

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

S.P. 536 - L.D. 1530

An Act To Amend the Laws Governing Unemployment Compensation

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

Sec. 1. 26 MRSA §1043, sub-§2, as amended by PL 1999, c. 555, §1, is further amended to read:

2. Annual payroll. "Annual payroll" means the total amount of wages paid by an employer during a calendar year, not meaning, however, to include that part of individual wages or salaries in excess of ~~\$3,000 in any calendar year through 1971, \$4,200 in any calendar year through 1977, \$6,000 in any calendar year through 1982, \$7,000 in any calendar year through 1999~~ and \$12,000 in any subsequent calendar year.

Sec. 2. 26 MRSA §1043, sub-§11, ¶F, as repealed and replaced by PL 2011, c. 691, Pt. A, §27, is amended to read:

F. The term "employment" does not include:

(1) Service performed in the employ of this State, or of any political subdivision thereof, or of any instrumentality of this State or its political subdivisions, except as provided by this subsection;

(2) Service performed in the employ of the United States Government or an instrumentality of the United States immune under the Constitution of the United States from the contributions imposed by this chapter, except that on and after January 1, 1940 to the extent that the Congress of the United States has permitted states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation or employment security law, all of the provisions of this chapter are applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this State is not certified for any year by the Secretary of Labor under the federal Internal Revenue Code, Section 3304, the payments required of such instrumentalities with respect to that year must be refunded by the commissioner from the fund in the same manner and

within the same period as is provided in section 1225, subsection 5, with respect to contributions erroneously collected;

(3) Service with respect to which unemployment compensation is payable under an unemployment compensation system or employment security system established by an Act of Congress. The commissioner is authorized and directed to enter into agreements with the proper agencies under such an Act of Congress, which agreements become effective 10 days after publication thereof in the manner provided in section 1082, subsection 2, for regulations, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment compensation under such an Act of Congress, or who have, after acquiring potential rights to unemployment compensation under such an Act of Congress, acquired rights to benefits under this chapter;

(4) Agricultural labor as defined in subsection 1, except as provided in paragraph A-2;

(5) Service performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to the United States Immigration and Nationality Act, Sections 214(c) and 101(a) (15) (H);

(6) Domestic service in a private home, except as provided in paragraph A-3;

(7) Service performed by an individual in the employ of that individual's son, daughter or spouse and service performed by a child under 18 years of age in the employ of that child's father or mother, except for periods of such service for which unemployment insurance contributions are paid;

(8) Service performed by a student attending an elementary, secondary or postsecondary school while participating in a cooperative program of education and occupational training or on-the-job training that is part of the school curriculum;

(9) Service performed with respect to which unemployment compensation is payable under the federal Railroad Unemployment Insurance Act, 52 Stat. 1094 (1938);

(10) Service performed in the employ of any other state or any political subdivision thereof or any instrumentality of any one or more of the foregoing that is wholly owned by one or more states or political subdivisions and any services performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such a service, immune under the Constitution of the United States from the tax imposed by Section 3301 of the federal Internal Revenue Code, except as provided in paragraph A-1, subparagraph (1);

(11) Service performed in any calendar quarter in the employ of any organization exempt from income tax under the federal Internal Revenue Code, Section 501(a) other than an organization described in the federal Internal Revenue Code, Section 401(a), or under Section 521, if the remuneration for such service is less than \$150;

- (12) Service performed in the employ of a foreign government, including service as a consular or other officer or employee or a nondiplomatic representative;
- (13) Service performed in the employ of an instrumentality wholly owned by a foreign government:
- (a) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or an instrumentality thereof; and
 - (b) If the commissioner finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;
- (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law and service performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school chartered or approved pursuant to state law;
- (15) Service performed by an individual for a person as a real estate broker, a real estate sales representative, an insurance agent or an insurance solicitor, if all such service performed by that individual for that person is performed for remuneration solely by way of commission;
- (16) Service performed by an individual under 18 years of age in the delivery or distribution of newspapers or shopping news, except delivery or distribution to any point for subsequent delivery or distribution;
- (17) Service performed in the employ of any organization that is excluded from the term "employment" as defined in the Federal Unemployment Tax Act solely by reason of 26 United States Code, Section 3306(c)(7) or (8) if:
- (a) Service is performed in the employ of a church or convention or association of churches or an organization that is operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches;
 - (b) Service is performed by a duly ordained, commissioned or licensed minister of a church in the exercise of that minister's ministry or by a member of a religious order in the exercise of duties required by that order;
 - ~~(c) Prior to January 1, 1978, service is performed in the employ of a school primarily operated as an elementary, secondary or preparatory school for higher education that is not an institution of higher education;~~
 - (d) Service is performed in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental disability or injury or providing

~~remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work with intellectual or developmental disabilities who are employed in capacities meeting the conditions set forth in section 666;~~

(e) Service is performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof by an individual receiving that work relief or work training;

(f) Service is performed in the employ of a hospital, as defined in subsection 26, by a patient of that hospital;

~~(g) Service is performed prior to January 1, 1978 for a hospital in a state prison or other state correctional institution by an inmate of that prison or correctional institution and after December 31, 1977 by an inmate of a custodial or penal institution;~~

(h) Service is performed in the employ of a school, college or university if that service is performed by a student who is enrolled and is regularly attending classes at such a school, college or university; or

~~(i) Prior to January 1, 1978, service is performed in the employ of a school that is not an institution of higher education and after December 31, 1977, service~~ Service is performed in the employ of a governmental entity referred to in paragraph A-1, subparagraph (1) if that service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) As a member of a legislative body or a member of the judiciary of a state or political subdivision of a state;

(iii) As a member of the State National Guard or Air National Guard;

(iv) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(v) In a position that, under or pursuant to the laws of this State, is designated as a major nontenured policy-making or advisory position or a policy-making or advisory position the performance 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;

(18) Service performed under a booth rental agreement or other rental agreement by:

(a) A hairdresser who holds a booth license and operates within another hairdressing establishment; or

- (b) A tattoo artist if the service performed by the tattoo artist is not subject to federal unemployment tax;
- (19) Service performed by a barber who holds a booth license and operates within another barbering establishment if operated under a booth rental agreement or other rental agreement;
- (20) Service performed by a contract interviewer engaged in marketing research or public opinion interviewing when such interviewing is conducted in the field or over the telephone on premises not used or controlled by the person for whom such contract services are being provided;
- (21) After December 31, 1981, service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life, unless those services would be included in the definition of "employment" for federal unemployment tax purposes under the Federal Unemployment Tax Act, 26 United States Code, Section 3306(c), as amended. Also included in this exemption are services performed in harvesting shellfish for depuration from designated areas as authorized by Title 12, section 6856;
- (22) Service performed by a member or leader of a musical group, band or orchestra or an entertainer when the services are performed under terms of a contract entered into by the leader or an agent of the musical group, band, orchestra or entertainer with an employing unit for whom the services are being performed, if the leader or agent is not an employer by reason of subsection 9 or of section 1222, subsection 3;
- (23) Service performed in the delivery or distribution of newspapers or magazines to the ultimate consumer by an individual who is compensated by receiving or retaining a commission or profit on the sale of the newspaper or magazine;
- (24) Service performed by a homemaker in the knitted outerwear industry as those terms are defined, on September 19, 1985, in 29 Code of Federal Regulations, Part 530, Section 530.1;
- (25) Service performed by a full-time student, as defined in subsection 30, in the employ of a youth camp licensed under Title 22, section 2495 if the full-time student performed services in the employ of the camp for less than 13 calendar weeks in the calendar year and the camp:
- (a) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or
 - (b) Had average gross receipts for any 6 months in the preceding calendar year that were not more than 33 1/3% of its average gross receipts for the other 6 months in the preceding calendar year;
- (26) Service performed by an individual as a home stitcher as long as that employment is not subject to federal unemployment tax;

(27) Service performed by a person licensed as a guide as required by Title 12, section 12853, as long as that employment is not subject to federal unemployment tax;

(28) Service performed by a direct seller as defined in 26 United States Code, Section 3508(b)(2). This subparagraph does not include a person selling major improvements or renovations to the structure of a home, business or property;

(29) Service performed by lessees of taxicabs, as long as that employment is not subject to federal unemployment tax. This subparagraph may not be construed to affect a determination regarding a lessee's status as an independent contractor for workers' compensation purposes;

(30) Service provided by a dance instructor to students of a dance studio when there is a contract between the instructor and the studio under which the instructor's services are not offered exclusively to the studio, the studio does not control the scheduling of the days and times of classes other than beginning and end dates, the instructor is paid by the class and not on an hourly or salary basis, the compensation rate is the result of negotiation between the instructor and the studio and the instructor is given the freedom to develop the curriculum;

(31) Service performed by participants enrolled in programs or projects under the national service laws including the federal National and Community Service Act of 1990, as amended, 42 United States Code, Section 12501 et seq. and the federal Domestic Volunteer Service Act, as amended, 42 United States Code, Section 4950 et seq.;

(32) Service of an author in furnishing text or other material to a publisher who:

- (a) Does not control the author's work except to propose topics or to edit material submitted;
- (b) Does not restrict the author from publishing elsewhere;
- (c) Furnishes neither a place of employment nor equipment for the author's use;
- (d) Does not direct or control the time devoted to the work; and
- (e) Pays only for material that is accepted for publication.

This exception does not apply if the employment is subject to federal unemployment tax;

(33) Service provided by an owner-operator of a truck or truck tractor while it is leased to a motor carrier, as defined in 49 Code of Federal Regulations, Section 390.5 (2000), as long as that employment is not subject to federal unemployment tax; ~~and~~

(34) Service performed by a professional investigator, as defined in Title 32, section 8103, subsection 5, as long as that employment is not subject to federal unemployment tax and the following requirements are met:

- (a) There is a written contract between the professional investigator and the party requesting services;

- (b) The professional investigator offering the services operates independently of the party requesting services, except for the time frame and quality of finished work as specified in the contract;
- (c) Compensation for services is negotiated between the 2 parties and is paid for each service performed; and
- (d) The party requesting services furnishes neither equipment nor the place of employment to the professional investigator; and

(35) Service performed by an individual who volunteers for an employer or governmental entity if the volunteer:

- (a) Performs hours of service for the employer or governmental entity for civic, charitable or humanitarian reasons, without promise, expectation or receipt of compensation for services rendered. Although a volunteer may receive no compensation, a volunteer may be paid expenses, reasonable benefits or a nominal fee to perform such services;
- (b) Offers services freely and without pressure or coercion, direct or implied, from an employer; and
- (c) Is not otherwise employed by the same employer or governmental entity to perform the same type of services as those for which the individual proposes to volunteer.

For purposes of this subparagraph, "governmental entity" has the same meaning as in section 1221, subsection 10.

Sec. 3. 26 MRSA §1043, sub-§19, as amended by PL 2011, c. 691, Pt. A, §28, 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~~ must be estimated and determined in accordance with regulations prescribed by the commission, except that:

A. For purposes of section 1221, the term "wages" does not include remuneration that exceeds ~~the first \$7,000 through December 31, 1999, and on and after January 1, 2000,~~ the first \$12,000 that is paid in a calendar year to an individual by an employer or the employer's predecessor for employment during any calendar year, unless that 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 are 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~~ does not include:

- (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~~ the employee's dependents under a plan or system established by an employer ~~which that~~ makes provision for ~~his~~ the employer's employees generally, or for ~~his~~ the employer's employees generally and their dependents, or for a class or classes of ~~his~~ the employer's employees, or for a class or classes of ~~his~~ the employer's 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~~ the employee's dependents, this subparagraph ~~shall exclude~~ excludes from the term "wages" only payments ~~which that~~ 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 or a 3rd party 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~~ the individual attains the age of 62, if ~~he~~ the individual did not perform services for the employing unit in the period for which such payment is made and is not expected to perform service in the future for the payment; or

(4) The amount of any nominal fee or stipend to a volunteer whose service is excluded from the definition of employment pursuant to subsection 11, paragraph F, subparagraph (35);

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

- (1) That 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) That:
 - (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 that is not an institution of higher education, as provided in subsection 11, paragraph F, subparagraph (17), 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;

D. Nothing in this subsection may be construed to include as wages any payment ~~which~~ that 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; and

E. Nothing in this subsection may be construed to exclude from wages any remuneration ~~which~~ that is:

- (1) Taxable under any federal law that imposes a tax against which credit may be taken for contributions required to be paid into a state unemployment fund; or
- (2) Required to be covered under this chapter as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

Sec. 4. 26 MRSA §1192, sub-§6-E, as enacted by PL 1999, c. 705, §1, is amended to read:

6-E. Prohibition against disqualification of individuals in approved training under federal Workforce Innovation and Opportunity Act. Notwithstanding any other provision of this chapter, unless inconsistent with federal law, the acceptance of training opportunities available through the federal Workforce ~~Investment~~ Innovation and Opportunity Act of 1998, 20 United States Code, Sections 9201 to 9276 (1998) is deemed to be acceptance of training with the approval of the State within the meaning of any other provision of federal or state law relating to unemployment benefits.

Sec. 5. 26 MRSA §1192, sub-§13, as enacted by PL 2011, c. 645, §4, is amended to read:

13. Reemployment services and eligibility assessment; participation. In the case that the individual has been referred to reemployment services and eligibility assessment ~~services~~ by the Department of Labor, the individual participates in those services, unless the department determines there is good cause for the individual's failure to participate. Failure to participate in reemployment services and eligibility assessment ~~services~~ without good cause results in a denial of benefits until the individual participates.

Sec. 6. 26 MRSA §1193, sub-§1, ¶A, as amended by PL 2009, c. 33, §1, is further amended to read:

A. For the week in which the claimant left regular employment voluntarily without good cause attributable to that employment. The disqualification continues until the claimant has earned 4 times the claimant's weekly benefit amount in employment by an employer. A claimant may not be disqualified under this paragraph if:

(1) The leaving was caused by the illness or disability of the claimant or an immediate family member and the claimant took all reasonable precautions to protect the claimant's employment status by promptly notifying the employer of the need for time off, a change or reduction in hours or a shift change and being advised by the employer that the time off or change or reduction in hours or shift change cannot or will not be accommodated;

(2) The leaving was necessary to accompany, follow or join the claimant's spouse in a new place of residence, ~~and the claimant is in all respects able, available and actively seeking suitable work;~~

(3) The leaving was in good faith in order to accept new employment on a permanent full-time basis and the new employment did not materialize for reasons attributable to the new employing unit;

(4) The leaving was necessary to protect the claimant or any member of the claimant's immediate family from domestic abuse or the leaving was due to domestic violence that caused the claimant reasonably to believe that the claimant's continued employment would jeopardize the safety of the claimant or any member of the claimant's immediate family and the claimant made all reasonable efforts to preserve the employment; or

(5) The claimant's employer announced in writing to employees that it planned to reduce the work force through a layoff or reduction in force and that employees may offer to be among those included in the layoff or reduction in force, at which time the claimant offered to be one of the employees included in the layoff or reduction in force and the claimant's employer accepted the claimant's offer, thereby ending the employment relationship.

Separation from employment based on the compelling family reasons in subparagraphs (1), (2) and (4) does not result in disqualification.

Sec. 7. 26 MRSA §1193, sub-§1, ¶C, as enacted by PL 1989, c. 702, Pt. F, §1, is amended to read:

C. For the duration of ~~an unpaid voluntary~~ a leave of absence or sabbatical leave that has been mutually agreed to by the employee and the employer.

Sec. 8. 26 MRSA §1193, sub-§1, ¶D is enacted to read:

D. For the duration of a partial separation or reduction of hours initiated at the employee's request and agreed to by the employee and employer;

Sec. 9. 26 MRSA §1193, sub-§7-A, as enacted by PL 1985, c. 420, §2, is amended to read:

7-A. Absence from work due to incarceration. For the duration of ~~his~~ the individual's unemployment subsequent to a discharge arising from ~~his~~ the individual's absence from work for more than 2 workdays due to ~~his~~ the individual's incarceration for conviction of a criminal offense. This disqualification continues until the ~~claimant~~ individual has earned ~~4~~ 8 times ~~his~~ the individual's weekly benefit amount in employment by an employer; or

Sec. 10. 26 MRSA §1198, sub-§1, ¶F, as enacted by PL 2011, c. 91, §1 and affected by §3, is amended to read:

F. "Intermittent employment" means employment that is not continuous but may consist of intervals of weekly work and intervals of no weekly work or annually reoccurring reductions of work at a year-round business that has not been determined seasonal.

Sec. 11. 26 MRSA §1198, sub-§2, ¶J, as enacted by PL 2013, c. 448, §3, is amended to read:

J. The eligible employer allows eligible employees to participate, as appropriate, in training, including employer-sponsored training or worker training funded under the federal Workforce ~~Investment~~ Innovation and Opportunity Act of 1998, Public Law 105-220, 112 Stat. 936, to enhance job skills if such training has been approved by the commissioner.

Sec. 12. 26 MRSA §1221, sub-§3, ¶A, as amended by PL 2013, c. 175, §1, is further amended to read:

A. At the time the status of an employing unit is ascertained to be that of an employer, the commissioner shall establish and maintain, until the employer status is terminated, for the employer an experience rating record, to which are credited all the contributions that the employer pays on the employer's own behalf. This chapter may not be construed to grant any employer or individuals in the employer's service prior claims or rights to the amounts paid by the employer into the fund. Benefits paid to an eligible individual under the Maine Employment Security Law must be charged against the experience rating record of the claimant's most recent subject employer or to the General Fund if the otherwise chargeable experience rating record is that of an employer whose status as such has been terminated; except that no charge may be made to an individual employer but must be made to the General Fund if the commission finds that:

- (1) The claimant's separation from the claimant's last employer was for misconduct in connection with the claimant's employment or was voluntary without good cause attributable to the employer;
- (2) The claimant has refused to accept reemployment in suitable work when offered by a previous employer, without good cause attributable to the employer;
- (3) Benefits paid are not chargeable against any employer's experience rating record in accordance with section 1194, subsection 11, paragraphs B and C;
- (5) Reimbursements are made to a state, the Virgin Islands or Canada for benefits paid to a claimant under a reciprocal benefits arrangement as authorized in section 1082, subsection 12, as long as the wages of the claimant transferred to the other state, the Virgin Islands or Canada under such an arrangement are less than the amount of wages for insured work required for benefit purposes by section 1192, subsection 5;
- (6) The claimant was hired by the claimant's last employer to fill a position left open by a Legislator given a leave of absence under chapter 7, subchapter 5-A,

and the claimant's separation from this employer was because the employer restored the Legislator to the position after the Legislator's leave of absence as required by chapter 7, subchapter 5-A;

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

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

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