

MAINE STATE LEGISLATURE

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Legislative Document

No. 1015

S.P. 332

March 6, 2007

An Act To Amend the Unemployment Laws

Reference to the Committee on Labor suggested and ordered printed.

A handwritten signature in black ink, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MARTIN of Aroostook.
Cosponsored by Senators: BARTLETT of Cumberland, DIAMOND of Cumberland,
STRIMLING of Cumberland.

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

2 **Sec. 1. 26 MRSA §1043, sub-§11, ¶F**, as amended by PL 2005, c. 35, §1 and c.
3 119, §2, is further amended to read:

4 F. The term "employment" ~~shall~~ does not include:

5 (1) Service performed in the employ of this State, or of any political subdivision
6 thereof, or of any instrumentality of this State or its political subdivisions, except
7 as provided by this subsection;

8 (2) Service performed in the employ of the United States Government or an
9 instrumentality of the United States immune under the Constitution of the United
10 States from the contributions imposed by this chapter, except that on and after
11 January 1, 1940 to the extent that the Congress of the United States has permitted
12 states to require any instrumentalities of the United States to make payments into
13 an unemployment compensation fund under a state unemployment compensation
14 or employment security law, all of the provisions of this chapter ~~shall be~~ are
15 applicable to such instrumentalities and to services performed for such
16 instrumentalities, in the same manner, to the same extent and on the same terms
17 as to all other employers, employing units, individuals and services. If this State
18 ~~shall is~~ is not be certified for any year by the Secretary of Labor under section 3304
19 of the Federal Internal Revenue Code, the payments required of such
20 instrumentalities with respect to ~~such~~ that year ~~shall~~ must be refunded by the
21 commissioner from the fund in the same manner and within the same period as is
22 provided in section 1225, subsection 5, with respect to contributions erroneously
23 collected;

24 (3) Service with respect to which unemployment compensation is payable under
25 an unemployment compensation system or employment security system
26 established by an Act of Congress. The commissioner is authorized and directed
27 to enter into agreements with the proper agencies under such an Act of Congress,
28 which agreements ~~shall~~ become effective 10 days after publication thereof in the
29 manner provided in section 1082, subsection 2, for regulations, to provide
30 reciprocal treatment to individuals who have, after acquiring potential rights to
31 benefits under this chapter, acquired rights to unemployment compensation under
32 such an Act of Congress, or who have, after acquiring potential rights to
33 unemployment compensation under such an Act of Congress, acquired rights to
34 benefits under this chapter;

35 (4) Agricultural labor as defined in subsection 1, except as provided in paragraph
36 A-2;

37 (4-1) Agricultural labor, if performed by an individual who is an alien, other than
38 a citizen of a contiguous country with which the United States has an agreement
39 with respect to unemployment compensation, admitted to the United States to
40 perform agricultural labor pursuant to the United States Immigration and
41 Nationality Act, Sections 214(c) and 101(a) (15) (H);

42 (5) Domestic service in a private home, except as provided in paragraph A-3;

- 1 (6) Service performed by an individual in the employ of ~~his~~ that individual's son,
2 daughter or spouse; and service performed by a child under the age of 18 in the
3 employ of ~~his~~ that child's father or mother, except for periods of such service for
4 which unemployment insurance is paid;
- 5 (6-1) Services performed by a student attending an elementary, secondary or
6 postsecondary school while participating in a cooperative program of education
7 and occupational training or on-the-job training that is part of the school
8 curriculum;
- 9 (9) Service performed with respect to which unemployment compensation is
10 payable under the Railroad Unemployment Insurance Act (52 Stat. 1094);
- 11 (10) Services performed in the employ of any other state, or any political
12 subdivision thereof, or any instrumentality of any one or more of the foregoing
13 ~~which~~ that is wholly owned by one or more states or political subdivisions; and
14 any services performed in the employ of any instrumentality of one or more other
15 states or their political subdivisions to the extent that the instrumentality is, with
16 respect to such a service, immune under the Constitution of the United States
17 from the tax imposed by section 3301 of the Federal Internal Revenue Code;,
18 except as provided in paragraph A-1, subparagraph (1);
- 19 (11) Service performed in any calendar quarter in the employ of any
20 organization exempt from income tax under section 501(a) of the Federal Internal
21 Revenue Code; other than an organization described in section 401(a) or under
22 section 521; of ~~such~~ the Code, if the remuneration for such service is less than
23 \$150;
- 24 (16) Service performed in the employ of a foreign government, including service
25 as a consular or other officer or employee or a nondiplomatic representative;
- 26 (17) Service performed in the employ of an instrumentality wholly owned by a
27 foreign government:
- 28 (a) If the service is of a character similar to that performed in foreign
29 countries by employees of the United States Government or an
30 instrumentality thereof; and
- 31 (b) If the commissioner finds that the United States Secretary of State has
32 certified to the United States Secretary of the Treasury that the foreign
33 government, with respect to whose instrumentality exemption is claimed,
34 grants an equivalent exemption with respect to similar service performed in
35 the foreign country by employees of the United States Government and of
36 instrumentalities thereof;
- 37 (18) Service performed as a student nurse in the employ of a hospital or a nurses'
38 training school by an individual who is enrolled and is regularly attending classes
39 in a nurses' training school chartered or approved pursuant to state law; and
40 service performed as an intern in the employ of a hospital by an individual who
41 has completed a 4 years' course in a medical school chartered or approved
42 pursuant to state law;

- 1 (19) Service performed by an individual for a person as a real estate broker, a
2 real estate ~~salesman~~ sales representative, an insurance agent or as an insurance
3 solicitor, if all such service performed by ~~such that~~ such that individual for ~~such that~~ such that person
4 is performed for remuneration solely by way of commission;
- 5 (20) Service performed by an individual under the age of 18 in the delivery or
6 distribution of newspapers or shopping news, ~~not including~~ except delivery or
7 distribution to any point for subsequent delivery or distribution;
- 8 (21) Service performed in the employ of any organization ~~which that~~ which that is excluded
9 from the term "employment" as defined in the Federal Unemployment Tax Act
10 solely by reason of section 3306(c)(7) or (8) if:
- 11 (a) Service is performed in the employ of a church or convention or
12 association of churches, or an organization ~~which that~~ which that is operated primarily
13 for religious purposes and ~~which that~~ which that is operated, supervised, controlled or
14 principally supported by a church or convention or association of churches;
- 15 (b) Service is performed by a duly ordained, commissioned or licensed
16 minister of a church in the exercise of ~~his that~~ his that minister's ministry or by a
17 member of a religious order in the exercise of duties required by ~~such that~~ such that
18 order;
- 19 (c) Prior to January 1, 1978, service is performed in the employ of a school
20 primarily operated as an elementary, secondary or preparatory school for
21 higher education, ~~which that~~ which that is not an institution of higher education;
- 22 (d) Service is performed in a facility conducted for the purpose of carrying
23 out a program of rehabilitation for individuals whose earning capacity is
24 impaired by age or physical or mental deficiency or injury or providing
25 remunerative work for individuals who, because of their impaired physical or
26 mental capacity, cannot be readily absorbed in the competitive labor market
27 by an individual receiving such rehabilitation or remunerative work;
- 28 (e) Service is performed as part of an unemployment ~~work—relief~~ work-
29 relief or ~~work—training~~ work-training program assisted or financed in whole
30 or in part by any federal agency or an agency of a state or political
31 subdivision thereof by an individual receiving ~~such that~~ such that work-relief or work-
32 training;
- 33 (f) Service is performed in the employ of a hospital as defined in subsection
34 26 by a patient of ~~such that~~ such that hospital;
- 35 (g) Services are performed prior to January 1, 1978; for a hospital in a state
36 prison or other state correctional institution by an inmate of ~~such that~~ such that prison
37 or correctional institution and after December 31, 1977; by an inmate of a
38 custodial or penal institution;
- 39 (h) Service is performed in the employ of a school, college or university; if
40 ~~such that~~ such that service is performed by a student who is enrolled and is regularly
41 attending classes at such a school, college or university; or

- 1 (i) Prior to January 1, 1978, service is performed in the employ of a school
- 2 that is not an institution of higher education; and after December 31, 1977,
- 3 service is performed in the employ of a governmental entity referred to in
- 4 paragraph A-1, subparagraph (1) if that service is performed by an individual
- 5 in the exercise of duties:
- 6 (i) As an elected official;
- 7 (ii) As a member of a legislative body; or a member of the judiciary; of a
- 8 state or political subdivision of a state;
- 9 (iii) As a member of the State National Guard or Air National Guard;
- 10 (iv) As an employee serving on a temporary basis in case of fire, storm,
- 11 snow, earthquake, flood or similar emergency;
- 12 (v) In a position that, under or pursuant to the laws of this State, is
- 13 designated as a major nontenured policymaking or advisory position; or a
- 14 policymaking or advisory position the performance of the duties of which
- 15 ordinarily does not require more than 8 hours per week; or
- 16 (vi) As an election official or election worker if the amount of
- 17 remuneration received by the individual during the calendar year for
- 18 services as an election official or election worker is less than \$1,000;
- 19 (29) Services performed by a hairdresser who holds a booth license and operates
- 20 within another hairdressing establishment if operated under a booth rental
- 21 agreement or other rental agreement;
- 22 (30) Services performed by a barber who holds a booth license and operates
- 23 within another barbering establishment if operated under a booth rental
- 24 agreement or other rental agreement;
- 25 (31) Services performed by a contract interviewer engaged in marketing research
- 26 or public opinion interviewing; when such interviewing is conducted in the field
- 27 or over the telephone on premises not used or controlled by the person for whom
- 28 such contract services are being provided;
- 29 (32) After December 31, 1981, services performed by an individual on a boat
- 30 engaged in catching fish or other forms of aquatic animal life, unless those
- 31 services would be included in the definition of "employment" for federal
- 32 unemployment tax purposes under the Federal Unemployment Act, United States
- 33 Code, Title 26, Section 3306(c), as it may be amended. Also included in this
- 34 exemption are services performed in harvesting shellfish for depuration from
- 35 designated areas as authorized by Title 12, section 6856;
- 36 (33) Services performed by a member or leader of a musical group, band or
- 37 orchestra or an entertainer when the services are performed under terms of a
- 38 contract entered into by the leader or an agent of the musical group, band,
- 39 orchestra or entertainer with an employing unit for whom the services are being
- 40 performed, provided the leader or agent is not an employer by reason of
- 41 subsection 9 or of section 1222, subsection 3;

- 1 (34) Services performed in the delivery or distribution of newspapers or
2 magazines to the ultimate consumer by an individual who is compensated by
3 receiving or retaining a commission or profit on the sale of the newspaper or
4 magazine;
- 5 (35) Services performed by a homemaker in the knitted outerwear industry as
6 those terms are defined, on the effective date of this subparagraph, in the 29 Code
7 of Federal Regulations, Part 530, Section 530.1;
- 8 (36) Service performed by a full-time student, as defined in subsection 30, in the
9 employ of an organized camp if the full-time student performed services in the
10 employ of the camp for less than 13 calendar weeks in the calendar year and the
11 camp:
- 12 (a) Did not operate for more than 7 months in the calendar year and did not
13 operate for more than 7 months in the preceding calendar year; or
- 14 (b) Had average gross receipts for any 6 months in the preceding calendar
15 year that were not more than 33 1/3% of its average gross receipts for the
16 other 6 months in the preceding calendar year;
- 17 (37) Services performed by an individual as a home stitcher as long as that
18 employment is not subject to federal unemployment tax;
- 19 (38) Services performed by a person licensed as a guide as required by Title 12,
20 section 12853, as long as that employment is not subject to federal
21 unemployment tax;
- 22 (39) Services performed by a direct seller as defined in 26 United States Code,
23 Section 3508, Subsection (b), Paragraph (2). This subparagraph does not include
24 a person selling major improvements or renovations to the structure of a home,
25 business or property;
- 26 (40) Services performed by lessees of taxicabs, as long as that employment is
27 not subject to federal unemployment tax. This subparagraph may not be
28 construed to affect a determination regarding a lessee's status as an independent
29 contractor for workers' compensation purposes;
- 30 (41) Services provided by a dance instructor to students of a dance studio when
31 there is a contract between the instructor and the studio under which the
32 instructor's services are not offered exclusively to the studio, the studio does not
33 control the scheduling of the days and times of classes other than beginning and
34 end dates, the instructor is paid by the class and not on an hourly or salary basis,
35 the compensation rate is the result of negotiation between the instructor and the
36 studio and the instructor is given the freedom to develop the curriculum;
- 37 (42) Services performed by participants enrolled in programs or projects under
38 the national service laws including the federal National and Community Service
39 Act of 1990, as amended, 42 United States Code, Section 12501 et seq., and the
40 federal Domestic Volunteer Service Act, as amended, 42 United States Code,
41 Section 4950 et seq.;

1 (43) Services of an author in furnishing text or other material to a publisher
2 who:

3 (a) Does not control the author's work except to propose topics or to edit
4 material submitted;

5 (b) Does not restrict the author from publishing elsewhere;

6 (c) Furnishes neither a place of employment nor equipment for the author's
7 use;

8 (d) Does not direct or control the time devoted to the work; and

9 (e) Pays only for material that is accepted for publication.

10 This exception does not apply if the employment is subject to federal
11 unemployment tax; and

12 (44) Services provided by an owner-operator of a truck or truck tractor while it
13 is leased to a motor carrier, as defined in 49 Code of Federal Regulations, 390.5
14 (2000), as long as that employment is not subject to federal unemployment tax.

15 **SUMMARY**

16 This bill allows an individual in the employ of a son, daughter or spouse or an
17 individual under the age of 18 in the employ of a parent to receive unemployment
18 compensation for periods of service for which unemployment insurance is paid.