LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

FIRST REGULAR SESSION
December 5, 1984 to June 20, 1985
Chapters 1-384

PUBLISHED BY THE REVISOR OF STATUTES IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED, TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Co., Inc.
Augusta, Maine
1986

PUBLIC LAWS

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1985

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 14, 1985.

CHAPTER 348

S.P. 493 - L.D. 1319

AN ACT to Amend Certain Sections of the Employment Security Law.

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

Sec. 1. 26 MRSA §1043, sub-§9, ¶D, as amended by PL 1971, c. 538, §5, is further amended to read:

D. Any employing unit which together with one or more other employing units is owned or controlled, by legally ~~enforcible~~ enforceable means or otherwise, directly or indirectly by the same interests, or which owns or controls one or more other employing units, by legally ~~enforcible~~ enforceable means or otherwise, and which, if treated as a single unit with such other employing unit, or interests, or both, would be an employer under ~~paragraphs~~ A, paragraph A-1 ~~or~~, H or J;

Sec. 2. 26 MRSA §1043, sub-§19, as amended by PL 1977, c. 570, §§18 and 19, is further amended to read:

19. Wages. "Wages" means all remuneration for personal services, including commissions, bonuses, severance or terminal pay, gratuities and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with regulations prescribed by the commission, except that:

A. For purposes of section 1221, the term "wages" shall not include that part of remuneration which after remuneration equal to $3,000 through December 31, 1971, $4,200 through December 31, 1977, $6,000 through December 31, 1982, and on and after January 1, 1983, that part of

remuneration equal to $7,000 has been paid in a calendar year to an individual by an employer or his predecessor with respect to employment during any calendar year, is paid to the individual by the employer during that calendar year, unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. The wages of an individual for employment with an employer shall be subject to this exception whether earned in this State or any other state when the employer-employee relationship is between the same legal entities;

B. For purposes of section 1191, subsection 2, section 1192, subsection 5 and section 1221, the term "wages" shall not include:

~~(1) The amount of any payment made to, or on behalf of, an employee under a plan or system established by an employing unit which makes provision for his employees generally or for a class or classes of his employees, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement, or sickness or accident disability, or medical and hospitalization expense in connection with sickness or accident disability, or death,~~

(1) The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally, or for his employees generally and their dependents, or for a class or classes of his employees, or for a class or classes of his employees and their dependents, on account of:

(a) Sickness or accident disability, but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workers' compensation law;

(b) Medical or hospitalization expenses in connection with sickness or accident disability; or
(c) Death;

(1-A) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for that employer;

(2) The payment by an employing unit, without deduction from the remuneration of the employee, of the tax imposed upon an employee under section 3101 of the Federal Insurance Contributions Act, as amended, with respect to service performed after July 26, 1940, with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor; or

(3) The amount of any payment, other than vacation or sick pay, to an individual after the month in which he attains the age of ~~65~~ 62, if he did not perform services for the employing unit in the period for which such payment is made, and is not expected to perform services in the future for the payment;

C. With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this paragraph, the term "previously uncovered services" means services:

(1) Which were not employment as defined in subsection 11, and were not services covered pursuant to section 1222, at any time during the one-year period ending December 31, 1975; and

(2) Which:

(a) Are agricultural labor, as defined in subsection 11, paragraph A-2 or domestic service as defined in subsection 11, paragraph A-3, or

(b) Are services performed by an employee of this State or a political subdivision thereof, or any of their instrumentalities as provided in subsection 11, paragraph A-1, subparagraph (1), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in subsection 11, paragraph F, subparagraph (21), division (i);

except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services~~.~~; and

D. Nothing in this subsection may be construed to include as wages any payment which is not included as wages under the Federal Unemployment Tax Act, 26 United States Code, Section 3306(b)(5) and (r), as amended, as of January 1, 1985.

Sec. 3. 26 MRSA §1051, sub-§2, as amended by PL 1983, c. 118, is further amended to read:

2. Separate offense. Any person who willfully fails or refuses to make any contributions or other payments, to furnish any reports required by this chapter or to produce or permit the inspection or copying of records as required is guilty of a Class D crime. Each failure or refusal shall constitute a separate offense. For purposes of this paragraph, "person" means an individual, corporation or partnership or an officer or employee of any corporation, including a dissolved corporation, or a member or employee of any partnership who was, at the time of the violation, under a duty to comply with this paragraph.

Sec. 4. 26 MRSA §1082, sub-§8, as amended by PL 1983, c. 351, §12, is further amended to read:

8. Oaths and witnesses. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chairman of an appeal tribunal and any duly authorized representative ~~of either~~ of them shall have power to administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the ad-

ministration of this chapter. Oaths and affirmations required by reason of duties performed pursuant to this chapter may be administered by any of such persons as may be designated for the purpose by the commissioner. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chairman of an appeal tribunal or any duly authorized representative ~~of either~~ of them, when the interests of any interested party demand, may issue commissions to take depositions to any unemployment compensation or employment security official empowered to take such depositions under this chapter or the laws of any other state, for either of the following causes:

A. When the deponent resides out of, or is absent from, the State;

B. When the deponent is bound to sea or is about to go out of the State; or

C. When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

Such depositions shall be taken by written interrogatories to be compiled by the commission or the appeal tribunal, and the adverse party shall be afforded an opportunity to refute such testimony before a determination is made. The deponent shall be sworn and the deposition shall be signed and sworn to by the deponent before admissible as testimony at a hearing before the appeal tribunal or the commission.

Subpoenas shall be issued pursuant to Title 5, section 9060.

Sec. 5. 26 MRSA §1192, sub-§5, as amended by PL 1979, c. 515, §13-A, is further amended to read:

5. Has earned wages. For each eligible individual establishing a benefit year on or after January 1, 1980, he has been paid wages equal to or exceeding 2 times the annual average weekly wage for insured work in each of 2 different quarters in his base period and has been paid total wages equal to or exceeding 6 times the annual average weekly wage in his base period for insured work. The annual average weekly wage amount to be used for purposes of this subsection shall be that which is applicable at the time the individual files a request for determination of his insured status. For the purpose of this subsection, wages shall be counted as "wages for insured work" for benefit purposes with respect to any benefit year

only if such benefit year begins subsequent to the date on which the employer by whom such wages were paid has satisfied the conditions of section 1043, subsection 9, or section 1222, subsection 3, with respect to becoming an employer; provided that no individual may receive benefits in a benefit year, unless, subsequent to the beginning of the next preceding benefit year during which he received benefits, he performed services, ~~whether or not in employment as defined in section 1043, subsection 11,~~ and earned remuneration for such service in an amount equal to not less than 8 times his weekly benefit amount in employment by an employer in the benefit year being established. This subsection applies only to any individual requesting determination of insured status on and after January 1, 1972. In determining a claimant's qualification under this subsection, payments pursuant to Title 39, sections 54 and 55, the Workers' Compensation Act, and Title 39, sections 188 and 189, the Occupational Disease Law, shall be considered wages for insured work.

Sec. 6. 26 MRSA §1193, sub-§4, ¶C, as amended by PL 1983, c. 351, §17, is further amended to read:

C. He has obtained employment subsequent to the beginning of the stoppage of work and has earned at least 8 times his weekly benefit amount in employment by an employer or has been in employment by an employer for 5 full weeks; or

Sec. 7. 26 MRSA §1194, sub-§2, as repealed and replaced by PL 1983, c. 816, Pt. A, §23, is amended to read:

2. Determination. A representative designated by the commissioner, and in this chapter referred to as a deputy, shall promptly examine the first claim filed by a claimant in each 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.

The deputy shall promptly examine all subsequent claims filed and, on the basis of the facts found by him, shall determine whether or not that claim is valid with respect to sections 1192 and 1193, other than section 1192, subsection 5, or shall refer that claim or any question involved therein to an appeal tribunal or to the commission, which shall make a determination with respect thereto in accordance with the procedure described in subsection 3, except that

in any case in which the payment or denial of benefits will be subject to section 1193, subsection 4, the deputy shall promptly transmit a report with respect to that subsection to the Director of Unemployment Compensation upon the basis of which the director shall notify ~~its~~ appropriate deputies as to the applicability of that subsection.

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

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

If an employer's separation report for an employee is not received by the office specified thereon within 10 days after that report was requested, the claim shall be adjudicated on the basis of information at hand. If the employer's separation report containing possible disqualifying information is received after the 10-day period and the claimant is denied benefits by a revised deputy's decision, benefits paid prior to the date of the revised decision shall not constitute an overpayment of benefits. Any benefits paid after the date of the revised decision shall constitute an overpayment.

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

on that new employer information shall constitute an overpayment.

If, during the period a claimant is receiving benefits, new information or a new issue arises concerning the claimant's eligibility for benefits or which affects the claimant's weekly benefit amount, no benefits may be withheld until a determination is made on the issue, unless authorized by the claimant. Before a determination is made, written notice shall be mailed to the claimant and other interested parties, which shall include the issue to be decided, the law upon which it is based, any factual allegations known to the bureau, the right to a fact-finding interview, the date and location of the scheduled interview, and the claimant's rights regarding the continuation of benefits, conduct of the interview and appeal. The fact-finding interview shall be scheduled not less than 5 days nor more than 14 days after the notice is mailed. The bureau shall include with the notice a preprinted form, which the claimant may sign and return to the bureau after indicating thereon whether he wishes to continue to receive benefits until a determination is made, acknowledging an understanding that any benefits paid prior to the determination may be an overpayment under applicable law and recoverable by the bureau if it is later determined that the claimant was not entitled to the benefits. If the claimant does not appear for the scheduled interview, the deputy shall make a determination on the basis of available evidence. The deputy shall make a prompt determination of the issue based solely on any written statements of interested parties filed with the bureau before the interview, together with the evidence presented by interested parties who personally appeared at the interview. Upon request and notice to all parties at the interview, the deputy may accept corroborative documentary evidence after the interview. In no other case may the deputy base his decision on evidence received after the interview has been held.

Sec. 8. 26 MRSA §1194, sub-§10, as amended by PL 1983, c. 305, §6, is further amended to read:

10. Determination may be reconsidered; appeal. The deputy may reconsider a determination with respect to the weekly benefit amount and maximum total amount of benefits for a claimant for any given benefit year, if he finds that an error has occurred in connection therewith, or that wages have been erroneously reported, but no such redetermination shall be made after one year from the date of the original

determination. Notice of any such redetermination shall be promptly given to the parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination. If the maximum amount of benefits is increased upon such redetermination, an appeal therefrom solely with respect to the matters involved in such increase may be filed in the manner and subject to the limitations provided in subsection 2. If the amount of benefits is decreased upon such redetermination, the matters involved in such decrease shall be subject to an appeal by claimant with respect to subsequent benefits which may be affected by the redetermination. An appeal may be filed in the manner and subject to the limitations provided in subsection 2.

The deputy may reconsider a benefit payment for any particular week or weeks whenever he finds that an error has occurred, but no such redetermination may be made after one year from the date of payment for such week or weeks. Notice of any such redetermination shall be promptly given to the claimant. Subject to subsection 11, unless the claimant files an appeal from such redetermination within ~~20~~ 15 calendar days after such redetermination was mailed to his last known address, such redetermination shall be final, provided that the period within which an appeal may be filed may be extended for a period not to exceed an additional 15 calendar days for good cause shown.

Subject to the same limitations and for the same reasons, the commission may reconsider the determination in any case in which the final decision has been rendered by an appeal tribunal, the commission or a court, and may apply to the body or court which rendered such final decision to issue a revised decision. In the event that an appeal involving an original determination is pending as of the date a redetermination thereof is issued, such appeal, unless withdrawn, shall be treated as an appeal from such redetermination.

Sec. 9. 26 MRSA §1221, sub-§2, as amended by PL 1983, c. 16, is further amended to read:

2. Rate of contribution. Each employer subject to this chapter, other than those liable for payments in lieu of contributions, shall pay contributions at the rate of ~~2.7%~~ 5.4% of the wages paid by him with respect to employment during each calendar year, except as otherwise prescribed in subsection 4.

~~A. Each employer subject to this chapter, other than those liable for payments in lieu of contributions, shall pay, in addition to his contribution rate as prescribed in subsection 4, 3/10 of 1% of the wages paid by him with respect to employment during the calendar year 1977.~~

B. Each employer subject to this chapter, other than those liable for payments in lieu of contributions, shall pay, in addition to his contribution rate as prescribed in subsection 4, 6/10 of 1% of the wages paid by him with respect to employment during the calendar years 1983 and 1984. This paragraph is repealed January 1, 1985.

Sec. 10. 26 MRSA §1221, sub-§4, ¶A, as amended by PL 1983, c. 753, §2, is further amended to read:

A. The standard rate of contributions shall be 5.4%. No contributing employer's rate may be varied from the standard rate, unless and until his experience rating record has been chargeable with benefits throughout the ~~36-consecutive-calendar-month~~ 24-consecutive-calendar-month period ending on the computation date applicable to such year; ~~provided that with respect to the rate year beginning July 1, 1972, and each rate year thereafter, the rate of any contributing employer who has not been subject to this chapter for a sufficient period of time to meet the 36-month requirement may be varied from the standard rate, if there shall have been a lesser period throughout which his experience rating record has been chargeable with benefits, but in no case less than the 24-consecutive-calendar-month period ending on the computation date applicable to such year; provided, further, that beginning July 1, 1976, and with respect to each rate year thereafter,~~ each contributing employer newly subject to this chapter shall pay contributions at the average contribution rate, rounded to the next higher 1/10 of 1%, on the taxable wages reported by contributing employers for the 12-month period immediately preceding the last computation date, provided such rate ~~does~~ may not exceed 3.0%~~, and not~~ nor be less than 1%; provided that, with respect to the rate year beginning January 1, 1986, and each rate year thereafter, the rate shall not exceed 4.0% nor be less than 1% and until such time as his experience rating record has been chargeable with benefits throughout the 24-consecutive-calendar-month period ending on

the computation date applicable to such year, and for rate years thereafter his contribution rate shall be determined in accordance with subsections 3 and 4.

Sec. 11. 26 MRSA §1221, sub-§6, ¶E, as repealed and replaced by PL 1973, c. 563, §3, is amended to read:

E. Net balance available for benefit payments. "Net balance available for benefit payments" means the sum of the balance in the trust fund, the benefit fund, and the clearing account after adjustment for outstanding checks, and adjustment for funds in transit between either of said funds or said account.

Sec. 12. 26 MRSA §1225, sub-§4, as amended by PL 1983, c. 351, §27, is further amended to read:

4. Penalty on past-due contributions. If quarterly contributions are not paid when due, the commissioner shall assess, for the first 30 days after the due date or a waiver, a penalty of 2% of the amount of the contributions and thereafter a penalty of 5% of the amount of the unpaid contributions~~, but this penalty shall not be less than $5 nor more than $100~~. The commissioner may waive that penalty if he finds that the delay was occasioned by the illness or death of the person in charge of the records of the employing unit or by some other unavoidable occurrence. The commissioner may allow an extension of time up to 30 days beyond the due date for good cause upon written request made on or before the due date.

Sec. 13. 28 MRSA §304, as amended by PL 1981, c. 698, §124, is further amended to read:

§304. Licensee not to be indebted, obligated or involved

Except as provided by section 601, no person shall be issued a license or a renewal of a license if he shall be indebted in any manner, directly or indirectly, to any other person for liquor or to the State of Maine for any tax, other than property tax, assessed and deemed final under Title 36 which the State Tax Assessor certifies, in accordance with Title 36, section 172, as remaining unpaid in an amount exceeding $1,000 for a period greater than 60 days after the applicant or licensee has received notice of the finality of such tax. No person may be issued a license or a renewal of a license if he is indebted

for any contributions assessed and deemed final under Title 26, section 1225, when the Director of Unemployment Compensation certifies that the amount remains unpaid for a period greater than 60 days, after the applicant or licensee has received notice of the finality of that tax. It shall be unlawful for any licensee or any applicant for license, directly or indirectly, to receive any money, credit, thing of value, indorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person, association or corporation within or without the State, if such person, association or corporation shall be engaged, directly or indirectly, in the manufacture, distribution, sale, storage or transportation of liquor; or if such person, association or corporation shall be engaged in the manufacture, distribution, sale or transportation of any commodity, equipment, material or advertisement used in connection with the manufacture, distribution, sale, storage or transportation of liquor. No Maine retail liquor licensee shall have any interest, direct or indirect, in any Maine manufacturer's or wholesaler's license or certificate of approval issued to an out-of-state manufacturer or foreign wholesaler of malt liquor or table wine; and no out-of-state manufacturer or foreign wholesaler having a state certificate of approval, nor any state wholesaler or manufacturing licensee, shall have any interest, direct or indirect, in any state retail liquor license. Minor investment in securities of a corporation engaged in liquor business not amounting to more than 1% shall not be held to be an interest forbidden by the foregoing sentence. This section shall not prohibit a wholesaler from receiving normal credits for the purchase of malt liquor or table wine from the manufacturer thereof within or without the State.

Effective September 19, 1985.

CHAPTER 349

H.P. 809 - L.D. 1156

AN ACT To Provide Penalties for Violations of Antitrust Statutes.

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