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MEMO TO: Commissioner Laura Fortman, Maine Department of Labor
FROM: Christine Hastedt and Sue Hamlett, Maine Equal Justice
DATED: December 27, 2021
RE: Issues raised during Unemployment Insurance Stakeholder Group meetings

Thank you for the opportunity to restate and clarify] issues raised by Sue Hamlett on behalf of Maine Equal Justice and the unemployed workers with low income that we represent during the Unemployment Insurance Stakeholders Group convened pursuant to PL 2021, Chapter 456. Will you please post this memo on the Department's UI Stakeholder website so that it may be share with other members and any other interested persons.

- 1. Improvements to Maine's Workshare Program.** We strongly support the UI Workshare Program, and appreciate the work that MDOL is doing to enhance this program. We are intrigued by the suggestion made by employer members of the stakeholder group to expand opportunities for the program to be used to support workers in approved training programs. We note that federal law may open the door to this possibility at 26 USC §3306(v)(6):

“(6) eligible [employees](#) may participate, as appropriate, in training (including [employer](#)-sponsored training or worker training funded under the Workforce Innovation and Opportunity Act) to enhance job skills if such program has been approved by the [State agency](#)...”

We understand that adding such a provision to Maine's Workshare plan will require further conversation and approval by USDOL, however, we urge the Department to explore this promising opportunity to both increase employee's skill levels bringing the prospect of higher wages, and better meet employer's needs.

Given the significant support for this program by both workers and employers, and a renewed interest by the federal agency, we anticipate that there may be more flexibility in the law governing this program over the next few years. We urge you to monitor any changes carefully to see if they align with other suggestions from the Working Group, including increased access for part-time workers generally, and opportunities to modify eligibility requirements so that the program may be more readily available to new entrants to the labor force or low wage workers who might otherwise be excluded as a result of current monetary eligibility requirements.

- 2. Clarification of recall date for purposes of exemption from the Reemployment Services and Eligibility Assessment (RESEA) program.** We appreciate the changes made by the Department to the RESEA Program to accommodate claimants by providing for on-line and telephonic participation along with flexible rescheduling opportunity. We also appreciate the issue raised by some employer representatives related to persons exempt from this requirement who are subject to recall and thus exempt from the UI work search requirement for a certain period.

The problem described involves the inability to designate a specific recall date for workers in certain industries necessary for those workers (e.g. mud season for loggers) to be considered exempt from the work search requirement, and, by extension, the RESEA requirement. The sense of the discussion was that this problem could be mitigated by establishing a reasonable recall date mutually agreed upon by the industry and the Department with the understanding that it may be extended if conditions warrant, and automatically applying that date (along with any extensions) to applications from workers in that industry. This would eliminate the uncertainty faced by workers who are not able to accurately respond to the recall date question on the application, and thus lose the opportunity for a waiver even though they fully intend to return to work with that employer when the business is able to reopen. Maine law gives the Department the flexibility to adopt this, or similar, resolution to this problem that creates perennial problems for workers, employers and the Department.

- 3. Improve connections between employers with the unemployed.** As Sue noted during the discussion of this issue, one of the things we have found most helpful for unemployed workers who reach out to us, is identifying supports like SNAP, child care, housing assistance, MaineCare, etc., that may help them meet basic needs while they are out of work. Equally important is helping them understand how earnings impact benefits from these programs. In many cases they may be able to maintain assistance from these programs when they become reemployed, yet many assume they will not. The fear of losing a critical support, like Medicaid, often creates uncertainty about whether they will be better off, or not, by accepting a certain job. If they know that they will be able to keep their health care once reemployed that barrier would be removed. If not, they would be able to reassess and begin seeking employment opportunities that offer that benefit.

For many years we have encouraged MDOL to provide greater assistance to help unemployed persons identify and apply for services and supports that will help them meet their basic needs, and thus be able to engage more successfully in reemployment or training efforts. It would also be beneficial to provide materials that will explain how wages effect eligibility for certain key benefits like MaineCare, SNAP and TANF. These benefits are frequently available to low-wage workers, yet that fact is not well understood. As you are aware, the Department of Health and Human Services is working to design a dashboard (operating name for now) to help people understand the

impact of wages on benefits. This would be a useful tool for both DOL and employers as they work to ensure that claimants have the information that they need regarding how the combination of wages and benefits may assist individuals in making ends meet as they enter the workforce. We urge MDOL to more effectively utilize this and other tools to help workers better understand what additional help may be available and how employment may impact these benefits and the combination of wages and benefits may affect their economic security.

4. **Recommendations to improve the effectiveness of 26 MRSA §1044.** As Sue noted during the discussion of this issue, we are concerned that the protections established at §1044 are not effectively communicated to either employers and employees. We were deeply concerned by the number of respondents to the survey that we jointly administered with the AFL-CIO this spring indicating that they felt discouraged from applying for unemployment compensation by their employer. While we did not have to capacity to do a thorough quantitative analysis of this issue, we did speak to several respondents to learn what form that discouragement took. The two most prevalent responses were that interactions with their employer led them to believe that they: (1) would not be rehired if they made a claim for UI, or (2) that their employer advised them that they would not be eligible for benefits because they had either quit or were fired leading them to believe that it would be fruitless to apply for UI. Both of these actions undermine the protections established by §1044.

While we do not want to imply that large numbers of employers are bad actors, behaving in a such a manner as to intentionally discourage workers from applying for UI benefits, our experience indicates that discouragement does occur, and when it does it is a serious violation resulting in the loss of benefits for which the worker may be eligible, and, thus, must be addressed in a serious manner. Given that, we ask that MDOL take the following steps to ensure that claimants are ensured the protections intended by law:

- a. **Clear notice.** Amend the current notice to employees to make clear that employers must not discourage employees from applying for UI in any way, including specific examples of prohibited behavior. For example, the notice should make clear that an application is the best way to determine eligibility and employers should neither discourage an employer from making an application, or offer an opinion as to whether or not the employee will be eligible for benefits.
- b. **Educational campaign.** As recommended by several stakeholder members, including employer representatives, implement an educational initiative to help employers understand that this behavior is prohibited, including using specific examples of prohibited behavior.

- c. **Establish a complaint procedure.** As far as we can tell, there is no clear procedure for an employee to make a complaint to the Department when they believe they have been discouraged from applying for benefits or experienced any other violation of §1044. We urge the Department to establish a complaint procedure, including a form by which an employee can report such violations to the Department and make that information readily accessible to all Maine workers.
 - d. **Relief.** Provide an opportunity to apply for benefits retroactively to any employee who the Department determines was discouraged from making a timely application for benefits in violation of 26 MRSA §1044.
5. **Methods to streamline and facilitate applications for unemployment insurance that will increase access for unemployed workers, including any modifications that may be needed related to the submission of partial unemployment claims forms in accordance with 26 MRSA §1194 sub-§1 and sub-§1-A.** We raised four issues related to this charge during the stakeholder proceedings which we reiterate here:
- a. **Improve accessibility of notice of rights pursuant to §1194 sub-§1.** Given the stakeholder discussion of this provision (and our own experience working with claimants), we believe it is important to clarify that this section of statute requires that each employee must be given a copy of the printed statement of the rules related to claims for UI benefits at the time that individual becomes unemployed. This provision is mandatory and does not apply only when an employee asks for a copy of the rules. Moreover, this printed statement must be supplied by the Department to each employer without cost to the employer. It became clear during this discussion that this statement is not provided in many cases. While some employer representatives posited that nearly everyone knows about unemployment benefits, the reciprocity rate in Maine and throughout the nation belies that assumption. Therefore, we ask the Department to take seriously the need to improve the effectiveness of this provision to be sure that all unemployed workers know that they have the right to apply for this important benefit.
 - b. **Clarify the purpose of §1194 sub-§1-A; improve implementation.** Based on the discussion, we are also concerned that there may be a misunderstanding of the requirements of §1194 sub-§1-A. This sub-section requires that an employer issue a properly completed partial unemployment claim form in two distinctly different circumstances: (1) when an employee who is customarily employed full time is given less than full-time hours during *a week* due to lack of work (emphasis added); or (2) when an employee who is customarily employed full time is given no work *for one week* due to lack of work and who is not separated from that employer (emphasis added).

In the first case, that of the employee given less than full time work, there is no limitation on the number of weeks for which the reduction in hours must trigger completion of a partial claim form by the employer. This is made clear by the use of the words “during a week” when hours are reduced to part time, as compared to the language applying to situations in which the employee is given no work where the duty to file a partial claim is limited to “one week” (although the statute permits the Department to require it be done for more than one-week). Clearly the statute establishes a duty for the employer to file a partial claim for each and any week during which full time hours are reduced to part time, as compared to the one week in which there is no work available to the employee.

It was not clear to us from the stakeholder discussion that the Department is reading this statute to require that employers’ file a partial unemployment claim form for *all* weeks in which and employees’ hours have been reduced from full to part time. Moreover, it is not at all clear that either of these provisions is being effectively enforced at this time.

As part time work becomes a more prominent feature of today’s workforce, and since we have found that part time workers often do not realize that they are eligible for unemployment benefits, we believe that it is essential to ensure that this provision is adequately communicated to help people understand that they may be eligible for partial benefits, and that it is effectively enforced.

- c. Establish a pre-test for UI benefits on the DHHS My Maine Connection platform to facilitate access to UI.** We reiterate our strong recommendation made during the stakeholder process and many times in the past, that MDOL work with Maine DHHS to create a pre-test for UI eligibility accessible on the DHHS My Maine Connection platform. There is now considerable literature showing that low wage workers are among those least likely to know that they are eligible for UI benefits and apply for them. Since many of these low wage workers turn to DHHS for help with food and medical assistance, providing these workers with information about UI at the time they apply for other benefits would help to facilitate their knowledge of, and application for, the UI Program helping to increase the reciprocity rate. Currently DHHS prescreens eligibility for WIC and the EITC on My Maine Connection. If it appears that they may be eligible for one of these programs, they are then electronically referred to that program to complete an application. (https://apps1.web.maine.gov/benefits/prescreen/getting_started/step1.html?). Just to provide a sense of volume, there are currently 92,500 families (162,000 individuals) receiving SNAP benefits, and 374,090 individuals receiving MaineCare or MSP. While not all of these individuals would qualify for UI, this provides a snapshot of the number of people with low income with whom DHHS interacts.

- d. Equitable Access to UI.** There is increasing recognition that while workers of color are more likely to be unemployed, they are less likely than others to receive unemployment benefits. Recently USDOL has offered a grant opportunity to states to, among other things, improve equity in the delivery of UI benefits.

During the UI Working Group deliberations Claude Rwaganje made an important recommendation, supported by Sue Hamlett, that would both increase access to UI benefits for immigrant workers, as well as improve benefit promptness for those workers. This issue relates to delays in verification through the USCIS SAVE system. Claude has been raising this issue for more than a year now, and we have also worked with claimants experiencing this problem and brought it to your attention. Because of the complexity of this issue, and the need to resolve it to ensure access and the prompt delivery of benefits for some of the most vulnerable claimants, we strongly urge MDOL to immediately convene a working group with a date certain for resolving this issue. This working group should include Department employees, representatives of the immigrant community and advocates working with claimants experiencing these difficulties and conduct listening sessions with impacted individuals to better understand this problem. The working group should consider, among other things, how requests for verification can be expedited, whether benefits may legally be withheld pending verification through the SAVE system, and how the “when due” provisions of UI law can most effectively be implemented for this population.

Thank you very much for the opportunity to provide further clarification of the issues raised by Sue Hamlett during the UI Stakeholder group deliberations. We look forward to your report, and response to these comments.

