

U.S. DEPARTMENT OF LABOR  
Employment and Training Administration  
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 5  
December 2012

<b>MAINE</b>	SB 589 (CH 645)	ENACTED April 18, 2012 EFFECTIVE August 29, 2012
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Nonmonetary Eligibility

Requires an individual to actively seek work, unless participating in approved training or the work search requirement is waived, and to provide evidence of the work search efforts in the manner prescribed. Failure to provide required documentation will result in a denial of benefits for the week(s) documentation is not provided unless good cause is found.

Provides that failure to participate in reemployment assessment services when referred by the Maine Department of Labor will result in denial of benefits until the individual participates in the services, unless there is good cause for failure to participate.

For purposes of work registration, ability and availability for work, and reemployment eligibility assessment and services, defines "good cause" as:

- the individual is ill;
- the individual's presence is required due to the illness of the individual's spouse, children, parents, stepparents, brothers or sisters, or relatives acting in the capacity of a parent (of either the unemployed individual or spouse);
- the individual is in attendance at the funeral of one of the above;
- the individual is observing a religious holiday required by religious conviction;
- the individual is performing military or civil duty as required by law; or
- a cause of a necessitous and compelling nature, including child care or transportation emergencies.

"Good cause" does not include incarceration as a result of a conviction for a felony or misdemeanor.

Provides that an individual discharged or suspended for misconduct shall be disqualified until the individual has earned 8 times the weekly benefit amount (previously 4).

Provides that an individual who refuses suitable work shall be disqualified until the individual earns 10 times the weekly benefit amount (previously 8). Provides that earnings may not be considered when determining suitable work for an individual after the first 10 consecutive weeks (previously 12) of unemployment.

Provides that an individual will be disqualified for any week that the individual receives vacation pay in an amount exceeding the equivalent of 4 weeks wages; however, if the vacation pay is less than the benefits due, the weekly benefit amount shall be reduced by the amount of the remuneration. Vacation pay paid to the individual prior to notification of the employer's intent to terminate is not considered remuneration for this purpose.

### Overpayments

Provides that an individual guilty of unemployment fraud is guilty of theft by deception under Title 17-A, Section 354 of the Maine criminal code (previously a Class D crime; now determined by the amount of fraud, ranging from Class B-E).

Requires that an individual be disqualified for a 3<sup>rd</sup> occurrence of a false statement or misrepresentation in the application for benefits for a period to be determined by the Commissioner, Maine Department of Labor (previously 6-12 months).

**MICHIGAN**

SB 1094  
(Act No. 216)

ENACTED June 27, 2012  
EFFECTIVE January 1, 2013

### Extensions and Special Programs

Amends Michigan law to create a shared-work program in which employers may participate and provides definitions related to the program. To participate in the shared-work program, employers must have:

- filed all required reports and paid all obligated assessments, contributions, reimbursements in lieu of contributions, interest, and penalties;
- a positive reserve account balance if a contributing employer; and
- paid wages for 12 consecutive calendar quarters prior to application.

Requires that the shared-work application include:

- the employer's assurances that required reports and any other relevant information required will be submitted;
- the employer's assurances that no new employees will be hired or transferred to the affected unit during the period of the plan and that no employees will be laid off or hours reduced by more than the percentage defined in the plan except for holidays, designated vacation periods, equipment maintenance, or similar circumstances (employer must provide a list of anticipated week or weeks);
- the employer's certification that any applicable bargaining unit has approved the plan and all affected employees not in the bargaining unit have been notified of the plan;
- the employer's certification that the implementation of the plan is in lieu of temporary layoffs that would affect at least 15 percent of the employees in the affected unit and would result in an equivalent reduction in the hours of work;

- the employer's certification that participation in the plan is consistent with employer's obligations under Federal and state laws and that the employer will abide by all terms and conditions established in law; and
- any other relevant information required by the agency.

Provides that an employer may apply for more than one plan.

Shared-work plans may not be approved after January 1, 2018. Approval of a shared-work plan requires that a plan:

- applies to one affected unit and that all employees in the affected unit are participating except an employee who has been employed less than 3 months before the date of the application or an employee whose hours after reduction are more than 40 hours per week;
- includes at least 2 employees (not including corporate officers);
- provides the names, social security numbers, and number of planned work hours (after the reduction) for participating employees;
- stipulates that the number of work hours a participating employee will work during the period of the plan is the number of hours of the employee's normal weekly hours reduced by the reduction percentage;
- includes an estimate for the number of employees who would have been laid off without implementation of the plan;
- describes how affected employees will be given advance notice, if feasible;
- results in a reduction in the number of hours with a corresponding decrease in wages for participating employees;
- does not affect fringe benefits for participating employees;
- is effective for a period of 52 weeks or less and that benefits payable that will not exceed 20 times the weekly benefit amount; and
- includes a percentage reduction between 15 percent and 45 percent that is the same for all participating employees (any change in the reduction percentage requires approval).

Provides that the State agency must issue a written decision on the application within 15 days of receipt of the plan. The shared-work plan shall be effective the first calendar week following the date of approval for the number of weeks indicated on the plan unless the agency approves a lesser number of weeks or the plan is terminated.

Employees participating in a shared-work plan must:

- receive compensation in an amount equal to the weekly benefit rate times the reduction percentage, rounded to the next lower dollar;
- receive compensation under the plan that is applied to the maximum amount of benefits payable but not to the individual's maximum duration of weeks;
- not be denied compensation for reasons related to active work search or refusal to apply for or accept work other than work offered by the participating employer;
- be available for work during the employee's normal work week; and
- be allowed to participate in a training plan approved by the unemployment agency.

Provides that the employer shall file claims on behalf of the participating employees on a 2-week schedule established by the agency (the agency may include 1-week periods as necessary and revise the schedule).

Provides that the agency may terminate a shared-work plan for good cause and the employer may terminate the plan by providing written notice. Approval of a shared-work plan or any modification to the plan is at agency discretion and not subject to appeal.

Requires an annual report to the Governor and certain members of the legislature for the purpose of assessing the impact of the shared-work program.

### Financing

Provides that employers participating in a shared-work plan:

- shall not be charged for the cost of benefits if full Federal funding is provided;
- if partial Federal funding is available, employers shall pay an amount equal to one-half of the benefits paid, which shall be deposited into the state's unemployment compensation fund;
- will be charged for all benefits paid to employees if no Federal funding is available and for employees who are seasonal, temporary or hired on an intermittent basis; and
- will not have charges included in the calculation of the employer's experience account.

**NEW HAMPSHIRE**

HB 1366  
(CH 212)

ENACTED June 13, 2012  
EFFECTIVE October 1, 2012

### Financing

Defines the "most recent employer" as the last non-reimbursing employer, whether primary or alternate, of an individual with 12 weeks (previously 4) of employment in the base period.

Provides that an employer will not be charged for benefits paid to an individual who had left employment to accept better employment.

### Nonmonetary Eligibility

Adds additional requirements for benefit eligibility by requiring an individual to be available for and to seek temporary, full-time or part-time work for which he or she is qualified:

- if permanent work for which the individual is qualified is not immediately available within the individual's labor market area; and
- if the individual is reasonably expected to be recalled in 4-26 weeks and equivalent or better work for which the individual qualifies is not immediately available in the individual's labor market area; and

- the wages, hours, or other conditions of the temporary work are not substantially less favorable to the individual than those prevailing for similar temporary or permanent work in the locality.

Provides that an individual not under disqualification shall not be disqualified for accepting work that would not be deemed suitable, and terminates such employment within 12 weeks (previously 4), with or without good cause.

Clarifies and expands the elements used to determine suitable work for an individual, and provides that if no work is available in the individual's labor market area at the customary pay rate for work to be suitable, it must be determined that the:

- work pays the minimum wage or an hourly rate when multiplied times 40 is equal to or greater than 150 percent of the individual's weekly benefit; and
- the wages, hours, or other conditions of the temporary work are not substantially less favorable to the individual than those prevailing for similar temporary or permanent work in the locality.

Notwithstanding any other provisions of law, provides that benefits shall not be denied to an individual for refusing to accept new, suitable, temporary work offered without the expectation of such work becoming permanent for any week which follows the earlier of:

- the last week which includes one or more days within the maximum expected duration of the temporary work; or
- The fifth week following the date the individual refused such temporary work in which the individual meets the earnings requalification requirements.

Eliminates the requirement to earn requalifying wages if an individual becomes unemployed after leaving work for better employment.

**NORTH CAROLINA**

SB 828  
(CH 134)

ENACTED June 29, 2012  
EFFECTIVE June 29, 2012,  
except as indicated

### Administration

Replaces the Division of Employment Security with the Labor and Economic Analysis Division as the entity responsible to maintain the common follow-up information management system. Requires the Division of Employment Security to provide all information requested to assist the Division in accomplishing its purpose.

Provides that all disclosure and redisclosure of information must be consistent with 20 C.F.R. Part 603 and any other guidance issued by the U.S. Department of Labor.

## Appeals

Requires all testimony at any hearing before an appeals referee be recorded, unless waived by all interested parties. (Effective November 1, 2012.)

Provides that parties may enter into a stipulation of the facts. If the stipulation provides sufficient information to make a decision, the stipulation may be accepted; if not, it may be rejected. The decision to accept or reject the stipulation must occur in a recorded hearing. (Effective November 1, 2012.)

Changes the length of time an employer has to protest a claim to 10 days from the delivery of the notice. (Previously, 30 days from the earlier of the mailing or delivery). (Effective November 1, 2012.)

## Extensions and Special Programs

Extends the ending date for the temporary federal-state extended benefits (EB) program provisions concerning the EB “on” and “off” indicators by using a 3-year look-back for both the insured unemployment rate (IUR) and the seasonally adjusted total unemployment rate (TUR) to December 31, 2012 (previously applied to weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011). (Provision expires January 1, 2013.)

Prohibits the extension of unemployment insurance benefits without a General Assembly enactment. (Retroactively effective to January 1, 2012.)

## Financing

Requires employers to report the date services for remuneration were first performed by a newly hired employee. Defines “newly hired employee” as an employee not previously employed by the employer and an employee previously employed but who has been separated for at least 60 consecutive days. (Effective July 1, 2012.)

## Nonmonetary Eligibility

Effective November 1, 2012, defines “misconduct” as willful and wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior which an employer has a right to expect or has explained, orally or in writing, to an employee; or, carelessness or negligence of such degree or recurrence as to show intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to the employer. The prima facie evidence of misconduct is clarified, which may be rebutted by the claimant, including requirements that:

- a conviction of a drug offense must be related to or connected with an employee’s work or is in violation of a reasonable work rule or policy;

- termination after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs must be related to or connected with an employee's work or is in violation of a reasonable work rule or policy; and
- refusing to perform reasonably assigned work tasks or failing to adequately perform employment duties as evidenced by no fewer than 3 written reprimands in the 12 months immediately preceding the termination.

Provides that a discharge for misconduct connected with work does not include the discharge of a severely disabled veteran. (Effective November 1, 2012.)

### Overpayments

Provides that for overpayments established on or after October 1, 2013, an employer must be charged for an overpayment when:

- the overpayment occurred because the employer failed to respond timely (within 10 days); or adequately (fails to provide sufficient facts to make a correct determination) to a written request (may be electronic) for information relating to the claim; and
- the employer exhibits a pattern of failure to respond timely or adequately by failing to respond on two or more occasions. If a third-party agent is used, the pattern is established on the agent's behavior overall, not only with respect to its behavior related to the employer.

Provides that the prohibition on noncharging for the above will apply to benefits paid each week there is an overpayment.

Provides that the determination of noncharging for an employer who fails to respond timely or adequately will be made by the paying state for a combined-wage claim, and the employer must be appropriately charged upon notification to the transferring state. The prohibition on noncharging may be waived for good cause. (Effective October 1, 2013.)

Requires a 15 percent penalty, payable to the State Unemployment Trust Fund, be assessed on the amount of an erroneous overpayment of benefits received by an individual as a result of a false statement or misrepresentation. This penalty may not be recovered through an offset of future benefits. (Effective October 1, 2013.)

Provides that effective December 1, 2012, an individual who makes a false statement or fails to disclose a material fact to obtain or increase any benefit will be guilty of a:

- Class I felony if the overpayment is more than \$400.
- Class 1 misdemeanor if the overpayment is \$400 or less.

Repeals the limitations to recover both fraud (previously 10 years) and nonfraud (previously 3 years) overpayments. (Effective October 1, 2012.)

Requires reports to the House Unemployment Fraud Task force on the implementation timeline, requirements, barriers, costs, and an estimate of the annual amount to be recovered through the U.S. Treasury Offset Program.

**PENNSYLVANIA** HB 1539  
(Act No. 107)

ENACTED and EFFECTIVE July 5, 2012

### Extensions and Special Programs

Establishes the Keystone Works Program to be administered by the Department of Labor and Industry and defines training in the program as a learning environment in which the employer derives no immediate advantage and is designed to provide the skills and knowledge necessary to meet a business's specifications for an occupation or trade.

Provides that individuals receiving regular unemployment compensation (UC) may voluntarily enroll in the program and be qualified for training if the department determines the claimant is an appropriate match with a job opening at a participating business and the individual's UC balance at the start of the training is equal to or exceeds the weekly benefit amount times the number of weeks of training. The individual must certify in writing that he/she:

- will not accept any form of compensation from the business;
- will provide information and documentation as requested by the department; and
- will cooperate with the Department's evaluation of the program.

To be eligible to provide training under the program, requires a business to:

- have a job opening to which a claimant may be matched by the department;
- register with the Pennsylvania Career Link system;
- provide bona fide training to the individual;
- consider the individual for a job for which he/she was trained upon completion of the training;
- ensure a job offered at the completion of training provides service in "employment" (work will not be contract work or in a self-employment capacity) if a job is offered upon completion;
- not pay any form of compensation during the training period;
- not provide training under the program during any work stoppage related to a labor dispute nor concurrently while participating in a Work Share program;
- not violate a collective bargaining agreement, displace, or adversely affect existing employees by training or hiring an individual under the program;
- cooperate with requests for information and documentation;
- satisfy any additional criteria established by the Department to ensure appropriate number of individuals receive offers of suitable long-term employment;
- be current in its tax liabilities, has filed a timely appeal, or is on an approved deferred payment plan; and
- not be under suspension or disbarment with any government entity.

Provides that a business must provide a maximum of 24 hours of unpaid training per week for a maximum of 8 weeks and consider the individual for a job. The business is not required to hire the individual but shall be disqualified from participation if a pattern of acting in bad faith regarding job offers is determined.

Provides that the Department has authority to establish guidelines, applications, and policies and procedures for implementation. Requires the Department to purchase or arrange worker's compensation insurance for approved individuals participating in Keystone Works.

The individual participating in the training has the option to discontinue participation, and eligibility for UC will not be affected by discontinuation in the program, termination from the program by a participating business, or completion of the program.

Authorizes funding from appropriated funds to provide an incentive of \$375 to a business that hires an individual who participated in Keystone Works if the individual remains employed for a period of 4 consecutive weeks at a minimum of 35 hours per week. A business may receive incentive payments for up to 4 consecutive periods for a maximum of \$1,500 total incentive payments. Requires that 15 percent of the funding be reserved for businesses with fewer than 100 employees; if the reserved amount is not committed by April 30 of each year, funds shall be available for businesses that have at least 100 employees.

Requires the Department to develop and implement an evaluation and performance improvement system that collects critical information on certain performance measures and defines the benefits of the program and its training to businesses, individuals, and the UC fund. On July 1 annually, requires a report with specified information to legislative committees.

Authorization for the Keystone Works Program expires June 30, 2017.

**WASHINGTON**    HB 2491  
                                  (CH 2)

ENACTED May 2, 2012  
EFFECTIVE July 10, 2012

### Financing

Provides that penalties, rate computations, and sanctions will be applied if the Washington Employment Security Department finds that a significant purpose of the transfer of a business is to obtain a reduced array calculation factor rate.

Provides that a predecessor-successor relationship does not exist for experience rating purposes if an employer transfers the business or its operating assets to move or expand an existing business. Provides that if both employers are under substantially common ownership, management, or control at the time of the transfer, the transferring employer's experience will transfer and be combined with the experience of the employer to whom the business is transferred.

Provides that any provisions in conflict with requirements to receive federal funds or unemployment tax credits shall be inoperative.