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S.P. 589

In Senate, January 4, 2012

An Act To Strengthen the Unemployment Insurance Laws and Reduce Unemployment Fraud

Submitted by the Department of Labor pursuant to Joint Rule 204.

Reference to the Committee on Labor, Commerce, Research and Economic Development suggested and ordered printed.

Joseph G. Carleton Jr.

JOSEPH G. CARLETON, JR.
Secretary of the Senate

Presented by Senator RECTOR of Knox.

Cosponsored by Representative PRESCOTT of Topsham.

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

2 **Sec. 1. 26 MRSA §1051, sub-§1**, as amended by PL 1983, c. 118, is further
3 amended to read:

4 **1. False statement or representation.** A person is guilty of unemployment fraud if
5 ~~he~~ that person makes a false statement or representation knowing it to be false or
6 knowingly fails to disclose a material fact:

7 A. To obtain or increase any benefit or other payment under this chapter or under an
8 employment security law of any other state or of the Federal Government;

9 B. To prevent or reduce the payment of unemployment benefits to any individual;

10 C. To avoid becoming or remaining an employer under this chapter; or

11 D. To avoid or reduce any contribution or other payment required from an
12 employing unit under this chapter.

13 Each false statement or representation or failure to disclose a material fact ~~shall constitute~~
14 constitutes a separate offense. Unemployment fraud for a principal benefit amount of not
15 more than \$1,000 is a Class D crime. Unemployment fraud for a principal benefit amount
16 of more than \$1,000 but not more than \$10,000 is a Class C crime, and unemployment
17 fraud for a principal benefit amount exceeding \$10,000 is a Class B crime.

18 **Sec. 2. 26 MRSA §1192, sub-§2**, as repealed and replaced by PL 1975, c. 25, is
19 amended to read:

20 **2. Has registered for work.** ~~He~~ The individual has registered for work at, and
21 ~~thereafter~~ continued to report at, an employment office in accordance with ~~such~~
22 ~~regulations as~~ rules the commission ~~may prescribe~~ adopts, except that the commission
23 may, by ~~regulation~~ rule, waive or alter either or both of the requirements of this
24 subsection as to individuals attached to regular jobs and as to such other types of cases or
25 situations with respect to which ~~it~~ the commission finds that compliance with ~~such~~ the
26 requirements would be oppressive, or would be inconsistent with the purposes of this
27 chapter. ~~No such regulation shall~~ A rule under this subsection may not conflict with
28 section 1191, subsection 1~~;~~.

29 The individual must actively seek work each week in which a claim for benefits is filed
30 unless the individual is participating in approved training under subsection 6 or work
31 search has been waived in accordance with rules adopted by the commission and provide
32 evidence of work search efforts in a manner and form as prescribed by the commission.
33 Failure to provide required work search documentation results in a denial of benefits until
34 the documentation is provided, unless the commission determines there is good cause for
35 the individual's failure to comply with this requirement;

36 **Sec. 3. 26 MRSA §1192, sub-§12**, as corrected by RR 1995, c. 1, §23, is
37 amended to read:

38 **12. Participation in reemployment services.** The individual who has been referred
39 to reemployment services, pursuant to a profiling system established by the

1 commissioner, participates in those services or similar services unless it is determined
2 that the individual has completed those services or there is good cause for the individual's
3 failure to participate-; and

4 ~~For purposes of this subsection, "good cause" means all circumstances described in the~~
5 ~~definition of good cause in Chapter 1 of the rules governing the administration of the~~
6 ~~Employment Security Law, including child care emergencies and transportation~~
7 ~~emergencies.~~

8 **Sec. 4. 26 MRSA §1192, sub-§13** is enacted to read:

9 **13. Reemployment eligibility assessment services; participation.** In the case that
10 the individual has been referred to reemployment eligibility assessment services by the
11 commission, the individual participates in those services, unless the commission
12 determines there is good cause for the individual's failure to participate. Failure to
13 participate in reemployment eligibility assessment services without good cause results in
14 a denial of benefits until the individual participates.

15 **Sec. 5. 26 MRSA §1192**, as amended by PL 2009, c. 271, §3 and c. 466, §2, is
16 further amended by adding at the end a new paragraph to read:

17 For purposes of subsections 2, 12 and 13, "good cause" means the unemployed
18 individual is ill; the presence of the unemployed individual is required due to an illness of
19 the unemployed individual's spouse, children, parents, stepparents, brothers or sisters, or
20 relatives who have been acting in the capacity of a parent of either the unemployed
21 individual or the unemployed individual's spouse; the unemployed individual is in
22 attendance at the funeral of such a relative; the unemployed individual is observing a
23 religious holiday as required by religious conviction; the unemployed individual is
24 performing either a military or civil duty as required by law; or other cause of a
25 necessitous and compelling nature. "Good cause" does not include incarceration as a
26 result of a conviction for a felony or misdemeanor.

27 **Sec. 6. 26 MRSA §1193, sub-§2**, as amended by PL 1979, c. 651, §§46 and 47, is
28 further amended to read:

29 **2. Discharge for misconduct.** For the week in which ~~he~~ the individual has been
30 discharged for misconduct connected with ~~his~~ the individual's work, if so found by the
31 deputy, and disqualification ~~shall continue~~ continues until claimant has earned ~~4~~ 10
32 times ~~his~~ the claimant's weekly benefit amount in employment by an employer.

33 A. For the duration of any period for which ~~he~~ the individual has been suspended
34 from ~~his~~ the individual's work by ~~his~~ the individual's employer as discipline for
35 misconduct, if so found by the deputy, or until the claimant has earned ~~4~~ 10 times
36 ~~his~~ the claimant's weekly benefit amount in employment by an employer-;

37 **Sec. 7. 26 MRSA §1193, sub-§3**, as amended by PL 1983, c. 650, §1, is further
38 amended to read:

39 **3. Refused to accept work.** For the duration of ~~his~~ the individual's unemployment
40 subsequent to ~~his~~ the individual's having refused to accept an offer of suitable work for

1 which ~~he~~ the individual is reasonably fitted, or having refused to accept a referral to a
2 suitable job opportunity when directed to do so by a local employment office of this State
3 or another state or if an employer is unable to contact a former employee at last known or
4 given address, for the purpose of recall to suitable employment; or the individual fails to
5 respond to a request to report to the local office for the purpose of a referral to a suitable
6 job, and the disqualification ~~shall continue~~ continues until claimant has earned ~~8~~ 10 times
7 ~~his~~ the claimant's weekly benefit amount in employment by an employer. If the deputy
8 determines that refusal has occurred for cause of necessitous and compelling nature, the
9 individual ~~shall be~~ is ineligible while such inability or unavailability continues, but ~~shall~~
10 ~~be~~ is eligible to receive prorated benefits for that portion of the week during which ~~he~~ the
11 individual was able and available.

12 A. In determining whether or not any work is suitable for an individual during the
13 first ~~12~~ 6 consecutive weeks of unemployment, the deputy shall consider the degree
14 of risk involved to ~~his~~ the individual's health, safety and morals, ~~his~~ the individual's
15 physical fitness and prior training, ~~his~~ the individual's experience and prior earnings,
16 ~~his~~ the individual's length of unemployment and prospects for securing local work in
17 ~~his~~ the individual's customary occupation; and the distance of the available work from
18 ~~his~~ the individual's residence.

19 In determining whether or not work is suitable for an individual after the first ~~12~~ 6
20 consecutive weeks of unemployment, the deputy shall consider the degree of risk
21 involved to ~~his~~ the individual's health, safety and morals, ~~his~~ the individual's physical
22 fitness, ~~his~~ the individual's prior earnings, ~~his~~ the individual's length of
23 unemployment and prospects for securing local work in ~~his~~ the individual's
24 customary occupation and the distance of the available work from ~~his~~ the individual's
25 residence. The individual's prior earnings ~~shall~~ may not be considered with respect to
26 an offer of or referral to an otherwise suitable job ~~which~~ that pays wages equal to or
27 exceeding the average weekly wage in the State of ~~Maine~~.

28 B. Notwithstanding any other provisions of this chapter, work ~~shall~~ may not be
29 ~~deemed~~ considered suitable and benefits ~~shall~~ may not be denied under this chapter to
30 any otherwise eligible individual for refusing to accept new work under any of the
31 following conditions:

32 (1) If the position offered is vacant due directly to a strike, lockout or other labor
33 dispute;

34 (2) If the wages, hours or other conditions of work are substantially less
35 favorable to the individual than those prevailing for similar work in the locality;

36 (3) If, as a condition of being employed, the individual would be required to join
37 a company union or to resign from or refrain from joining any bona fide labor
38 organization;

39 (4) If the position offered is the same one previously vacated by the claimant for
40 good cause attributable to that employment or is the position ~~which~~ that the
41 employee left for reasons attributable to that employment, but which were found
42 insufficient to relieve disqualification for benefits under subsection 1, paragraph
43 A, ~~provided that~~ as long as, in either instance, the specific good cause or specific
44 reasons for leaving have not been removed or otherwise changed; and

1 (5) If the position offered is on a shift, the greater part of which falls between the
2 hours of midnight ~~to~~ and 5 a.m., and is refused because of parental obligation, the
3 need to care for an immediate family member; or the unavailability of a personal
4 care attendant required to assist the unemployed individual who is a handicapped
5 person;

6 **Sec. 8. 26 MRSA §1193, sub-§5**, as amended by PL 2009, c. 638, §1, is further
7 amended to read:

8 **5. Receiving remuneration.** For any week with respect to which ~~he~~ the individual is
9 receiving, is entitled to receive or has received remuneration in the form of:

10 A. Dismissal wages, wages in lieu of notice, terminal pay, vacation pay or holiday
11 pay; or

12 B. Benefits under the unemployment compensation or employment security law of
13 any state or similar law of the United States.

14 If the remuneration under paragraph A is less than the benefits ~~which~~ that would
15 otherwise be due under this chapter, ~~he shall be~~ the individual is entitled to receive for
16 that week, if otherwise eligible, benefits reduced by the amount of the remuneration,
17 rounded to the nearest lower full dollar amount;

18 **Sec. 9. 26 MRSA §1193, sub-§6**, as amended by PL 1999, c. 464, §7, is further
19 amended to read:

20 **6. Has falsified.** For any week for which the deputy finds that the claimant made a
21 false statement or representation knowing it to be false or knowingly failed to disclose a
22 material fact in the claimant's application to obtain benefits. In addition, for a first or 2nd
23 occurrence, the claimant is ineligible to receive any benefits for a period of not less than 6
24 months nor more than one year from the mailing date of the determination, and the
25 commissioner shall assess a penalty of 50% of the benefits falsely obtained for the first
26 occurrence; and 75% for the 2nd occurrence and 100% for the 3rd and any subsequent
27 occurrences. If an individual is disqualified for a 3rd occurrence of statement falsification
28 or misrepresentation in an effort to obtain benefits, the commissioner shall assess a
29 penalty of 100% of the benefits falsely obtained and the claimant is disqualified from
30 receiving benefits for an indefinite period; ~~or~~

31 SUMMARY

32 This bill amends the employment security laws pertaining to specific benefit
33 eligibility requirements, including work search, suitable work, misconduct,
34 unemployment fraud disqualification and participation in the reemployment eligibility
35 assessment services.

36 The bill provides that it is an individual's responsibility to seek work and report work
37 search efforts to the Maine Unemployment Insurance Commission and that failure to do
38 so without good cause results in the loss of benefits; that participation in the
39 reemployment eligibility assessment services is mandatory and failure to comply without
40 good cause results in the loss of benefits; and that unemployment fraud for amounts

1 exceeding \$1,000 are either Class C or Class B crimes depending on the benefit amount
2 involved. This change is consistent with the current prosecution of these crimes as theft
3 under the Maine Revised Statutes, Title 17-A.

4 The bill increases the earnings requirement for requalifying for benefits after
5 disqualification for refusing suitable work from 8 times the individual's weekly benefit
6 amount to 10 times; changes the requirement that the individual must broaden the
7 individual's work search after 6 weeks of unemployment rather than 12 weeks; increases
8 the earnings requirement to requalify for benefits after a misconduct disqualification from
9 4 times the individual's weekly benefit amount to 10 times; imposes an indefinite
10 disqualification from receiving benefits upon a 3rd determination of unemployment
11 fraud; and adds vacation pay to the types of remuneration for which unemployment
12 benefits are offset.