

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTIETH LEGISLATURE**

**FIRST SPECIAL SESSION**  
**November 13, 2002 to November 14, 2002**

**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 2002 to June 14, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**FEBRUARY 13, 2003**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 13, 2003**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2003**

answering, or failing to answer, or in producing or failing to produce evidence, in accordance with the order.

See title page for effective date.

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## CHAPTER 163

S.P. 485 - L.D. 1453

### An Act To Allow for Immediate Unemployment Fact-finding Interviews for Able and Availability Issues

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

**Sec. 1. 26 MRSA §1194, sub-§2,** as amended by PL 1999, c. 464, §8, is further 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 facts, 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 in the claim~~ to the Division of Administrative Hearings or to the commission, which shall make a determination with respect ~~thereto to the claim~~ in accordance with the procedure described in subsection 3, except that in any case in which the payment or denial of benefits ~~will be~~ is 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 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~~ must be charged, if and when paid.

The deputy shall promptly notify the claimant and any other interested party of the determinations and reasons ~~therefor~~ for the determinations. Subject to subsection 11, unless the claimant or any such interested party, within 15 calendar days after that notification was mailed to ~~his~~ the claimant's last

known address, files an appeal from that determination, that determination ~~shall be~~ is final, ~~provided~~ except 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 on the separation report~~ within 10 days after that report was requested, the claim ~~shall~~ must 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 do~~ 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 that~~ 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 do~~ 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 not be withheld until a determination is made on the issue. Before a determination is made, written notice shall be mailed to the claimant and other interested parties, which ~~shall~~ must 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 conduct of the interview and appeal. The fact-finding interview ~~shall~~ must be scheduled not less than 5 days nor more than 14 days after the notice is mailed. The bureau shall include in the notice a statement notifying the claimant 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 a decision on evidence received after the interview has been held.

A. This subsection does not apply when the claimant reports that, in the week claimed:

- (1) The claimant worked and reports a specific amount of earnings for that work;
- (2) The claimant worked and had earnings from that work, but does not furnish the amount of earnings;
- (3) The claimant reports that the claimant was not able or available for work for a specific portion of the week and there is sufficient information for the deputy to determine that the inability or unavailability for work was for good cause. If the information provided by the claimant indicated unavailability during the claim week, but is not specific as to the amount of time involved, the department shall immediately initiate a fact-finding interview with the individual and make a determination regarding the claimant's weekly benefit amount on the basis of that interview. If the department is not able to conduct an immediate fact-finding interview with the claimant, the notification and fact-finding process described in this subsection must be followed; or
- (4) The claimant received a specific amount of other remuneration as described in section 1193, subsection 5.

See title page for effective date.

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**CHAPTER 164**

**H.P. 1081 - L.D. 1476**

**An Act To Improve Timeliness of Unemployment Trust Fund Deposits**

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

**Sec. 1. 26 MRSA §1161**, as amended by PL 1977, c. 675, §15, is further amended to read:

**§1161. Accounts and deposit**

The Treasurer of State ~~shall be~~ is the ex officio treasurer and custodian of the Unemployment Compensation Fund and shall administer ~~such the~~ fund in accordance with the directions of the commissioner. The Treasurer of State shall maintain within the fund ~~3~~ 4 separate accounts:

- 1. Clearing account.** A clearing account for all money payable to the trust fund account that is not deposited into the combined unemployment insurance contributions and income tax withholding account;
- 2. Trust fund account.** An unemployment trust fund account; ~~and~~
- 3. Benefit account.** A benefit account-; and
- 4. Combined unemployment insurance contributions and income tax withholding account.** A clearing account for that portion of unemployment insurance contributions payable to the trust fund account from the combined money of unemployment insurance contributions and state income tax withholding payments.

All ~~moneys~~ money payable to the fund, upon receipt ~~thereof~~ by the commissioner, ~~shall must~~ be forwarded to the Treasurer of State, who shall immediately deposit ~~them~~ it in the clearing account or the combined unemployment insurance contributions and income tax withholding account. Refunds payable pursuant to section 1043, subsection 11, paragraph F, subparagraph (2) or section 1225 may be paid from the clearing account, the combined unemployment insurance contributions and income tax withholding account or the benefit account upon warrants prepared by the commissioner and signed by the State Controller. After clearance ~~thereof~~, all other ~~moneys~~ money in the clearing account ~~shall~~ and all of the unemployment compensation money in the combined unemployment insurance contributions and income tax withholding account must be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the Unemployment Trust Fund, established and maintained pursuant to ~~section~~ Section 904 of the Social Security Act, as amended, any provisions of law in this State relating to the deposit, administration, release or disbursement of ~~moneys~~ money in the possession or custody of this State to the contrary notwithstanding. The benefit account ~~shall must~~ consist of all ~~moneys~~ money requisitioned from this ~~state's~~ State's account in the Unemployment Trust Fund.

Except as otherwise provided, ~~moneys~~ money in the clearing, combined unemployment insurance contributions and income tax withholding and benefit accounts may be deposited by the Treasurer of State, under the direction of the commissioner, in any bank