

Annual List of Rulemaking Activity
Rules Adopted January 1, 2021 to December 31, 2021
Prepared by the Secretary of State pursuant to 5 MRS §8053-A sub-§5

Agency name: Department of Economic and Community Development
Umbrella-Unit: 19-100
Statutory authority: 30-A MRS §5250-M
Chapter number/title: Ch. 100, Pine Tree Development Zone Program
Filing number: 2021-195
Effective date: 10/4/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purposes of the rule change are to clarify the treatment of remote workers covered by the Pine Tree Development Zone (PTDZ) program, improve the procedure for handling certified businesses that fall below the required employment level, and align the state reporting dates with the current version of the authorizing statute.

Basis statement:

The basis for each component of the proposed revision to the Pine Tree Development Zone rule is as follows:

1. *Excludes remote employees working outside of a Pine Tree Development Zone (PTDZ) from the definition of qualified employee, excepting temporary remote work due to emergencies.*

An increased prevalence of remote work during the COVID-19 pandemic highlighted that the current program rule does not make clear how such workers should count towards a business's PTDZ eligibility and benefits. The revision remedies this issue by clarifying eligibility is tied to physical work location, in line with the program's intent to improve the economy in certain parts of the state, while exempting temporary remote work done in response to an emergency such as the pandemic.

2. *Specifies that a PTDZ business that falls below its employment baseline must notify DECD within 30 days of the lapse and has a total of 60 days to regain its baseline, after which they must submit a request for additional time to regain its new hire or the business will lose its PTDZ certification.*

This revision to the rule establishes a clearer process for notifying DECD of a lapse in employment baseline and sets a timeline to remedy the issue. The change is intended to create a policy that businesses can more easily adhere to while being more enforceable for DECO, relative to the current rule, in the event that a business does lose employment and cannot remain in the PTDZ program.

3. *PTDZ businesses who fall below their employment baselines due to the effects of emergencies will automatically be granted an extension to regain their required baseline level.*

The COVID-19 pandemic demonstrated that PTDZ businesses may fall below the required employment baseline due to emergency situations well outside their control and should not automatically be decertified from the program in such circumstances. While any business could, in theory, request an extension to the time period to regain the employment base level, this provision will make the extension automatic for those affected by a state of emergency.

Fiscal impact of rule:

The fiscal impact will likely be negligible. If a remote employee works outside of an eligible PTDZ, the company would only be able to claim a smaller reimbursement rate for that employee under the Employment Tax Increment Financing program. However, the difference

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would likely be small and only apply to a small fraction of the workers covered by the PTDZ and ETIF programs. The fiscal impact of the update to the procedure of reporting employment baseline lapses would also be negligible relative to existing PTDZ management practices, which already allow for companies to request extensions to regain the required employment level.

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Agency name: Department of Economic and Community Development
Umbrella-Unit: 19-100
Statutory authority: 36 MRS §6759
Chapter number/title: Ch. 400, Employment Tax Increment Financing
Filing number: 2021-196
Effective date: 10/4/2021
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The purposes of the rule change are to clarify the treatment of remote workers covered by the Employment tax Increment Financing (ETIF) program and to align the stated reporting dates with the current version of the authorizing statute.

Basis statement:

The basis for each component of the proposed revision to the Employment Tax Increment Financing (ETIF) rule is as follows:

1. *Specifies that the ETIF reimbursement rate for employees who work remotely will be defined by their physical work location, as opposed to the company's office location, excepting employees who only work remotely temporarily within the State of Maine due to the effect of an emergency.*

An increased prevalence of remote work during the COVID-19 pandemic highlighted that the current program rule does not make clear how such workers should count towards a business's ETIF eligibility and reimbursement rate. The revision remedies this issue by clarifying eligibility is tied to physical work location, in line with the program's intent to improve the economy in certain parts of the state, while exempting temporary remote work done in response to an emergency such as the pandemic.

2. *Updates annual reporting due dates to comply with the authorizing ETIF statute as amended.*

The ETIF rule had not yet been updated to reflect the new reporting due dates as set by the Legislature's revisions to the program in PL 2019 ch. 659. The revised rule aligns the dates with the current statute.

Fiscal impact of rule:

The fiscal impact will likely be negligible and neutral. We do not have reason to believe that remote workers will systematically be claimed more often in areas of higher or lower ETIF reimbursement rates. Furthermore, the vast majority of covered workers will still be non-remote and their company's reimbursement rates and amounts will be unchanged.