

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-SECOND LEGISLATURE

FIRST REGULAR SESSION
December 1, 2004 to March 30, 2005

FIRST SPECIAL SESSION
April 4, 2005 to June 18, 2005

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 29, 2005

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FIRST SPECIAL SESSION
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SEPTEMBER 17, 2005

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IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2005

ance of the duties of which ordinarily does not require more than 8 hours per week; or

(vi) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

See title page for effective date.

CHAPTER 120

S.P. 335 - L.D. 995

An Act To Conform Maine Employment Security Law with the Federal SUTA Dumping Prevention Act of 2004

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

Sec. 1. 26 MRSA §1221, sub-§5-A is enacted to read:

5-A. Transfers of experience and assignment of rates. Notwithstanding subsection 5, the following applies to the assignment of rates and transfers of experience.

A. If:

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

(2) Following a transfer of experience under subparagraph (1), the commissioner

determines that the purpose of the transfer or trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved must be combined into a single account and a single rate assigned to such account.

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

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

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

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

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

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

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

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

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

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

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

See title page for effective date.

CHAPTER 121

S.P. 517 - L.D. 1499

An Act To Amend the Laws Related to Health Insurance and Confidentiality of Property and Casualty Filings

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

PART A

Sec. A-1. 24-A MRSA §6603, sub-§1, ¶F-1 is enacted to read:

F-1. Must comply with the requirements of section 2809-A, subsection 11, concerning continued coverage in the event of an employee's being temporarily laid off or losing employment because of an injury or disease that the employee claims to be compensable under workers' compensation;

PART B

Sec. B-1. 24-A MRSA §2701, sub-§2, ¶C, as amended by PL 2001, c. 258, Pt. E, §1, is further amended to read:

C. Sections 2736, 2736-A, 2736-B and 2736-C apply to:

(1) Association groups as defined by section 2805-A, except associations of employers; ~~and~~

(1-A) Credit union groups as defined by section 2807-A; and

(2) Other groups as defined by section 2808, except employee leasing companies registered pursuant to Title 32, chapter 125.

PART C

Sec. C-1. 24-A MRSA §2304-A, sub-§7, as repealed and replaced by PL 1991, c. 377, §10, is amended to read:

7. Except as provided in section 2304-C, a rate filing and its supporting data are confidential until the filing ~~becomes effective~~ is approved.

Sec. C-2. 24-A MRSA §2412, sub-§8, as enacted by PL 1997, c. 126, §4, is amended to read:

8. Confidentiality of form filings. Forms filed as required by this section and any supporting information are confidential until the filing ~~becomes effective. If an insurer does not provide an effective date for the filings, the forms and supporting information become public on the date the filing is approved.~~

PART D

Sec. D-1. 24 MRSA §2332-A, sub-§3 is enacted to read:

3. Credit toward deductible. When an insured is covered under more than one expense-incurred health plan, payments made by the primary plan, payments made by the insured and payments made from a health savings account or similar fund for benefits covered under the secondary plan must be credited toward the deductible of the secondary plan. This subsection does not apply if the secondary plan is designed to supplement the primary plan.

Sec. D-2. 24-A MRSA §2723-A, sub-§3 is enacted to read:

3. Credit toward deductible. When an insured is covered under more than one expense-incurred health plan, payments made by the primary plan,