

MAINE
DEPARTMENT OF
LABOR

Unemployment Insurance Information for Employers



Understanding the Law

Maine Department of Labor
Bureau of Unemployment Compensation
Tax Division
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47 State House Station
Augusta, Maine 04333-0047
Telephone: 207-621-5120 | Toll Free: 844-754-3508
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www.maine.gov/labor

Help Prevent Unemployment Fraud and Improper Benefit Payments

If benefits are paid to someone who is not entitled to them, your unemployment tax rate may be negatively affected. Benefits may be improperly paid if:

- Individuals continue to collect benefits after they have started or resumed working.
- Individuals improperly report earnings or fail to report remuneration or bonus payments they have received.
- Individuals provide a false or inaccurate reason to explain their separation from employment.

Take Proactive Steps To Protect Your Experience Rating

1. Report employees who are newly hired, rehired or returning to work after a layoff. The law requires businesses to report when people are hired or rehired. The Maine Department of Labor runs a crosscheck of the database of individuals whom businesses have reported to have been hired against the list of individuals who are collecting unemployment benefits. This allows the Department to identify individuals who continue to file for benefits after they have returned to work.

Reporting new hires and rehires is simple. Use the most convenient option:

- Use the New Hire Report website:
<https://portal.maine.gov/newhire>
(Note: Internet Explorer is the preferred browser for this system.)
 - Complete the request forms received by standard mail.
2. Respond quickly to requests for employee separation information. Benefit eligibility is determined based on information provided by both the person filing a claim and the separating employer. If you do not respond to requests or are late in your responses, the department must base its decision to pay benefits solely on the information provided by the employee. If the information is incorrect, employers may be charged improperly for any benefits the person receives. This could negatively affect your experience rating.
 3. Review your monthly notice of charges. This includes the B-29 form, the Record of Unemployment Charges form and the list of former employees receiving unemployment benefits. If someone on this list never worked for you or is currently working for you and you believe they should not be receiving benefits, promptly report any discrepancies and return the form to the department with a detailed explanation. Taking these steps can ensure that you are not improperly charged.

4. Participate in fact-finding interviews. Fact findings gather critical information about a person's eligibility for benefits. If only the claimant participates, a decision may be based on incorrect or incomplete information. Protect your experience rating by promptly reviewing and responding to all forms and correspondence from the bureau and by participating in proceedings related to benefit eligibility.

ALERT: On October 20, 2013, Maine employers that demonstrate a pattern of failing to provide separation information or to respond timely to requests for information about benefit eligibility will incur penalties for any improper payments that may result.

Respond Online to Separation Information Requests

SIDES E-Response is a secure and no-cost online system for employers to use to respond to requests for wage and separation information. It is ideal for employers and Third Party Administrators (TPAs) with a limited number of unemployment claims. No programming is required.

Using Sides E-Response will reduce staff time, paperwork and postal expenses and eliminate delays related to paper mail delivery. It can help keep unemployment insurance rates lower by reducing overpayments and minimizing potential appeals because it provides accurate and timely information to the Bureau of Unemployment Compensation before claims are paid.

To enroll, visit www.maine.gov/reemployme/sides

SIDES E-Response requires a working Internet connection, an employer email address, your Federal Employer Identification Number (FEIN) and your Maine Department of Labor account number (SEIN). You can also unenroll or update email information at this same site.

Once you enroll and receive a personal identification number (PIN), all future requests for separation and wage information will come to you via email from SIDES E-Response. You will no longer need to handle paper requests for separation information.

For additional information or questions, contact Employer Services at 207-621-5120 or the Unemployment Claim Center at 1-800-593-7660.



Maine's Employment Standard

On December 31, 2012, a common “employment” definition went into effect for workers’ compensation, unemployment insurance and wage and hour coverage. This standard replaced the multiple definitions previously used by these agencies and seeks to eliminate business confusion about whether a worker is an employee or independent contractor.

Under this law, Maine’s Workers’ Compensation Board and the Unemployment Insurance Program will share information about and adopt one another’s formal employment determinations to streamline the audit process for employers. Note, however, this does not include the rebuttable “pre-determination” process used by Workers Compensation (which is a self-declaration process that is fully rebuttable in the event of an injury); federal law precludes someone from voluntarily giving up their protection under a state’s unemployment laws.

Penalties

The law includes clear penalties to deter the intentional misclassification of workers as independent contractors when they are employees according to the standard. Misclassification not only creates a competitive disadvantage for employers that correctly classify their workers but also increases unemployment tax premiums because fewer employers are paying appropriate taxes. Therefore, the law specifies penalties ranging up to \$10,000 to deter this practice.



Criteria

Services performed by an individual for remuneration are considered to be employment subject to this chapter unless it is shown to the satisfaction of the bureau, that the individual is free from the essential direction and control of the employing unit, both under the individual's contract of service and in fact, the employing unit proves that the individual meets all of the criteria in Number 1 and three (3) of the criteria in Number 2 as listed below.

1. *The following criteria must be met:*
 - a. The individual has the essential right to control the means and progress of the work except as to final results;
 - b. The individual is customarily engaged in an independently established trade, occupation, profession or business;
 - c. The individual has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
 - d. The individual hires and pays the individual's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
 - e. The individual makes the individual's services available to some client or customer community even if the individual's right to do so is voluntarily not exercised or is temporarily restricted; and

2. *At least three (3) of the following criteria must be met:*
 - a. The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge used by the individual to complete the work;
 - b. The individual is not required to work exclusively for the other individual or entity;
 - c. The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
 - d. The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
 - e. Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by the individual;
 - f. The work is outside the usual course of the business for which the service is performed; or
 - g. The individual has been determined to be an independent contractor by the federal Internal Revenue Service.
(an SS-8 determination)

How To Determine Independent Contractor Status

Step 1: Is the individual free from direction or control of the employing unit?

No: Stop. The individual is an *employee*, not an independent contractor.

Yes: Move to step 2.

Step 2: Does the individual have the essential right to control the means and progress of the work except as to final results?

No: Stop. The individual is an *employee*, not an independent contractor.

Yes: Move to step 3.

Step 3: Is the individual customarily engaged in an independently established trade, occupation, profession or business?

No: Stop. The individual is an *employee*, not an independent contractor.

Yes: Move to step 4.

Step 4: Does the individual have the opportunity for profit and loss as a result of the services being performed for the other individual/entity?

No: Stop. The individual is an *employee*, not an independent contractor.

Yes: Move to step 5.

Step 5: Does the individual hire and pay his or her assistants (if any) and to the extent that these assistants are employees, supervise the details of their work?

No: Stop. The individual is an *employee*, not an independent contractor.

Yes: Move to step 6.

Step 6: Does the individual make his or her services available to some client or customer community even if their right to do so is voluntarily not exercised or is temporarily restricted?

No: The individual is an *employee*, not an independent contractor.

Yes: Move to step 7.

Step 7: Determine if the individual meets any three (3) of the following elements:

- The individual has a substantive investment in the facilities, tools, instruments, materials, and knowledge to complete the work.
- The individual is not required to work exclusively for the other individual/entity.
- The individual is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.
- The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual/entity prior to completion of the work.
- Payment to the individual is based on factors directly related to the work performed and not solely on the amount of time expended by the individual.
- Such work is outside the usual course of the business for which the services is performed.
- The individual has an IRS Determination (SS-8) of independent contractor status.

**IF the individual meets fewer than three (3) elements, STOP.
The individual is an employee, not an independent contractor.**

**IF the individual meets three (3) or more elements; the
individual is an independent contractor.**



QUESTIONS?

If you desire more information on any matters relating to the Bureau, please contact the Unemployment Tax Division or the UC Claims Center (phone numbers and mailing addresses listed below).

Unemployment Tax Division

Telephone: 207-621-5120

Toll Free 844-754-3508

TTY Users Call Maine Relay 711

Fax: 207-287-3733

Email: division.uctax@Maine.gov

Address:

Bureau of Unemployment Compensation
Tax Division
47 State House Station
Augusta, ME 04333-0047

Division of Benefit Services Unemployment Claim Centers

Telephone: 1-800-593-7660

TTY users call Maine Relay 711

Fax: 207-287-5905

Address:

Bureau of Unemployment Compensation
Benefit Services Division
97 State House Station
Augusta, ME 04333-0097

