

# MAINE STATE LEGISLATURE

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

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 1, 2010 to June 29, 2011**

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

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**Augusta, Maine**  
**2011**

**CHAPTER 91**  
**H.P. 222 - L.D. 269**

**An Act To Implement a Maine  
Unemployment Insurance  
Work-sharing Program**

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

**Sec. 1. 26 MRSA §1198** is enacted to read:

**§1198. Work-sharing benefits**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Affected unit" means a specified plant, department, shift or other definable unit consisting of 2 or more eligible employees to which a work-sharing plan applies.

B. "Commissioner" means the Commissioner of Labor or the commissioner's designee.

C. "Eligible employee" means an individual who usually works for the eligible employer submitting a work-sharing plan.

D. "Eligible employer" means a public or private employer who is not delinquent in the payment of contributions or reimbursements or in the reporting of wages.

E. "Fringe benefits" includes, but is not limited to, health insurance, retirement benefits, paid vacation and holidays, sick leave and similar advantages that are incidents of employment.

F. "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work.

G. "Seasonal employment" means employment in seasonal industries within the determined seasonal period or periods.

H. "Seasonal industry" means an industry in which, because of the seasonal nature of the industry, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in a calendar year and any seasonal industry under section 1251, subsection 1.

I. "Temporary layoff" means the layoff of workers in an affected unit for an indefinite period expected to last for at least 2 months but less than 6 months.

J. "Usual weekly hours of work" means the normal hours of work each week for an eligible employee in an affected unit when that unit is operating on a full-time basis, not to exceed 40 hours and not including overtime.

K. "Work-sharing benefits" means benefits payable to eligible employees in an affected unit under an approved work-sharing plan.

L. "Work-sharing employer" means an eligible employer with an approved work-sharing plan in effect.

M. "Work-sharing plan" means a plan submitted to the commissioner by an eligible employer under which there is a reduction in the number of hours worked by the eligible employees in the affected unit in lieu of temporary layoffs of some of the employees.

**2. Criteria for approval of a work-sharing plan.** An eligible employer wishing to participate in a work-sharing program under this section must submit a signed work-sharing plan to the commissioner for approval. The commissioner shall approve a work-sharing plan if the following requirements are met:

A. The work-sharing plan identifies the affected unit or units and specifies the effective date of the plan;

B. The work-sharing plan identifies the eligible employees in the affected unit or units by name, social security number, usual weekly hours of work, proposed wage and hour reduction and any other information that the commissioner requires;

C. The work-sharing plan certifies that the reduction in the usual weekly hours of work is in lieu of temporary layoffs that would have affected at least 10% of the eligible employees in the affected unit or units and that would have resulted in an equivalent reduction in work hours;

D. Under the work-sharing plan the usual weekly hours of work for eligible employees in the affected unit or units are reduced by not less than 10% and not more than 50% and the reduction in hours in each affected unit is spread equally among eligible employees in the affected unit;

E. The work-sharing plan specifies the manner in which the fringe benefits of the eligible employees will be affected;

F. In the case of eligible employees represented by a collective bargaining agent, the work-sharing plan is approved in writing by the collective bargaining agent that covers the affected eligible employees. In the absence of a collective bargaining agent, the work-sharing plan must contain a certification by the eligible employer that the proposed plan, or a summary of the plan, has been made available to each eligible employee in the affected unit;

G. A statement that the work-sharing plan will not serve as a subsidy of seasonal employment

during the off-season or of intermittent employment is included; and

H. The eligible employer agrees to furnish reports relating to the proper conduct of the work-sharing plan and agrees to allow the commissioner or the commissioner's designee or authorized representatives access to all records necessary to verify the plan prior to approval and to monitor and evaluate application of the plan after approval.

**3. Approval or rejection of the work-sharing plan.** The commissioner shall approve or reject a work-sharing plan in writing. The commissioner's decision is final and not subject to appeal. The eligible employer may submit another work-sharing plan for approval, and a determination must be made based upon the new information submitted by the eligible employer.

**4. Effective date and duration of the work-sharing plan.** A work-sharing plan takes effect on the date specified in the plan or on the first Sunday following the date on which the plan is approved by the commissioner, whichever is later. It expires at the end of the 12th full calendar month after its effective date or on the date specified in the plan if that date is earlier, unless the plan is previously revoked by the commissioner. If a plan is revoked by the commissioner, it terminates on the date specified in the written order of revocation.

**5. Review; revocation of approval.** The commissioner shall review the operation of each approved work-sharing plan at least once during the period the plan is in effect to ensure that it complies with the work-sharing plan requirements under subsection 2. The commissioner may revoke approval of a work-sharing plan for good cause.

A. The revocation order must be in writing, state the reason for revocation and specify the date the revocation takes effect. The revocation order is final and not subject to appeal.

B. Action to revoke the work-sharing plan may be taken at any time by the commissioner on the commissioner's own motion, on the motion of any of the affected unit's eligible employees or on the motion of a collective bargaining agent that covers the affected employees.

For the purposes of this subsection, "good cause" includes, but is not limited to, failure to comply with assurances given in the work-sharing plan, unreasonable revision of productivity standards for the affected unit, conduct or occurrences tending to defeat the intent and effective operation of the plan and violation of any criteria on which approval of the plan was based.

**6. Modification of the work-sharing plan.** An operational approved work-sharing plan may be modi-

fied by the eligible employer with the consent of a collective bargaining agent that covers the affected employees, if any, if the modification is not substantial, conforms with the plan approved by the commissioner and is reported promptly to the commissioner by the eligible employer. If the hours of work are increased or decreased substantially beyond the level in the original plan or any other conditions are changed substantially, the commissioner shall approve or disapprove the modifications without changing the expiration date of the original plan. If the substantial modifications do not meet the requirements for approval under subsection 2, the commissioner shall disallow those modifications in writing. The decision of the commissioner is final and not subject to appeal.

**7. Eligibility for work-sharing benefits.** After serving a waiting period as prescribed by the commissioner, an eligible employee is eligible to receive work-sharing benefits with respect to any week only if the commissioner finds that, in addition to meeting other conditions of eligibility for regular benefits under this Title that are not inconsistent with this section:

A. During the week, the eligible employee is employed as a member of an affected unit under an approved work-sharing plan that was approved prior to that week and that is in effect with respect to the week for which work-sharing benefits are claimed; and

B. The eligible employee is available and able to work the normal workweek with the work-sharing employer.

Notwithstanding any other provisions of this chapter, an eligible employee is deemed unemployed in any week for which remuneration is payable to that eligible employee as an eligible employee in an affected unit for less than that eligible employee's normal weekly hours of work as specified under the approved work-sharing plan in effect for the week.

Notwithstanding any other provisions of this Title, an eligible employee may not be denied work-sharing benefits for any week by reason of the application of laws and rules relating to the availability for work and active search for work with an employer other than the work-sharing employer.

**8. Work-sharing benefits.** This subsection governs the payment of work-sharing benefits under this section.

A. The weekly work-sharing benefit amount is the product of the regular weekly benefit amount, including any dependents' allowances, multiplied by the percentage reduction in the eligible employee's usual weekly hours of work as specified in the approved work-sharing plan. If the weekly work-sharing benefit amount is not an exact multiple of \$1, the weekly work-sharing benefit

amount must be rounded down to the next lower multiple of \$1.

B. An eligible employee may not receive a total of work-sharing benefits and regular unemployment compensation in any benefit year that exceeds the maximum entitlement established for unemployment compensation, nor may an eligible employee be paid work-sharing benefits for more than 52 weeks in any benefit year pursuant to an approved work-sharing plan.

C. The work-sharing benefits paid must be deducted from the maximum entitlement amount established for an eligible employee's benefit year.

D. If an eligible employer approves time off and the eligible employee has performed some work during the week, the eligible employee is eligible for work-sharing benefits based on the combined work and paid leave hours for that week. If the eligible employer does not grant time off, the question of availability must be investigated by the commissioner.

E. If an eligible employee was sick and consequently did not work all the hours offered by the work-sharing employer in a given week, the employee must be denied work-sharing benefits for that week.

F. Claims for work-sharing benefits must be filed in the same manner as claims for unemployment compensation or as prescribed in rules by the commissioner.

G. Laws and rules applicable to unemployment compensation claimants apply to work-sharing claimants to the extent that they are not inconsistent with the established work-sharing provisions. An eligible employee who files an initial claim for work-sharing benefits, if eligible for work-sharing benefits, must be provided a monetary determination of entitlement to work-sharing benefits and must serve a waiting period of one week.

H. If an eligible employee works in the same week for a work-sharing employer and an employer other than the work-sharing employer, the eligible employee's work-sharing benefits must be computed in the same manner as if the eligible employee worked solely with the work-sharing employer, except that if the eligible employee is not able to work or is not available for the normal workweek with the work-sharing employer, work-sharing benefits may not be paid to that eligible employee for that week.

I. An eligible employee who does not work during a week for the work-sharing employer and is otherwise eligible must be paid the full weekly unemployment compensation amount. That week

is not counted as a week for which work-sharing benefits were received.

J. An eligible employee who does not work for the work-sharing employer during a week but works for another employer and is otherwise eligible must be paid benefits for that week under the partial unemployment compensation provisions of this chapter. That week is not counted as a week for which work-sharing benefits were received.

K. Nothing in this section precludes an otherwise eligible employee from receiving total or partial unemployment benefits when the eligible employee's work-sharing benefits have been exhausted.

**9. Benefit charges.** Notwithstanding any other provisions of this Title, work-sharing benefits are charged to the account of the work-sharing employer. Employers liable for payments in lieu of contributions must reimburse the Unemployment Compensation Fund for the full amount of work-sharing benefits paid to their employees under an approved work-sharing plan.

**10. Extended benefits.** An individual who has received all of the unemployment compensation or combined unemployment compensation and work-sharing benefits available in a benefit year is considered an exhaustee for purposes of extended benefits, as provided in section 1043, subsection 5, paragraph B, and, if otherwise eligible under that paragraph, is eligible to receive extended benefits.

**11. Rules.** The commissioner shall adopt rules to implement this section. Those rules are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**12. Repeal.** This section is repealed February 28, 2014.

**Sec. 2. Reports.** The Commissioner of Labor shall provide the proposed rules implementing the Maine Revised Statutes, Title 26, section 1198 for review by the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2012. The Commissioner of Labor shall report to the joint standing committee of the Legislature having jurisdiction over labor matters on the implementation and status of the work-sharing program implemented pursuant to Title 26, section 1198 by January 15, 2014.

**Sec. 3. Effective date.** That section of this Act that enacts the Maine Revised Statutes, Title 26, section 1198 takes effect March 1, 2012.

See title page for effective date, unless otherwise indicated.