

**12 Department of Labor**

12-172 Department of Labor, Bureau of Unemployment Compensation

2024-045: Chapter 8, Payments for Dependents

**Statutory Authority:** 26 M.R.S. §§ 1082 and 1191(6)

**Type:** Routine Technical

**Emergency?:** No

**Fiscal impact:** None

**Principal purpose:** *These rules align statutory changes that were made in Public Law 2021 Chapter 456 regarding payments for unemployment claimants with dependents.*

**Basis Statement:** *This chapter amends the criteria for determining when a claimant is eligible for a dependency allowance, in accordance with recent statutory changes to 26 M.R.S. § 1191(6) made by Public Law 2021, Chapter 456 § 16. The amended Rule clarifies that a claimant who supports a dependent is eligible for a dependency allowance, removing the requirement that the claimant be “wholly or mainly” supporting the dependent. The amended Rule sets forth the procedure for determining which parent is eligible for the dependency allowance when both parents qualify for unemployment benefits for the same week. The Rule establishes that the parent who files for unemployment benefits first will be eligible for the dependency allowance, except in situations in which one parent has primary custody, in which case, the custodial parent will be eligible for the dependency allowance.*

*This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. A public hearing was held on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings, but written comments were submitted by:*

*Commenter # 1: Maine Equal Justice*

*Commenter # 2: Peer Workforce Navigator Project*

*Commenter # 3: Maine AFL-CIO*

<b>12-172 Department of Labor, Bureau of Unemployment Compensation</b>	
<b>2024-046: Chapter 26, Waivers of Repayment of Erroneously Paid Benefits (Overpayments)</b>	
<b>Statutory Authority:</b>	26 M.R.S. § 1082
<b>Type:</b>	Routine Technical
<b>Emergency?:</b>	No
<b>Fiscal impact:</b>	None
<b>Principal purpose:</b>	<i>These rules align statutory changes that were made in Public Law 2021 Chapter 456, clarifying that waiver decisions will be made by the Bureau of Unemployment Compensation in the first instance.</i>
<b>Basis Statement:</b>	<p><i>The changes incorporate recent statutory changes to the law under Public Law 2021, Chapter 456, § 6 specifying that waiver determinations will be made in the first instance by the Bureau of Unemployment Compensation (“Bureau” or “BUC). The Rule clarifies that denials of waivers by the Bureau may be appealed to the Division of Administrative Hearings and the Unemployment Insurance Commission. The Rule refines and explains the criteria used in determining whether an overpayment will be waived.</i></p> <p><i>This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. Public hearings were held for each of the three rules on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings, but written comments were submitted by:</i></p> <p><i>Commenter # 1: Maine Equal Justice</i>  <i>Commenter # 2: Peer Workforce Navigator Project</i>  <i>Commenter # 3: Maine AFL-CIO</i></p> <p><i>The public comment period ended November 6, 2023. As set forth below, minor changes were made to the rule as a result of public comments.</i></p>

<b>12-597 Department of Labor, Bureau of Employment Services</b>	
<b>2024-051: Chapter 2, Rule Governing the Competitive Skills Scholarship Program</b>	
<b>Statutory Authority:</b>	26 M.R.S. § 2033
<b>Type:</b>	Routine Technical
<b>Emergency?:</b>	No
<b>Fiscal impact:</b>	N/A
<b>Principal purpose:</b>	<i>This rulemaking is to repeal and replace a rule pertaining to the Competitive Skills Scholarship Program.</i>
<b>Basis Statement:</b>	<p><i>This rulemaking is to repeal and replace a rule pertaining to the Competitive Skills Scholarship Program.</i></p> <p><i>The amended rule clarifies existing definitions and adds new definitions; clarifies the eligibility requirements; clarifies the documents needed to verify financial eligibility, identity, and Maine residence; clarifies the process for eligibility determination; clarifies the duration of the education or training; makes changes in accordance with P.L.2023, Ch. 184 for participants in registered apprenticeship and certified preapprenticeship programs and provides for cost of licensing or certification.</i></p> <p><i>This rulemaking of the Bureau of Employment Services is authorized by 26 M.R.S. § 2033. The proposed Rules were posted on October 11, 2023. A public hearing was held on Friday, November 3rd at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. The public comment period ended November 17, 2023. Public comments were received from the following:</i></p> <p><i>Commenter # 1: Chris Hastedt, Maine Equal Justice (In-person and written comments submitted)</i></p> <p><i>Commenter # 2: Scott Cuddy, Maine Labor Climate Council (In-person and written comments submitted)</i></p> <p><i>Commenter # 3: Tom Fernands, Eastern Maine Development Corporation (Virtual)</i></p> <p><i>Commenter # 4: Carry Gosselin, Competitive Skills Scholarship Program (Virtual)</i></p> <p><i>Commenter # 5: AFL-CIO (Written comments submitted)</i></p> <p><i>Commenter # 6: Denis Lehouillier, IBEW 567 (Written comments submitted)</i></p>

12-170 Department of Labor, Bureau of Labor Standards

2024-061: Chapter 15, Rules Relating to Severance Pay

<b>Statutory Authority:</b>	26 M.R.S. § 625-B(8); 26 M.R.S. § 42
<b>Type:</b>	Routine Technical
<b>Emergency?:</b>	No
<b>Fiscal impact:</b>	<i>No significant impact anticipated. Law excludes businesses with under 100 employed.</i>
<b>Principal purpose:</b>	<i>These changes address technical issues with the current rule clarifying definitions that previously resulted in questions and bringing the rule into better alignment with Bureau practices streamlining the determination process.</i>
<b>Basis Statement:</b>	<i>The Bureau of Labor Standards is modifying this rule, which governs the administration of Maine’s Severance Pay Law in order to bring it into conformity with statute, specifically Title 26 §625-B, and by clarifying certain issues that have been the subject of questions from employers. The amended rule addresses application to establishments with multiple sites by adding a definition for the term “facility”; clarifies the treatment of various types of payments and whether they should be included when calculating gross earnings and severance pay; specifies notice requirements and clarifies the process for determination of certain dates, as well as changes in layoff dates after the issuance of initial notice. The changes bring the rule into better alignment with Bureau practices as well as streamlining the determination process.</i>

12-172 Department of Labor, Bureau of Unemployment Compensation

2024-096: Chapter 27, WorkShare Program

**Statutory Authority:** 26 MRS §§ 1082(1) and 1198

**Type:** Routine Technical

**Emergency?:** No

**Fiscal impact:** None indicated by agency

**Principal purpose:** *To set forth the procedures and requirements for employers who choose to participate in Maine's Short-Term Compensation Program, known as the WorkShare Program*

**Basis Statement:** *Chapter 27: Work Share*

*This is a new Rule to set forth the procedures and requirements for employers who choose to participate in Maine's Short-Term Compensation Program, known as the Work-Share Program. this Rule provides additional guidance and clarifies definitions and processes set forth in 26 M.R.S. § 1198 of the Employment Security Act*

*This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. §§ 1082 and 1198. The proposed Rule was posted on November 29, 2023. A public hearing was scheduled for December 19, 2023, but was rescheduled due to closings of state offices. The public hearing was renoticed and held on February 2, 2024 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330.*

*Comments were submitted by:*

*Commenter # 1: Maine Equal Justice*

*Commenter # 2: Peer Workforce Navigator Project*

*The public comment period ended on February 13, 2024.*

<b>12-172 Department of Labor, Bureau of Unemployment Compensation</b>	
<b>2024-125: Chapter 14, Education Institutional Employees</b>	
<b>Statutory Authority:</b>	26 M.R.S. § 1082(1), Resolves 2023, ch. 38
<b>Type:</b>	Routine Technical
<b>Emergency?:</b>	No
<b>Fiscal impact:</b>	N/A
<b>Principal purpose:</b>	<i>To clarify the requirements and eligibility around educational employees who are between terms, including applicability to adjunct faculty, as directed by Resolves 2023, ch. 38..</i>
<b>Basis Statement:</b>	<p><i>Chapter 14: Education Institutional Employees</i></p> <p><i>The repealed and replaced Rule clarifies the analysis as to whether an education institution employee is eligible for unemployment benefits during an established and customary vacation period. In particular, this Rule clarifies the criteria for determining whether a “written reasonable assurance” exists and defining a “contract” as those terms are used in 26 M.R.S. § 1192(7). The rule further provides clarity and guidance on when adjunct faculty may qualify for unemployment benefits, as directed by Resolves 2023, ch. 38. In developing the changes to the Rule, the Bureau of Unemployment Compensation (“Bureau”) looked to guidance from the United States Department of Labor (USDOL), including USDOL’s Unemployment Insurance Program Letter (UILP) No. 5-17.</i></p> <p><i>This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082 and Resolves 2023, ch. 38. The proposed Rules were posted on November 29, 2023. A public hearing was scheduled for December 19, 2023, but was rescheduled due to closings of state offices. The public hearing was rescheduled and held on February 2, 2024 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330.</i></p> <p><i>Comments were submitted by:</i></p> <p><i>Commenter # 1: Maine Equal Justice</i>  <i>Commenter # 2: Peer Workforce Navigator Project</i>  <i>Commenter # 3: Maine AFL-CIO</i>  <i>Commenter # 4: Tim McCord, President of the Part-time Faculty Association of Maine</i>  <i>Commenter # 5: Andrea LaFlamme, President of the adjunct union with MSEA-SEIU and an adjunct professor at Eastern Maine Community College in Bangor</i>  <i>Commenter # 6: John J. Kosinski, Maine Education Association (MEA)</i></p> <p><i>The public comment period ended on February 13, 2024.</i></p> <p><i>Minor changes were made in response to comments, as set forth below. In addition, the Bureau made formatting and grammatical changes.</i></p>

12-172 Department of Labor, Bureau of Unemployment Compensation

2024-167: Chapter 24, Approved Training

**Statutory Authority:** 26 M.R.S. §§ 1082 and 1192 (6) and (6-C)

**Type:** Routine Technical

**Emergency?:** No

**Fiscal Impact:** None.

**Principal purpose:** *The amendments to the Rule update and clarify the criteria and procedure for approved training.*

**Basis Statement:** *The Rule explains the process for a training agency requesting prior approval of a training waiver and for a claimant requesting approval. The Rule explains the criteria that will be used by the Bureau of Unemployment Compensation (“Bureau” or “BUC”) to determine whether a training waiver will be granted, thus waiving the requirement that a claimant be able and available for work and searching for work in order to be eligible for unemployment benefits. In developing the changes to the Rule, the BUC looked to guidance from the United States Department of Labor.*

*This rulemaking of the Bureau of Unemployment Compensation is authorized by 26 M.R.S. § 1082. The proposed Rules were posted on October 4, 2023. A public hearing was held on Tuesday, October 24 at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Drive, Augusta ME 04330. No public comments were received at the public hearings. Three sets of written comments were submitted by:*

*Commenter # 1: Maine Equal Justice*

*Commenter # 2: Peer Workforce Navigator Project*

*Commenter # 3: Maine AFL-CIO*

*The public comment period ended on November 6, 2023.*

*The rule was reposted on February 21, 2024 for additional changes, in response to comments, with a comment period that ended on March 25, 2024, later extended to March 29, 2024. In the reposted rule, the section on prior approval of a training program was removed, as it is unnecessary and confusing. The additional changes clarified that claimants involved in training approved by the Bureau of Employer Services (BES) or the Bureau of Rehabilitation Services (BRS) pursuant to various federal and state laws qualify for the training waiver without further fact-finding or analysis. Thus, the rule is simplified and explains the process for a claimant to obtain a training waiver if the applicable training program has not been previously approved by BES or BRS.*

*Written comments were received on the reposted rule by:*

*Commenter # 1: Maine Equal Justice*

*Commenter # 2: Peer Workforce Navigator Project*

*All comments from Commenter #1 and Commenter #2 are identical.*



12-179 Department of Labor, Board of Occupational Safety and Health

2024-189: Chapter 6, Recording Occupational Injuries and Illnesses in The Public Sector

<b>Statutory Authority:</b>	26 M.R.S. § 565
<b>Type:</b>	Routine Technical
<b>Emergency?:</b>	No
<b>Fiscal Impact:</b>	<i>No significant impact anticipated.</i>
<b>Principal purpose:</b>	<i>The purpose of this chapter is to incorporate by reference rules governing the recording of occupational injuries and illnesses as promulgated by the Federal Occupational Safety and Health Administration at 29 CFR Part 1904, most recently amended on January 1, 2024</i>
<b>Basis Statement:</b>	<p><i>Maine is an OSHA State Plan for State and Local Governments only. The Federal Occupational Safety &amp; Health Administration (OSHA) still has jurisdiction for enforcing safety and health regulations in the private sector. Being a State Plan requires the Board of Occupational Safety &amp; Health (BOSH) to adopt rules applicable to public sector workplaces that are at least as effective as the standards promulgated by OSHA that apply to private sector workplaces. 26 M.R.S. § 565. BOSH is a 10-member board of which nine members are appointed by the Governor and the 10th member is the Bureau of Labor Standards Director. BOSH has rulemaking authority and is tasked with adopting reasonable rules for the public sector.</i></p> <p><i>The purpose of this Chapter is for BOSH to establish workplace safety and health standards and procedures to protect public sector employees, aligning public sector standards with changes to federal safety and health standards and procedures for injury and illness recordkeeping. OSHA has amended its occupational injury and illness recordkeeping regulation to require certain employers to electronically submit injury and illness information to OSHA that employers are already required to keep under the recordkeeping regulation. Specifically, OSHA amended its regulation to require establishments with 100 or more employees in certain designated industries (Appendix B to Subpart E - new) to electronically submit information from their OSHA Forms 300 and 301 to OSHA once a year. OSHA will not collect employee names or addresses, names of health care professionals, or names and addresses of facilities where treatment was provided if treatment was provided away from the worksite from the Forms 300 and 301. Establishments with 20 to 249 employees in certain industries (Appendix A to Subpart E- updated) will continue to be required to electronically submit information from their OSHA Form 300A annual summary to OSHA once a year. All establishments with 250 or more employees that are required to keep records under OSHA's injury and illness regulation will also continue to be required to electronically submit information from their Form 300A to OSHA on an annual basis.</i></p> <p><i>Procedural history – BOSH voted to propose the rule on March 6, 2024. The notice was issued on April 17, 2024.</i></p> <p><i>No comments were received during the public comment period. BOSH voted to adopt the rule on June 5, 2024.</i></p>

<b>Statutory Authority:</b>	26 M.R.S. §§ 42 and 53
<b>Type:</b>	Major Substantive
<b>Emergency?:</b>	No
<b>Fiscal Impact:</b>	N/A
<b>Principal purpose:</b>	<i>The Bureau of Labor Standards is proposing amendments to this Rule to simplify and increase the effectiveness of the administrative civil money penalties, to modify the appeals process to remove the possible perception of bias, and to ensure that Bureau resources are allocated in an effective and accountable manner.</i>
<b>Basis Statement:</b>	<p><i>The Bureau of Labor Standards is proposing amendments to this Rule to simplify and increase the effectiveness of the administrative civil money penalties, to modify the appeal process to remove the possible appearance of bias, and to ensure that Bureau resources are allocated in a more effective and accountable manner.</i></p> <p><i>The proposed rules simplify the administrative civil money penalties by reducing the number of categories under which a penalty may be increased or decreased. This makes calculating penalties easier and enables better understanding for employers of the penalties to which they might be subject for violations.</i></p> <p><i>The proposed rules make the civil money penalties more effective by increasing the deterrent effect associated with violations. This is done by making initial penalties higher and making the criteria for penalty reductions more stringent. Deterrence is not the only factor in effective enforcement, but without an effective deterrent, widespread compliance becomes much more difficult to attain.</i></p> <p><i>The proposed rules also modify the appeals process to avoid any possible appearance of bias. As the current rules stand, it is the Director who oversees the appeals process; the Director either sits as the hearing officer or delegates the hearing officer role to someone else but still makes the ultimate decision on the appeal outcome. Although the Director is not involved in the detail of all cases, the Director is heavily involved in the detail of some cases and directs the overall strategy of the Bureau. If the Director is also deciding the appeals which come out of the Bureau, it may create the impression that an employer is not obtaining a fresh review of the matter, notwithstanding the administrative burden, legal complexity, and cost of the proceedings. The proposed amended rules cure this deficiency by designating the Commissioner of Labor to be in charge of the appeals process and allowing the Commissioner to designate the appeal determination to any qualified person. This removes the appeals process one step further from the initial decision-maker and would also ensure that the appeal is being heard by someone from outside the Bureau. While the Bureau does not suggest or accept that its current appeals process is tainted by bias, it does wish to remove any potential appearance of bias as much as possible.</i></p> <p><i>The proposed rules also make the Bureau’s enforcement efforts more evidence-based and transparent. The Bureau’s enforcement duty goes beyond simply addressing complaints alleging legal rights have been violated. As 26 M.R.S. § 42 states:</i></p>

*“The Director shall cause to be enforced all laws regulating the employment of minors; ...all laws regulating the payment of wages; and all laws enacted for the protection of the working classes.”*

*The Bureau cannot adequately enforce the laws if it does so only by responding to complaints. This is because many of the workers most in need of protection are those least likely to complain, due to fear of retaliation, lack of confidence or trust in the system, language difficulties, lack of awareness of rights, or myriad other factors. To effectively enforce the laws, therefore, the Bureau must lean heavily on proactive investigations, directing investigative resources towards sectors of the economy where there are likely to be high violations and low complaints.*

*The proposed rules ensure this happens by requiring the Bureau to submit a public report annually, setting out a strategy for proactive enforcement, identifying the sectors or areas it will target – as well as the evidence base for this selection – and reviewing the effectiveness of its enforcement strategy for the previous year.*

*The notice of proposed rulemaking and hearing date were published in newspapers on November 22, 2023. The notice and hearing date were then sent to interested parties on November 28, 2023. A hearing was held on December 11, 2023.*

*The comment period closed on December 27, 2023.*

#### *Legislative Process*

*In the second regular session of the 131st Legislature, a resolve was introduced as the vehicle for the Legislature to approve the rules. This resolve took the form of L.D. 2184, Resolve, Regarding Legislative Review of Chapter 9: Rules Governing Administrative Civil Money Penalties for Labor Law Violations, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards.*

*The Joint Standing Committee on Labor and Housing held a public hearing on Tuesday, February 6, 2024. 18 people testified.*

*The Committee then held a work session on February 15, 2024. On the same day, the Committee voted, by a majority, Ought to Pass. On March 5, 2024, the Committee reported the bill out.*

*The bill was finally passed by the House of Representatives on March 19, 2024, and by the Senate on March 20, 2024. On March 25, 2024, the Governor signed the bill into law.*

12-702 Department of Labor, Paid Family Medical Leave Program

2024-268: Chapter 1, Rules Governing Paid Family and Medical Leave Program

<b>Statutory Authority:</b>	26 MRS 850-Q
<b>Type:</b>	Routine Technical
<b>Emergency?:</b>	No
<b>Fiscal Impact:</b>	n/a
<b>Principal purpose:</b>	<i>The legislature established a paid family and medical leave benefits program to be administered by the Department of Labor. Pursuant to 26 MRS §850-Q, the Department is responsible for adopting rules as necessary to implement this program.</i>
<b>Basis Statement:</b>	<p><b>SUMMARY:</b></p> <p><i>The Maine legislature enacted the Paid Family and Medical Leave (PFML) law in October 2023, establishing the program effective January 1, 2026. The PFML law is codified at 26 M.R.S. §§ 850-A – 850-R. The PFML law, at 26 M.R.S. § 850-Q, directs the Department of Labor to adopt rules necessary to implement the law by January 1, 2025. The PFML law and this rule will apply to most employees and employers in the State of Maine. PFML will provide up to 12 weeks of paid leave per benefit year for family, medical or safe leave, with such benefits beginning in mid-2026. Premium contributions will begin January 2025.</i></p> <p><i>Before the formal rulemaking process began, the Department held informal listening sessions to solicit feedback from the public about questions or issues surrounding PFML that may benefit from further detail or clarification in rule. The Department hosted four informal listening sessions on the following topics: January 25, 2024 (Contributions), February 1, 2024 (Eligibility), February 12, 2024 (Private plans) and, February 28, 2024 (Any provisions related to the PFML law). Furthermore, the Department consulted with other paid leave states as to their experiences with implementing their respective programs to further inform the Department’s rulemaking. The Department considered United States Department of Labor regulations and guidance with respect to federal Family Medical Leave. Furthermore, the Department considered the legislative history of the statute. The Department also held meetings with the Paid Family Leave Authority and considered their recommendations. The Department also relied upon the expertise and experience of its staff.</i></p> <p><i>On May 20, 2024, the Maine Department of Labor (“The Department”) invited comments on the new Chapter 1 of the rules governing the Maine Paid Family and Medical Leave Program (PFML). Comments were accepted through July 8, 2024.</i></p> <p><i>On August 28, 2024, the Department invited a second round of comments on amendments to the proposed Rule based on comments submitted in the first comment period. The second comment period ended on September 30, 2024. The Department carefully considered more than 1,600 comments submitted by approximately 500 commenters during both comment periods. This statement contains the factual and policy basis for each section, comments from the first and second round and the response to the comments in each round. In addition to the changes set forth below, the Department made minor grammatical and formatting changes.</i></p>