

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 494

6
7 H.P. 411

House of Representatives, February 1, 1983

8 Received by the Clerk of the House on February 1, 1983. Referred to the
9 Committee on Labor, and ordered printed pursuant to Joint Rule 14.

10 EDWIN H. PERT, Clerk

11 Presented by Representative Connolly of Portland.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Protect Unemployed Workers
18 from the Loss of Unemployment Benefits
19 without the Opportunity for a Fair Hearing.
20

21 Be it enacted by the People of the State of Maine as
22 follows:

23 26 MRSAs §1194, sub-§2, as amended by PL 1981, c.
24 177, is further amended to read:

25 2. Determination. A representative designated by
26 the commission, and in this chapter referred to as a
27 deputy, shall promptly examine the first claim filed
28 by a claimant in each benefit year and shall deter-
29 mine the weekly benefit amount and maximum benefit
30 amount potentially payable to the claimant during
31 such that benefit year in accordance with section
32 1192, subsection 5.

1 The deputy shall promptly examine all subsequent
2 claims filed and, on the basis of the facts found by
3 him, shall determine whether or not such that claim
4 is valid with respect to sections 1192 and 1193,
5 other than section 1192, subsection 5, or shall refer
6 such that claim or any question involved therein to
7 an appeal tribunal or to the commission, which shall
8 make a determination with respect thereto in accor-
9 dance with the procedure described in subsection 3,
10 except that in any case in which the payment or
11 denial of benefits will be subject to section 1193,
12 subsection 4, the deputy shall promptly transmit a
13 report with respect to that subsection to the commis-
14 sion upon the basis of which the commission shall
15 notify its appropriate deputies as to the applicabil-
16 ity of that subsection.

17 The deputy shall determine in accordance with section
18 1221, subsection 3, paragraph A the proper employer's
19 experience rating record, if any, against which bene-
20 fits of an eligible individual shall be charged, if
21 and when paid.

22 The deputy shall promptly notify the claimant and any
23 other interested party of the determinations and
24 reasons therefor. Subject to subsection 11, unless
25 the claimant or any such interested party, within 15
26 calendar days after such that notification was mailed
27 to his last known address, files an appeal from such
28 that determination, such that determination shall be
29 final, provided that the period within which an
30 appeal may be filed may be extended, for a period not
31 to exceed an additional 15 calendar days, for good
32 cause shown. If new evidence or pertinent facts that
33 would alter such that determination become known to
34 the deputy prior to the date such that determination
35 becomes final, a redetermination is authorized, but
36 such that redetermination must be mailed before the
37 original determination becomes final.

38 If an employer's separation report for an employee is
39 not received by the office specified thereon within
40 10 days after such that report was requested, the
41 claim shall be adjudicated on the basis of informa-
42 tion at hand. If the employer's separation report
43 containing possible disqualifying information is
44 received after the 10-day period and the claimant is

1 denied benefits by a revised deputy's decision, bene-
2 fits paid prior to the date of the revised decision
3 shall not constitute an overpayment of benefits. Any
4 benefits paid after the date of the revised decision
5 shall constitute an overpayment.

6 If an employer files an amended separation report or
7 otherwise raises a new issue as to the employee's
8 eligibility or changes a new issue is otherwise
9 raised as to the employee's eligibility or which
10 affects the wages or weeks used in determining bene-
11 fits which results in a denial of benefits or a
12 reduction of the weekly benefit amount, the benefits
13 paid prior to the date the determination is mailed
14 shall not constitute an overpayment. In this event,
15 benefits shall not be terminated until a new determi-
16 nation has been made. The claimant and any other
17 interested party will be promptly notified of the new
18 determination, the reasons therefor, and their rights
19 regarding appeal and continuation of benefits pro-
20 vided in this subsection. Claimants who request a
21 fair hearing in accordance with section 1194, subsec-
22 tion 3, shall be granted such a hearing on the next
23 scheduled hearing date at the Bureau of Employment
24 Security office nearest to him, which shall in no
25 event be less than 5 days nor more than 30 days after
26 the new determination. The claimant may elect to con-
27 tinue to receive benefits until the hearing date. Any
28 benefits received after such date from the date of
29 the new determination to which the claimant is not
30 entitled pursuant to a new determination fair hearing
31 decision based on such new employe* information shall
32 constitute an overpayment.

33 STATEMENT OF FACT

34 Constitutional due process requires that persons
35 receiving government benefits be given notice and the
36 opportunity for hearing before those benefits are
37 terminated. The policy of the Department of Labor
38 permits the agency to terminate benefits to persons
39 without either notice or hearing when an issue arises
40 which may affect their continued eligibility for ben-
41 efits.

1 Claimants' checks have been withheld for over a
2 month without notice from the department as to the
3 reason for the termination.

4 This bill prevents the termination of benefits
5 until a new determination of eligibility has been
6 made by a deputy. It allows benefits to be continued
7 at the claimant's option until he has had the oppor-
8 tunity for a full due process hearing.

9 If the claimant is subsequently found to be
10 ineligible, those benefits paid from the date that
11 the new determination was received would constitute
12 an overpayment that must be repaid to the department.

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