

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 846

6
7 S.P. 281

In Senate, February 23, 1983

8 Submitted by the Department of Labor pursuant to Joint Rule 24.

9 Referred to the Committee on Labor, sent down for concurrence and
ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Dutremble of York.

11 Cosponsors: Representative Foster of Ellsworth, Representative Beaulieu
of Portland and Senator Hayes of Penobscot.

12 STATE OF MAINE
13

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

17 AN ACT to Clarify, Simplify and Improve
18 Certain Sections of the Labor Laws of Maine.
19

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

22 Sec. 1. 26 MRSA §1051, sub-§5, as amended by PL
23 1981, c. 327, is further amended to read:

24 5. Refusal to repay erroneous payments; waiver
25 of repayment. If, after due notice, any person
26 refuses to repay amounts erroneously paid to him as
27 unemployment benefits, the amounts due from that
28 person shall be collectible in the manner provided in
29 subsection 6 or in the discretion of the commission
30 the amount erroneously paid to such person may be
31 deducted from any future benefits payable to him
32 under this chapter. Provided ; provided that there

1 shall be no recovery of payments from any person who,
2 in the judgment of at least 2 ~~commissieners~~ commis-
3 sion members, is without fault on his part and where,
4 in the judgment of the commission, such recovery
5 would defeat the purpose of benefits otherwise
6 authorized or would be against equity and good con-
7 science. No recovery may be attempted until the
8 determination of an erroneous payment is final as to
9 law and fact and the individual has been notified of
10 the opportunity for a waiver under this subsection.

11 Sec. 2. 26 MRSa §1191, sub-§2, as amended by PL
12 1981, c. 342, §1, is further amended to read:

13 2. Weekly benefit amount for total unemployment.
14 Each eligible individual establishing a benefit year
15 on and after January 1, 1972, who is totally unem-
16 ployed in any week shall be paid with respect to such
17 week, benefits equal to 1/22 of the wages, rounded to
18 the nearest dollar, paid to him in the high quarter
19 of his base period, but not less than \$12. The maxi-
20 mum weekly benefit amount for claimants requesting
21 insured status determination from June 1st of a cal-
22 endar year to May 31st of the next calendar year
23 shall not exceed 52% of the annual average weekly
24 wage, rounded to the nearest dollar, paid in the cal-
25 endar year preceding June 1st of such calendar year.

26 ~~The amount of benefits payable to an eligible indi-~~
27 ~~vidual with respect to any week of total unemployment~~
28 ~~shall be reduced by the amount of any holiday pay~~
29 ~~which the individual has received or is entitled to~~
30 ~~receive for that week.~~

31 Sec. 3. 26 MRSa §1191, sub-§3, as amended by PL
32 1981, c. 342, §2, is further amended to read:

33 3. Weekly benefit for partial unemployment.
34 Each eligible individual who is partially unemployed
35 in any week shall be paid with respect to such week a
36 partial benefit in an amount equal to this weekly
37 benefit amount less that part of his earnings,
38 ~~including holiday pay,~~ paid or payable to him with

1 respect to such week which is in excess of \$10 \$15
2 plus any fraction of a dollar, except that any
3 amounts received from the Federal Government by mem-
4 bers of the National Guard and organized reserve,
5 including base pay and allowances or any amounts
6 received as a volunteer fireman or as elected members
7 of the Legislature, shall not be deemed wages for the
8 purpose of this subsection.

9 On and after January 1, 1978, each eligible indi-
10 vidual who, affirmatively terminated from his regular
11 employment for a period in excess of 4 consecutive
12 calendar weeks, is employed less than 40 hours for a
13 period not exceeding 2 consecutive calendar weeks or
14 performs odd jobs shall be paid an amount equal to
15 his weekly benefit amount less-

16 A- 50% of his earnings paid or payable to him
17 with respect to such week in excess of \$10 up to
18 \$35, plus any fraction of a dollar; and

19 B- 100% of his earnings paid or payable to him
20 with respect to such week in excess of \$35, plus
21 any fraction of a dollar.

22 Sec. 4. 26 MRSA §1192, sub-§5, as amended by PL
23 1979, c. 515, §13-A, is further amended to read:

24 5. Has earned wages. For each eligible indi-
25 vidual establishing a benefit year on or after Janu-
26 ary 1, 1980, he has been paid wages equal to or
27 exceeding 2 times the annual average weekly wage for
28 insured work in each of 2 different quarters in his
29 base period and has been paid total wages equal to or
30 exceeding 6 times the annual average weekly wage in
31 his base period for insured work. The annual average
32 weekly wage amount to be used for purposes of this
33 subsection shall be that which is applicable at the
34 time the individual files a request for determination
35 of his insured status. For the purpose of this sub-
36 section, wages shall be counted as "wages for insured
37 work" for benefit purposes with respect to any bene-
38 fit year only if such benefit year begins subsequent
39 to the date on which the employer by whom such wages
40 were paid has satisfied the conditions of section
41 1043, subsection 9 or section 1222, subsection 3,

1 with respect to becoming an employer; provided no
2 individual may receive benefits in a benefit year,
3 unless, subsequent to the beginning of the next pre-
4 ceding benefit year during which he received bene-
5 fits, he performed services, ~~whether or not in~~
6 employment as defined in section 1043, subsection 11
7 in employment by an employer, and earned remuneration
8 for such service in an amount equal to not less than
9 8 times his weekly benefit amount in the benefit year
10 being established. This subsection applies only to
11 any individual requesting determination of insured
12 status on and after January 1, 1972. In determining
13 a claimant's qualification under this subsection,
14 payments pursuant to Title 39, sections 54 and 55,
15 the Workers' Compensation Act, and Title 39, sections
16 188 and 189, the Occupational Disease Law, shall be
17 considered wages for insured work.

18 Sec. 5. 26 MRSA §1193, sub-§5, ¶A is amended to
19 read:

20 A. Dismissal wages ~~or~~, wages in lieu of notice
21 ~~or~~, terminal pay ~~or~~, vacation pay, holiday pay or
22 bonus payments; or

23 Sec. 6. 26 MRSA §1193, sub-§7, as amended by PL
24 1979, c. 428, §6, is further amended to read:

25 7. Discharged for crime. For the period of unem-
26 ployment next ensuing with respect to which he was
27 discharged for conviction of felony or misdemeanor in
28 connection with his work. The ineligibility of such
29 individual shall continue for all weeks subsequent
30 until such individual has thereafter earned not less
31 than ~~\$400~~ \$600 in employment by an employer.

32 Sec. 7. 26 MRSA §1194, sub-§2, as amended by PL
33 1981, c. 177, is further amended to read:

34 2. Determination. A representative designated by
35 the commission, and in this chapter referred to as a
36 deputy, shall promptly examine the first claim filed
37 by a claimant in each benefit year and shall deter-

1 mine the weekly benefit amount and maximum benefit
2 amount potentially payable to the claimant during
3 such benefit year in accordance with section 1192,
4 subsection 5.

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

21 The deputy shall determine in accordance with section
22 1221, subsection 3, paragraph A the proper employer's
23 experience rating record, if any, against which bene-
24 fits of an eligible individual shall be charged, if
25 and when paid.

26 The deputy shall promptly notify the claimant and any
27 other interested party of the determinations and
28 reasons therefor. Subject to subsection 11, unless
29 the claimant or any such interested party, within ~~15~~
30 20 calendar days after such notification was mailed
31 to his last known address, files an appeal from such
32 determination, such determination shall be final,
33 ~~provided that the period within which an appeal may~~
34 ~~be filed may be extended, for a period not to exceed~~
35 ~~an additional 15 calendar days, for good cause shown.~~
36 If new evidence or pertinent facts that would alter
37 such determination become known to the deputy prior
38 to the date such determination becomes final, a
39 redetermination is authorized, but such redetermina-
40 tion must be mailed before the original determination
41 becomes final.

42 If an employer's separation report for an employee is
43 not received by the office specified thereon within

1 10 days after such report was requested, the claim
2 shall be adjudicated on the basis of information at
3 hand. If the employer's separation report containing
4 possible disqualifying information is received after
5 the 10-day period and the claimant is denied benefits
6 by a revised deputy's decision, benefits paid prior
7 to the date of the revised decision shall not consti-
8 tute an overpayment of benefits. Any benefits paid
9 after the date of the revised decision shall consti-
10 tute an overpayment.

11 If an employer files an amended separation report or
12 otherwise raises a new issue as to the employee's
13 eligibility or changes the wages or weeks used in
14 determining benefits which results in a denial of
15 benefits or a reduction of the weekly benefit amount,
16 the benefits paid prior to the date the determination
17 is mailed shall not constitute an overpayment. Any
18 benefits received after such date to which the claim-
19 ant is not entitled pursuant to a new determination
20 based on such new employer information shall consti-
21 tute an overpayment.

22 Sec. 8. 26 MRSA §1194, sub-§3, as amended by PL
23 1981, c. 145, is further amended to read:

24 3. Appeals. Unless such appeal is withdrawn, an
25 appeal tribunal, after affording the parties reason-
26 able opportunity for fair hearing, shall affirm,
27 modify or set aside the findings of fact and decision
28 of the deputy. If an issue arises before the appeal
29 tribunal which was not presented to the deputy, the
30 appeal tribunal shall remand the new issue to the
31 deputy for a determination on the new issue. An
32 appeal may be taken from the deputy's determination,
33 upon remand, in the same manner prescribed in subsec-
34 tion 2. The parties shall be then duly notified of
35 such tribunal's decision, together with its reasons
36 therefor, which subject to subsection 11 shall be
37 deemed to be the final decision of the commission
38 unless, within 15 calendar days after that notifica-
39 tion was mailed to his last known address, the claim-
40 ant and employer may appeal to the commission by
41 filing an appeal in accordance with such rules as the
42 commission shall prescribe, provided that the appeal-
43 ing party appeared at the hearing and was given

1 notice of the effect of the failure to appear in
2 writing prior to the hearing. If facts which would
3 alter such decision become known to the appeal tribu-
4 nal prior to the date the decision becomes final, an
5 amended decision is authorized, but the decision must
6 be mailed before the original decision becomes final.

7 Sec. 9. 26 MRSA §1194, sub-§10, as amended by PL
8 1981, c. 547, §1, is further amended to read:

9 10. Determination may be reconsidered; appeal.
10 The deputy may reconsider a determination with
11 respect to the weekly benefit amount and maximum
12 total amount of benefits for a claimant for any given
13 benefit year, if he finds that an error in ~~computa-~~
14 ~~tion or identity~~ has occurred in connection there-
15 with, or that wages have been erroneously reported,
16 but no such redetermination shall be made after one
17 year from the date of the original determination.
18 Notice of any such redetermination shall be promptly
19 given to the parties entitled to notice of the origi-
20 nal determination, in the manner prescribed in this
21 section with respect to notice of an original deter-
22 mination. If the maximum amount of benefits is
23 increased upon such redetermination, an appeal there-
24 from solely with respect to the matters involved in
25 such increase may be filed in the manner and subject
26 to the limitations provided in subsection 2. If the
27 amount of benefits is decreased upon such redeter-
28 mination, the matters involved in such decrease shall
29 be subject to an appeal by claimant with respect to
30 subsequent benefits which may be affected by the
31 redetermination. An appeal may be filed in the man-
32 ner and subject to the limitations provided in sub-
33 section 2.

34 The deputy may reconsider a benefit payment for any
35 particular week or weeks whenever he finds that an
36 error in computation or identity has occurred in con-
37 nection therewith or that earnings were erroneously
38 reported, but no such redetermination may be made
39 after one year from the date of payment for such week
40 or weeks. Notice of any such redetermination shall
41 be promptly given to the claimant. Subject to sub-
42 section 11, unless the claimant files an appeal from

1 such redetermination within ~~15~~ 20 calendar days after
2 such redetermination was mailed to his last known ad-
3 dress, such redetermination shall be final.

4 Subject to the same limitations and for the same
5 reasons, the commission may reconsider the determina-
6 tion in any case in which the final decision has been
7 rendered by an appeal tribunal, the commission or a
8 court, and may apply to the body or court which
9 rendered such final decision to issue a revised deci-
10 sion. In the event that an appeal involving an origi-
11 nal determination is pending as of the date a
12 redetermination thereof is issued, such appeal,
13 unless withdrawn, shall be treated as an appeal from
14 such redetermination.

15 Sec. 10. 26 MRSA §1195, sub-§3-B, as enacted by
16 PL 1981, c. 228, is amended to read:

17 3-B. Additional ineligibility. Any individual who
18 has been found ineligible for extended benefits for
19 reason of the provisions in subsection 3-A shall also
20 be denied benefits beginning with the first day of
21 the week following the week in which that failure
22 occurred and until he has been employed in each of 4
23 subsequent weeks, whether or not consecutive, and has
24 earned remuneration equal to not less than 4 times
25 the extended weekly benefit amount in employment by
26 an employer.

27 Sec. 11. 26 MRSA §1195, sub-§3-C, ¶C, as enacted
28 by PL 1981, c. 228, is amended to read:

29 C. No individual may be denied extended benefits
30 for failure to accept an offer of or apply for
31 any job which meets the definition of suitability
32 described in this subsection if:

33 (1) The position was not offered to the
34 individual in writing and or was not listed
35 with the employment service;

1 (2) The failure could not result in a denial
2 of benefits under the definition of suitable
3 work for regular benefit claimants in
4 section 1193, subsection 3 to the extent
5 that the criteria of suitability in that
6 section are not inconsistent with this sub-
7 section; and

8 (3) The individual furnishes satisfactory
9 evidence to the deputy that his prospects
10 for obtaining work in his customary occupa-
11 tion within a reasonably short period are
12 good. If the evidence is deemed satisfac-
13 tory for this purpose, the determination of
14 whether any work is suitable with respect to
15 that individual shall be made in accordance
16 with the definition of suitable work for
17 regular benefit claimants in section 1193,
18 subsection 3 without regard to the defini-
19 tion specified by this subsection.

20 Sec. 12. 26 MRSA §1401, 2nd ¶, as amended by PL
21 1981, c. 168, §§20, 26, is further amended to read:

22 The Commissioner of Labor shall receive a fixed
23 weekly salary in accordance with Title 2, section 6,
24 and shall be paid from the administrative funds of
25 the Maine Employment Security Commission, the Bureau
26 of Labor Standards and from other program administra-
27 tive funds which he is authorized by statute to ad-
28 minister. The commissioner is authorized to estab-
29 lish an Office of the Commissioner consisting of such
30 personnel deemed necessary to carry out the duties
31 and responsibilities of the commissioner and paid
32 from administrative funds from programs the commis-
33 sioner is authorized to administer.

34 STATEMENT OF FACT

35 Section 1 makes a technical correction of the law
36 by changing the word "commissioners" to "commission
37 members," referring to individuals who serve on the
38 Employment Security Commission.

1 Sections 2, 3 and 5 places all reductions in
2 benefints other than wages under one section of the
3 law for the sake of clarity and simplicity.

4 Section 3 is designed to simplify a section of
5 the law which is extremely difficult to administer.
6 Present law establishes a complicated formula to
7 determine benefits for individuals partially employed
8 and in certain sets of circumstances. The bill
9 deducts any wages over \$15 from the benefit payment.

10 Section 6 increases the wages required for
11 requalification for unemployment benefits for indi-
12 viduals who were discharged from employment due to a
13 crime connected with the individual's work. "Wages
14 equal to 4 times an individual's weekly benefit
15 amount" is the requalifying requirement for individu-
16 als who voluntarily left work. Since the maximum
17 weekly benefit amount is \$124 and the average is now
18 approximately \$100, the sanction intended by the law
19 is totally subverted in many cases.

20 Section 7 establishes a simple 20-day period for
21 appeals of deputies' decisions. This will eliminate
22 an area of the law which has created unnecessary ad-
23 judication and controversy.

24 Section 8 will give the appeal tribunal the same
25 authority to reconsider decisions that deputies and
26 the Employment Security Commission have. The appeal
27 tribunal is also given the authority to remand a new
28 issue to the deputy level.

29 Section 9 will assure that an error for any
30 reason in a benefit payment may be reconsidered by a
31 deputy. Present law unnecessarily restricts the
32 ability of deputies to correct errors.

33 Sections 10 and 4 are designed to eliminate
34 opportunities for subterfuge under the present law.
35 Wages necessary for an individual to requalify for
36 unemployment benefits will be required to be from an
37 employer subject to the Employment Security Law;
38 otherwise, wages are not necessarily verifiable.

39 Section 11 is necessary for conformity with fed-
40 eral law. An interpretation of federal law made

1 subsequent to the passage of the state law requires
2 changing the word "and" to "or."

3 Section 12 allows the commissioner to establish a
4 staff similar to that in other state government
5 departments which is directly responsible to the com-
6 missioner and intended to work on issues which are
7 department-wide rather than specific to a given
8 bureau or agency.

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