

MAINE STATE LEGISLATURE

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128th MAINE LEGISLATURE

SECOND REGULAR SESSION-2018

Legislative Document

No. 1770

S.P. 657

In Senate, January 3, 2018

**An Act To Revise Laws Regarding Unemployment That Were
Amended or Affected by Recently Enacted Legislation**

(EMERGENCY)

Submitted by the Department of Labor pursuant to Joint Rule 203.
Reference to the Committee on Labor, Commerce, Research and Economic Development
suggested and ordered printed.

A handwritten signature in cursive script, reading 'Heather J.R. Priest'.

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator VOLK of Cumberland.
Cosponsored by Representatives: CRAIG of Brewer, ESPLING of New Gloucester, STETKIS
of Canaan, VACHON of Scarborough.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** the State's biennial budget was enacted and signed into law as an
4 emergency measure on July 4, 2017; and

5 **Whereas,** the biennial budget made changes to the laws governing unemployment
6 compensation, and this legislation makes changes to those laws that are necessary for
7 their proper administration; and

8 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
9 the meaning of the Constitution of Maine and require the following legislation as
10 immediately necessary for the preservation of the public peace, health and safety; now,
11 therefore,

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

13 **Sec. 1. 26 MRSA §1221, sub-§3, ¶A,** as amended by PL 2017, c. 284, Pt.
14 CCCC, §2, is further amended to read:

15 A. At the time the status of an employing unit is ascertained to be that of an
16 employer, the commissioner shall establish and maintain, until the employer status is
17 terminated, for the employer an experience rating record, to which are credited all the
18 contributions that the employer pays on the employer's own behalf. This chapter may
19 not be construed to grant any employer or individuals in the employer's service prior
20 claims or rights to the amounts paid by the employer into the fund. Benefits paid to
21 an eligible individual under the Employment Security Law must be charged against
22 the experience rating record of the claimant's most recent subject employer, except
23 that, beginning January 1, ~~2018~~ 2020, benefits paid to an eligible individual under the
24 Employment Security Law must be charged against the experience rating record of
25 the claimant's employers in inverse chronological order in a ratio ~~inversely~~
26 proportional to the claimant's employment beginning with the most recent employer
27 in the base period, or to the General Fund if the otherwise chargeable experience
28 rating record is that of an employer whose status as such has been terminated; except
29 that no charge may be made to an individual employer but must be made to the
30 General Fund if the commission finds that:

31 (1) The claimant's separation from the claimant's last employer was for
32 misconduct in connection with the claimant's employment or was voluntary
33 without good cause attributable to the employer;

34 (2) The claimant has refused to accept reemployment in suitable work when
35 offered by a previous employer, without good cause attributable to the employer;

36 (3) Benefits paid are not chargeable against any employer's experience rating
37 record in accordance with section 1194, subsection 11, paragraphs B and C;

38 (5) Reimbursements are made to a state, the Virgin Islands or Canada for
39 benefits paid to a claimant under a reciprocal benefits arrangement as authorized
40 in section 1082, subsection 12, as long as the wages of the claimant transferred to

1 the other state, the Virgin Islands or Canada under such an arrangement are less
2 than the amount of wages for insured work required for benefit purposes by
3 section 1192, subsection 5;

4 (6) The claimant was hired by the claimant's last employer to fill a position left
5 open by a Legislator given a leave of absence under chapter 7, subchapter 5-A,
6 and the claimant's separation from this employer was because the employer
7 restored the Legislator to the position after the Legislator's leave of absence as
8 required by chapter 7, subchapter 5-A;

9 (7) The claimant was hired by the claimant's last employer to fill a position left
10 open by an individual who left to enter active duty in the United States military,
11 and the claimant's separation from this employer was because the employer
12 restored the military serviceperson to the person's former employment upon
13 separation from military service;

14 (8) The claimant was hired by the claimant's last employer to fill a position left
15 open by an individual given a leave of absence for family medical leave provided
16 under Maine or federal law, and the claimant's separation from this employer was
17 because the employer restored the individual to the position at the completion of
18 the leave; or

19 (9) The claimant initiated a partial separation or reduction of hours and that
20 partial separation or reduction of hours was agreed to by the employee and
21 employer.

22 **Sec. 2. 26 MRSA §1221, sub-§3, ¶C-2** is enacted to read:

23 C-2. For the purposes of paragraph A, the experience rating record of the most recent
24 subject employer may not be charged with benefits paid to a claimant whose work
25 record with that employer totaled 5 consecutive weeks or less of total or partial
26 employment; in that case the most recent subject employer with whom the claimant's
27 work record exceeded 5 consecutive weeks of total or partial employment must be
28 charged if that employer would have otherwise been chargeable had not subsequent
29 employment intervened. This paragraph is repealed January 1, 2020.

30 **Sec. 3. 26 MRSA §1221, sub-§4-A, ¶C,** as amended by PL 2007, c. 352, Pt. A,
31 §2, is further amended to read:

32 C. The commissioner shall:

33 (1) Promptly notify each employer of the employer's rate of contributions as
34 determined for the 12-month period commencing January 1st of each year. The
35 determination is conclusive and binding upon the employer unless within 30 days
36 after notice of the determination is mailed to the employer's last known address
37 or, in the absence of mailing, within 30 days after the delivery of the notice, the
38 employer files an application for review and redetermination, setting forth the
39 employer's reasons. If the ~~commission~~ Division of Administrative Hearings
40 grants the review, the employer must be promptly notified and must be granted
41 an opportunity for a hearing. An employer does not have standing in any
42 proceedings involving the employer's rate of contributions or contribution

1 liability to contest the chargeability to the employer's experience rating record of
2 any benefits paid in accordance with a determination, redetermination or decision
3 pursuant to section 1194, except upon the ground that the services for which
4 benefits were found to be chargeable did not constitute services performed in
5 employment for the employer and only when the employer was not a party to the
6 determination, redetermination or decision or to any other proceedings under this
7 chapter in which the character of the services was determined. The employer
8 must be promptly notified of the ~~commission's~~ Division of Administrative
9 Hearings' denial of the employer's application or the ~~commission's~~ Division of
10 Administrative Hearings' redetermination, both of which are subject to appeal
11 pursuant to Title 5, chapter 375, subchapter 7; and

12 (2) Provide each employer at least monthly with a notification of benefits paid
13 and chargeable to the employer's experience rating record. In the absence of an
14 application for redetermination filed in the manner and within the period
15 prescribed by the ~~commission~~ commissioner, a notification is conclusive and
16 binding upon the employer for all purposes. A redetermination made after notice
17 and opportunity for hearing and the ~~commission's~~ Division of Administrative
18 Hearings' findings of fact may be introduced in subsequent administrative or
19 judicial proceedings involving the determination of the rate of contributions of an
20 employer for the 12-month period commencing January 1st of any year and has
21 the same finality as provided in this section with respect to the findings of fact
22 made by the ~~commission~~ Division of Administrative Hearings in proceedings to
23 redetermine the contribution rates of an employer.

24 **Sec. 4. 26 MRSA §1221, sub-§11, ¶D,** as amended by PL 1979, c. 651, §28, is
25 further amended to read:

26 D. The amount due specified in any assessment from the commissioner ~~shall be~~ is
27 conclusive on the employer or governmental entity, unless not later than 15 days after
28 the assessment was mailed to the last known address; the employer or governmental
29 entity files an application for redetermination by the ~~commission~~ Division of
30 Administrative Hearings setting forth the grounds for such application.

31 **Sec. 5. 26 MRSA §1225, sub-§2,** as amended by PL 1993, c. 312, §3, is further
32 amended to read:

33 **2. Jeopardy assessment.** If the Director of Unemployment Compensation
34 determines that the collection of any contribution, interest or penalty under this
35 subchapter, as amended, will be jeopardized by delay, the director may immediately
36 assess the contributions, interest or penalties, whether or not the time prescribed by law or
37 any rules issued pursuant to section 1082, subsection 2; for making reports and paying the
38 contributions has expired, and shall give written notice of the assessment to the employer.
39 In these cases, the right to appeal to the ~~commission~~ Division of Administrative Hearings,
40 as provided in section 1226, is conditioned upon payment of the contributions, interest or
41 penalties so assessed, or upon giving appropriate security to the commissioner for the
42 payment thereof.

1 The biennial budget also changed this law and applied the changes beginning January 1,
2 2018. The bill also provides that until January 1, 2020 the experience rating record of the
3 most recent subject employer may not be charged with benefits paid to an eligible
4 individual whose work record with that employer totaled 5 consecutive weeks or less.

5 This bill also provides that certain decisions made by the Commissioner of Labor are
6 subject to review by the Department of Labor, Division of Administrative Hearings,
7 rather than by the Maine Unemployment Insurance Commission.