

§1082. Powers and duties

1. Powers and duties of the commissioner. Except as otherwise provided, it is the duty of the Commissioner of Labor to administer this chapter, through an organization to be known as the Bureau of Unemployment Compensation. The commissioner may employ persons, make expenditures, require reports, make investigations and take other actions the commissioner determines necessary or suitable to that end. The commissioner is responsible and possesses the necessary authority for the operation and management of the Bureau of Unemployment Compensation. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter. The commissioner may adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to achieve this purpose, except rules pertaining to unemployment insurance as provided in subsection 2. The commissioner may adopt rules with respect to a self-employment assistance program as provided in section 1197. The commissioner shall determine methods of operational procedures in accordance with the provisions of this chapter and by the Maine Administrative Procedure Act, Title 5, chapter 375. The commissioner shall make recommendations for amendments to this chapter that the commissioner determines proper. When the commissioner believes that a change in contribution or benefit rates is necessary to protect the solvency of the fund, the commissioner shall promptly inform the Governor and the Legislature and make recommendations with respect to the change in rates. [PL 1995, c. 560, Pt. G, §11 (AMD).]

2. Powers and duties. In addition to other powers and duties provided in this chapter, the commission, by majority vote and with the advice of the commissioner, may adopt or rescind rules with respect to unemployment insurance in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. The commission may require reports, make investigations and undertake other activities necessary to carry out the duties of the commission. Each member of the commission is entitled to access to any information, memoranda, reports or statistical data that is in the possession of or that has been prepared by a division of the Department of Labor and that relates to the administration of this chapter. [PL 2003, c. 452, Pt. O, §3 (AMD); PL 2003, c. 452, Pt. X, §2 (AFF).]

3. Publication. The Commissioner of Labor shall cause to be printed for distribution to the public the text of this chapter, the commission's regulations, the commissioner's annual reports to the Governor and any other material the commissioner or the commission considers relevant and suitable, and shall furnish the same to any person upon application.

The commissioner shall cause to be printed a comprehensive set of Department of Labor internal rules, policies, regulations, memoranda, instructions and other forms used in determining eligibility, payment of benefits and similar issues. The compilation must be indexed conveniently to facilitate its use by the public and easily accessible to the public.

The commissioner shall annually publish data on the content and usage of the fund for not less than the preceding 10 years, including financing, benefit costs, experience rating and contribution rates as applicable. Legislative changes enacted after December 31, 2010 that have an impact on the content or usage of the fund must be disclosed separately for not less than the 5 years after enactment of the change.

[PL 2011, c. 212, §1 (AMD).]

4. Personnel. Subject to other provisions of this chapter, the Commissioner of Labor is authorized to appoint and prescribe the duties and powers of, and fix the compensation of, such officers, accountants, attorneys, experts and other persons as may be necessary in the performance of his duties, subject to the Civil Service Law. The commissioner may delegate to any such person so appointed such power and authority as is reasonable and proper for the effective administration of this chapter, and may in his discretion bond any person handling moneys or signing checks under this chapter. On request of the commissioner, the Attorney General shall represent the department, the commission and the State

in any court action relating to this chapter or to its administration and enforcement. Special counsel may be retained by the commissioner in accordance with Title 5, section 196, whose service and expenses shall be paid from the funds provided for the administration of this chapter. The commissioner shall not employ or pay any person who is an officer or committee member of any political party organization.

[PL 1985, c. 785, Pt. B, §120 (AMD).]

4-A. Division of Administrative Hearings. There is established within the Department of Labor the Division of Administrative Hearings to hear and decide appeals from decisions of the deputy as provided by this chapter and any other appeals as the commission or commissioner may require.

A. The division shall be under the direction of the chief administrative hearing officer appointed by the commissioner and subject to the Civil Service Law. The chief administrative hearing officer must be an attorney admitted to practice law in the State. [PL 1987, c. 641, §3 (NEW).]

B. The chief administrative hearing officer shall administer the office, supervise and assign cases to the administrative hearing officers, and preside at hearings as necessary. [PL 1987, c. 641, §3 (NEW).]

C. Administrative hearing officers shall preside at appeal proceedings. These administrative hearing officers shall be under the direction of the chief administrative hearing officer and hired subject to the Civil Service Law. [PL 1987, c. 641, §3 (NEW).]

[PL 1987, c. 641, §3 (NEW).]

5. Advisory council.

[PL 2001, c. 352, §13 (RP).]

6. Employment stabilization. The Commissioner of Labor may take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

[PL 2001, c. 352, §14 (AMD).]

7. Records and reports. Each employing unit shall keep true and accurate work records, containing such information as the commissioner may prescribe. These records must be open to inspection and be subject to being copied by the commissioner or the commissioner's authorized representatives at any reasonable time and as often as may be necessary. The commissioner may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, that the commissioner considers necessary for the effective administration of this chapter. Information thus obtained or obtained from any individual pursuant to the administration of this chapter, except to the extent necessary for proper presentation of a claim, must be held confidential and may not be published or opened to public inspection, other than to public employees in the performance of their public duties or to any agent of an agency that is under contract with a state or local child-support agency, or to any agent of an agency that is under contract or subcontract with the state employment and job training agency, pursuant to safeguards established by the commissioner, in any manner revealing the individual's or employing unit's identity, but the department shall, upon request, provide to any party to an adjudicatory proceeding information from the records relating to the proceeding. Final decisions of adjudicatory proceedings are available to the public after the names and addresses of claimants and employers are deleted from the decisions. Records, with any necessary authentication of those records, required in the prosecution of any criminal action brought by another state for misrepresentation to obtain benefits under the law of this State must be made available to the agency administering the employment security law of any such state for the purpose of such prosecution.

A. A person who violates this subsection commits a Class E crime. [PL 2003, c. 452, Pt. O, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

B. An agent of an agency that is under contract with a state or local child-support agency, or an agent of an agency that is under contract or subcontract with the state employment and job training agency who discloses any information that is confidential pursuant to this subsection, other than disclosure authorized by this subsection, commits a Class E crime. [PL 2003, c. 452, Pt. O, §4 (NEW); PL 2003, c. 452, Pt. X, §2 (AFF).]

Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[PL 2003, c. 452, Pt. O, §4 (AMD); PL 2003, c. 452, Pt. X, §2 (AFF).]

8. Oaths and witnesses. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chief administrative hearing officer and any duly authorized representative of them shall have power to administer oaths and affirmations, take depositions, certify official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter. Oaths and affirmations required by reason of duties performed pursuant to this chapter may be administered by any of such persons as may be designated for the purpose by the commissioner. In the discharge of the duties imposed by this chapter, the commissioner, the commission, the chief administrative hearing officer or any duly authorized representative of them, when the interests of any interested party demand, may issue commissions to take depositions to any unemployment compensation or employment security official empowered to take such depositions under this chapter or the laws of any other state, for either of the following causes:

- A. When the deponent resides out of, or is absent from, the State;
- B. When the deponent is bound to sea or is about to go out of the State; or
- C. When the deponent is so aged, infirm or sick as to be unable to attend at the place of hearing.

Such depositions shall be taken by written interrogatories to be compiled by the commission or the Division of Administrative Hearings, and the adverse party shall be afforded an opportunity to refute such testimony before a determination is made. The deponent shall be sworn and the deposition shall be signed and sworn to by the deponent before admissible as testimony at a hearing before the Division of Administrative Hearings or the commission.

Subpoenas shall be issued pursuant to Title 5, section 9060.

[PL 1987, c. 641, §4 (AMD).]

9. Subpoenas.

[PL 1977, c. 694, §471 (RP).]

9-A. Refusal to appear. A person who without just cause fails or refuses to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda and other records, if it is in that person's power to do so, in obedience to a subpoena of the commissioner, the commission, the Division of Administrative Hearings or the duly authorized representative of any of them commits a Class E crime. This crime is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. If a person refuses to obey a subpoena duly issued by the commissioner, the commission, the Division of Administrative Hearings or the duly authorized representative of any of them, any court of this State within the jurisdiction of which the person resides or transacts business has jurisdiction to issue to that person an order requiring the person to appear and produce evidence or testimony, and any failure to obey that order may be punished by the court as contempt of court.

[PL 2003, c. 452, Pt. O, §5 (AMD); PL 2003, c. 452, Pt. X, §2 (AFF).]

10. Protection against self-incrimination. No person may be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records before the commission, the chief administrative hearing officer or duly authorized representative of either of them, or in obedience to the subpoena of the commission, the chief administrative hearing officer or the duly authorized representative of either of them in any cause or proceeding before the commission, the chief administrative hearing officer or duly authorized representative of either of them, on the ground that the testimony or evidence, documentary or otherwise, required of that person may tend to incriminate that person or subject that person to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which that person is compelled, after having claimed privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

[PL 1987, c. 641, §6 (AMD).]

11. State-federal cooperation. In the administration of this chapter, the commissioner shall cooperate to the fullest extent consistent with this chapter with the Department of Labor; shall make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations of the Secretary of Labor governing the expenditure of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this chapter. Upon request therefor, the commissioner shall furnish to any agency of the United States, charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter. The commissioner may make the state's records relating to the administration of this chapter available to the Railroad Retirement Board and may furnish the Railroad Retirement Board, at the expense of such board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law or employment security law.

[PL 1977, c. 675, §10 (AMD).]

12. Reciprocal benefit arrangements. The commissioner shall participate in any arrangements with the appropriate agencies of other states or the Federal Government for the payment of benefits on the basis of combining an individual's wages and employment covered under this chapter and that individual's wages and employment covered under the unemployment compensation or employment security laws of other states that are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations and that include provisions for applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws, and avoiding the duplicate use of wages and employment by reason of such combining. The commissioner shall reimburse such state or federal agency for such benefits as may be paid by that agency upon the basis of wages received in employment subject to this chapter or shall receive from such state or federal agency such amounts as may be paid from the fund upon the basis of wages received in employment subject to the laws of such state or of the Federal Government.

The commissioner is authorized to enter into reciprocal agreements with the appropriate agencies of other states or the Federal Government adjusting the collection and payment of contributions by employers with respect to services of individuals not performed wholly within the jurisdiction of this State whereby such services may be agreed upon to be considered for all purposes, if the commissioner so desires, as wholly within, or wholly without, the jurisdiction of this State, notwithstanding any provisions of section 1043, subsection 11.

The commissioner is authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this chapter as the commissioner considers necessary or appropriate to facilitate the administration of any unemployment compensation, employment security or public employment service law, and in like manner to accept and utilize information, services and facilities made available to this State by any agency charged with the administration of any such other unemployment compensation, employment security or public employment service law. To the extent permissible under the laws and Constitution of the United States, the commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation or employment security laws of any foreign government may be utilized for the taking of claims and the payment of benefits under this chapter, or under a similar law of such government. The commissioner, by agreement with another state or the Federal Government, as provided under Section 303(g) of the federal Social Security Act, may recover any overpayment of benefits paid to any individual under the laws of this State or of another state or under an unemployment benefit program of the Federal Government. Any overpayments subject to this subsection may be deducted from any future benefits payable to the individual under the laws of this State or of another state or under an unemployment program of the Federal Government.

In any case in which under this subsection a claimant is liable to repay any amount to the agency of another state, such amounts may be collected without interest by civil action in the name of the commissioner acting as agent for such agency.

[PL 2019, c. 343, Pt. RRR, §1 (AMD).]

13. Filing payroll reports; penalty. The commission may prescribe rules for the filing of payroll reports for the employing units in the State. Each employing unit shall submit a quarterly payroll report by electronic submission or on forms prescribed by the bureau. These quarterly reports are due in the office of the bureau, or of any duly constituted agent of the bureau, on or before the last day of the month following the close of the calendar quarter for which the reports relate. The failure on the part of any employing unit to file the payroll reports within this time frame renders the employing unit liable for a penalty of \$25 or 10% of the tax due, whichever is greater.

In the case of executive, administrative and professional employees, and outside sales representatives, as defined in Part 541 of the Rules and Regulations promulgated under the Fair Labor Standards Act of 1938, as amended as of June 30, 1971, the commissioner, upon the request of an employer of those individuals, may approve an alternative method for obtaining from that employer necessary wage information relative to those employees.

[PL 2015, c. 39, §1 (AMD).]

13-A. Certificate of records of payroll reports as evidence. Notwithstanding any other provision of law or rule of evidence, for purposes of any prosecution or action to enforce Title 39-A, section 324, a certificate signed by the Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner stating what the payroll report records show must be received in any court in this State as prima facie evidence of any fact stated in the certificate or the records attached to the certificate.

[PL 1991, c. 885, Pt. E, §37 (AMD); PL 1991, c. 885, Pt. E, §47 (AFF).]

14. Determination of employer or employment; appeal.

A. The Director of Unemployment Compensation or a representative of the commissioner duly authorized by the commissioner to do so shall determine whether an employing unit is an employer and whether services performed for or in connection with the business of the employing unit constitute employment and shall give written notice of the determination to the employing unit. Unless the employing unit, within 30 calendar days after notification was mailed to its last known

address, files an appeal from that determination to the Division of Administrative Hearings, the determination is final. [PL 2017, c. 284, Pt. AAAAA, §1 (AMD).]

B. After a determination has been made under paragraph A, the Director of Unemployment Compensation or a representative of the commissioner may within one year reconsider the determination in the light of additional evidence and make a redetermination and shall give written notice of the redetermination to the employing unit. Unless the employing unit, within 30 calendar days after notification was mailed to its last known address, files an appeal from that redetermination to the Division of Administrative Hearings, the redetermination is final. [PL 2017, c. 284, Pt. AAAAA, §1 (AMD).]

C. [PL 2017, c. 284, Pt. AAAAA, §2 (RP).]

D. The employer or the commissioner may appeal a decision of the Division of Administrative Hearings to the commission, which may affirm, modify or reverse the decision upon review of the record. The commission may hold further hearings or may remand the case to the Division of Administrative Hearings for the taking of additional evidence. The commission shall notify the parties to the proceeding of its findings of fact and decision, and such decision is subject to appeal pursuant to Title 5, section 11001 et seq. In the absence of appeal therefrom, the determination of the commission, together with the record of the proceeding under this subsection, is admissible in any subsequent material proceeding under this chapter, and if supported by evidence, and in the absence of fraud, is conclusive, except as to errors of law, upon any employing unit that was a party to the proceeding under this subsection. [PL 2017, c. 284, Pt. AAAAA, §3 (AMD).]

E. [PL 1977, c. 694, §473 (RP).]

[PL 2017, c. 284, Pt. AAAAA, §§1-3 (AMD).]

SECTION HISTORY

PL 1965, c. 381, §7 (AMD). PL 1967, c. 398, §1 (AMD). PL 1967, c. 519 (AMD). PL 1971, c. 538, §§18-20 (AMD). PL 1971, c. 620, §§6-10 (AMD). PL 1975, c. 90 (AMD). PL 1975, c. 771, §286 (AMD). PL 1977, c. 460, §4 (AMD). PL 1977, c. 675, §§6-11 (AMD). PL 1977, c. 694, §§468-473 (AMD). PL 1977, c. 696, §§373,375 (AMD). PL 1979, c. 127, §§160,161 (AMD). PL 1979, c. 515, §§9A-11 (AMD). PL 1979, c. 541, §A181 (AMD). PL 1979, c. 579, §§13-17,44 (AMD). PL 1979, c. 651, §§14-18,45, 47 (AMD). PL 1981, c. 168, §§11-16 (AMD). PL 1981, c. 470, §A145 (AMD). PL 1983, c. 115, §1 (AMD). PL 1983, c. 351, §§8-14 (AMD). PL 1983, c. 489, §14 (AMD). PL 1983, c. 812, §164 (AMD). PL 1983, c. 816, §A21 (AMD). PL 1985, c. 348, §4 (AMD). PL 1985, c. 537 (AMD). PL 1985, c. 785, §B120 (AMD). PL 1987, c. 77, §2 (AMD). PL 1987, c. 338, §4 (AMD). PL 1987, c. 641, §§3-6 (AMD). PL 1989, c. 483, §A49 (AMD). PL 1989, c. 503, §B111 (AMD). PL 1989, c. 878, §A72 (AMD). PL 1991, c. 885, §E37 (AMD). PL 1991, c. 885, §E47 (AFF). PL 1993, c. 312, §1 (AMD). PL 1993, c. 710, §1 (AMD). PL 1995, c. 560, §G11 (AMD). PL 1995, c. 657, §§1,2 (AMD). PL 1995, c. 657, §10 (AFF). PL 1997, c. 687, §1 (AMD). PL 2001, c. 352, §§13,14 (AMD). PL 2003, c. 452, §§O3-5 (AMD). PL 2003, c. 452, §X2 (AFF). PL 2011, c. 212, §1 (AMD). PL 2015, c. 39, §1 (AMD). PL 2017, c. 284, Pt. AAAAA, §§1-3 (AMD). PL 2019, c. 343, Pt. RRR, §1 (AMD).

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