MAINE
DEPARTMENT OF
LABOR
Unemployment Compensation

Employer's Guide to Maine Unemployment Laws

Me. I-47 (rev. 08/09)

EQUAL OPPORTUNITY IS THE LAW

The Maine Department of Labor is an equal opportunity employer / program. Auxiliary aids and services are available upon request to individuals with disabilities.

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

- Against any individual in the United States, on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and
- Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/ status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any WIA Title I financially-assisted program or activity.

The recipient must not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIA Title I financially-assisted program or activity;
- Providing opportunities in, or treating any person with regard to, such a program or activity; or
    - Making employment decisions in the administration of, or in connection with, such a program or activity.

What Can You Do If You Believe You Have Experienced Discrimination. If you think that you have been subjected to discrimination under a WIA Title I financially-assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either: The recipient's Equal Opportunity Officer – Michaela Loisel, (207) 623-6735; or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you **filed** your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you **filed** your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

This Employer's Guide to the Maine Employment Security Law is designed to assist employers to better understand their responsibilities and to help employers navigate Unemployment Insurance Law. This guidebook provides guidance, but in no way does it have the effect or the authority of the Law. The contents of this guidebook explain the Maine Employment Security Law and Rules as effective at the time of print.

Helpful Contact Information: Field Offices, Claim Centers, and Websites

▶ Tax Field Advisors and Examiners TTY: 1-800-794-1110

Augusta Phone: (207) 621-5120 Fax: (207) 287-3733 Maine Department of Labor Bureau of Unemployment Comp. 45 Commerce Drive 47 State House Station Augusta, ME 04333-0047	**Bangor** Phone: (207) 561-4094 Fax: (207) 561-4096 Maine Department of Labor Bureau of Unemployment Comp. 45 Oak Street, Suite 2 Bangor, ME 04401-6596	**Bath** Phone: (207) 442-0300, ext. 324 Fax: (207) 442-0065 Maine Department of Labor Bureau of Unemployment Comp. 34 Wing Farm Parkway P.O. Box 329 Bath, ME 04530-0329
Lewiston Phone: (207) 753-9088 Fax: (207) 753-9091 Maine Department of Labor Bureau of Unemployment Comp. 5 Mollison Way Lewiston, ME 04240	**Portland** Phone: (207) 822-0212 Fax: (207) 822-0307 Maine Department of Labor Bureau of Unemployment Comp. 185 Lancaster Street Portland, ME 04101	**Presque Isle** Phone: (207) 768-6813 Fax: (207) 760-6350 Maine Department of Labor Bureau of Unemployment Comp. 66 Spruce Street P.O. Box 1088 Presque Isle, ME 04769-1088
Saco Phone: (207) 286-2677 Fax: (207) 286-2655 Maine Department of Labor Bureau of Unemployment Comp. 110 Main Street, Suite 1103 Saco, ME 04072-3504	**Wilton** Phone: (207) 645-5825 Fax: (207) 645-2093 Maine Department of Labor Bureau of Unemployment Comp. 865 US Rte 2 East P.O. Box 825 Wilton, ME 04294-0825	

▶ Unemployment Insurance Claim Centers Phone: 1-800-593-7660 TTY: 1-888-457-8884

Augusta Fax: (207) 287-5905 Maine Department of Labor Bureau of Unemployment Comp. 97 State House Station Augusta, ME 04333-0097	**Orono** Fax: (207) 561-4665 Maine Department of Labor Bureau of Unemployment Comp. P.O. Box 610 Orono, ME 04473-0610	**Presque Isle** Fax: (207) 764-2142 Maine Department of Labor Bureau of Unemployment Comp. P.O. 1088 Presque Isle, ME 04769-1088

▶ Websites

Department, Bureau, or Division	Web Address
Bureau of Unemployment Compensation, Tax Division	**www.Maine.gov/labor/unemployment/tax.html**
Bureau of Unemployment Compensation, Benefits Division	**www.file4ui.com**
Maine Revenue Service	**www.Maine.gov/revenue**
Division of Administrative Hearings	**www.Maine.gov/labor/appeals**
Maine *CareerCenter*	**www.Mainecareercenter.com**
Bureau of Labor Standards	**www.Maine.gov/labor/bls**
Workers' Compensation Board	**www.Maine.gov/wcb**
Center for Workforce Research and Information	**www.Maine.gov/labor/lmis** - Click tab "Services for Employers"
Business Answers	**www.Maine.gov/businessanswers/index.html**
United States Small Business Administration	**www.sba.gov**

For Questions on:	Contact:	At:
- Liability under Employment Security Law - Coverage of a worker - Transfer of experience rates - Tax rates - Voluntary Contributions - Filing of quarterly contribution reports - Notices of underpayment or overpayment - Tax Warrants - Collection Actions - Lien Release - Wage Corrections - Federal Certification - Matters other than the above or questions of a tax nature	Maine Department of Labor Bureau of Unemployment Compensation 45 Commerce Drive 47 State House Station Augusta, ME 04333-0047	Phone: (207) 621-5120 Fax: (207) 287-3733 TTY: 1-800-794-1110 **division.uctax@Maine.gov**
Matters other than the above or inquiries or questions of a general tax nature	Call your local Tax Field Advisor and Examiner at the telephone number provided on the previous page.	
- Eligibility of a claimant to receive unemployment insurance benefits - An offer of reemployment to a former employee currently receiving benefits - Record of Unemployment Charges - Notice of Potential Benefit Assessment or Notice of Assessment	Contact the Unemployment Compensation (UC) Claims Center (addresses are on the previous page)	UC Claims Center: Phone: 1-800-593-7660 TTY: 1-888-457-8884 On-line: **www.file4ui.com**
- Information regarding a person who may be fraudulently receiving benefits	Maine Department of Labor Bureau of Unemployment Compensation 45 Commerce Drive 47F State House Station Augusta, ME 04333-0047	Phone: (207) 621-5100 Fax: (207) 287-8351 TTY: 1-800-794-1110
Liability under the Federal Unemployment Tax Act	Consult the nearest Internal Revenue Service office.	

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LAW CITATIONS: Unless otherwise noted, law sections referenced in this guidebook refer to sections within the Maine Revised Statutes Annotated (M.R.S.A.), Title 26, Chapter 13.

Employers, Wages, and Employment

The Maine Employment Security Law requires employers to pay taxes and make contributions on wages paid to workers who perform employment services. The terms, though, are not always easy to understand when applied in real life. The Maine Department of Labor, for the purposes of the Employment Security Law, defines the terms below. ***Please note: Other agencies (Example: the Internal Revenue Service, Maine Revenue Service, Workers' Compensation, etc.) may use different definitions for these same terms. Please check with the agency prior to filing reports to be certain to fill out the information properly.***

Definitions

- ### *Employers and Employing Units*

Under the law "**employer**" (26 M.R.S.A., Ch. 13, §1043(9)) and "**employing unit**" (26 M.R.S.A., Ch. 13, §1043(10)) are considered the same. An employer is any business or individual that pays an individual for services. Employers can be organized into any of the business types listed below:

- Sole Proprietor
- Governmental – federal, state, county, and municipal;
- Limited Liability – partnerships, corporations; individuals (estates and trusts);
- Partnerships – firms, associations, trusts, joint ventures;
- Corporations - public, private, nonprofit, foreign, domestic, c-corp., and s-corp.

If you do not find your type of business entity listed above, please contact a representative either by phone at (207) 621-5120, or by e-mail at **division.uctax@Maine.gov**. General tax information is available on the web at **www.Maine.gov/labor/unemployment/tax.html**.

- ### *Contributions*

The term "contribution" is used interchangeably with the term "tax" and refers to the unemployment compensation insurance premiums paid by an employer on the taxable wage base.

- ### *Wages*

Employers pay their workers "**wages"** which can be any type of payment, monetary or nonmonetary, for services rendered. (26 M.R.S.A., Ch. 13, §1043(19)).

- ### *Employment*

"**Employment"** (26 M.R.S.A., Ch. 13, §1043(11)) is the entire service of an individual performed for some kind of wage under any type of contract. The law presumes that a worker's services are covered employment unless the employer can show that a worker's services are exempt.

One way in which an employer can show that a worker's services are exempt from coverage under the law is through a legal standard commonly referred to as the "ABC Test," explained below.

- *"ABC Test"*

Section 1043(11)(E) in Maine Employment Security Law (26 M.R.S.A., Chapter 13) is the legal standard commonly referred to by the Maine Department of Labor, Bureau of Unemployment Compensation (BUC) as the "**ABC Test**." As there is not a definition of an "independent contractor" in Maine Employment Security Law, the ABC Test is used to determine a worker's status. The ABC Test indicates if a worker is in covered or non-covered employment. Non-covered employment usually indicates a worker is free from direction and control, services are outside of the course and place of business, and independently establish in their own trade, occupation, profession, or business. It is presumed that a worker's services are in covered employment until the employer can show that:

1. The individual performing the service has been and will continue to be, free from control or direction over the performance of the service, both under the contract of service and in fact; and

   Note: To meet part one of the ABC Test, the employer must prove that it has no right to control or direct the performance of the worker's services. Control need not be exercised actively in order to be present according to this test.

2. The service is either outside the usual course of business for which the service is performed, or the service is performed outside all of the places of business of the enterprise for which the service was performed; and

   Note: To meet part two of the ABC Test, the employer must prove either that the worker is performing services that are not generally offered by the employer to its clientele or that the worker is performing services outside of any place that the employer operates or conducts business. Places that the employer operates or conducts business include physical locations (such as a plant or a shop) as well as the business territory within which the employer operates.

3. The individual is customarily engaged in an independently established trade, occupation, profession, or business.

   Note: To meet part three of the ABC Test, the employer must prove that the worker is customarily independently established. A worker is independently established when he or she has a proprietary interest in a business. A worker is likely to have a proprietary interest in his or her business when he or she: advertises services to a clientele, performs services for more than one employer, has invested time and/or money in establishing his or her business, and could realize a profit/lose money from business endeavors.

The employer has the burden of meeting all three parts of the ABC Test in order to exclude a worker's services from employment. It is not sufficient to meet only one or two parts of the ABC Test. If the employing unit fails to meet one section, the other two sections do not need to be considered.

Exempt Employment

The following is a partial list of those forms of employment that are exempt from unemployment insurance coverage. Each has specific provisions; contact your nearest Field Advisor and Examiner (listed in the Helpful Contact Information section at the beginning of this Guide) to determine whether your workers are exempt under the law. Legislators may add or subtract exempt employment categories. For a complete list, please refer to 26 M.R.S.A., Ch. 13, §1043(11)(F) of the Maine Employment Security Law, contact a representative at (207) 621-5120, email **division.uctax@Maine.gov**, or visit our website at **www.Maine.gov/labor/unemployment/tax.html**

- Services which may be compensated under the Railroad Unemployment Insurance Act
- Aliens admitted to the U.S. performing agricultural work (apple harvest)
- Individuals working for their children or spouses, and children under age 18 employed by a parent or guardian
- Students working in a training or cooperative education program while attending an elementary or secondary school
- Students working for a nonprofit school, university or college in which they are enrolled and regularly attend classes
- Full-time students employed for less than 13 weeks by an organized "seasonal" camp
- Student nurses enrolled and attending classes in a nursing training program who perform services for a hospital or training program
- Real Estate brokers and salespersons (if compensation is based solely on commissions)
- Insurance Agents or solicitors (if compensation is based solely on commissions)
- Newspaper carriers under age 18
- Newspaper and periodical deliverers to the ultimate consumer
- Individuals employed by a religious organization, facility, school, association, or convention of churches
- Ordained or licensed ministers, if performing duties required by their ministry or order
- Elected officials
- Members of the state Air National Guard or National Guard
- Temporary employees serving in the event of an emergency, such as volunteer ambulance drivers and volunteer firefighters
- Hairstylists/Barbers who possess a booth license and operate under a booth rental agreement
- Individuals performing fishing activities

- Musicians and entertainers under contract
- Home workers in the knitted outerwear industry
- Certain contract interviewers
- Employees of other states
- Employees of foreign governments
- Taxi drivers

Need Help?

Field Advisors are ready to assist you in Augusta, Bangor, Bath; Lewiston, Portland, Presque Isle; Saco; and Wilton

Employers with Workers Outside of Maine

Some employers provide employment to workers outside of Maine, and some employers require workers to travel out-of-state for employment. These circumstances may leave employers wondering whether unemployment contributions should be made to Maine or elsewhere. Use the following tests to determine where to make your contributions.

- Employers with workers who are United States citizens working outside the United States for an American employer should submit taxes and wage reports to Maine only if the place of business has its headquarters within the State of Maine. (26 M.R.S.A., Ch. 13, §1043(11)(4)(a)).

- If the worker performs services in Maine for a majority of his or her employment, and some of his or her employment in other states, then the contributions should be made to the State of Maine. (26 M.R.S.A., Ch. 13, §1043(11)(D)(2)).

- If the worker has a company base of operations in Maine to which he or she returns occasionally, the contributions should be made to the State of Maine. The base location may be, but is not limited to, a place where the worker receives instructions from the employer, communicates with customers, replenishes materials, or repairs equipment. (26 M.R.S.A., Ch. 13, §1043(11)(A)(2)).

If none of the previous conditions apply, the worker's place of residence and the provision of Maine-based services are taken into account. The worker should have a Maine residence and perform some services in Maine in order for the employer to pay unemployment taxes in Maine. (26 M.R.S.A., Ch. 13, §1043(11)(C)).

Seasonal Employment

The **Unemployment Insurance Commission** is responsible for designating **seasonal** periods for specific seasonal industries. Generally, a seasonal industry operates less than 26 weeks during a calendar year. Seasonal employment, though, is specific to the industry within the designated season. (26 M.R.S.A., Ch. 13, §1251(1)). For questions about your industry or business, contact the Field Advisor and Examiner nearest you (contact information can be found in the Helpful Contact Information section in the beginning of this Guide). The following is a partial list of seasonal industries that have been determined by the Unemployment Insurance Commission.

- ***Seasonal Industries Determined by the Unemployment Insurance Commission (partial listing)***

Industry	**Season Dates**
Apple Harvest	09/01-10/20
Blueberry Harvest	07/20-09/20
Applesauce (Packing/Processing)	10/10-11/15
Shelled Beans (Packing/Processing)	08/15-10/20
String Beans (Packing/Processing)	07/20-09/15
Beets (Packing/Processing)	09/01-10/30
Blueberries (Packing/Processing)	07/20-09/20
Carrots (Packing/Processing)	10/01-11/30
Corn (Packing/Processing)	08/15-10/20
Dandelions (Packing/Processing)	05/15-10/15
Golden Relish (Packing/Processing)	08/15-10/20
Green Tomato Relish (Packing/Processing)	08/01-09/15
Peas (Packing/Processing)	07/01-08/10
Peas (Packing/Processing) Aroostook County	07/10-08/30
Pumpkins (Packing/Processing)	09/20-10/30
Squash (Packing/Processing)	09/20-10/30
Turnips (Packing/Processing)	10/01-11/30
Fiddleheads (Packing/Processing)	05/15-10/15
Summer Recreation	06/15-09/15
Camping Areas	05/15-09/30
Wreath Making, Decorating, Boxing, Tipping	10/01-12/24
Washing, Bleaching, Drying and Curing of Sea Moss	05/15-10/15
Whitewater Rafting	Third Thursday in April through the First Tuesday after 25 Weeks
Ice Fishing Tip-Ups Manufacturing	07/01-12/15
Ski Industry, Snowmobile Trail Construction and Maintenance	12/01-04/30
Summer Cruise Boats, Party Boats (Fishing and Sightseeing), Summer Visitor Guide Program	05/15-11/01
Baseball	First Week of April through Third Week of September
Amusement Parks	05/10-11/03

Industry	Season Dates
Amusements such as Carnivals, Amusement Rides, Agricultural and Horticultural Societies Fairs, Summer Theaters, Summer Festivals	04/15-9/15
Automobile Racing—including Drag-Strip and Stock Car Racing	04/15-9/15
Yacht Clubs, Marinas, Sea Kayaking, and Oceanariums	04/15-9/15

According to 26 M.R.S.A., Ch. 13, §1251(3)(B), a potato packing business that customarily operates during a single regularly recurring period and does not exceed 26 weeks will be deemed seasonal. According to 26 M.R.S.A., Ch. 13, §1251(3)(A), the following industries are deemed to be seasonal if the operational period or periods do not exceed 26 weeks during the calendar year:

- Variety Stores
- Trading Posts
- Hotels, Motels, Inns, and other Lodging Facilities
- Sporting Camps
- Boys' and Girls' Camps
- Restaurants and other Eating Establishments
- Frozen Milk Products

Seasonal businesses are required to file "Quarterly Wage Reports" each quarter, regardless of whether the business is in operation. A penalty will be assessed to the unemployment insurance accounts of employers who do not file each quarter. Seasonal businesses should file reports indicating zero wages for quarters in which they have no activity.

• *Reporting Seasonal Information*

If a worker is performing services for a business that is deemed to be seasonal, wages should be reported quarterly as follows:

- If the service is not connected with the seasonal part of the business, all of the wages for that service should be reported as nonseasonal.
- If a worker performs services both in season and out-of-season, then the wages paid during the season should be reported as seasonal wages. Wages outside of the seasonal period should be reported as nonseasonal wages.
- Wages paid to a worker entirely outside of the season are designated as nonseasonal wages.

You're an Employer. Now What?

When you first become an employer in the State of Maine, you must request and file an application for tax registration.

Setting Up Your Employer Account

When you first become an employer in the State of Maine, you will become liable for various taxes. The Bureau of Unemployment Compensation (BUC) has a website for registration for both Maine Revenue Services (MRS) and the Bureau of Unemployment Compensation.

www.file4ui.com

On the right of this website is a yellow starburst for "Online Unemployment Employer Registration." This registration has help menus to assist in completing the application. Information will be sent to your business a few days following the registration online. If you require further assistance with the application, a list of Field Advisor and Examiners is located in the Helpful Contact Information section at the front of this Guide or you may e-mail **division.uctax@Maine.gov** or call a representative at (207) 621-5120.

- ***Notice of Liability***

A "Notice of Unemployment Insurance Liability" (Form Me. FX-1.1) simply informs employers they have met the general or employment-specific conditions to incur taxes under Maine Employment Security Law. The Notice also informs employers that an account has been created with the Unemployment Insurance system and gives each employer an account number. An employer's liability under the law becomes final 30 days from the mailing date of the Notice of Unemployment Liability. An employer may appeal the "Notice of Unemployment Insurance Liability" within 30 days. An explanation of employer tax rates and how they are calculated is included later in this guidebook.

Liability

In general, an employer becomes **liable** when he or she pays workers $1,500 or more in gross wages in a calendar quarter, or for work performed in employment in any part of the day in 20 weeks in the calendar year. (26 M.R.S.A., Ch. 13, §1043(A-1)). This encompasses most employers.

Successor Employers and Their Liability

There are two types of successor employers: Acquisition in toto and severable portion.

- ### *Acquisition in Toto*

If substantially all of a business' assets are purchased, the employer may be considered a successor employer (26 M.R.S.A., Ch. 13, §1043(9)(B)). Multiple factors are used to make this determination, such as continuity in management, equipment used in the business, and the amount of time the business was closed between the sale and the opening/re-opening. When substantially all of the assets are purchased, the successor employer inherits the previous owner's experience rating. ***Note: Not only is the new owner liable for the employment results of retaining or laying off the previous employer's workers, he or she may be held responsible for any outstanding balance owed to the Bureau of Unemployment Compensation.*** If both the predecessor and successor employers are already liable to pay contributions, then the two experience ratings are combined and the successor employer will inherit an average of the two rates. Businesses purchased out of bankruptcy may or may not acquire the predecessor. For more information, please refer to 26 M.R.S.A., Ch. 13, §1221) in the law, contact a representative by calling (207) 621-5120, or by email at **division.uctax@Maine.gov**.

- ### *Severable Portion*

An employer who purchased only a distinct portion of the experience rating of a business, such as a retail store, that was a distinct part of a larger business operation, might be considered a new employer. This "severable" portion of the business must meet liability under its own conditions. (26 M.R.S.A., Ch. 13, §1043(9)(G)).

Other Types of Employers and Their Liability

- ### *Agricultural Labor*

Liability is determined differently for work deemed to be agricultural labor. An employer must pay $20,000 or more in gross wages during a calendar quarter for agricultural services, or employ at least 10 individuals in **agricultural labor** on a day in each of 20 different weeks in a calendar year. (26 M.R.S.A., Ch. 13, §1043(11)(A-2)). Contact your nearest Tax Field Advisors, please refer to the Helpful Contact Information section at the front of this Guide.

- ### *501(C)(3) Employers*

Despite their exemption from federal unemployment taxes granted by the Internal Revenue Service, some 501(C)(3) nonprofit organizations may be liable for state contributions. Liability is established when four (4) or more individuals are employed on the same day for 20 weeks in a calendar year, though not necessarily for consecutive weeks. This is known as the "4 for 20" provision. (26 M.R.S.A., Ch. 13, §1043(11)(A-1)(3)).

- ### *Private Household (Domestic) Employers*

Service in an employer's private household, such as cooking, cleaning, childcare, maids, butlers, personal care attendants, or caretakers meets liability when $1,000 or more in gross wages are paid

in a calendar quarter. Organizations at a college or university, such as a fraternity or sorority house, are also included in this category. (26 M.R.S.A., Ch. 13, §1043(11)(A-3)).

- ***Governmental Entities***

Governmental employing entities (state, county, municipal) are automatically liable for covered employment. Unlike other types of employers, there is no time period or wage level that establishes liability. (26 M.R.S.A., Ch. 13, §1043(11)(A-1)(1)).

- ***Several Businesses/Organizations Controlled by the Same Interests***

In this case, when two or more businesses/organizations are added together, the primary controlling interest is the liable employer, not the individual businesses. (26 M.R.S.A., Ch. 13, §1043(9)(D)).

- ***Federal Unemployment Tax Act (FUTA) Liability***

When a business is already liable for FUTA taxes in the current or previous calendar year and begins employment in Maine, that business is automatically required to make contributions to the State of Maine. (26 M.R.S.A., Ch. 13, §1043(11)(A-1)(1)).

- ***Voluntary Election***

Employers who utilize services from workers not covered under Maine Employment Security Law may choose to make voluntary contributions. For example, a small nonprofit organization that does not meet liability under the "4 for 20" provision may want to elect voluntarily to cover their employees in case of layoffs. Voluntary coverage will take place for no less than two years, and can occur only with approval from the Commissioner of Labor. Additionally, employers may elect to cover employment not required by the Law (for example, family members). Each of these elections will influence the employer's overall experience rate. (26 M.R.S.A., Ch. 13, §1222(3)(A)

- ***Leasing Companies***

Companies that lease workers to client companies are responsible for paying unemployment taxes on the gross wages paid to the leased workers. The leasing company may meet general conditions of liability by itself, but an unemployment insurance account must be set up in the name of each client of the leasing company. Leasing company clients are responsible for paying contributions, interest and penalties if the leasing company fails to do so. (26 M.R.S.A., Ch. 13, §1043(8-A)(6)(a)).

- ***Separation of Liability***

Employers who have multiple forms of employment within one business may have different types of liability for each form of employment. Determining liability may require individual examinations of each type of employment. Domestic, agricultural, and general employment

each have different liability conditions, and so each type of employment must be reviewed individually to identify the proper standard of liability for that employment. For more information contact a representative at (207) 621-5120, **division.uctax@Maine.gov**, or the Tax Field Advisor and Examiner nearest you (contact information can be found in the Helpful Contact Information section in the front of this Guide).

- ***Taxable Employment vs. Direct Reimbursement***

Governmental entities and 501(C)(3) nonprofit organizations may choose to make reimbursement payments to the Bureau of Unemployment Compensation for unemployment benefits paid in a calendar year instead of making contributions at a certain tax rate (26 M.R.S.A., Ch. 13, §1221(10)). This option obligates the employer to pay benefit assessments on a dollar for dollar basis, <u>including dependency allowances</u>, ***regardless of the reason the worker is separated from the employer.*** During periods of high unemployment, you may be assessed an additional amount up to one-half (1/2) of your potential assessment amount for extended benefits or, if you are a governmental entity, an amount equal to your potential assessment. ***In choosing direct reimbursement, an employer forgoes purchasing unemployment insurance coverage.*** Contrary to the case when an employer makes regular unemployment contributions, direct reimbursement of benefit charges cannot be waived. If the former worker is found to have been ineligible to receive benefits and the benefit is recovered, the employer account is credited in the amount recovered. Therefore, the employer should determine whether direct reimbursement might risk increasing costs before applying for direct reimbursement status.

To start direct reimbursement, the organization must request the direct reimbursement option in writing within 30 days of its status determination, or by December 1 of any calendar year (26 M.R.S.A., Ch. 13, §1221(10)(A)). Direct reimbursement employers are required to keep thorough records and report payroll information on a quarterly basis. The Bureau of Unemployment Compensation bills employers for amounts charged to them for claimants. Payments are due within 30 days of the date billed. Late direct reimbursement payments are subject to the same interest and penalties as regular tax payments (for more information, see the Unemployment Account Delinquencies section on page 14). Failure to pay on a timely basis could result in the revocation of direct reimbursement status.

Note: Nonprofit organizations who elect direct reimbursement status are required to post a surety of 5% of the taxable payroll to be held by the Treasurer of the State of Maine on behalf of the Department of Labor. Instructions on this option are provided at the time of election.

Understanding Your Employer Account

The Bureau of Unemployment Compensation handles issues regarding the establishment of employer liability, reporting requirements, delinquency and claims filed by former workers for unemployment insurance benefits.

How Your Rate Is Calculated

Each year, you will receive a “Notice of Contribution Rate” (Form Me. TAX-13). It explains how your individual rate for a calendar year was determined. There are a number of factors considered when computing an employer’s tax rate, such as the annual taxable wages of the employer, benefit charges, and contributions paid.

An established employer’s rate is determined by looking at all the contributions paid, minus the benefits charged to your account since meeting liability. The remainder is called the beginning excess for the calendar year of your rate determination. All the contributions paid from July 1 through June 30 are added to the beginning excess. The benefit charges for that time period are subtracted from the beginning excess. Your average taxable wage (over the past three years) is divided into the ending excess to determine the reserve ratio.

The formula looks like this:

Contributions Paid Minus Benefits Charged from Date of Liability = Beginning Excess

Beginning Excess Plus Contributions Paid (07/01-06/30) minus Benefit Charges (07/01-06/30) = Ending Excess

Ending Excess Divided By The Average Taxable Wage = Employer’s Reserve Ratio

This reserve ratio is combined with that of all other taxable employers, from one through twenty, in descending order. The most positive ratios are in the lowest rate categories and are designated as “one.” The highest rate category has the most negative reserve ratios, and is designated as “twenty.” Approximately five percent of employers comprise each category. Rates do not reflect types of industries. They show tax relationships to all employers based on reserve ratios.

If the reserve ratio is “0,” your account is not eligible for a rate computation. Your contribution rate is the average contribution rate, which is the rate for new employers. This information is also contained on your “Notice of Contribution Rate” (Form Me. TAX-13). The notice is not a bill; its purpose is to explain how your individual rate was calculated.

Competitive Skills Scholarship Program (CSSF) –

26 M.R.S.A. §1166 and chapter 25, subchapter 5.

This program is administered by the Maine Department of Labor and provides funding for education, training and support to customers of the Department of Labor's CareerCenters to prepare them for high-wage jobs in industries with significant demand for skilled labor. The program is funded by a percentage of taxable wages, as that term is defined in the unemployment contributions law. The CSSF contribution paid by employers began in 2008 on the combined quarterly Maine income tax withholding and unemployment contributions tax return (Form 941/C1-ME) filed with Maine Revenue Services. The CSSF contribution is offset by a reduction in required unemployment contributions from employers.

Terminating Your Account

An employer may request that his or her account be terminated if it can be shown that liability conditions are no longer met (26 M.R.S.A., Ch. 13, §1222). The "Application for Termination of Coverage" (Form Me. FX-3) starts the account termination process. You can obtain a copy of this form from our website at **http://www.state.me.us/labor/unemployment/tax.html** (choose "Unemployment Tax Forms"). You may also request a copy of this application by calling a representative at (207) 621-5120, emailing **division.uctax@Maine.gov**, or by contacting the nearest Field Advisor and Examiner (contact information is included in the Helpful Contact Information section in the front of this Guide). Complete the "Application for Termination of Coverage" (Form Me. FX-3) and retain a copy for your files. Send the original and a second copy of the form to:

Maine Department of Labor
Bureau of Unemployment Compensation
47S State House Station
Augusta, ME 04333-0047

Your application must be postmarked on or before January 31 of the year the termination is to be effective. You will receive notice of approval or denial of your termination application. If you have more than one type of employment in your business, all applicable sections of the application must be completed.

Terminating Your Account vs. Closing Your Account

Terminating your account is not the same thing as closing your account. If you wish to reuse or retain your unemployment account number and will resume employment activity within seven calendar quarters, your account should be closed. If your intent is to permanently close your account and no longer operate for an indefinite period to exceed seven calendar quarters, the account should be terminated. The Commissioner of the Department of Labor can terminate closed accounts that are not reopened within seven calendar quarters.

Reporting Requirements

Keeping accurate records is always a good business practice, but it is required for reporting tax information. ***It is your responsibility to maintain up-to-date reports, and notify the Maine Department of Labor and Maine Revenue Services of any changes to your account.*** (26 M.R.S.A., Ch. 13, §1082(7)).

Audits

Good record keeping is also important if your business is audited. An **audit** is a systematic examination of an employer's books and records. Receiving a notice of an audit does not mean that an employer is noncompliant. In fact, 10 percent of Maine's employers are randomly audited each year to ensure proper wage reporting in a single calendar year. If randomly audited, an employer will not be randomly audited again for a minimum of four years. However, the employer may be audited again at any time for cause, such as in response to complaints, or if an employer experiences sudden increases or decreases in employment. Businesses are also more likely to be audited based on a new employer status or based on industry. (26 M.R.S.A., Ch. 13, §1082(7)).

Filing Quarterly Reports

Employers must submit the "Combined Quarterly Report" (Form 941/C1-ME) no later than **30** days after the end of a calendar quarter.

Quarter	Dates	Due Date
January through March	01/01-03/31	04/30
April through June	04/01-06/30	07/31
July through September	07/01-09/30	10/31
October through December	10/01-12/31	01/31

To make changes to your quarterly reports, employers should use an "Authorization to Correct Wages" (Form Me. C-1A).

Joint Reporting

To simplify the reporting process for employers, tax filing occurs concurrently between the Maine Department of Labor and Maine Revenue Services. This allows employers to fill out one form, such as the "Combined Quarterly Report" (Form 941/C1 ME), and make payments to one address. However, employers have distinct responsibilities to each agency.

For example, when you file a "Combined Quarterly Report" (Form 941/C1 ME), and you did not pay the amount in full, you will receive a combined bill from Maine Revenue Services. After the first combined bill, each agency will send separate bills.

Delinquent employer accounts are handled by more than one State agency. If you become delinquent, arrangements and payments must be made to both agencies where delinquency has occurred, i.e., the Bureau of Unemployment Compensation and Maine Revenue Services.

> **Reminder**: Although the Department of Labor and Maine Revenue Service allow joint filing, each agency defines terms differently. After the first combined billing, collection activities are also handled separately by both agencies.

Unemployment Account Delinquencies

If you have not filed your quarterly report and/or made your required payments, you will receive an account statement within four to five days after the quarterly due date. If your report is not filed or paid six weeks following your "Combined Quarterly Report" (Form 941/C1 ME) due date, you will receive a "Statement of Account and/or Notification of Assessment" (Form Me. TAX-15).

At this point, you have 30 days to appeal new assessments. If you do not appeal, the Department of Labor may take several possible steps to ensure your compliance. (26 M.R.S.A., Ch. 13, §1225).

Once the appeal period is passed, and if you are still delinquent, additional penalties will accrue. You will receive a "Final Notice and Demand for Payment" (Form Me. TAX-19) to pay the remaining balance. Other advance collection procedures include:

- Assets frozen/levied (26 M.R.S.A., Ch. 13, §1233(2))
- Disclosure Court to determine ability to pay (26 M.R.S.A., Ch. 13, §1229)
- Personal Responsibility – The individual responsible for overseeing financial obligations for corporations becomes liable for the remaining balance. (26 M.R.S.A., Ch. 13, §1233(1))
- Withholding/Revocation of certain licenses (26 M.R.S.A., Ch. 13, §1232)
- Lien – The State of Maine will claim an interest in your property until debt is repaid. (26 M.R.S.A., Ch. 13, §1227(1))
- Tax refunds may be used to pay the debt. (26 M.R.S.A., Ch. 13, §1233(5))

Tax Appeals

An employer has the right to appeal two types of determinations made by the Department of Labor – tax determinations and benefit determinations. Tax determinations are processed through the Unemployment Insurance Commission.

Benefit appeals are processed through the Division of Administrative Hearings. For more information about benefit appeals, see page 21.

Common reasons for tax hearings include:

- Employer disputes regarding workers' services as "covered employment" (refer to legal standard commonly referred to as the "ABC Test" on page 2.

- Benefit disputes by a claimant relating to monetary eligibility for unemployment

- Successor employers who may or may not have "acquired" the business (tax status issues)

- Determinations of who is an employer or what is employment (tax liability issues)

- Disputes concerning collection activities with which an employer disagrees (tax delinquency issues)

Tax appeals must be filed within 30 days of the mailing date on the "Notice of Determination" form. Hearings with the Unemployment Insurance Commission can take place either by telephone or in person. Appeals to the Unemployment Insurance Commission may be mailed to 57 State House Station, Augusta, ME 04333-0057. For more information about presenting your appeal, see page 22, Hearings: Presenting Your Best Case. This information also applies to tax appeals.

For more information about tax appeals, call the Field Advisor and Examiner nearest you (contact information is located in the Helpful Contact Information section at the front of this Guide) or the Unemployment Insurance Commission at (207) 623-6786.

Separation From Employment and Claims for Benefits

When an employer lays off a worker, there is separation from employment. Separation from employment is the primary reason former workers file claims for unemployment benefits. To initiate a claim for unemployment benefits, a separated worker can file a claim for unemployment benefits:

- Online at **www.file4ui.com**;
- Calling 1-800-593-7660; or
- Download an Initial Claim Form (Me. B-9.2) from our website at **www.file4ui.com**, under Publications and Forms.

Claims for unemployment benefits can also be filed on forms issued by employers. The employer may obtain a "Separation Information and Claim Form" (Form Me. B-9.1) by calling a Department of Labor representative at (207) 621-5100. This form needs to be filled out by both the employer and the former worker.

Forms can also be obtained at one of the Department of Labor CareerCenters, or downloaded from the Department's website. Any questions regarding benefit payments, benefit charges or Deputy's Decisions should be directed to the UC Claims Centers by calling 1-800-593-7660.

Your call will be referred to the appropriate staff person for information. You may also direct your inquiries in writing to one of the UC Claims Centers (see addresses on Page i).

Eligibility for Benefits

The unemployed worker must meet specific requirements established by the Employment Security Law to be eligible for unemployment compensation benefits.

The principle eligibility conditions provide that a claimant:

1. Must be totally or partially unemployed;

2. Must file a claim;

3. Must be able and available for work (this requirement may be waived in some circumstances);

4. Must be actively seeking work (this requirement may be waived in some circumstances); and

5. Must have been paid at least two times the Annual Average Weekly Wage in each of two different quarters and have total wages of at least six times the Annual Average Weekly Wage in insured work during the individual's base period. Currently the Annual Average Weekly Wage is $685.27. Therefore, to establish a benefit year on June 1, 2009, or later, an individual must have wages of at least $1,370.54 in each of 2 different calendar quarters and at least $4,111.62 in the base period. The Annual Average Weekly Wage changes on June 1 of each year.

"Insured work," means service performed in employment for an employer who is subject to the taxing provisions of the Employment Security Law. "Base period" means the first four of the last five completed calendar quarters immediately prior to the first day of an individual's benefit year. "Alternate Base Period" means the last four completed calendar quarters prior to the first day of an individual's benefit year. "Benefit year" is the one-year period beginning with the date with respect to which an individual is determined monetarily eligible to receive benefits.

If a claimant's eligibility for benefits is questioned, all facts regarding the issue are obtained in a scheduled fact-finding interview after which a written Deputy's Decision is issued to all interested parties. The claimant or the employer may appeal the decision (see Benefit Appeals of Deputy's Decision or Separation and Charge Notice on page 21).

Once an individual has filed a claim for unemployment compensation benefits, the most recent employer is mailed a form "Request for Separation/Wage Information," (Form Me. B-1DP). Once completed and returned to the Bureau, this form should provide the necessary information to proceed with the individual's claim for benefits. This form also provides the employer an opportunity to explain why the claimant is no longer working for the employer and advises the employer of any fact-finding interview scheduled to gather facts surrounding the separation. The claimant's immediate supervisor or someone having direct knowledge of the circumstances leading to the separation should be available to provide facts during the interview.

If the claimant's separation was due to a lack of work, the company will receive a "Separation Decision and Charge Notice," (Form Me. BD-1). This form will inform you whether or not your experience rating record will be charged for the claimant's unemployment compensation benefits. You should review this form carefully. If you feel the information is incorrect you should immediately call one of the UC Claims Centers and you should file an appeal with the Division of Administrative Hearings as outlined on the notice.

Disqualification for Benefits

Benefit disqualifications are imposed under the Law chiefly for:

1. Voluntary separations from regular employment without good cause attributable to the employment, except in specific circumstances;

2. Separations due to retirement;

3. The duration of an unpaid voluntary leave of absence or sabbatical leave that has been mutually agreed to by the employee and the employer;

4. Discharges for work-connected misconduct (see Discharge – Burden of Proof and Evidence below);

5. Periods of suspension by the employer as discipline for misconduct;

6. Refusals of referrals to suitable job opportunities;

7. Refusals of offers of suitable work;

8. Inability of an employer to contact a former employee for the purpose of a job offer;

9. Receipt or entitlement to dismissal wages, wages in lieu of notice, terminal pay, vacation pay, or holiday pay;

10. Misrepresentation in the filing of claims;

11. Discharges related to convictions for work-connected felonies or misdemeanors; or

12. Weeks of unemployment attributable to work stoppages resulting from labor disputes. (There are exceptions due to employer's failure to observe health and safety standards.)

Lack of Work vs. Other Separations (i.e. Voluntarily Quitting or Discharge)

In general, when you (the employer) initiates separation from covered employment (such as in a temporary layoff), the reason for unemployment is "lack of work," in which case (if the individual meets all of the other requirements) the former worker may receive unemployment benefits. For information on qualification requirements, call a UC Claims Center Representative at 1-800-593-

7660. However, if due to a lack of work, a worker who is normally employed full-time is employed less than full-time, the worker may qualify for partial benefits. If the claimant is only separated for no more than 1 week with no earnings, the employer should obtain an "Unemployment Benefits and Earnings Report" (Form Me. B-9) and submit it to the nearest UC Claims Center (mailing addresses for the UC Claims Centers are included in the Helpful Contact Information section at the front of this Guide).

On the other hand, when the worker "voluntarily quits" covered employment, or when the employer separates a worker for misconduct (such as for willingly violating the rules of the company), the former worker may or may not be eligible for unemployment benefits. In both cases, the employer will receive a "Request for Separation/Wage Information" (Form Me. B-1DP), which needs to be returned to the UC Claims Center. Information from this form, in conjunction with a fact-finding interview, will be used to make a determination of eligibility.

Discharge – Burden of Proof and Evidence

A discharge is a termination of the employer-employee relationship which is initiated by the employer. An employee would be entitled to receive unemployment benefits unless he or she is discharged for misconduct connected with the work. Employment Security Law defines misconduct as a culpable breach of the employee's duties or obligations to the employer or a pattern of irresponsible behavior that, in either case, manifests a disregard for a material interest of the employer. The burden of proof is on the employer to prove that the employee's conduct meets the statutory definition of misconduct. More detail regarding what constitutes misconduct can be found in section 1043 (23)(A) and (B) of the law book, or on the Department of Labor website at **www.file4ui.com**, select "Frequently Asked Questions" or "Laws and Rules Governing Unemployment Benefits."

When an employer provides substantial evidence that an employee was discharged for engaging in criminal conduct in connection with the employment, evidence of conviction is not required to sustain a finding of misconduct.

Claims and Benefits Affect an Employer's Experience Rating

When former workers become separated from covered employment and meet eligibility requirements, they can receive weekly unemployment benefits. The benefits paid to former workers are charged to their former employers' unemployment insurance accounts. Having benefits charged to your account might increase your tax rate in the future.

Benefit Charges

Most benefit payments are charged to the account of the last employer for whom the claimant worked in excess of five consecutive weeks of full- or part-time employment. However, there are exceptions.

- Employees hired part-time and still employed in that capacity, will not be charged to the current employer's account while filing for partial benefits as long as the employee has not had a week of no work.

- Benefits paid to claimants who are filing in another state under the Interstate Plan for Combining Wage Credits have had Maine wages transferred to the state where the claim has been filed. The paying state periodically bills each participating state for a proportionate share of benefits paid to the claimant. Benefits charged to the State of Maine under the Interstate Plan for Combining Wage Credits are then charged to the experience rating account of the most recent Maine employer for whom the claimant worked in excess of five consecutive weeks.

- The State of Maine also acts as an agent for the federal government to pay unemployment compensation to federal civilian employees and to ex-servicepersons. The federal government reimburses Maine for benefits paid to these claimants in the same proportion as the claimant's earnings as a federal employee or serviceperson are to the total earnings used to determine the claim. The remaining portion of the benefits paid to these claimants is then charged to the experience rating account of the Maine employer for whom the claimant worked in excess of five consecutive weeks.

Employers are advised of all charges or adjustments to their account monthly on a "Record of Charges Under Experience Rating," (Form Me. B-29). Since Maine is billed only periodically for benefits paid by other states under the Interstate Plan, notice of these charges are made on a quarterly basis.

A written "Notice of Potential Benefit Assessment," (Form Me. BD-1 DR) notifies Direct Reimbursement employers that a claim has been filed and their records may be charged for benefit weeks paid. This provides employers an opportunity to notify a UC Claims Center if they disagree with the information contained in the notice. All charges made against that account are mailed monthly to the employer on a "Notice of Assessment," (Me. B-29 DR). This gives the employer the opportunity to review these charges and object if they believe that benefits have been improperly paid or improperly charged to their accounts. Employers electing the reimbursement option are required to reimburse the Unemployment Insurance Fund on a dollar-for-dollar basis for all benefits paid to their former employees and assessed to their accounts. Assessments are due regardless of the reasons for the employee's separation and are based on a prorated share of base period wages.

To mitigate the effects of benefits charges on your account, you may:

- Make voluntary contributions in addition to your contribution rate.

- Rehire former workers so that they are no longer unemployed and eligible to receive unemployment benefits.

  Note: When a former worker refuses your offer of employment, or when (for the purpose of recall to employment) you are unable to contact a former worker at the last known or given address, you should request a "Notice of Attempted Recall or Job Refusal" (Form Me. B-12) from a Department of Labor representative by calling any UC Claims Center at 1-800-593-7660. You may also download the form from our website at:

  www.maine.gov/labor/unemployment/tax.html **-** Click on Unemployment Tax Forms

If you believe that a former worker is not eligible to receive unemployment benefits, please contact the UC Claims Center at 1-800-593-7660. For example, the former worker might work for another employer "under the table" and still be receiving unemployment checks. You would know this based on charges to your account. The UC Claims Center will then reevaluate the claim. However, claimants' information is confidential. You will not be able to "check up" on the former worker's case after you place your request for a reevaluation.

Employers have the right to appeal notices they receive concerning benefits charged to their accounts. During the appeal process, employers are required to pay contributions. However, if the appeal body decides that the former worker is ineligible to receive benefits or has received benefits for which he or she did not qualify, employers may have a portion of the benefits charged to their accounts reimbursed. For more information about the employer appeals process, see page 20.

Partial Claims for Benefits

A full-time employee whose hours are temporarily reduced due to lack of work may be eligible for partial benefits. A special form, "Claim for Unemployment Benefits and Earnings Report" (Form Me. B-9), often called a "Green Slip," is provided to all employers to assist the worker when claiming partial benefits. This Form Me. B-9 cannot be used if there is more than one week of no work and no earnings unless the Department authorizes use for more than one week. This form requires the employer's endorsement of the employee's unemployment status and the amount of the employee's earnings or other remuneration during a particular week. An employer is required by law to provide an employee with a "B-9" or "Green Slip" when requested to do so by the employee. These forms may be obtained from the Unemployment Compensation Bureau Director's Office by calling (207) 621-5100 or by contacting a UC Claim Center at 1-800-593-7660.

An employee who has worked during part of a week and is then laid off due to a lack of work may open a claim for benefits by calling the UC Claims Center or the employer may issue the employee a "Separation Information and Claim Form" (Form Me. B-9.1). Both the employer and the employee must complete the Form Me. B-9 or Me. B-9.1.

Claimants may file for partial weekly unemployment benefits either online at **www.file4ui.com**, by mailing weekly claim cards to a UC Claims Center or by telephone. Before an individual can be paid unemployment benefits for a week in which he/she worked, they must provide the Bureau verification of their earnings. Usually the claimants provide the UC Claims Center with a copy of their check stub. However, your employee may ask you to complete a form "Verification of Earnings" (Form Me. B-9.3) in order to meet this requirement and receive benefits. This form is available on our website at **www.file4.ui.com** under "Publications and Forms."

Employer Appeals of Benefit Determinations

Benefit appeals must first be processed first through the Division of Administrative Hearings (hereinafter "DAH"), and second, to the Maine Unemployment Insurance Commission (second level of appeal), and lastly through the Maine Superior Court System. The information provided below explains how to file an appeal; and outlines your rights and responsibilities prior to, and after, the appeal hearing at all levels. If you have any questions regarding the appeal process, you can contact

the Division of Administrative Hearings at (207) 621-5001 or the Unemployment Insurance Commission ("UIC") at (207) 623-6786.

Benefit Appeals of Deputy's Decision or Separation and Charge Notice

I. Filing An Appeal With The Division of Administrative Hearings

If the employer or the claimant disagrees with a Deputy's Decision or a Separation and Charge Notice, an appeal may be filed with the Division of Administrative Hearings within **15** calendar days of the **mailing** date of the Deputy's Decision or the Separation Decision and Charge Notice. An additional 15 days for filing an appeal **may** be granted if there is "good cause" for the late filing.

There are several ways to file appeals:

- By Internet at: **www.Maine.gov/labor/appeals**. This is the fastest way to file and it immediately locks in the date of your appeal
- By telephone: (207) 621-5001 or TTY (Deaf / Hard of Hearing) 1-800-794-1110
- By Fax: (207) 287-5949
- By mail addressed to: Division of Administrative Hearings
30 State House Station
Augusta, ME 04333-0030

A. Notification of the Hearing Date and Time.

Once an appeal is filed with the Division of Administrative Hearings, all matters related to the appeal should be directed to DAH. After receiving your appeal, DAH will mail you a Notice of Hearing, indicating the date and time of the appeal hearing. Along with the Notice of Hearing, you will also receive copies of any documents the agency has related to the file as well as a booklet titled, "How to Prepare for an Appeal Hearing." Additional information about the appeal process can also be accessed through the DAH website at **www.Maine.gov/labor/appeals.**

B. Types of Hearings.

Some hearings are held via telephone. **Please note that while hearings may be conducted via cellular telephone, you do so at your own peril.** If the hearing is scheduled to be held in-person, the Notice of Hearing will include the hearing date, time and location of hearing. Please plan to arrive at the hearing site at least 15 minutes prior to the time of the in-person hearing. Presently, in person hearings are conducted in the following cities: Portland, Lewiston, Augusta and Orono.

C. What to Expect at the Hearing.

At the hearing, your entity must respond to the issues listed on the Notice of Hearing by presenting the Hearing Officer with all the information necessary for the Hearing officer to resolve the issue identified on the Notice of Hearing. You may present documents and witnesses, but witnesses should have direct personal knowledge of the events and facts at issue in the case. It is better to bring a direct supervisor or co-worker, for instance, than human resources personnel who have little knowledge of the worker beyond paperwork submitted by others. Finally, all witness testimony is taken under oath and witnesses will be sequestered while other witnesses are testifying.

D. What to Expect Following the Hearing.

The Hearings Officer will render a written decision regarding the claimant's eligibility for benefits and/or the charging of your experience rating record. You should receive this decision within 7 to 10 business days following the hearing, and if you do not, please call the Division of Administrative Hearings at the telephone number listed above.

II. Filing An Appeal With the Maine Unemployment Insurance Commission

If either party disagrees with the Hearing Officer's decision, an appeal can be filed with the Maine Unemployment Insurance Commission ("Commission") within 15 days of the date the Hearings Officer's decision was mailed. If you fail to file an appeal within 15 days of the date of the decision, you will be precluded from further appeal.

Mail or fax your appeal to: Unemployment Insurance Commission
57 State House Station
Augusta, ME 04333-0057

Fax: (207) 287-4554

Be sure to include with your appeal, any new information that you want to present to the Commission and any specific objections that may you have with the Hearing Officer's decision. A brochure "Presenting your Best Case At Your Commission Hearing" (Form UIC H-1) is available by calling (207) 623-6786.

If you do not agree with the decision of the Commission, you should request a reconsideration of that decision within 10 days of the mailing date of the Commission's decision. Your request must specify your reason(s) for reconsideration. If you do not agree with the decision or reconsidered decision of the Commission, an appeal can be filed with the State Superior Court within 30 days of receipt of the Commission's decision.

Hearings: Presenting Your Best Case

You should carefully read all notices and documents sent to you by either the Division of Administrative Hearings or the Unemployment Insurance Commission. If the telephone number or address printed on the Notice of Hearing is incorrect, immediately notify either the Division of Administrative Hearings or the Unemployment Insurance Commission at the address or telephone number listed below. ***Failing to participate at the hearing may result in a default***

decision. For good cause, you may file a written request for reconsideration if you fail to appear at your hearing.

Division of Administrative Hearings
30 State House Station
Augusta, ME 04333-0030

Telephone: (207) 621-5001

Unemployment Insurance Commission
57 State House Station
Augusta, ME 04333-0057

Telephone: (207) 623-6786

Understand your responsibilities. Be sure to re-check the Notice of Hearing Notice to be certain you have the correct time and place for your hearing. If the hearing is an in-person hearing be sure to arrive early at the hearing site. If your hearing is being conducted over the telephone, you must be by the telephone number listed on the notice by the time the hearing is scheduled to start. If you do not receive a call within 15 minutes after the time the hearing was scheduled to start, you should call either the Division of Administrative Hearings or the Unemployment Insurance Commission immediately to see if there is a problem.

NOTE: The **use of a cell phone** by any party or witness is strongly discouraged. The reliability of these devices tends to be inadequate for the purposes of a recorded hearing. Any party or witness using a cell phone does so at their own risk. Parties participating by telephone are encouraged to use a landline telephone for the hearing. Parties are also encouraged to make sure that any witnesses testifying on his or her behalf by telephone use a landline telephone.

How To Prepare for an Appeal Hearing

Depending on whether you are appealing a tax decision or a benefits decision be prepared! Prepare for the hearing by being ready to explain completely your reasons for appealing, such as facts you feel were not adequately considered by the prior decision, new facts, additional documents, and witnesses.

Division of Administrative Hearings:

Hearings before the Division of Administrative Hearings are "*de novo*" hearings. This means you should be prepared to present all of your evidence, including testimony and documents, a new. The Hearings Officer will not consider any evidence considered by the Deputy unless you present it at the appeal hearings. Consequently, this is an opportunity for you to gather your evidence and present all the facts necessary for the Hearings Officer to issue a decision.

Unemployment Insurance Commission:

The Unemployment Insurance Commission is comprised of three members representing the public, employers, and labor. The Commission is appointed by the Governor and confirmed by the Maine State Senate. Appeal hearings before the Unemployment Insurance

Commission, on the other hand, is a forum in which to introduce new and additional evidence, **not** to repeat previous testimony.

You must respond to the issues listed in the Notice of Hearing by presenting the Commission with all necessary information. You may present documents and witnesses. Witnesses should have direct personal knowledge of events and facts. It is more helpful for your appeal to bring a direct supervisor or co-worker than to bring human resources personnel who may have little knowledge of the worker beyond paperwork. You may contact the Commission at (207) 623-6786 to issue a subpoena to any witness you feel might fail to appear or produce documents. Witnesses must appear in person or via telephone; they may not appear only by written statement. Any other documents should be sent to the Unemployment Insurance Commission, 57 State House Station, Augusta, ME 04333-0057 at least five days prior to the scheduled hearing if the hearing will be conducted by telephone. Helpful documents may include tax forms, purchase and sale agreements, asset value statements, letterheads or bill stubs, receipts and/or contracts.

A lawyer or authorized agent may help you prepare for the hearing and appear with you during your hearing. You and your lawyer or authorized agent are welcome to review your case file at the Unemployment Insurance Commission at 57 State House Station, Augusta, ME 04333-0057 and receive a copy of any previous hearings. You must make an appointment with the Unemployment Insurance Commission to view your file or receive a copy of the previous hearings. (There is a nominal fee for audio copies.)

Once the Commission has considered the evidence presented at the hearing, it will issue a written decision that will be sent to the parties by regular mail. You may ask the Unemployment Insurance Commission to reconsider its decision. This request must be filed with the Unemployment Insurance Commission at 57 State House Station, Augusta, ME 04333-0057 within 10 days of receipt of the original decision, or it may be dismissed.

For due process issues after the Unemployment Commission reconsiders, you may appeal to the Maine Superior Court within 30 days of the receipt of the decision.

Glossary

501(C)(3): This is a status as a nonprofit organization granted by the IRS. To qualify, an employer must meet these five requirements:

1. Be a corporation, a trust, or a similar entity.
2. Operate exclusively for charitable purposes.
3. Not give benefits to shareholders or any individual.
4. Not substantially attempt to influence legislation.
5. Not participate in (at all) a political campaign for public office.

ABC Test: 26 M.R.S.A., Ch. 13, §1043(11)(E) is the legal standard used by the Maine Department of Labor, Bureau of Unemployment Compensation to determine if "employment" exists for the purpose of unemployment contributions (tax), and is commonly referred to as the ABC Test. The ABC Test determines if the services performed by an individual have the status of covered employment or if the individual's services are those of someone independently established in the trade, occupation, profession, or business. Independently established service providers are commonly referred to as "independent contractors." However, no definition of an independent contractor exists under Maine Employment Security Law. The ABC Test has three important parts, all of which the employer must meet for the presumption of employment to be negated. If the employer fails to meet even one part of the ABC Test, the presumption that the individual's services are employment remains. The three parts of the ABC test review employer control/direction of the worker, place(s) of business or course of business, and proof that the worker is independently established in the trade. You may read the statutory language of the legal standard commonly referred to as the ABC Test by visiting our website, **www.Maine.gov/labor/unemployment/tax.html**

Acquisition: Something, usually a business, which has been bought or obtained recently.

Agricultural Labor: Agricultural labor generally refers to services performed on a farm for an employing unit that is connected to cultivating soil or raising or harvesting any agricultural, aquacultural or horticultural commodity. This includes tending to livestock, bees, poultry, and other animals. Types of farms acceptable in this definition are stock, dairy, poultry, fruit, fur bearing animals and truck farms, plantations, ranches, nurseries, ranges, greenhouses, orchards and similar structures.

Alternate Base Period: This refers to the four most recent completed calendar quarters prior to the first day of an individual's benefit year. These quarters are used to determine a claimant's monetary eligibility when the claimant has not earned enough wages during the regular base period.

Annual taxable wages: Annual taxable wages are the amounts of wages on which an employer pays unemployment contributions in a calendar year.

Audit Program: As part of the Maine Department of Labor's Quality Control program, a minimum of two percent of Maine's employers are selected for audit each year. The audit is performed to ensure proper reporting of wages over a single calendar year. Other reasons for audits include new employer status, large increases/decreases in employment, or industry examinations.

Average Employer Rate: This is the rate assigned to new employers upon receiving an employer account number. After two full rating periods (a minimum of 30 months), the employer will be eligible for the experience rate.

Base Period: A base period is the first four of the last five completed calendar quarters immediately prior to the first day of an individual's benefit year. These quarters are used to determine a claimant's monetary eligibility to unemployment compensation benefits.

Benefit Year: The one year period beginning with the effective date an individual is determined monetarily eligible to receive benefits.

Calendar Quarter: The calendar quarter is the time period wherein an employer may become liable if wages are paid to any worker totaling more than $1,500 or for 20 weeks of employment. Calendar Quarters are also important for wage reporting, such as the "Quarterly Wage Report" (Form 941/C1-ME). The four calendar quarters are noted as January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31.

Combined Quarterly Reports (CQR): The combined form is used for the quarterly filing of State Income Tax Withholding, State Unemployment Contributions, and the Competitive Skills Scholarship Fund assessment. These reports are due on or before the last day of the month following the quarter close date.

Tax payments on reportable wages in a calendar quarter are due on or before the last day of the month following the quarter close on the "Combined Quarterly Report" (CQR) (Form Me. C-2.6).

Contribution: A term used interchangeably with "tax."

Competitive Skills Scholarship Fund (CSSF): CSSF is an assessment collected along with unemployment insurance contributions and state withholding taxes. This assessment is used to fund training and decrease the growing skills gap facing Maine's workforce.

Direct Reimbursement Employer: Governmental entities and nonprofit 501 (C)(3) nonprofit organizations may choose to make reimbursement payments to the Bureau of Unemployment Compensation instead of making regular contributions paid by taxes. To sign up for direct reimbursement status, the employer must file a written request within 30 days of its subject status determination. Changing the payment method should occur within 60 days prior to the beginning of the year of the change.

Employer/Employing Unit: Under the law "**employer**" and "**employing unit**" are considered the same. An employer is any business or individual that pays an individual for services. Employers can take many of the forms listed below:

- Sole Proprietor
- Governmental – federal, state, county and municipal;
- Limited Liability – individuals, partnerships, corporations; Individuals (estates and trusts),
- Partnerships – firms, associations, trusts, joint ventures;
- Corporations – public, private, nonprofit, foreign, domestic, c-corp, and s-corp.

Employment: Employment is the entire service of an individual performed for some kind of wage, under any type of contract. The law presumes that a worker's services are employment unless the employer can prove that the worker's services are exempt. A three-part test determines whether a worker's service should be considered covered employment (See ABC test above).

Excess Contributions: A relevant factor of how an employer's experience rate is determined, "excess" is defined as the difference when the amount charged to the employer's account is subtracted from the amount of contributions the employer has made to the account.

Excess Wages: As of January 1, 2000, the taxable wage base is the first $12,000 of gross wages paid to a worker in a calendar year. Any wages paid in excess of this taxable wage base are "excess wages" and are not subject to unemployment insurance contributions (tax).

Experience Rating: Employers are eligible for the experience rate after the new account has been set up and the employer has been assigned the average employer rate. The employer's experience rate is determined through multiple factors over time. The rate may be higher or lower than the average employer rate. A rate reflects an employer's history of average taxable wages, contributions paid, and benefits charged. New business will qualify for an experience rating computation after they have been liable to pay contributions for a period of two calendar years.

FUTA: The Federal Unemployment Tax (FUTA) is one of two taxes generally paid by employers. FUTA is paid to the IRS and finances the administrative costs of unemployment insurance.

Good Cause: For the purposes of Employment Security Law and regulations, the Commission determines that "good cause" shall be when the unemployed individual is ill or when illness of the unemployed individual's spouse or children, or parent or stepparents, brothers or sisters, or relatives who have been acting in the capacity of a parent of either the claimant or spouse, require his or her presence; or he or she is in attendance at a funeral of such a relative; or required by religious conviction to observe a religious holiday; or required by law to perform either a military or civil duty; or other cause of necessitous and compelling nature. Incarceration as the result of a conviction for a felony or misdemeanor is excluded from the definition of "good cause."

Insured Work: Services performed in employment for an employer who is subject to taxing provisions of the Employment Security law.

Interested Party: An interested party means the claimant, the claimant's most recent employer, the most recent chargeable employer prior to the claimant's filing a claim for benefits or the deputy.

Liability: An employer is determined to meet liability for unemployment purposes under 26 M.R.S.A., Ch. 13, §1043(9).

Misconduct: Employment Security Law defines misconduct as a culpable breach of the employee's duties or obligations to the employer or a pattern or irresponsible behavior which, in either case, manifests a disregard for a material interest of the employer. This definition relates only to an employee's entitlement to benefits and does not preclude an employer from discharging an employee. A detailed explanation of misconduct can be found in section 1043 (23) of the Employment Security Law.

Remuneration: Payment for services.

Reserve Ratio: The total excess wages on a date divided by the average taxable wages, and shown as a percentage.

Seasonal Employment: Work performed in an industry designated as seasonal during the seasonal time period determined by the Unemployment Insurance Commission or determined by statute.

Successor Employer: Successor employers are those that have acquired in whole or in part a previously liable employer's business, including certain uncollected obligations. A **successor employer from an acquisition in toto** acquires substantially all of the assets from another

organization, trade or business. Successors immediately become liable for coverage, and inherit the experience of their predecessors. Successor employers may be held responsible for unpaid tax liabilities.

SUTA: State Unemployment Tax (SUTA) is a required tax paid by employers regardless of federal liability, which finances benefits disbursed from the Unemployment Insurance Fund.

Unemployment Employer Account Number: New employers are issued account numbers when they have met liability by filing an application or submitting a quarterly report. The account number is used to process all of the employer's reports and payments. The employer account number should also be used on all correspondence with this Department.

Unemployment Insurance Commission: This body, comprised of three members representing employers, labor, and the general public hears employer, claimant, and deputy appeals. A decision is rendered, and any of the parties previously mentioned may appeal within 10 days. The Commission members are appointed by the Governor and approved by the State Senate for a term of six years.

Voluntary Contribution: Voluntary contributions may be made in addition to regular contributions within 30 days of a rate notice. After voluntary contributions are made, the employer's tax rate is recalculated to show the additional payment. Voluntary contributions can help an employer improve their contribution rate. A new employer receives the average employer rate and cannot elect to make voluntary contributions.

Voluntary Election: With permission from the Commissioner of Labor, an exempt employing unit may choose voluntarily to be covered by unemployment insurance. If an otherwise exempt employer is allowed to be covered voluntarily, it must make contributions for a minimum of two years.

Wages: Wages refers to all remuneration for personal services. Wages includes commissions, bonuses, severance or terminal pay, gratuities, and the cash value of other forms of payment, such as room and board. Vacation and holiday pay, as well as compensation to corporate officers (for services outside of stock ownership) are also wages.

Appendix A:

Table of Forms

Form No.	Title	This Form is Referenced on Page(s)
Me. C-1A	Authorization to Correct Wages (1 page) An employer uses this form to correct wage records on file with the Bureau of Unemployment Compensation.	13
Me. C-2.6	Employer's Multi-Quarter Contribution and Payroll Report (Seasonal) (2 pages – Front and Back) A seasonal employer uses this form to report seasonal and nonseasonal wages for all four calendar quarters to the Bureau of Unemployment Compensation.	26
Me. FX-1.1	Notice of Unemployment Insurance Liability (1 page) An employer is informed of their liability status with this form. Employers may appeal their liability status within 30 days of the receipt of this form.	7
Me. FX-3	Application for Termination of Coverage (1 page) An employer initiates a termination process for their account with this form.	12
941/C1-ME	Application for Tax Registration (2 pages from Application Booklet) An employer applies to register for Maine general taxes with Maine Revenue Service and for Maine unemployment insurance with the Bureau of Unemployment Compensation with this form.	12, 13, 26
Me. TAX-13	Notice of Contribution Rate – 2005 (2 pages – Front and Back) An employer is informed of their unemployment tax rate based on their individual experience with this form.	11
Me. TAX-15	Notification of Assessment and/or Statement of Account (1 page) An employer is made aware of the status of their account and what amount is due to their account with this form.	14
Me. B-1DP	Request for Separation / Wage Information (1 page) The employer provides additional information surrounding a former worker's separation when the former worker voluntarily quit or was discharged.	16, 18
Me. B-9	Claim for Unemployment Benefits and Earnings Report (2 pages – Front and Back) An employer submits additional information about the wages of a separated worker who has filed a claim for benefits with this form.	18, 20

Form No.	Title	This Form is Referenced on Page(s)
Me. B-9.1	Separation Information and Claim Form (2 pages – Front and Back) An employer is notified that a claim for benefits from their account is being made and the employer provides additional information for a benefits eligibility determination with this form.	15, 20
Me. B-9.3	Verification of Earnings (1 page / 2 per sheet) An employer uses this form when a claimant requests verification of earnings for a particular week. A claimant must provide proof of gross earnings before a benefit check is issued.	20
Me. B-12	Notice of Attempted Recall or Job Refusal (1 page) An employer notifies the Bureau of Unemployment Compensation when a former worker refuses employment or is unavailable for recall, and protects themselves from fraudulent benefits charges, with this form.	19
Me. B-29	Record of Unemployment Charges (1 page) An employer is notified of any benefit charges made to the employer's experience rating for the previous month. The employer has the opportunity to protect the account by verifying whether the claimant was employed, report any information on the claimant's eligibility and any offers of reemployment.	19
Me. B-29 DR	Assessment for Benefit Payments (1 page) A direct reimbursement employer is notified of benefits paid to present or former employees during the month and charged to the account and to assess for the direct reimbursement due. Payment is due no later than 30 days after the date the assessment is mailed.	19
Me. BD-1	Separation Decision and Charge Notice (1 page) A decision that notifies both the claimant and the employer that the reason for separation was due to lack of work and informs the employer whether the employer's experience rating is charged for benefits.	17
Me. BD-1 DR	Notice of Potential Benefit Assessment A direct reimbursement employer is notified of the total dollar amount of benefits the employer may be assessed during the individual claimant's benefit year. The form is issued when the claimant files an initial claim for unemployment benefits.	19

NOTES

Employer's Checklist

Have You….

- Met Liability? (see page 7)
- Filed Your Combined Application for Tax Registration? (see page 7)
- Filed Your Combined Quarterly Reports and made payments on or before:
- ☐ April 30 for the quarter ending March 31
- ☐ July 31 for the quarter ending June 30
- ☐ October 31 for the quarter ending September 30
- ☐ January 31 for the quarter ending December 31
- Notified the Department of Labor ***and*** Maine Revenue Service of any changes in employer information or status?
- Located your nearest Department of Labor Field Office?

My Tax Field Representative Is:

Name:_____

Phone No._____ Fax No._____

E-Mail Address:_____

Mailing Address: _____

_____