

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1453

S.P. 485

In Senate, March 27, 2003

### **An Act To Allow for Immediate Unemployment Fact-finding Interviews for Able and Availability Issues**

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Submitted by the Department of Labor pursuant to Joint Rule 204.  
Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator EDMONDS of Cumberland.  
Cosponsored by Representatives: BOWLES of Sanford, SMITH of Van Buren, TREADWELL  
of Carmel.

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

2  
4       **Sec. 1. 26 MRSA §1194, sub-§2**, as amended by PL 1999, c. 464, §8, is further amended to read:

6       **2. Determination.** A representative designated by the  
8 commissioner, and in this chapter referred to as a deputy, shall  
10 promptly examine the first claim filed by a claimant in each  
12 benefit year and shall determine the weekly benefit amount and  
maximum benefit amount potentially payable to the claimant during  
that benefit year in accordance with section 1192, subsection 5.

14 The deputy shall promptly examine all subsequent claims filed  
16 and, on the basis of facts, shall determine whether or not that  
18 claim is valid with respect to sections 1192 and 1193, other than  
section 1192, subsection 5, or shall refer that claim or any  
20 question involved ~~therein~~ in the claim to the Division of  
Administrative Hearings or to the commission, which shall make a  
22 determination with respect ~~thereto~~ to the claim in accordance  
with the procedure described in subsection 3, except that in any  
24 case in which the payment or denial of benefits ~~will--be~~ is  
subject to section 1193, subsection 4, the deputy shall promptly  
26 transmit a report with respect to that subsection to the Director  
of Unemployment Compensation upon the basis of which the director  
shall notify appropriate deputies as to the applicability of that  
subsection.

28 The deputy shall determine in accordance with section 1221,  
30 subsection 3, paragraph A, the proper employer's experience  
rating record, if any, against which benefits of an eligible  
individual shall must be charged, if and when paid.

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

48 If an employer's separation report for an employee is not  
50 received by the office specified ~~thereon~~ on the separation report  
within 10 days after that report was requested, the claim shall

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

9  
10 If an employer files an amended separation report or otherwise  
11 raises a new issue as to the employee's eligibility or changes  
12 the wages or weeks used in determining benefits which that  
13 results in a denial of benefits or a reduction of the weekly  
14 benefit amount, the benefits paid prior to the date the  
15 determination is mailed shall do not constitute an overpayment.  
16 Any benefits received after that date to which the claimant is  
17 not entitled pursuant to a new determination based on that new  
18 employer information shall constitute an overpayment.

19  
20 If, during the period a claimant is receiving benefits, new  
21 information or a new issue arises concerning the claimant's  
22 eligibility for benefits or which affects the claimant's weekly  
23 benefit amount, no benefits may not be withheld until a  
24 determination is made on the issue. Before a determination is  
25 made, written notice shall be mailed to the claimant and other  
26 interested parties, which shall must include the issue to be  
27 decided, the law upon which it is based, any factual allegations  
28 known to the bureau, the right to a fact-finding interview, the  
29 date and location of the scheduled interview and the conduct of  
30 the interview and appeal. The fact-finding interview shall must  
31 be scheduled not less than 5 days nor more than 14 days after the  
32 notice is mailed. The bureau shall include in the notice a  
33 statement notifying the claimant that any benefits paid prior to  
34 the determination may be an overpayment under applicable law and  
35 recoverable by the bureau if it is later determined that the  
36 claimant was not entitled to the benefits. If the claimant does  
37 not appear for the scheduled interview, the deputy shall make a  
38 determination on the basis of available evidence. The deputy  
39 shall make a prompt determination of the issue based solely on  
40 any written statements of interested parties filed with the  
41 bureau before the interview, together with the evidence presented  
42 by interested parties who personally appeared at the interview.  
43 Upon request and notice to all parties at the interview, the  
44 deputy may accept corroborative documentary evidence after the  
45 interview. In no other case may the deputy base a decision on  
46 evidence received after the interview has been held.

47 A. This subsection does not apply when the claimant reports  
48 that, in the week claimed:

- 2 (1) The claimant worked and reports a specific amount  
of earnings for that work;
- 4 (2) The claimant worked and had earnings from that  
work, but does not furnish the amount of earnings;
- 6 (3) The claimant reports that the claimant was not  
8 able or available for work for a specific portion of  
the week and there is sufficient information for the  
10 deputy to determine that the inability or  
unavailability for work was for good cause. If the  
12 information provided by the claimant indicated  
14 unavailability during the claim week, but is not  
16 specific as to the amount of time involved, the  
18 department shall immediately initiate a fact-finding  
interview with the individual and make a determination  
regarding the claimant's weekly benefit amount on the  
basis of that interview. If the department is not able  
to conduct an immediate fact-finding interview with the  
claimant, the notification and fact-finding process  
described in this subsection must be followed; or
- 22 (4) The claimant received a specific amount of other  
24 remuneration as described in section 1193, subsection 5.

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**SUMMARY**

30 This bill allows the Department of Labor, Bureau of  
Unemployment Compensation, to hold an immediate fact-finding  
32 interview when an individual submits information in a weekly  
unemployment claim indicating the claimant was not available for  
34 work during the claim week and then modify the benefit check  
amount accordingly based on the information provided by the  
36 claimant during the fact-finding interview. Current statute  
allows modification of the benefit amount if the claimant is  
38 specific as to the amount of time the claimant was not available  
for work.  
40