

MAINE STATE LEGISLATURE

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127th MAINE LEGISLATURE

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Legislative Document

No. 701

H.P. 477

House of Representatives, March 5, 2015

An Act To Modify Unemployment Insurance Successor Law

Submitted by the Department of Labor pursuant to Joint Rule 204.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative HERBIG of Belfast.

Cosponsored by Senator VOLK of Cumberland and

Representatives: AUSTIN of Gray, LOCKMAN of Amherst, WARD of Dedham, Senator:
PATRICK of Oxford.

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

2 **Sec. 1. 26 MRSA §1221, sub-§5**, as amended by PL 2007, c. 23, §1, is repealed
3 and the following enacted in its place:

4 **5. Successor transfers of experience and assignment of rates; no common**
5 **ownership.** The following applies to the assignment of rates and transfers of experience
6 **in successor purchases when there is substantially no common ownership, management or**
7 **control between purchaser and predecessor.**

8 **A. Effective as of the date on which the business was acquired:**

9 **(1) The executors, administrators, successors or assigns of a new employer who**
10 **acquires the business of the predecessor employer in toto may acquire the**
11 **experience rate of that employer with payrolls, contributions and benefits or may**
12 **be assigned the state average contribution rate, whichever rate is lower; and**

13 **(2) The executors, administrators, successors or assigns of an existing employer**
14 **with an established experience rate who acquires the business of the predecessor**
15 **employer in toto may acquire the experience rate of that predecessor employer**
16 **with payrolls, contributions and benefits, which is then blended with the**
17 **successor's established experience rate to form a new rate, or retain the**
18 **established experience rate of the successor, whichever is lower.**

19 **Sec. 2. 26 MRSA §1221, sub-§5-A**, as corrected by RR 2005, c. 1, §12, is
20 amended to read:

21 **5-A. Transfers of experience and assignment of rates involving common**
22 **ownership.** ~~Notwithstanding subsection 5,~~ **The** following applies to the assignment
23 of rates and transfers of experience **when there is substantial common ownership,**
24 **management or control between the successor and predecessor employers.**

25 **A. If:**

26 (1) An employer transfers its trade or business, or a portion of its trade or
27 business, to another employer and, at the time of the transfer, there is
28 substantially common ownership, management or control of the 2 employers,
29 then the unemployment experience attributable to the transferred trade or
30 business is transferred to the employer to whom the business is transferred. The
31 rates of both employers must be recalculated and made effective immediately
32 upon the date of the transfer of the trade or business. The transfer of some or all
33 of an employer's workforce to another employer shall be considered a transfer of
34 trade or business when, as the result of such transfer, the transferring employer
35 no longer performs trade or business with respect to the transferred workforce,
36 and such trade or business is performed by the employer to whom the workforce
37 is transferred; and

38 (2) Following a transfer of experience under subparagraph (1), the commissioner
39 determines that the purpose of the transfer of trade or business was to obtain a
40 reduced liability for contributions, then the experience rating accounts of the

1 employers involved must be combined into a single account and a single rate
2 assigned to such account.

3 B. Whenever a person who is not an employer under this chapter acquires the trade
4 or business of an employer, the unemployment experience of the acquired trade or
5 business is not transferred to that person if the commissioner finds that the person
6 acquired the trade or business solely or primarily for the purpose of obtaining a lower
7 rate of contributions. In such circumstances, the person acquiring the trade or
8 business is assigned the applicable new employer rate under subsection 4-A. In
9 determining whether the trade or business was acquired solely or primarily for the
10 purpose of obtaining a lower rate of contributions, the commissioner shall consider
11 objective factors that may include the cost of acquiring the trade or business, whether
12 the person continued the business enterprise of the acquired trade or business, how
13 long the business enterprise was continued or whether a substantial number of new
14 employees were hired for performance of duties unrelated to the business activity
15 conducted prior to acquisition.

16 C. If a person knowingly violates or attempts to violate paragraph A or B or any
17 other provision of this chapter related to determining the assignment of a contribution
18 rate or if a person knowingly advises another person in a way that results in a
19 violation of such a provision, the person commits a Class D crime. In addition, the
20 person is subject to the following:

21 (1) If the person is an employer, then that employer is assigned the highest rate
22 assignable under this chapter for the rate year during which the violation or
23 attempted violation occurred and for the 3 rate years immediately following that
24 rate year, except that, if the person's business is already at the highest rate for any
25 year or if the amount of increase in the person's rate would be less than 2% for
26 such year, then a penalty rate of contributions of 2% of taxable wages is imposed
27 for that year; and

28 (2) If the person is not an employer, that person is subject to a fine of not more
29 than \$5,000, which must be deposited in the Special Administrative Expense
30 Fund established under section 1164.

31 D. As used in this subsection, unless the context otherwise indicates, the following
32 terms have the following meanings.

33 (1) "Knowingly" means having actual knowledge of or acting with deliberate
34 ignorance or reckless disregard for the prohibition involved.

35 (2) "Person" has the meaning given that term by Section 7701(a)(1) of the
36 Internal Revenue Code of 1986.

37 (3) "Trade or business" includes the employer's workforce.

38 (4) "Violates or attempts to violate" includes, but is not limited to, intent to
39 evade, misrepresentation or willful nondisclosure.

40 E. The commissioner shall adopt rules to identify the transfer or acquisition of a
41 business for purposes of this subsection. Rules adopted pursuant to this paragraph
42 are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

1 F. This subsection must be interpreted and applied in such a manner as to meet the
2 minimum requirements contained in any guidance or regulations issued by the United
3 States Department of Labor.

4 **SUMMARY**

5 This bill changes the treatment of unemployment contribution rate assignment in
6 successor transactions. In cases when the successor is a newly established employer, and
7 when no substantial common ownership, management or control exists between the
8 purchaser and the predecessor, the successor may opt to retain the predecessor's rate or
9 be assigned the average contribution rate, whichever is lower. In such cases when the
10 successor is an established employer with an existing contribution experience rate, the
11 successor may choose to retain this rate or inherit the experience rate of the purchased
12 business blended with the successor's existing rate to form a new experience rate,
13 whichever is more favorable.