, § 2)

Effect of amendment.—The 1955 amendment added the words “Prior to January 1, 1956” at the beginning of paragraph A of subsection IX, added paragraph A-1 of subsection IX and rewrote paragraph E of subsection IX. Only the paragraphs added or changed by the amendment are set out.

Pension payments are not “wages” within the meaning of subsection XVII of this section. *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359.

A pension payment, characterized as “retirement separation pay,” does not become a wage payment “with respect to” the weeks following retirement, merely because the amount of the pension payment is computed with respect to a contract formula relating to weekly wages during the last week of service. *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359.

The Commission.

Sec. 4. Administrative organization.—

II. Salaries. The chairman of the commission shall receive a fixed weekly salary, at the rate of \$8,000 per year, and each of the other members shall receive a fixed weekly salary, at the rate of \$7,500 per year, and shall be paid from the employment security administration fund. (1945, c. 367. 1949, c. 401, § 2. 1951, c. 412, § 7. 1955, c. 473, § 7)

Effect of amendment.—The 1955 amendment increased the salary of the chairman of the commission from \$7,000 to \$8,000 and of the other members from \$6,500 to

\$7,500 per year. As only subsection II was changed by the amendment, the rest of the section is not set out.

Powers and Duties.

Sec. 5. Administration.

V. Advisory council. The commission shall appoint a state advisory council consisting of not more than 9 members composed of an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment or affiliations and an equal number of members representing the general public. Such council shall meet no less than 4 times a year and shall aid the commission in formulating policies and discussing problems related to the administration of the provisions of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Each member of the advisory council shall be compensated in the amount of \$20 for each day in attendance upon a meeting of the council in addition to reimbursement for any necessary expenses; provided, however, that such compensation paid to any one member of the council shall not exceed the sum of \$240 in any 1 fiscal year. (1947, c. 375, § 16. 1955, c. 350)

XIII. Regulations for filing payroll reports; penalty. The commission may prescribe regulations for the filing of payroll reports for the employing units in the state and the failure on the part of any employing unit to file the payroll reports within the time stated by the regulation of the commission shall render the employing unit liable to a penalty of \$10, unless the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by other unavoidable accident which shall excuse the employing unit from said penalty. (1945, c. 198. 1955, c. 421, § 3)

Effect of amendments.—The first 1955 amendment substituted “shall” for “may” near the beginning of the first sentence of subsection V, inserted the words “shall meet no less than 4 times a year and” near the beginning of the second sentence of subsection V, and substituted “\$20” for “\$10” and “\$240” for “\$120” in the third sentence of subsection V. The second 1955 amendment changed the penalty provided in subsection XIII from \$5 a day for the first day of delinquency and \$1 for each

day thereafter to \$10. As the rest of the section was not changed by the amendments, only subsections V and XIII are set out.

Regulatory power of commission may not be exerted to change statute.—The regulatory power of the commission under this section may not be exerted to change, modify, extend or limit any law enacted by the legislature. *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359.

Management of Funds.

Sec. 10. Withdrawals.—Moneys shall be requisitioned from the state’s account in the unemployment trust fund solely for the payment of benefits and for the payment of refunds pursuant to subparagraph 2 of paragraph F of subsection XI of section 3 and section 19 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 this state’s account therein, as it deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer of state shall deposit such moneys in the benefit account and warrants shall be issued for the payment of benefits and refunds solely from such benefit account. All such warrants for the payment of benefits from the benefit account shall be prepared by and shall be signed by the chairman of the commission, and countersigned by a designated member of the commission, and when so signed and countersigned and delivered to the payee shall become a check against a designated bank or trust company acting as a depository of the state government. The commission shall be the sole judge of the legality or propriety of any award of benefits, or the amount thereof, appearing in any such warrant prepared by the chairman subject only to the right of appeal as provided in subsections VIII and IX of section 16. 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 and refunds 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 section 9. (R. S. c. 24, § 9. 1949, c. 430, § 1. 1955, c. 312, § 2.)

Effect of amendment.—The 1955 amendment rewrote the fourth sentence and substituted “chairman” for “commission” near the end of the fifth sentence.

Benefits.

Sec. 13. Benefits.—

II. Weekly benefit amount for total unemployment. On and after April 1, 1955, each eligible individual who is totally unemployed in any week shall be paid with respect to such week, benefits at the rate shown in column (C) of the schedule below on the line on which in column (A) there is indicated the individual's wage class and such rate shall be individual's weekly benefit amount; and the maximum total amount of benefits payable to any eligible individual during any benefit year shall be the amount listed in column (D). The individual's wage class shall be determined by the total amount of wages paid to him for insured work, during his base period as shown in column (B).

Column A	Column B	Column C	Column D
1.	\$ 0.00 up to \$ 299.99	None	None
2.	300.00 up to 399.99	\$ 6.00	\$138.00
3.	400.00 up to 499.99	9.00	207.00
4.	500.00 up to 599.99	10.00	230.00
5.	600.00 up to 699.99	11.00	253.00
6.	700.00 up to 799.99	12.00	276.00
7.	800.00 up to 899.99	13.00	299.00
8.	900.00 up to 999.99	14.00	322.00
9.	1000.00 up to 1099.99	15.00	345.00
10.	1100.00 up to 1199.99	16.00	368.00
11.	1200.00 up to 1299.99	17.00	391.00
12.	1300.00 up to 1399.99	18.00	414.00
13.	1400.00 up to 1499.99	19.00	437.00
14.	1500.00 up to 1599.99	20.00	460.00
15.	1600.00 up to 1699.99	21.00	483.00
16.	1700.00 up to 1849.99	22.00	506.00
17.	1850.00 up to 1999.99	23.00	529.00
18.	2000.00 up to 2149.99	24.00	552.00
19.	2150.00 up to 2299.99	25.00	575.00
20.	2300.00 up to 2449.99	26.00	598.00
21.	2450.00 up to 2599.99	27.00	621.00
22.	2600.00 up to 2749.99	28.00	644.00
23.	2750.00 up to 2899.99	29.00	667.00
24.	2900.00 and over	30.00	690.00

(1945, c. 301. 1947, c. 340. 1949, c. 291, § 1; c. 444. 1953, c. 327 1955, c. 367)

III. Weekly benefit for partial unemployment. On and after April 1, 1955, each eligible individual who is partially unemployed in any week shall be paid with respect to such week a partial benefit in an amount equal to his weekly benefit amount less that part of his earnings paid or payable to him with respect to such week which is in excess of \$5 plus any fraction of a dollar; except that remuneration paid or payable as holiday pay shall not be deemed wages for the purpose of this subsection. [1945, c. 285. 1949, c. 291, § 2. 1951, c. 204,

§ 15-A. 1953, c. 323, § 2; c. 326. 1955, c. 377]. (R. S. c. 24, § 3. 1945, cc. 284, 285, 301. 1947, c. 340. 1949, c. 291, §§ 1, 2, 3; c. 430, § 1; c. 444. 1951, c. 204, § 15-A. 1953, c. 323, § 2; cc. 326, 327. 1955, cc. 367, 377.)

Effect of amendments.—The first 1955 amendment, which became effective on its approval, May 17, 1955, substituted "1955" for "1953" near the beginning of subsection II and revised the schedule in subsection II. The second 1955 amendment, effective on its approval, May 19, 1955, re-

wrote subsection III. As subsection I was not changed by the amendments, it is not set out.

Cited in *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359 (sub-§ II).

Sec. 14. Benefit eligibility conditions.

III. He is able to work and is available for work at his usual or customary trade, occupation, profession or business or in such other trade, occupation, profession or business as his prior training or experience shows him to be fitted or qualified; and in addition to having complied with the provisions of subsection II is himself making a reasonable effort to seek such work; provided that an individual shall be ineligible to receive benefits for any week which is recognized as a vacation week for his grade, class or shift at the factory, mill, workshop or other premises where he is employed; except that an individual who is not entitled to pay for any such vacation week may qualify for benefits or credit for his waiting period if he is available for work and complies with the other conditions of eligibility; and, provided further, that a female claimant shall be ineligible to receive benefits, or waiting period credit, for any week wholly or partly within the 8 weeks immediately prior to the expected date of such individual's giving birth to a child and within the 4 weeks after the actual birth of her child. (1949, cc. 239, 371. 1953, c. 328. 1955, c. 421, § 4)

IV. He has served a waiting period of 1 week of total or partial unemployment. Provided that this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment and provided further that the week immediately preceding a benefit year, if part of an uninterrupted period of unemployment which continued into such benefit year, shall be deemed, for the purpose of this subsection only, to be within such benefit year as well as within the preceding benefit year. Except as provided in this subsection, no week shall be counted as a week of total or partial unemployment for the purpose of this subsection:

A. Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits;

B. If benefits have been paid with respect thereto;

C. Unless the individual was eligible for benefits with respect thereto as provided in this section and section 15, except for the requirements of this subsection and of paragraph C of subsection V of section 15; (1945, c. 163. 1955, c. 421, § 5)

Effect of amendment.—The 1955 amendment rewrote subsection III, inserted the second sentence of subsection IV, and added the words "Except as provided in this subsection" at the beginning of the third sentence of subsection IV. As the rest of the section was not changed by the amendment, only subsections III and IV are set out.

The test of availability for work is met if it appears that the individual is willing, able and ready to accept suitable work which he does not have good cause to refuse, that is when he is genuinely attached

to the labor market. The determination entails primarily a probe of the claimant's good-faith intention to work. *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359.

Claimants having left employment and received retirement separation pay held "available for work."—Where claimants, who had left their employment and received "retirement separation pay" as provided by contract between their union and their employer, were advanced in years and no longer physically able to perform their customary tasks, but they were able

and anxious to perform lighter work, and were seeking work from their employers and from others, and were registered and reporting regularly at the employment office and had not refused any offer of employment, they were "available" for work

within the meaning of the subsection III of this section, and not being otherwise disqualified, they were eligible for benefits. *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359.

Sec. 15. Disqualification for benefits.

I. For the period of unemployment next ensuing after he had left his employment voluntarily without good cause attributable to such employment, or with respect to a female claimant who has voluntarily left work to marry, or to perform the customary duties of a housewife, or to leave the locale to live with her husband, or to a claimant who has voluntarily removed himself from the labor market where presently employed to an area where employment opportunity is less frequent, if so found by the commission, for not less than 7 nor more than 14 weeks in addition to the waiting period of one week, and his maximum benefit amount shall be reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit. (1955, c. 376, § 1)

II. For the week in which he has been discharged for misconduct connected with his work, if so found by the commission, and for not less than 7 nor more than 14 weeks in addition to the waiting period of one week which immediately follow such discharge, and his maximum benefit amount shall be reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit amount. (1955, c. 376, § 2)

III. If he has refused to accept an offer of work for which he is reasonably fitted, or has refused to accept a referral to a job opportunity when directed to do so by a local employment office of this state or another state, and the disqualification shall begin with the week in which the refusal occurred and shall continue for the duration of the period of unemployment during which such refusal occurred.

A. In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

B. Notwithstanding any other provisions of this chapter no work shall be deemed suitable and benefits shall not be denied under the provisions of this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout or other labor dispute;
2. If the wages, hours or other conditions of work are substantially less favorable to the individual than those prevailing for similar work in the locality;
3. If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization. (1955, c. 376, § 3)

VI. For any week for which the deputy finds that the claimant made a willful misrepresentation in his application to obtain benefits and his maximum benefit amount shall be reduced by an amount equivalent to the number of such weeks of disqualification times his weekly benefit amount, then and in that event, the deputy shall notify the claimant of the deputy's findings, whereupon the claimant shall have the right to a hearing, appeal or review by the commission and appeal to the courts, as is provided by other provisions of this chapter. If the claimant appeals the decision of the deputy, the appeal tribunal shall, after

an opportunity for a fair hearing, affirm, modify or set aside the decision of the deputy and if it is found that the claimant did in fact knowingly accept benefits to which he was not entitled the claimant shall be ineligible to receive any further benefits for a period of not less than 3 months nor more than one year, such period to be determined by the appeal tribunal.

If the claimant does not appeal the decision of the deputy, the appeal tribunal shall review the record and if it is found that the claimant knowingly accepted benefits to which he was not entitled the claimant shall be found ineligible to receive any further benefits for a period of not less than 3 months nor more than one year, such period to be determined by the appeal tribunal.

Appeals from the decision of the appeal tribunal may be taken in the same manner as is provided in section 16 of this chapter, except that appeals from the decision of the appeal tribunal, in cases wherein no appeal from the deputy's decision was filed by the claimant, shall apply only to the period of ineligibility as decreed by the appeal tribunal. (1949, c. 420, § 1. 1951, c. 204, § 17. 1953, c. 317, § 1. 1955, c. 421, § 6.)

VII. For the period of unemployment next ensuing with respect to which he was discharged for conviction of felony or misdemeanor in connection with his work. The ineligibility of such individual shall continue for all weeks subsequent until such individual has thereafter earned not less than \$300 in employment. [1955, c. 376, § 4]. (R. S. c. 24, § 5. 1949, c. 420, § 1; c. 430, § 1. 1951, c. 204, §§ 16, 17. 1953, c. 317, § 1. 1955, c. 376, §§ 1-4; c. 421, § 6.)

Effect of amendments.—The first 1955 amendment rewrote subsections I and II and the first paragraph of subsection III and added subsection VII. The second 1955 amendment rewrote subsection VI. Only the subsections changed or added by the amendments are set out.

Voluntary retirement is not "dismissal."—Where there is mere passive acquiescence by the employer in a voluntary retirement pursuant to a contractual retirement plan, there is no "dismissal" within the meaning of subsection V, A, of this

section. *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359.

Termination payments in lieu of notice and pension payments distinguished.—Termination payments in lieu of notice are payments for the period with respect to which an employer would give advance notice of his intention to dismiss an employee, and are distinguishable from pension payments. *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359.

Sec. 16. Claims for benefits.—

X. Determination may be reconsidered; appeal. The commission may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if it finds that an error in computation or identity has occurred in connection therewith, or that wages have been erroneously reported, but no such redetermination shall be made after one year from the date of the original determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection II of this section. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to review in connection with an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection II of this section.

The commission may reconsider a benefit payment for any particular week or weeks whenever it finds that an error in computation or identity has occurred in connection therewith or that earnings were erroneously reported, but no such redetermination may be made after one year from the date of payment for such

week or weeks. Notice of any such redetermination shall be promptly given to the claimant. Unless the claimant files an appeal from such redetermination within 5 calendar days from delivery or 7 calendar days after such notification was mailed to his last known address such redetermination shall be final and benefits shall be paid or denied in accordance therewith.

Subject to the same limitations and for the same reasons, the commission may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the commission or a court, and may apply to the body or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination. (1955, c. 421, § 7)

Effect of amendment.—The 1955 amendment rewrote subsection X. As the rest of the section was not change by the amendment, only subsection X is set out.

Applied in *Dubois v. Maine Employment Security Comm.*, 150 Me. 494, 114 A. (2d) 359 (sub-§ IX).

Contributions. Employer's Coverage.

Sec. 17. Contributions.—

IV. Employer's experience classifications.

C. Repealed by Public Laws 1955, c. 421, § 8.

F.

2. The commission shall provide each employer at least monthly with a notification of benefits paid and chargeable to his experience rating record and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the commission may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redetermination, made after notice and opportunity for hearing, and the commission's findings of fact in connection therewith, may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for the 12-month period commencing July 1 of any year and shall be entitled to the same finality as is provided in this section with respect to the findings of fact made by the commission in proceedings to redetermine the contribution rates of an employer. (1953, c. 317, § 3. 1955, c. 421, § 9)

G. Notwithstanding any other inconsistent provision of law, any employer, who has been notified of his rate of contribution, as required by subparagraph 1 of paragraph F of this subsection, for the year commencing July 1, 1955 or for any year commencing July 1 thereafter, may voluntarily make payment of additional contributions, and, upon such payment, shall promptly receive a recomputation and renotification of his contribution rate for such year, including in the calculation the additional contributions so made. Any such additional contribution shall be made during the 10-day period following the date of the mailing to the employer of such notice of his contribution rate in any year, unless, for good cause, the time of payment has been extended by the commission for not to exceed an additional 10 days. (1955, c. 296)

Effect of amendments.—The first 1955 amendment added paragraph G to subsection IV. The second 1955 amendment repealed paragraph C of subsection IV and rewrote the first clause of the first sentence of subparagraph 2 of paragraph F of subsection IV. As the rest of the section was not changed by the amendments, only subparagraph 2 of paragraph F and paragraph G are set out.

Sec. 18. Period, election and termination of employer's coverage.—**II. Termination of employer's coverage.**

A. Except as otherwise provided in subsection III of this section, an employing unit shall cease to be an employer subject to the provisions of this chapter as of the 1st day of January of any calendar year, only if it files with the commission, prior to the 20th 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 4 or more individuals in employment subject to the provisions of this chapter. For the purpose of this subsection, the two or more employing units mentioned in paragraph B or C or D of subsection IX of section 3 shall be treated as a single employing unit. (1955, c. 421, § 10)

B. The commission may upon its own motion terminate coverage of any employer when 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 4 or more individuals in employment subject to the provisions of this chapter; and the commission may, upon its own motion terminate the coverage of an employing unit which had become an employer by virtue of the provisions of subsection III of this section, as of January 1 of any calendar year when such employing unit has, by virtue of approval of its election to become a subject employer, been such a subject employer for the two or more preceding calendar years. (1947, c. 375, § 13. 1955, c. 421, § 10)

Effect of amendment.—The 1955 amendment substituted the figure 4 for the figure 8 in line seven of paragraph A of subsection II and in line four of paragraph B of

subsection II. As the rest of the section was not changed by the amendment, only subsection II is set out.

Sec. 19. Collection of contributions.—

I-A. Penalty on past-due contributions. In the event quarterly contributions are not paid when due, the commission shall assess a penalty of 5% of the amount of the contributions but such penalty shall not be less than \$5 nor more than \$100. The commission may waive such penalty if it finds that the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by other unavoidable accident which shall excuse the employing unit from said penalty. Provided, however, an extension of time up to 30 days beyond the due date may be allowed by the commission for good cause upon written request made on or before the due date. (1955, c. 421, § 11)

Effect of amendment.—The 1955 amendment added the above subsection I-A after subsection I of this section. As the rest of

the section was not changed, it is not set out.

Chapter 30.**Department of Labor and Industry.**

Sections 88-A to 88-E. Board of Construction Safety Rules and Regulations.

Organization.

Sec. 1. Commissioner; deputy; assistants; salaries; expenses.—A state department of labor and industry, as heretofore established and hereinafter in this chapter called the "department", shall be maintained under the direction of an officer whose title shall be commissioner of labor and industry and state factory inspector, hereinafter in this chapter called the "commissioner". He shall be