

MAINE STATE LEGISLATURE

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E I G H T Y - S I X T H L E G I S L A T U R E

Legislative Document

No. 495

H. P. 1074

House of Representatives, Feb. 7, 1933.

Referred to Committee on Labor and 500 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Allison of Biddeford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED THIRTY-THREE

AN ACT to Create an Unemployment Insurance Commission, to Create an Employers' Mutual Unemployment Insurance Company, to Provide for Payments to Men out of Work, and to Establish a System of Unemployment Insurance.

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

Sec. 1. Definitions. The following terms, expressions and phrases as used in this act shall be construed as follows:

(1) The term "employer" shall mean every person, firm and private corporation who shall, at any time after the date when this act takes effect, have 5 or more employees in a common employment. But the term "employer" shall not include farmers. Any employer who has been subject to this act, upon his showing to the satisfaction of the unemployment insurance commission that at no time during the previous 12 months has he employed 5 or more employees and that all his liability for compensation or for insurance is discharged or provided for, shall (until such time as he again employs 5 or more employees) cease to be an employer within the meaning of this act.

(2) The term "employee" shall mean every person of whatever age in employment in the service of an employer under any contract of hire, express or implied, oral or written, including all helpers and assistants of employees, whether paid by employer or employee, if employed with

the knowledge, actual or constructive, of the employer. But the term "employee" shall not include persons:

- (a) Who are engaged in farm labor;
- (b) Whose employment is not in the usual course of the trade, business, profession or occupation of the employer;
- (c) Whose income from sources other than manual, mental or clerical labor is at the rate of \$1,000 or more per year.

Employees engaged in interstate commerce who work within this state shall be included in this act; provided, however, that the unconstitutionality of this sentence of paragraph (2) of this section shall not invalidate the remainder of this act.

(3) The expression "weeks of employment" shall mean the total weeks of employment by 1 or more employers during which the employer or employers were liable for compensation under this chapter.

(4) An employee shall be deemed partially unemployed when his usual weekly work is reduced to such an extent that his weekly remuneration or wage is less than 80 per cent of his average full time weekly remuneration or wage.

(5) The term "compensation" shall mean compensation for total or partial unemployment.

Sec. 2. Periodical employment. (1) Whenever in any industry or class of employment it is customary by reason of natural or climatic conditions to operate only during a regularly recurring period or periods of less than 1 year in length, then the employer's liability for compensation and his obligation to insure this liability shall apply only to the longest seasonal period or periods, during which, according to the best practice of such industry or class of employment it is customary to operate. The unemployment insurance commission hereinafter created shall ascertain and determine or redetermine such seasonal period or periods for each such seasonal employment. Until such determination, no employment shall be deemed seasonal. But this section shall not be construed to apply to the manufacture of articles of clothing.

(2) Whenever in any establishment it is customary to afford a regularly recurring vacation period, without pay, then the employer's liability for compensation and his obligation to insure this liability shall not apply to such vacation period. The unemployment insurance commission shall ascertain and determine or redetermine such vacation periods. Until such determination no period of unemployment shall be deemed a vacation period.

(3) Whenever in any industry or class of employment it is customary to engage employees for term of 3 days or less, then the employer in such

industry or class of employment shall owe compensation beginning with the day of filing claims as provided in section 3. The unemployment insurance commission shall ascertain and determine or redetermine the casual employments to which this section shall apply. Until such determination no employment shall be deemed casual.

Sec. 3. Liability of employer. An employer shall be liable for compensation whenever an employee leaves or loses employment with an employer. This section shall take effect the first of January next after the organization of the employer's mutual unemployment insurance company hereinafter created. The amount of the liability shall be determined by the provisions of sections 4, 5, 9 and 11.

Sec. 4. Compensation, how payable. (1) Compensation shall be payable weekly by the last employer of an employee or by the employers' mutual unemployment insurance company hereinafter provided for, and shall accrue:—

(a) Beginning with the 3rd day after filing claim (except in casual employments in which it shall accrue beginning with the day of filing claim), to an employee totally unemployed, if under 18 years of age, at the rate of \$1 for each working day including half holidays; if 18 years of age or over, at the rate of \$2 for each working day including half holidays; except as provided, however, in section 11, paragraph (4) of this act; provided, however, that no employee shall be compensated at a higher rate per week than 2-3rds of his average full time remuneration or wage in his last employment by an employer.

(b) Beginning with the 3rd day after filing claim, to an employee partially unemployed, at that proportion of the above rates which his actual loss in wages compared to his average full time weekly wage bears to his average full time weekly wage.

(2) Compensation shall not accrue to an employee either for more than 13 weeks in a calendar year or in greater ratio than 1 week of compensation to 6 weeks of employment during the 2 preceding calendar years.

(3) For the purpose of computing the number of weeks during which compensation may accrue to an employee, any period during which an employee received compensation for partial unemployment shall be counted in the ratio which this compensation bears to compensation for total unemployment.

(4) Employment by a person not an employer within the meaning of this act shall not terminate, but only suspend, the liability of a previous employer. If the employee becomes unemployed within 6 months of the cessation of his employment by such previous employer, compensation

shall again accrue upon his filing a claim against such previous employer within 1 month of the cessation of his last employment.

(5) Any employer within the meaning of this act who employs persons for part time only shall not be liable to pay compensation for unemployment to such persons at any greater rate than that part of the compensation for total unemployment which the part time employment that he offers bears to full time employment.

Sec. 5. Compensation to accrue, how. (1) Compensation shall accrue to an employee as provided in section 4:—

(a) On condition that the employee has been employed by 1 or more employers within the state not less than 26 weeks during each of the 2 preceding calendar years;

(b) So long as he is continuously unemployed except as provided in paragraph (4) of section 4;

(c) While he is capable of and available for employment and (unless only partially unemployed) unable to obtain suitable employment, and

(d) While he continues to report from time to time according to such rules as may be prescribed by the unemployment insurance commission hereinafter created.

(2) Suitable employment shall mean employment in his usual employment or other employment for which he is reasonably fitted in the vicinity, as determined by the unemployment insurance commission, of his residence or last employment. But an employee shall not lose his right to compensation if he refuses an employment as unsuitable:—

(a) Because the situation is subject to conditions substantially less favorable than the prevailing conditions in his usual employment, but the conditions shall not be deemed less favorable because the employment is likely to be less permanent or because it is an employment to which compensation does not attach;

(b) Because the situation is vacant owing to the direct participation of a previous occupant in an existing strike or lockout;

(c) Because the hourly pay is less than 90 per cent of what he was formerly receiving.

(3) An employee shall not be entitled to compensation:—

(a) If he lost his employment through his misconduct;

(b) If he has left his employment voluntarily without reasonable cause;

(c) If he has left or lost his employment by reason of participating in a strike against the employer at the factory, workshop or premises at which he was employed, so long as the strike continues;

(d) If he is receiving compensation under the workmen's compensation law.

Sec. 6. Compensation not assignable. No agreement by an employee to waive his right to compensation shall be valid, and no compensation shall be assignable, subject to attachment, or liable in any way for an employee's debts.

Sec. 7. Commission created. (1) For the purposes of this act there shall be created a commission of 7 members to be known as the unemployment insurance commission. The commissioner of labor and industries and the commissioner of insurance ex-officio shall be members of this commission, and the other 5 members shall be appointed by the governor with the advice and consent of the council. At least 2 of them shall be members of trade unions and at least 1 of them shall be a woman. One of them to be designated as a chairman shall be appointed for a term of 5 years, and the other commissioners for terms of 4 years each.

(2) The commissioners so appointed shall hold office for the terms aforesaid, unless removed as herein provided, and until their successors are appointed and qualified. They shall all have the same authority and powers; but their respective duties shall be determined by the chairman. They shall be sworn, and for inefficiency, wilful neglect of duty, or for malfeasance in office may after notice and hearing be removed by the governor and council. In case of a vacancy occurring through death, resignation or removal, the governor shall appoint a successor for the whole term of the member whose place he takes, subject to removal as aforesaid. In case the office of chairman becomes vacant, the senior commissioner shall act as chairman until the governor makes an appointment to fill such vacancy. The chairman shall receive a salary of \$4,500 per year, and the other commissioners a salary of \$4,000 each per year.

Sec. 8. Powers. The unemployment insurance commission shall have the power:—

(a) To require such reports as it may deem fit from the employers' mutual unemployment insurance company hereinafter created, and to prescribe forms and make rules governing such reports;

(b) To classify industries of this state that are subject to unemployment insurance into proper classes for employment insurance purposes;

(c) To establish separate funds by industries or groups of industries so that each of such industries or groups of industries shall bear approximately the cost of its own unemployment;

(d) To make loans from 1 fund to another;

(e) To make inspections of risks and to apply thereto an experience rating system;

(f) To establish charges and credits under such a system;

(g) To provide general rules for refunds or surcharges to employers on the basis of their individual unemployment experience;

(h) To require such reports as it may deem fit on payrolls and number of employees from all employers, whether they have elected to insure their liability to pay compensation under this act or not;

(i) To investigate unemployment conditions and other material facts in connection with unemployment risks and to promote regularity of employment and to prevent unemployment.

Sec. 9. Claims for compensation. (1) Claims for compensation, in such form as the unemployment insurance commission shall provide, shall be filed with the deputies designated by the commission for this purpose. The commission shall designate 1 or more deputies in each county. Such claim must be filed within 1 month of the cessation of employment, otherwise the claimant shall not be entitled to compensation.

(2) (a) If the claim appears to the deputy invalid, he shall reject the claim and notify the claimant in writing of such rejection and of his right to make an application for a hearing. This application must be made within 4 working days of such notification and in such form as the unemployment insurance commission shall provide.

(b) If the claim appears to the deputy valid, he shall give written notice of the claim to the claimant's last employer, and to the employers' mutual unemployment insurance company hereinafter created, and notify them that compensation must be paid unless the claim is contested by filing with the commission, within 4 working days after receipt of the notice, a denial of the claim in such form as the unemployment insurance commission shall provide. If such a denial is filed, it shall operate as an application for a hearing.

(c) In case the claim is not contested, compensation shall be paid at the rate and for the period it is due under this act. Upon failure to make proper and prompt payments, the claimant may make, in such form and within such time as the commission may prescribe, an application for a hearing.

Sec. 10. Hearings. (1) On application for a hearing, a member of the unemployment insurance commission or a local board constituted in accordance with paragraph (3) of this section shall proceed to hear and, if necessary, investigate and determine any contested claim for compensation in accordance with such rules and regulations as may be adopted and promulgated by the commission.

(2) Any party in interest who is aggrieved by any decision of a commissioner may appeal to the appeal board of the unemployment insurance commission. The commission shall designate 3 or more of its members

to sit as the appeal board. Decisions of the appeal board shall be final as to questions of fact, and appeal therefrom shall lie only to the supreme court of the commonwealth and only on questions of law.

(3) The unemployment insurance commission may provide for the hearing of contested claims by local boards representing the employers and employees, and may make rules for the proceedings before such boards and for review or rehearing before the commission or any 3 or more members thereof.

(4) If the application for a hearing arises under subsection (c) of paragraph (2) of section 9, the employer or the employers' mutual unemployment insurance company shall be estopped to set up:—

- (a) That the claimant was not his employee;
- (b) That the claimant lost his employment through his own misconduct;
- (c) That the claimant left his employment voluntarily without reasonable cause;
- (d) That the claimant left his employment by reason of participating in a strike.

(5) Any party in interest may file a certified copy of a decision of the commission or any of its members or of the local board provided for in paragraph (2) of this section with the clerk of the superior court for the county in which the employee was last employed. Execution may issue upon a decision so filed as upon a judgment for wages due and unpaid. In cases of insolvency or assignments for the benefit of creditors claims for compensation for unemployment shall rank equally with claims for wages, except as provided in section 12, paragraph (5).

Sec. 11. Insurance policy. (1) Every employer liable for the payment of compensation, unless he exempts himself as provided in section 11, paragraph (4), shall insure such liability in the employers' mutual unemployment insurance company hereinafter created. The obligation to take out a policy insuring such liability shall take effect at the time set forth in section 11, paragraph (2), or as soon thereafter as a person not theretofore an employer becomes such, and premiums shall be payable as set forth in section 12, paragraph (2). Any employer who fails to take out a policy of insurance with the employers' mutual unemployment insurance company shall nevertheless be liable to such company for premiums at the same rate as if he had taken out a policy, plus a penalty of \$25, and shall receive the same protection as if he had taken out the standard policy hereinafter provided for in section 13, paragraph (4), unless he gives notice in writing of his intention not to insure to the unem-

ployment insurance commission and the employers' mutual unemployment insurance company.

(2) Liability for compensation under this act shall not be affected or reduced by any other insurance, contribution or other benefit in respect of unemployment due to or received by the employee entitled to compensation under this act.

(3) The claimant of compensation may recover the same directly from his employer, when his employer has exempted himself from the duty of insuring his liability for the payment of compensation, in accordance with paragraph (4) of this section. When his employer has insured his liability for the payment of compensation, either by taking a policy or by failure to give notice in writing of his intention not to insure, then the employee may enforce in his own name, by proceedings before the unemployment insurance commission or its deputies, in conformity with sections 9 and 10, the liability of the employers' mutual unemployment insurance company, and shall not have the right to proceed against his employer; provided, however, that the failure of the claimant's employer to do or refrain from doing any act required by the policy shall not be available to the employers' mutual employment insurance company as a defense to such a claim.

(4) Employers who desire to exempt themselves from the duty of insuring their liability for compensation under this act with the employers' mutual unemployment insurance company may do so by giving notice in writing of such intention to the employers' mutual unemployment insurance company and the unemployment insurance commission. Employers who have so elected to exempt themselves shall post conspicuously in all their places of business a notice to their employees informing them that they have so elected to exempt themselves. Employers who have so elected to exempt themselves shall pay compensation to all of their employees who become entitled to compensation under sections 3, 4 and 5 of this act at the rate of \$1.50 per day for persons under 18 years of age, and \$3.00 per day for persons 18 years of age or over; provided, however, that no employee shall be compensated at a higher rate per week than $\frac{3}{4}$ of his average full time weekly remuneration or wage in his last employment, instead of at the rate of compensation set forth in section 4, paragraph (1) (a) of this act.

Sec. 12. Insurance company created. (1) There shall be created, for the purpose of insuring the liability of employers under this act and of preventing unemployment, an employers' mutual unemployment insurance company. Such company shall insure all the liability for compensation, under this act, of all employers who have not been exempted from insuring in such company under the provision of section 11, paragraph (4). The

governor shall fix a place in Augusta and a time not less than 30 nor more than 60 days after the passage of this act, for the meeting of employers required to insure their liability, for the purpose of organizing and incorporating the company, and shall give public notice of such meeting at least 30 days in advance. Each employer or his authorized agent shall be entitled at such first meeting to 1 vote for each 100 employees or fraction thereof. The meeting shall provide for incorporation as a mutual insurance company and the laws of this commonwealth relating to mutual insurance companies shall apply so far as they are not inconsistent with the provisions of this act. The commissioner of labor and industries shall preside at the meeting, and pass upon the credentials and voting rights of persons attending the meeting.

(2) From and after the first of January next following the organization of the employers' mutual unemployment insurance company, the said company shall collect and every employer who has not exempted himself in accordance with section 11, paragraph (4) of this act, from the duty to insure his liability for compensation under this act with the said company shall pay 3 per cent of his payroll weekly, bi-weekly or monthly, according as he pays his employees, for the period of 3 calendar years. In addition, the said company shall have the power at any regular meeting of its board of directors to assess every employer who has not exempted himself from the duty of insuring his liability for compensation under this act in accordance with section 11, paragraph (4), an additional sum up to a maximum of 2 per cent more of his payroll if such an assessment becomes necessary to meet the obligations of the said company to pay compensation for unemployment in accordance with the terms in this act.

(3) From and after the end of the period of 3 calendar years from the time when the liability for compensation for unemployment begins under this act, the employer's mutual unemployment insurance company shall, subject to the approval of the unemployment insurance commission, fix such rates of premium as will cover all the liability of employers to pay compensation for unemployment under this act.

(4) The employers' mutual unemployment insurance company shall have the right to enforce the payment of premiums to be made under paragraphs (2) and (3) of this section by all the remedies that the state of Maine may use in enforcing the collection of taxes. In case of insolvency of or assignment for the benefit of creditors by any employer, the claims of the employers' mutual unemployment insurance company for money due under paragraph (1) of this section shall stand on the same footing in respect to priority as the claims of the state of Maine for taxes.

(5) During the first 3 years after the liability for compensation for

unemployment begins under this act, if the assets of said employers' mutual unemployment insurance company fall below the net reserve and other liability of the company, as determined by the unemployment insurance commission, the unemployment insurance commission shall temporarily reduce the periods for which compensation shall be paid under this act to such reasonable periods as may secure the solvency of such company.

Sec. 13. Reports of insurance company. (1) The employers' mutual unemployment insurance company shall make such reports as the employment insurance commission may require.

(2) The employers' mutual unemployment insurance company shall establish separate funds by industries or groups of industries as may be directed or approved by the unemployment insurance commission, so that each of such industries or groups of industries shall bear approximately the cost of its own unemployment.

(3) The employers' mutual unemployment insurance company shall be authorized and required subject to the approval of the unemployment insurance commission:

(a) To classify industries of this state that are subject to the liability to pay compensation for unemployment into proper classes for employment insurance purposes;

(b) To make inspections of risks and to apply thereto an experience rating system;

(c) To establish charges and credits under such system;

(d) To provide general rules for refunds and surcharges to employers on the basis of their individual unemployment experience;

(e) To investigate unemployment conditions and other material facts in connection with compensation risks and to promote regularity of employment and to prevent unemployment.

(4) The unemployment insurance commission shall draw up or approve a standard form of policy for the insurance of the compensation herein provided for or against the liability to pay such compensation, and may establish maximum and minimum rates of premiums for various industries. Every contract for the insurance of the compensation herein provided for or against the liability to pay such compensation shall be made subject to the provisions of this act and provisions thereof inconsistent with this act shall be void. Every such contract shall be construed to grant full coverage of all liability of the assured under this act notwithstanding any agreement of the parties to the contrary, unless the unemployment insurance commission has previously by written order specifically consented to the issuance of a contract of insurance covering a part only of such liability.

Sec. 14. Minimum premiums. (1) The minimum premiums which the

employers' mutual unemployment insurance company shall charge shall be subject to approval by the unemployment insurance commission. Such premiums shall be modified by such system of experience rating as the unemployment insurance commission may prescribe or approve. The commission shall approve only of minimum premiums and experience rating systems that are fair and adequate for the various industries to which they apply over a period of years and which do not discriminate unfairly between risks or industries.

(2) The unemployment insurance commission either upon its own motion or upon written complaint of any employer who is aggrieved by any rate, rule or classification affecting him made by the employers' mutual unemployment insurance company shall have power to review the acts of such company upon hearing and 10 days' written notice thereof to all parties in interest, and to make findings and orders requiring compliance with the provisions of this act. Findings made by the unemployment insurance commission in accordance with this section shall be conclusive and may be attacked in the courts only for fraud.

Sec. 15. Penalty. If any employer refuses or neglects to comply with any of the requirements of this act or the regulations, rules and orders made thereunder, or fails to make any reports or give any information required by the unemployment insurance commission, or if any employer solicits, receives or collects any money or deducts or attempts to deduct any money from the wages or other remuneration of the employee, either directly or indirectly, for the purpose of discharging any part of the employer's liability under the provisions of this act, he shall forfeit \$50 for each offense. Each day's continuance of an offense under this section shall be deemed to be a separate offense.

Sec. 16. Expenses, how paid. The expense of the unemployment insurance commission, including the salaries of its deputies, agents and clerks, shall be paid by the treasurer of state out of money specifically appropriated for that purpose by the legislature.