

MAINE STATE LEGISLATURE

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(New Draft of H.P. 411, L.D. 494)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1416

H.P. 1089

House of Representatives, April 6, 1983

Reported by Representative Beaulieu from the Committee on Labor and
printed under Joint Rule 2.

EDWIN H. PERT, Clerk

STATE OF MAINE

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

**AN ACT to Protect Unemployed Workers
from the Loss of Unemployment Benefits
Without the Opportunity for a Fair Hearing.**

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

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

2. Determination. A representative designated by
the commission, and in this chapter referred to as a
deputy, shall promptly examine the first claim filed
by a claimant in each benefit year and shall deter-
mine the weekly benefit amount and maximum benefit
amount potentially payable to the claimant during
~~such~~ that benefit year in accordance with section
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 accord-
9 ance 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 the wages or weeks used in
9 determining benefits which results in a denial of
10 benefits or a reduction of the weekly benefit amount,
11 the benefits paid prior to the date the determination
12 is mailed shall not constitute an overpayment. Any
13 benefits received after such that date to which the
14 claimant is not entitled pursuant to a new determina-
15 tion based on such that new employer information
16 shall constitute an overpayment.

17 If, during the period a claimant is receiving bene-
18 fits, new information or a new issue arises concern-
19 ing the claimant's eligibility for benefits or which
20 affects the claimant's weekly benefit amount, no bene-
21 fits may be withheld until a determination is made
22 on the issue, unless authorized by the claimant.
23 Before a determination is made, written notice shall
24 be mailed to the claimant and other interested par-
25 ties, which shall include the issue to be decided,
26 the law upon which it is based, any factual allega-
27 tions known to the bureau, the right to a fact-
28 finding interview, the date and location of the
29 scheduled interview, and the claimant's rights
30 regarding the continuation of benefits, conduct of
31 the interview and appeal. The fact-finding interview
32 shall be scheduled not less than 5 days nor more than
33 14 days after the notice is mailed. The bureau shall
34 include with the notice a preprinted form, which the
35 claimant may sign and return to the bureau after
36 indicating thereon whether he wishes to continue to
37 receive benefits until a determination is made, ac-
38 knowledging an understanding that any benefits paid
39 prior to the determination may be an overpayment
40 under applicable law and recoverable by the bureau if
41 it is later determined that the claimant was not
42 entitled to the benefits. If the claimant does not
43 appear for the scheduled interview, the deputy shall
44 make a determination on the basis of available evi-
45 dence. The deputy shall make a prompt determination

1 of the issue based solely on any written statements
2 of interested parties filed with the bureau before
3 the interview, together with the evidence presented
4 by interested parties who personally appeared at the
5 interview. Upon request and notice to all parties at
6 the interview, the deputy may accept corroborative
7 documentary evidence after the interview. In no
8 other case may the deputy base his decision on evi-
9 dence received after the interview has been held.

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STATEMENT OF FACT

11 If, while a claimant is receiving unemployment
12 benefits, new information or a new issue arises con-
13 cerning his eligibility for benefits or affecting his
14 weekly benefit amount, no benefits may be withheld
15 from the claimant until a deputy of the Bureau of
16 Employment Security makes a determination on that
17 issue, unless the claimant authorizes it. Before a
18 determination is made, the bureau must send a written
19 notice to the claimant and other interested parties,
20 along with a preprinted form. The claimant may
21 return this form to the bureau to indicate whether he
22 wishes to continue to receive benefits until a deter-
23 mination is made, and to acknowledge an understanding
24 that any benefits paid prior to the determination may
25 be an overpayment under applicable law and recover-
26 able by the bureau if it is later determined that the
27 claimant was not entitled to the benefits.

28 The fact-finding interview shall be scheduled
29 before a deputy not less than 5 days and not more
30 than 14 days after the notice is mailed. If the
31 claimant does not appear, the deputy shall make a
32 determination based on available evidence.

33 The deputy shall make a prompt determination of
34 the issue based solely on any written statements of
35 interested parties filed with the bureau before the
36 interview, together with evidence presented by inter-
37 ested parties who personally appeared at the inter-
38 view. On request and notice to all parties at the
39 interview, the deputy may accept corroborative docu-
40 mentary evidence after the interview, but in no other
41 case may base his decision on evidence received after
42 the interview.

1 This new draft seeks to provide adequate notice
2 and hearing to interested parties before a decision
3 is made or benefits are cut off, but balance cost
4 concerns by providing an opportunity for a fact-
5 finding interview rather than a full evidentiary
6 hearing on the new issues. In addition, the new
7 draft would lead to fairness in decision-making by
8 requiring that the deputy base his decision only on
9 evidence received before or at the interview, or on
10 corroborative documentary evidence received after the
11 interview, but on no other evidence received subse-
12 quent to the fact-finding interview.

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