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Legislative Document

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S.P. 658

In Senate, December 24, 2019

An Act To Amend the Unemployment Compensation Laws

(EMERGENCY)

Submitted by the Department of Labor pursuant to Joint Rule 203.

Received by the Secretary of the Senate on December 20, 2019. Referred to the Committee on Labor and Housing pursuant to Joint Rule 308.2 and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BELLOWS of Kennebec.

1 **Emergency preamble. Whereas,** acts and resolves of the Legislature do not
2 become effective until 90 days after adjournment unless enacted as emergencies; and

3 **Whereas,** changes made to the laws governing unemployment compensation will
4 have an adverse impact on the employer community if implemented; and

5 **Whereas,** this legislation makes changes to those laws that are necessary to
6 eliminate the adverse impact; and

7 **Whereas,** in the judgment of the Legislature, these facts create an emergency within
8 the meaning of the Constitution of Maine and require the following legislation as
9 immediately necessary for the preservation of the public peace, health and safety; now,
10 therefore,

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

12 **Sec. 1. 26 MRSA §1221, sub-§3, ¶A,** as amended by PL 2019, c. 343, Pt. TTT,
13 §1, is further amended to read:

14 A. At the time the status of an employing unit is ascertained to be that of an
15 employer, the commissioner shall establish and maintain, until the employer status is
16 terminated, for the employer an experience rating record, to which are credited all the
17 contributions that the employer pays on the employer's own behalf. This chapter may
18 not be construed to grant any employer or individuals in the employer's service prior
19 claims or rights to the amounts paid by the employer into the fund. Benefits paid to
20 an eligible individual under the Employment Security Law must be charged against
21 the experience rating record of the claimant's most recent subject employer, ~~except~~
22 ~~that, beginning January 1, 2022, benefits paid to an eligible individual under the~~
23 ~~Employment Security Law must be charged against the experience rating record of~~
24 ~~the claimant's employers in a ratio inversely proportional to the claimant's~~
25 ~~employment beginning with the most recent employer, or to the General Fund if the~~
26 otherwise chargeable experience rating record is that of an employer whose status as
27 such has been terminated; except that no charge may be made to an individual
28 employer but must be made to the General Fund if the commission finds that:

29 (1) The claimant's separation from the claimant's last employer was for
30 misconduct in connection with the claimant's employment or was voluntary
31 without good cause attributable to the employer;

32 (2) The claimant has refused to accept reemployment in suitable work when
33 offered by a previous employer, without good cause attributable to the employer;

34 (3) Benefits paid are not chargeable against any employer's experience rating
35 record in accordance with section 1194, subsection 11, paragraphs B and C;

36 (5) Reimbursements are made to a state, the Virgin Islands or Canada for
37 benefits paid to a claimant under a reciprocal benefits arrangement as authorized
38 in section 1082, subsection 12, as long as the wages of the claimant transferred to
39 the other state, the Virgin Islands or Canada under such an arrangement are less

1 than the amount of wages for insured work required for benefit purposes by
2 section 1192, subsection 5;

3 (6) The claimant was hired by the claimant's last employer to fill a position left
4 open by a Legislator given a leave of absence under chapter 7, subchapter 5-A,
5 and the claimant's separation from this employer was because the employer
6 restored the Legislator to the position after the Legislator's leave of absence as
7 required by chapter 7, subchapter 5-A;

8 (7) The claimant was hired by the claimant's last employer to fill a position left
9 open by an individual who left to enter active duty in the United States military,
10 and the claimant's separation from this employer was because the employer
11 restored the military serviceperson to the person's former employment upon
12 separation from military service;

13 (8) The claimant was hired by the claimant's last employer to fill a position left
14 open by an individual given a leave of absence for family medical leave provided
15 under Maine or federal law, and the claimant's separation from this employer was
16 because the employer restored the individual to the position at the completion of
17 the leave; or

18 (9) The claimant initiated a partial separation or reduction of hours and that
19 partial separation or reduction of hours was agreed to by the employee and
20 employer.

21 **Sec. 2. 26 MRSA §1221, sub-§3, ¶C-2** is enacted to read:

22 C-2. For the purposes of paragraph A, the experience rating record of the most recent
23 subject employer may not be charged with benefits paid to a claimant whose work
24 record with that employer totaled 5 consecutive weeks or less of total or partial
25 employment, in which case the most recent subject employer with whom the
26 claimant's work record exceeded 5 consecutive weeks of total or partial employment
27 must be charged if that employer would have otherwise been chargeable had not
28 subsequent employment intervened.

29 **Sec. 3. 26 MRSA §1221, sub-§4-A, ¶C,** as amended by PL 2007, c. 352, Pt. A,
30 §2, is further amended to read:

31 C. The commissioner shall:

32 (1) Promptly notify each employer of the employer's rate of contributions as
33 determined for the 12-month period commencing January 1st of each year. The
34 determination is conclusive and binding upon the employer unless within 30 days
35 after notice of the determination is mailed to the employer's last known address
36 or, in the absence of mailing, within 30 days after the delivery of the notice, the
37 employer files an application for review and redetermination, setting forth the
38 employer's reasons. If the ~~commission~~ Division of Administrative Hearings
39 grants the review, the employer must be promptly notified and must be granted
40 an opportunity for a hearing. An employer does not have standing in any
41 proceedings involving the employer's rate of contributions or contribution
42 liability to contest the chargeability to the employer's experience rating record of

1 any benefits paid in accordance with a determination, redetermination or decision
2 pursuant to section 1194, except upon the ground that the services for which
3 benefits were found to be chargeable did not constitute services performed in
4 employment for the employer and only when the employer was not a party to the
5 determination, redetermination or decision or to any other proceedings under this
6 chapter in which the character of the services was determined. The employer
7 must be promptly notified of the ~~commission's~~ Division of Administrative
8 Hearings' denial of the employer's application ~~or the commission's~~
9 ~~redetermination, both of which are subject to appeal pursuant to Title 5, chapter~~
10 ~~375, subchapter 7, which is subject to appeal pursuant to section 1226; and~~

11 (2) Provide each employer at least monthly with a notification of benefits paid
12 and chargeable to the employer's experience rating record. In the absence of an
13 application for redetermination filed ~~in the manner and within the period~~
14 ~~prescribed by the commission~~ 30 days after the notification was mailed, a
15 notification is conclusive and binding upon the employer for all purposes. A
16 ~~redetermination made after notice and opportunity for hearing and the~~
17 ~~commission's findings of fact may be introduced in subsequent administrative or~~
18 ~~judicial proceedings involving the determination of the rate of contributions of an~~
19 ~~employer for the 12-month period commencing January 1st of any year and has~~
20 ~~the same finality as provided in this section with respect to the findings of fact~~
21 ~~made by the commission in proceedings to redetermine the contribution rates of~~
22 ~~an employer~~ Any request for reconsideration must be made in accordance with
23 section 1226.

24 **Sec. 4. 26 MRSA §1221, sub-§11, ¶D**, as amended by PL 1979, c. 651, §28, is
25 further amended to read:

26 D. The amount due specified in any assessment from the commissioner ~~shall be~~ is
27 conclusive on the employer or governmental entity, unless not later than 15 days after
28 the assessment was mailed to the last known address; the employer or governmental
29 entity files an application for redetermination by the ~~commission~~ Division of
30 Administrative Hearings setting forth the grounds for such application.

31 **Sec. 5. 26 MRSA §1225, sub-§2**, as amended by PL 1993, c. 312, §3, is further
32 amended to read:

33 **2. Jeopardy assessment.** If the Director of Unemployment Compensation
34 determines that the collection of any contribution, interest or penalty under this
35 subchapter, as amended, will be jeopardized by delay, the director may immediately
36 assess the contributions, interest or penalties, whether or not the time prescribed by law or
37 any rules issued pursuant to section 1082, subsection 2; for making reports and paying the
38 contributions has expired, and shall give written notice of the assessment to the employer.
39 In these cases, the right to appeal to the ~~commission~~ Division of Administrative Hearings,
40 as provided in section 1226, is conditioned upon payment of the contributions, interest or
41 penalties so assessed, or upon giving appropriate security to the commissioner for the
42 payment thereof.

1 1. Current law provides that, beginning January 1, 2022, benefits paid to an
2 individual under the laws governing unemployment compensation must be charged
3 against the experience rating record of the claimant's employers in a ratio inversely
4 proportional to the claimant's employment beginning with the most recent employer.
5 This bill strikes that language and instead restores the previous language governing the
6 employer benefit charging model.

7 2. It provides that the experience rating record of the most recent subject employer
8 may not be charged with benefits paid to a claimant whose work record with that
9 employer totals 5 or fewer consecutive weeks.

10 3. It provides that, in the absence of an application for redetermination filed within
11 30 days after the mailing of notification of benefits paid and chargeable to the employer's
12 experience rating, the notification is conclusive and binding. Under the bill, any request
13 for reconsideration must be made under the laws governing appeals of determination or
14 assessment.

15 4. It replaces references to the Unemployment Insurance Commission with
16 references to the Division of Administrative Hearings to conform with changes made in
17 Public Law 2017, chapter 284, Part AAAAA.