

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Simplify Standards for Determining Independent Contractor Status for Unemployment Compensation Purposes**

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

**Sec. 1. 26 MRSA §1043, sub-§11, ¶E,** as amended by PL 1979, c. 651, §45, is further amended to read:

E. Services performed by an individual for remuneration ~~shall be~~ deemed to be employment subject to this chapter unless ~~and until~~ it is shown to the satisfaction of the bureau that: the individual is an independent contractor.

~~(1) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact;~~

~~(2) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and~~

~~(3) Such individual is customarily engaged in an independently established trade, occupation, profession or business.~~

**Sec. 2. 26 MRSA §1043, sub-§14-A** is enacted to read:

**14-A. Independent contractor.** "Independent contractor" means a person who performs services for another under contract, but who is not under the essential control or superintendence of the other person while performing those services. In determining whether such a relationship exists, the bureau shall consider:

A. Whether or not a contract exists for the person to perform a certain piece or kind of work at a fixed price;

B. Whether or not the person employs assistants with the right to supervise their activities;

C. Whether or not the person has an obligation to furnish any necessary tools, supplies and materials;

D. Whether or not the person has the right to control the progress of the work, except as to final results;

E. Whether or not the work is part of the regular business of the employer;

F. Whether or not the person's business or occupation is typically of an independent nature;

G. The amount of time for which the person is employed; and

H. The method of payment, whether by time or by job.

In applying these factors, the bureau may not give any particular factor a greater weight than any other factor, nor may the existence or absence of any one factor be decisive. The bureau shall consider the totality of the relationship in determining whether an employer exercises essential control or superintendence of the person.

**Sec. 3. 26 MRSA §1052** is enacted to read:

**§ 1052. Predetermination of independent contractor status**

**1. Predetermination permitted.** A worker or an employer may apply to the bureau for a predetermination of whether the status of an individual worker, group of workers or a job classification associated with the employer is that of an employee or an independent contractor.

A. The predetermination by the board creates a rebuttable presumption that the determination is correct in any later claim for benefits under this chapter.

B. Nothing in this section requires a worker or an employer to request predetermination.

**2. Predetermination submission.** A party may submit, on forms approved by the bureau, a request for predetermination regarding the status of a person or job description as an employee or independent contractor. The status requested by a party is deemed to have been approved if the bureau does not deny or take other appropriate action on the submission within 14 days.

**3. Rulemaking.** The bureau may adopt rules to implement the intent of this section, which is to afford speedy and equitable predetermination of employee and independent contractor status. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

## SUMMARY

This bill defines "independent contractor" under the laws governing unemployment compensation to make it consistent with the definition of that term under the laws governing workers' compensation. In addition, this bill authorizes the Bureau of Unemployment Compensation to issue a predetermination of independent contractor status.