**State of Maine: Notice of Agency Rulemaking – November 22, 2023**

**NOTICE OF STATE RULEMAKING**

**Public Input for Rules**

Notices are published each Wednesday to alert the public regarding state agency rulemaking. You may obtain a copy of any rule by notifying the agency contact person. You may also comment on the rule, and/or attend the public hearing. If no hearing is scheduled, you may request one - the agency may then schedule a hearing, and must do so if 5 or more persons request it. If you are disabled or need special services to attend a hearing, please notify the agency contact person at least 7 days prior to it. **Petitions**: you can petition an agency to adopt, amend, or repeal any rule; the agency must provide you with petition forms, and must respond to your petition within 60 days. The agency must enter rulemaking if the petition is signed by 150 or more registered voters, and may begin rulemaking if there are fewer. You can also petition the Legislature to review a rule; the Executive Director of the Legislative Council (115 State House Station, Augusta, ME 04333, phone (207) 287-1615) will provide you with the necessary petition forms. The appropriate legislative committee will review a rule upon receipt of a petition from 100 or more registered voters, or from "...any person who may be directly, substantially and adversely affected by the application of a rule..." (Title 5 §11112). **World‑Wide Web**: Copies of the weekly notices and the full texts of adopted rule chapters may be found on the internet at: <http://www.maine.gov/sos/cec/rules>. There is also a list of rulemaking liaisons (<http://www.maine.gov/sos/cec/rules/liaisons.html>), who are single points of contact for each agency.

**PROPOSALS**

AGENCY: **94-411 - Maine Public Employees Retirement System**

CHAPTER NUMBER AND TITLE: **Ch. 803,** Participating Local District Consolidated Retirement Plan

TYPE OF RULE: Routine Technical

PROPOSED RULE NUMBER: **2023-P240**

BRIEF SUMMARY: This rule governs the Consolidated Plan for Participating Local Districts. Under the current rule, cost-of-living adjustments to eligible retirees are capped at 2.5%. The proposed amendment to the rule provides for an additional one-time, non-cumulative cost-of-living payment in the amount of 0.5% of benefits to be paid to retirees who were eligible for a cost-of-living adjustment in September 2023. Under the current rule, several special plans are available for adoption by participating local district employers. No employers or employees are currently active in special plan 4N and the proposed amendment makes that plan no longer available for adoption after January 31, 2024.

PUBLIC HEARING: December 14, 2023, 9:05 a.m., Maine Public Employees Retirement System, 139 Capitol Street, Augusta, Maine

COMMENT DEADLINE: December 26, 2023

EMAIL FOR PUBLIC TO SUBMIT COMMENTS: rulemaking@mainepers.org

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Kathy J. Morin, Director, Actuarial and Legislative Affairs, Maine Public Employees Retirement System, P.O. Box 349, Augusta, ME 04332-0349. Telephone: 1-800-451-9800 or (207) 512-3190. Email: Kathy.Morin@mainepers.org

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: None

STATUTORY AUTHORITY FOR THIS RULE: 5 M.R.S. §§ 17103(4), 18801

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED *(if different)*: N/A

AGENCY WEBSITE: MainePERS.org

EMAIL FOR OVERALL AGENCY RULEMAKING LIAISON: Kathy.Morin@mainepers.org

AGENCY: **12-170** -Department of Labor, **Bureau of Labor Standards**

CHAPTER NUMBER AND TITLE: **Ch. 9,** Rules Governing Administrative Civil Money Penalties

TYPE OF RULE: Major Substantive

PROPOSED RULE NUMBER: **2023-P241**

DETAILED SUMMARY: The Bureau of Labor Standard is proposing amendments to Chapter 9 for three principal reasons:

1. to simplify and increase the effectiveness of the administrative civil money penalties;
2. to modify the appeals process to remove the possible perception of bias; and
3. to ensure that Bureau resources are allocated in an effective and accountable manner.

Penalties

26 M.R.S.A. § 53 mandates the Bureau Director to “adopt rules to govern the administration of the civil money forfeiture provisions. The rules must include…a range of monetary assessments with consideration given to the size of the employer’s business, the good faith of the employer, the gravity of the violation and the history of previous violations.” § 53 applies only to the penalties in 26 M.R.S. Chapter 7, subchapters I-IV. The current version of Chapter 9 extends to all of Chapter 7 and applies six factors, including two which are not required by the statute, including a separate multiplier for “willful” violations. The proposed amendments simplify this by making clear that the rules only apply to subchapters I-IV, and multipliers are applied only for the four factors referred to in the statute. The proposed amended rules do not consider whether a violation is “willful”.

The proposed amended rules also modify the criteria considering the gravity of a violation. The current rules set out the limited circumstances under which a penalty is adjusted for gravity. The proposed amended rules broaden the criteria for gravity so as to take into account the effect that violations of certain labor rights can have on the employee and to make the consequences of such violations more proportionate to the hardship caused.

Under the current rules the penalty calculation starts with the minimum allowable penalty that a court could award under the statute, and then may increase the penalty for various reasons (e.g., gravity of the violation, history of violations, repeated violations) and may decrease the penalty for other reasons (e.g., a small employer or the good faith of the employer). This means that fines – even for serious violations – tend to be very low, and much lower than is required by statute. For example, under the current rules, a company with 99 low-paid employees could pay them all half of what they are owed, for several months in a row leading up to an investigation by the Director, and it is entirely feasible that the end result for that violation would be a penalty of only $142.50 per violation, with no requirement to pay the workers the money they are owed. Therefore, short of instituting court proceedings, this fine is the only leverage the Director would have under the current rules. Such a small fine does not provide a deterrent effect and it does not incentivize compliance with the law. In other circumstances, the current rules may lead to fines which are even lower than the minimum amount set out in statute (often $100) for fines if recovered in court. Deterrence is not the only factor in effective enforcement, but without an effective deterrent, widespread compliance becomes much more difficult to attain.

The proposed amended rules address this deterrence deficiency by starting with the maximum $1,000 fine allowed by statute and then offering more moderate penalty reductions based on the factors set out in statute. The largest reduction available is for small employers. This keeps the effect of any penalty more proportionate and akin to a progressive tax regime, where individuals with higher income pay more in both absolute and relative terms.

However, the Bureau also wants to direct its enforcement resources, and deploy its deterrent effect, where it is most needed, hence the new requirement to produce an evidence-based annual strategy for enforcement (more on which below).

Appeals Process

The current rules may create the perception of bias in some cases. As the current rules stand, it is the Director who oversees the appeals process; the Director either sits as the hearing officer or delegates the hearing officer role to someone else but still makes the ultimate decision on the appeal outcome. Although the Director is not involved in the detail of all cases, the Director is heavily involved in the detail of some cases and directs the overall strategy of the Bureau. If the Director is also deciding the appeals which come out of the Bureau, it may create the impression that an employer is not obtaining a fresh review of the matter, notwithstanding the administrative burden, legal complexity, and cost of the proceedings. The proposed amended rules cure this deficiency by designating the Commissioner of Labor to be in charge of the appeals process, and allowing the Commissioner to designate the appeal determination to any qualified person. This removes the appeals process one step further from the initial decision-maker and would also ensure that the appeal is being heard by someone from outside the Bureau.

Bureau Effectiveness and Accountability

The Bureau’s enforcement duty goes beyond simply addressing complaints alleging legal rights have been violated. As 26 M.R.S. § 42 states:

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

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

The Bureau must also be strategic and evidence-based when determining how to direct its resources. Directing investigation resources towards businesses which are unlikely to have many violations is normally not an efficient use of the Bureau’s hyper-scarce resource.

Finally, the Bureau must review the effectiveness of the limited tools it has at its disposal to cause the laws to be enforced. One of the essential tools is the ability to create a deterrent effect; it must be more costly for an employer to disobey the law than to obey it. And the Bureau must design its enforcement actions so as to maximize the remedial effect for the worker. The statutory purpose of most of the laws the Bureau enforces is to protect workers. The Bureau must do all within its power to ensure the statutes perform the function the Legislature has designated to them.

The proposed amended rules address these matters by requiring the Director to conduct an annual study surveying the extent of labor law violations and probable violations in the state. This will allow one to compare the extent of violations and probable violations from year to year so as to measure progress. The proposed amended rules also require the Director to produce an annual report reviewing the effectiveness of the Bureau’s enforcement tools, and to set out a strategy for the forthcoming year. The report is to be submitted to the Joint Standing Committee on Labor and Housing and to be made publicly available. This ensures that the Bureau’s resources are allocated effectively, in an evidence-based manner, and so as to ensure maximum compliance with the law.

PUBLIC HEARING: Monday, December 11, 2023 at 10:00am, at the Maine Department of Labor, Frances Perkins Conference Room, 45 Commerce Dr., Augusta, ME 04330

COMMENT DEADLINE: December 27, 2023

CONTACT PERSON FOR THIS FILING/SMALL BUSINESS IMPACT STATEMENT: Isaac H. Gingras, Department of Labor, 54 State House Station, Augusta, Maine 04333-0054. Telephone: 207-626-6232. Email: Isaac.H.Gingras@maine.gov

FINANCIAL IMPACT ON MUNICIPALITIES OR COUNTIES *(if any)*: N/A

STATUTORY AUTHORITY FOR THIS RULE: 26 M.R.S. §§ 42 and 53

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: N/A

AGENCY WEBSITE: <http://www.maine.gov/labor>

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: Isaac.H.Gingras@maine.gov

**ADOPTIONS**

AGENCY: **65-407 - Maine Public Utilities Commission (PUC)**

CHAPTER NUMBER AND TITLE: **Ch. 324,** Small Generator Interconnection Procedures

ADOPTED RULE NUMBER: **2023-233**

CONCISE SUMMARY: The Public Utilities Commission amends the Small Generator Interconnection Procedures Rule (Chapter 324). This rulemaking implements the requirements of “An Act To Support the Continued Access to Solar Energy and Battery Storage by Maine Homes and Businesses” (L.D. 1100). In addition, this rulemaking makes additional changes to facilitate the interconnection process for all levels of generation facilities and adds provisions related to export control and energy storage.

EFFECTIVE DATE: November 20, 2023

AGENCY CONTACT PERSON: Pam Kowalchuk, MPUC, 18 State House Station, Augusta, ME 04333-0018; TELEPHONE: 207-287-1564; Email: Pamela.Kowalchuk@maine.gov
MPUC WEBSITE: [www.maine.gov/mpuc](http://www.maine.gov/mpuc)
MPUC RULEMAKING LIAISON: Deirdre.Schneider@Maine.gov

AGENCY: **94-457 -** **Finance Authority of Maine** **(FAME)**

CHAPTER NUMBER AND TITLE: **Ch. 601,** Maine State Grant Program

ADOPTED RULE NUMBER: **2023-234**

CONCISE SUMMARY: This rule implements changes to the Maine State Grant Program enacted during the First Regular Session of the 131st Legislature via L.D. 32, *An Act to Update the Maine State Grant Program*, and now set forth in law as P.L. 2023, chapter 23. The change in program terminology from “Expected Family Contribution” or “EFC” to “Student Aid Index” or “SAI” is necessary following changes at the federal level as part of simplification of the Free Application for Federal Student Aid (FAFSA).

EFFECTIVE DATE: November 20, 2023

AGENCY CONTACT PERSON: William Norbert, Esq., Finance Authority of Maine, PO Box 949 - 5 Community Drive, Augusta, ME 04332-0949. Telephone. (207) 620-3540. Email: wnorbert@famemaine.com.
FAME WEBSITE: <https://www.famemaine.com/>

AGENCY: **94-457 - Finance Authority of Maine** **(FAME)**

CHAPTER NUMBER AND TITLE: **Ch. 619,** Foreign Credentialing and Skills Recognition Grant Program

ADOPTED RULE NUMBER: **2023-235**

CONCISE SUMMARY: This Rule implements language enacted pursuant to L.D. 1169, *An Act to Amend the Laws Governing the Foreign Credentialing and Skills Recognition Revolving Loan Program,*during the First Special Session of the 131st Legislature and now set forth as P.L. 2023, chapter 456. The law changes the program from a zero-interest loan to a grant program. It also increases the maximum allowable distribution of funds per applicant from $700 to $1,000.

EFFECTIVE DATE: November 20, 2023

AGENCY CONTACT PERSON: William Norbert, Esq., Finance Authority of Maine, PO Box 949 - 5 Community Drive, Augusta, ME 04332-0949. Telephone. (207) 620-3540. Email: wnorbert@famemaine.com.
FAME WEBSITE: <https://www.famemaine.com/>

AGENCY: **90-699 - Maine Retirement Savings Board**

CHAPTER NUMBER AND TITLE: **Ch. 101,** Maine Retirement Savings Program

ADOPTED RULE NUMBER: **2023-236**

CONCISE SUMMARY:The Maine Retirement Savings Program, is implemented to automatically establish an Individual Retirement Account for Maine Covered Employees who do not otherwise have access to a retirement savings plan through their employer. This rule establishes the procedures and requirements for Covered Employers to register with the Program, as well as the establishment of and investment in such accounts for Covered Employees and individual participants in the Program. The rule establishes the default contribution amount and default investment, as well as the process for Covered Employees to customize their accounts or opt out of the Program. The rule establishes deadlines for employer registration as well as enforcement and appeal processes.

EFFECTIVE DATE: November 22, 2023

AGENCY CONTACT PERSON:Elizabeth Bordowitz, Maine Retirement Savings Board, c/o Office of State Treasurer, 39 State House Station, Augusta, ME 04333, Telephone:207.888.4706. Email:info@mainesaves.org.
AGENCY WEBSITE: [https://MaineSaves.org/](https://mainesaves.org/).

AGENCY: **14-197 -** Department of Health and Human Services, **Office of Aging and Disability Services**

CHAPTER NUMBER AND TITLE: **Ch.7,** Pilot Program for Transitional Services *(Repeal)*

ADOPTED RULE NUMBER: **2023-237**

CONCISE SUMMARY:This rule change repeals a pilot program that was established in 1988 to provide a method of funding for innovative transitional services for adults aged 20-26 that were clients of the Office of Aging and Disability Services, formerly the Office of Adults with Cognitive and Physical Disabilities. The program offered a method of funding that was otherwise unavailable or not reimbursable under existing funding systems and has not been operational for several years as redundant and similar services have since been adopted and implemented federally and statewide to support the target population.

EFFECTIVE DATE: November 22, 2023

AGENCY CONTACT PERSON:Connor Kelley, Department of Health and Human Services, Office of Aging and Disability Services, 41 Anthony Avenue, Augusta, Maine 04333-0011. Telephone:207-592-1952, TTY: 711 (Deaf or Hard of Hearing). Email: Connor.Kelley@maine.gov

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