**12 DEPARTMENT OF LABOR**

**172 MAINE UNEMPLOYMENT INSURANCE COMMISSION**

**Chapter 2: EMPLOYER NOTICES, RECORDS, CONTRIBUTION AND REIMBURSEMENT PAYMENTS AND REPORTS**

**SUMMARY**: This chapter establishes procedures to be followed by employers in: posting required notices; maintaining records; payment of monies due, including cash value of board and lodging; submitting required reports including contributions, payrolls, change in employer status, separation information on former employees; and details on refusal of job offers and recalls to employment.

**1. Posting notices to workers**. Every employer shall post and maintain such notices to its workers as the Commissioner shall from time to time require. Such notices shall be of such form and design and in such numbers as the Bureau may determine to be necessary and shall be posted in conspicuous places near the actual locations where workers' services are performed. No such notices shall be posted by any person or employing unit to whom an employer number has not been assigned by the Bureau or who has ceased to be an employer subject to the Employment Security Law.

**2. Records**

A. Each employing unit shall preserve existing records (which indicate date hereinafter set forth) with respect to employment performed in its service and shall establish, maintain and preserve records that show the information hereinafter set forth with respect to workers in employment on and after the effective date of this rule:

1. For each pay period:

a. The beginning and ending dates of such periods,

b. The total wages paid for employment in such pay period,

c. The week during which, on any part of a day, there were one (1) or more workers in employment.

2. For each worker: his or her given name, middle name or initial, surname and Social Security Number, wages, salary and basis of pay during period, and period of employment.

3. Special payments of any kind, including but not limited to annual bonuses, gifts, prizes, and other awards, should show separately:

a. Money payments,

b. Reasonable cash value of other remuneration,

c. The nature of such payments,

d. The calendar quarter during which such services were performed.

4. Each employer shall keep payroll records that provide information for each of its workers including but not limited to the following:

a. Wages earned weekly,

b. Wages earned quarterly,

c. Whether any week was, in fact, a week of less than full-time work,

d. Time lost, if any, by each worker due to his or her unavailability for work.

B. The records required by this section shall be maintained for a period of at least four (4) years after the calendar year for which the contributions to which they relate become due, or the date upon which the contributions were paid, whichever is the later.

**3. Contributions**

A. Contributions shall be due and shall be paid on or before the last day of the month following the close of the quarter for which contributions have been accrued. If the last day of such month falls on a non-work day for the Bureau, then any contribution reaching the office of the Bureau, or any duly constituted agent of the Bureau, on the next working day shall be deemed to have been received timely.

Payments made by mail shall be deemed to have been made timely if postmarked not later than midnight of the due date. If the due date falls on a Sunday or a legal holiday, payment shall be deemed to have been made timely if postmarked not later than midnight of the next business day.

B. Each quarterly payment shall include contributions with respect to wages for employment paid within the calendar quarter. For purposes of calculating the amount of contributions due, "wages for employment" shall not include any amounts received by proprietors or partners but shall include amounts received by corporate officers, including officers of subchapter "S" corporations, as remuneration for services, as provided in section 14 of this chapter.

C. The first contribution payment of any employing unit becoming an employer during the calendar year shall become due and be paid on or before the last day of the month following the close of the calendar quarter in which such employing unit becomes an employer and shall include contributions with respect to all wages for employment paid on and after January 1 of such year up to and including all pay days within the calendar quarter in which the employer became subject. Contribu­tions paid under this section shall be subject to the same time limits as are provided in subsection (A).

D. Employer payments will be applied in the following way:

1. Payments submitted with the employer’s contribution and wage report will be applied to the amounts due for that quarter in the following order: Competitive Skills Scholarship Fund contribution first, contributions second, interest third, payroll penalty fourth, and contribution penalty last.

2. All other payments received will be applied in the following way:

a. Beginning with the oldest quarter for which any amount remains outstanding, the outstanding contributions shall be liquidated first.

b. The balance remaining will be applied next to any interest on past due contributions imposed under subsection 3 of Section 1225 of the Employment Security Law for such quarter.

c. After the conditions of (a) and (b) above have been met, any remaining balance shall be applied for such quarter to any payroll penalty assessed under subsection 13 of Section 1082 and penalties on past due contributions imposed under subsection 4 of Section 1225, respectively.

d. Any balance thereafter remaining shall be applied in a like manner proceeding chrono­logically from the oldest to the most recent quarter for which any amounts remain outstanding.

3. The payment of interest on past due contributions, penalties on past due contributions, or payroll penalties does not preclude the employer from requesting and obtaining a waiver, abatement or refund under the provisions of subsections 3, 4, 5, and 8 of Section 1225 or subsection 13 of Section 1082 of the Employment Security Law.

4. Exceptions to this payment application may be made when it is deemed necessary for the successful collection of the contributions due and more of the payment received is applied to contributions and less to penalties and/or interest.

E. Under subsections 3 and 4 of Section 1225 and subsection 13 of Section 1082 of the Employment Security Law, decisions by the Bureau denying requests for the waiver of interest and penalties must include a written explanation as to why the legal standard for waiver has not been met. Denial of a waiver is a decision that is appealable to the Division of Administrative Hearings, in accordance with subsection 1 of Section 1226 of the Employment Security Law.

F. *[Repealed]*

G. *[Repealed]*

H. For the purpose of annually computing contribution rates under subsection 4 of Section 1221 of the Employment Security Law, all contribution payments made up to and including July 31st of the preceding year, including contributions assessed and paid late from the period when employment began, will be included in the formula for determining the employer's contribution rate. In calculating an employer's average annual payroll for the 36-consecutive month period ending June 30th of the preceding year, the divisor shall in all cases be 3 regardless of whether an employer paid wages during any July to June period.

I. For the purposes of subsection 9 of Section 1221 and subsection 12 of Section 1082, contributions erroneously paid by an employer to another state and subsequently refunded, in whole or in part, to such employer shall be due and payable to the State of Maine in an amount based on the amount of taxable wages paid in employment multiplied by the employer's Maine tax rate and reduced by any amount paid by such other state as unemployment compensa­tion benefits attributable to the employer. The amount of such reduction shall be charged against the employer's experience rating record, as required under subsection 3 of Section 1221.

**4. Payments in lieu of contributions**

A. Following the end of each calendar month the Bureau shall notify each employer of the amount of benefits paid and chargeable to the employer and shall assess the cumulative amount due, under paragraph A of subsection 11 of Section 1221 of the Employment Security Law. No such assessment shall be issued for a cumulative amount less than $10.00.

B. Payments shall be due 30 days after the date of mailing to the last known address of the employer unless an application for redetermination of an assessment is duly filed. If such due date falls on a Sunday or a legal holiday, or on a day which the Governor or the Commissioner of Administrative and Financial Services of the State of Maine or a designee has determined to be a non-work day for the Bureau, then any payment reaching the office of the Bureau, or any duly constituted agent of the Bureau, on the next work day shall be deemed to have been received timely. Due date for payment in the case of a redetermination shall be determined in the same manner as for the original determination.

B-1. After receiving an application for redetermination, in accordance with paragraph D of subsection 11 of Section 1221 of the Employment Security Law, the Bureau shall review the calculation of the amount assessed only with respect to whether such amount bears the same ratio to total benefits paid to the claimant during the period as the claimant's base period wages paid by the employer bear to the claimant's total base period wages paid by all employers. Employers liable for payments in lieu of contributions shall pay all amounts assessed when due without regard to the pendency or result of any appeal as to the claimant's eligibility or qualification for benefits. If the result of any such appeal establishes an overpayment to the claimant's benefit account, such overpayment shall be credited to the employer's account only at the time recovery from the claimant is effected. In no event shall an employer liable for payments in lieu of contributions be released from the liability to reimburse its proportionate share of benefits erroneously paid.

C. Payments made by mail shall be deemed to have been made timely if postmarked not later than midnight of the due date. If the due date falls on a Saturday, Sunday or a legal holiday, payment shall be deemed to have been made timely if postmarked not later than midnight of the next business day.

D. Within 60 days after the effective date of its election, each employer electing to make payments in lieu of contributions, if so required by the Commissioner, shall file a surety bond, or deposit money, or securities, as approved by the Commissioner, in the amount equal to five percent (5%) of the taxable wages paid by such employer for the four completed calendar quarters immediately preceding such effective date, or the four completed calendar quarters immediately preceding any renewal of the bond. If the employer has not paid wages for four completed calendar quarters, the amount of the bond, or deposit of money or securities shall be in the amount fixed by the Commissioner which would most nearly represent a four-calendar quarter period based on the employer's actual payment of wages.

The obligation under the bond shall render the surety liable, as though the surety was such employer, to the extent of the bond for any failure of the bonded employer to pay the full amount of payments in lieu of contribution when due, together with any applicable interest and penalties provided for in subsections 3 and 4 of Section 1225 of the Employment Security Law. The bond or other instrument of security shall remain in effect for the entire period of time during which unemployment benefits may be paid to the former employees of the employer, which extends for a minimum of 30 months beyond the date that employment ceased. The amount secured may be increased or renewed at such times as the Commissioner prescribes, as long as the employer continues liable for payments in lieu of contributions.

If the instrument of security is in the form of a deposit account to which the employer has access, the deposit account must specify that it is for the benefit of the Treasurer, State of Maine, as custodian for the Maine Department of Labor. The account must be established in a manner that prohibits the employer from making withdrawals from the account without approval from the Bureau.

**5. Payments by the State, any political subdivisions or instrumentalities**

A. Following the end of each calendar month, the Bureau shall notify the State or any political subdivision or instrumentality thereof of the amount of benefits paid and chargeable to the reimbursement account of such governmental entity and shall assess the cumulative amount due under the provisions of subsection 13 of Section 1221 of the Employment Security Law. However, no such assessment shall be issued for a cumulative amount less than $10.00.

B. Payment of the amount determined to be due shall be made within 30 days after notice of assessment is mailed, unless a request for redetermination is filed within 30 days of such mailing. If such due date falls on a non-work day for the Bureau, then any payment reaching the office of the Bureau, or any duly constituted agent of the Bureau, on the next work day shall be deemed to have been received timely.

Payments made by mail shall be deemed to have been made timely if postmarked not later than midnight of the due date. If the due date falls on a Saturday, Sunday or a legal holiday, payment shall be deemed to have been made timely if postmarked not later than midnight of the next business day.

Due date for payment in case of a redetermination shall be determined in the same manner as for the original determination.

C. The provisions of paragraph B-1 of section 4 of this chapter shall apply with equal force to assessments of amounts due from the State and any political subdivision and any of their instrumentalities.

**6. Group accounts**

A. For the purpose of subsection 15 of Section 1221 of the Employment Security Law, two or more eligible employers may file a joint application, on the form prescribed by the Bureau, for establishment of a group account. The application shall identify a group representative, authorized to act as agent of the group. When the application is approved, the Bureau shall establish the group account effective as of the beginning of the calendar quarter in which it receives the application, to remain in effect in accordance with the provisions of such sub­section 15.

B. New members may be added to, and active members may withdraw from such group account, with approval of the Commissioner, upon application duly filed.

C. The representative, acting as agent for the members of such group account, shall be responsible for dealing with the Bureau relative to obligations of each member under law, and all notices from the Bureau as required in the law sent to the representative shall be deemed to have been sent to any member of the group to which it relates.

D. Any bond, money or securities furnished under the provisions of subsection 12 of Section 1221 of the Employment Security Law shall be for the group and the amount thereof shall be determined in the same manner provided in section 4(D) of this chapter.

**7. Reports**

A. Every employer subject to payment of contributions or liable for payments in lieu of contributions, as provided in sections 3, 4, 5, and 6 of this chapter, shall execute and return to the Bureau quarterly, a contribution report.

B. Each employer shall submit, in accordance with subsection 13 of Section 1082 of the Employment Security Law, quarterly payroll reports showing the name, Social Security Number of, and total wages paid to each person employed by it. Quarterly reports shall be due in the office of the Bureau, or any agent of the Bureau, on or before the last day of the month following the close of the calendar quarter for which the reports relate and shall be on such forms as the Bureau may prescribe. If the due date falls on a non-work day for the Bureau, then quarterly reports reaching the office of the Bureau, or any duly constituted agent of the Bureau, on the next work day shall be deemed to have been received timely.

Quarterly reports made by mail shall be deemed to have been made timely if postmarked not later than midnight of the due date. If the due date falls on a Saturday, Sunday or a legal holiday, the report shall be deemed to have been made timely if postmarked not later than midnight of the next business day.

Employers, payroll service providers and group account agents are required to file reports electronically as directed by the Bureau unless they obtain a waiver from the Bureau. Waivers shall only be issued upon a determination that it is not possible for the reporting employer, payroll service provider, or group account agent to file reports electronically.

C. Each employing unit shall make reports as required by the Bureau on the prescribed forms. Instructions accompanying any report shall have the same force and effect as regulations.

D. Employers and agents of employers, including payroll providers and third-party agents, may use e-signatures to sign their reports. The use of e-signatures must be consistent with Maine statutes governing such use.

E. All employers exempt from the weekly payment of wages as provided in Section 1224 of the Employment Security Law shall submit quarterly payroll reports including all accrued wages payable for employment during the calendar quarter.

F. When an employing unit receives a request for information from the Bureau, including but not limited to a request for information with respect to separation of an alleged former employee, the employing unit shall complete the form and return the same within 10 days from the date the request was mailed. An employer that has established a pattern of failing to respond timely or adequately to requests from the Bureau for information relating to claims for unemployment compensation may not be relieved of charges relating to an erroneous payment made to a claimant due to a failure to receive the information prior to payment of the benefits pursuant to Section 1221(3)(E) of the Employment Security Law. Subsection 6(R) of Section 1221 defines a “pattern of failing” to mean “repeated documented instances of failure on the part of the employer or agent of the employer to respond timely or adequately to a written or electronic request from the Bureau for information relating to a claim for unemployment compensation, taking into consideration the number of instances of failure in relation to the total number of requests. An employer or agent of the employer that fails to respond timely or adequately to a written or electronic request from the Bureau for information relating to a claim for unemployment compensation may not be determined to have engaged in a pattern of failing if the number of instances of failure during the year prior to a request is fewer than 2 or less than 2% of requests, whichever is greater.”

G. Whenever an employing unit offers employment to an individual and such offer is refused, or when an employer is unable to contact a former employee at last known or given address or telephone number for purpose of recall to suitable employment, the employing unit shall immediately notify the Bureau as to the details of the offer and refusal or attempted recall.

**8. Identification of workers**. Each employer shall ascertain the Social Security Number of each worker employed by it.

**9. Change in employer status or entity**

A. Every employer shall immediately notify the Bureau of any change to its contact information, such as address, telephone number or any other form of contact. The Bureau will rely on last known or given address for the employer for purposes of notice to the employer of all matters pertaining to unemployment. The Bureau is entitled to the presumption of receipt by the employer of any notice or correspondence sent to the employer’s last known or given address.

B. Every employer who transfers any part of the assets of the employer's business by sale, lease, merger, consolidation, reorganization or otherwise, shall immediately in writing report such transfer to the Bureau.

C. Every employing unit which is the transferee of a part of the assets of any business formerly owned by an employer shall report such transfer to the Bureau.

D. Every executor or administrator of the estate of a deceased individual who, at the time of death, was an employer under the Employment Security Law shall notify the Bureau as to the date of death of such employer and the date upon which such executor or administrator qualified.

E. Every custodian, guardian, receiver, conservator, trustee in bankruptcy and any other person assuming control of the assets of an employer by court order shall notify the Bureau of the date and provisions of such order.

**10. Cash value of meals and lodging**. The cash value of meals and lodging, including those furnished at a bargain charge to the employee, shall also be included in the wages for computing contributions due under Section 1221 of the Employment Security Law. The cash value of meals and lodging may be excluded from wages if three conditions are met: such meals and lodging are (1) furnished for the employer's convenience; (2) on the employer's premises; and (3) furnished as a condition of employment.

If the value of meals and lodging is included in wages the Bureau reserves the right to determine, in individual cases, the cash value of such remuneration pursuant to subsection 19 of Section 1043 of the Employment Security Law. Where a cash value for meals and lodging is agreed upon in any contract of hire, the amount so agreed upon shall, if more than the rates prescribed herein, be deemed to be the value of such meals and lodging. Where a cash value for meals and lodging is not agreed upon by the employer and the employee, the Bureau will determine the fair market value of the meals and lodging on the basis of the facts and circumstances presented. In no circumstance shall the cash value of meals and lodging be determined to be more than: the State of Maine standard Federal per diem rates as established annually by the US General Services Administration.

**11. Field Investigations**

A. **Investigations of Potentially Subject Employers**. Whenever a claimant reports that he or she performed services with an individual or employing unit which has not previously been determined to be an "employer" as defined in subsection 9 of Section 1043 of the Employment Security Law, and that individual or employing unit should be or might be an "employer," then a field examination shall be initiated.

B. **Investigations of Potentially Subject Employment**. Whenever a claimant reports that he or she performed services for an "employer," as defined in subsection 9 of Section 1043 of the Employment Security Law, and it is found that the Bureau does not have a record of wages for those services, and such services should be or might be subject to the Employment Security Law, then a field examination shall be initiated. If it is determined that such services are "employment" as defined in subsection 11 of Section 1043 of the Employment Security Law, and if the Bureau does not have a record of the amount of wages paid, then a statement will be taken from the claimant. The claimant will be required to furnish any payroll check stubs or other reliable information required by the Bureau in support of the statement.

C. **Continued Filing of Claims**. While a field investigation, as described in subsections (A) or (B) of this section, is being conducted, the claimant shall be advised both orally and in writing to continue to file weekly claims.

**12. Severance Pay**

A. Severance pay is considered remuneration for personal services, and as such, is defined as wages in accordance with subsection 19 of Section 1043 of the Employment Security Law.

B. Contributions on severance pay, including payments made pursuant to Section 625-B of Title 26, shall be due on or before the last day of the month following the close of the calendar quarter in which the severance pay was paid to the individual. The contribution rate shall be based on the employer's experience rating record and determined from this reserve ratio in accordance with subsection 4 of Section 1221, of the Employment Security Law.

C. The severance pay will be exempt from contributions if the remuneration paid to the individual, in the form of wages, during the same calendar year exceeded the amount of wages specified in paragraph A of subsection 19 of Section 1043 of the Employment Security Law.

**13. Successorship**

A. Under Section 1228 of the Employment Security Law, the Bureau may determine, in accordance with paragraph (B) of subsection 9 of Section 1043, that an individual or organization is liable as a successor for contributions and interest due and unpaid by a predecessor employer as of the date that the successor employer acquired the predecessor's business. This determination must be made in writing and is appealable. A copy of such determination with notice of appeal rights must be retained by the Bureau. The factors to be used in determining whether a successorship has occurred are as follows:

1. The extent to which the successor’s enterprise retains its pre-transfer identity;

2. The successor’s capacity to produce similar goods and services;

3. Continuity of management;

4. Similarity in methods of production and distribution;

5. Identity of the employment force; and

6. The amount of assets, particularly employment producing or income producing assets, transferred.

The Bureau will take into account the combination of factors to determine the extent to which the successor has the capacity to perpetuate the business of the predecessor; no single factor is determinative of the issue.

B. The successor is liable for contributions owed by the predecessor in an amount not to exceed the reasonable value of the business acquired. The Bureau will assess the full amount of contributions owed on the presumption that the value of the business exceeds the amount of the debt for contributions. The successor may rebut the presumption by presenting evidence to demonstrate a reasonable value of the business at the time of acquisition. The Bureau’s determination of the value of the business may be appealed.

C. Assessments for contributions owed by the predecessor must be mailed to the successor employer in accordance with the time periods established by subsection 6 of Section 1225 of the Employment Security Law.

D. Prior to making an assessment against the successor for contributions and interest that were not paid by the predecessor, the Bureau shall make every effort to collect the amount owed from the predecessor, including but not limited to the following:

1. Documented attempts to contact the predecessor by telephone, by mail and in person;

2. Establishing responsible individual liability against the predecessor in accordance with Section 1225(1-A) of the Employment Security Law;

3. Establishing liens against property owned by the predecessor; and

4. Disclosing the assets of the predecessor when appropriate.

E. Under Section 1228 of the Employment Security Law, interest on the amount of contributions owed and unpaid by the predecessor shall not continue to accrue against the successor after the date of acquisition of the predecessor's assets.

F. If the predecessor makes payments on its debt to the Bureau after the successor has also so paid the Bureau, the amounts so paid by the successor with respect to the successorship shall first be applied to delinquent amounts owed by the successor, if any, and any amount remaining shall be reimbursed to the successor in full.

G. If the successor pays the entire amount owed by the predecessor, the debt will be considered paid in full. No further interest or penalties may be assessed against the predecessor for nonpayment of the debt with respect to the successorship, and all existing liens against the predecessor's property, which relate only to that debt, must be removed. Filing fees for removal of the liens must be paid in advance by the predecessor. If the predecessor will not pay the fees, the successor must pay the filing fees.

H. For purposes of rate determination under paragraph A of subsection 5 of Section 1221 of the Employment Security Law, the assignment of or rates and transfers of experience in successor purchases when there is substantially no common ownership, management or control between the transferor and transferee, is as follows:

1. A new employer who acquires the business of the predecessor employer in toto may acquire the experience rate of the employer or may be assigned the state average contribution rate, whichever is lower. Upon notification of the transfer, the Bureau will determine whether there is substantially no common ownership, management or control, relying on the criteria set forth in paragraph K below. If the Bureau determines that there is no common ownership, the Bureau will notify the new employer of the option of acquiring the predecessor’s experience rate, or being assigned the new employer rate. The new employer will have 30 days to notify the Bureau of its choice. Failure to notify the Bureau will result in the Bureau assigning the employer the lower of the two rates.
2. An existing employer with an established experience rate who acquires the business of the predecessor employer in toto may acquire the experience rate of that predecessor employer, which is then blended with the successor’s established experience rate to form a new rate, or retain the established experience rate of the successor, whichever is lower. Upon notification of the transfer, the Bureau will notify the existing employer of the option of blending the rate or retaining its established rate. The existing employer will have 30 days to notify the Bureau of its choice. Failure to notify the Bureau will result in the Bureau assigning the employer the lower of the two rates.
3. The acquisition in toto of a business accrues to the ultimate successor. An ultimate successor is the entity which has the capacity to continue the predecessor's business even though such successor may have acquired the predecessor's business or assets through an intermediate party or by other than a purchase/sale transaction. Where the intermediary acts only as a straw party and does not operate the business as its own, or have the capacity to do so for all practical purposes, the predecessor's experience rating record shall be transferred to the ultimate successor.

J. Under subsection 5 of Section 1221 of the Employment Security Law, only a successor employer that acquires the business of a predecessor employer in toto will be entitled to the predecessor's experience rating record. A successor that acquires only a severable portion of the predecessor's business, in accordance with paragraph G of subsection 9 of Section 1043, will be assigned the rate of a new employer pursuant to paragraph A of subsection 4 of Section 1221 of the Employment Security Law. A severable portion means a part of a business that is separable from the preceding business but which is capable of maintaining a complete and independent existence. If the successor that is acquiring the severable portion of the predecessor’s business is an existing employer, the successor will retain its own rate.

K. **SUTA Dumping**. Under Section 1221(5-A), when an employer who transfers its trade or business, or a portion to its trade or business, to another employer with which there is substantially common ownership, the Bureau may determine that the parties have engaged in SUTA dumping, which is a transfer that has been entered into for the purpose of obtaining a lower unemployment rate. For purposes of identifying such a transfer, the Bureau will consider the following factors:

1. Substantially common ownership exists when the transferor and transferee have a relationship that pre-exists the date of the transfer. This can include but is not limited to a family relationship, employment relationship, investor relationship or other relationship that suggests the parties shared a common interest in the economic success of the transferred business.
2. Substantially common management or control exists when the transferor and transferee have an intertwined or dependent relationship such that both parties are involved in the day-to-day operation of the transferred business.

**14. Proprietorship/Partnership Income; Corporate Officers**

A. In making assessments for contributions and determinations with respect to employment status under the Employment Security Law, remuneration received for services performed by proprietors or partners of a business is personal income and is not subject to taxation. The existence of a proprietorship or partnership negates the applicability of the employment standards test set forth in paragraph E of subsection 11 of Section 1043 of the Employment Security Law with respect to the services performed by proprietors or partners. In determining whether a partnership exists, the factors to be considered by the Bureau include but are not limited to the following:

1. A written partnership agreement is not necessary for a business to qualify as a partnership.

2. A partnership may be established by the agreement of the parties to pool their resources to jointly seek profits and share in the losses.

3. The entire arrangement between the parties must be analyzed under the totality of the circumstances in order to discern the true intent of the parties.

B. For all purposes of the Employment Security Law and these rules, services performed for any corpora­tion, including a subchapter "S" corporation, by its corporate officers shall be deemed to be "employment", and remuneration received by corporate officers for such services shall be treated as "wages".

**15. Responsible Individual Assessment**

For purposes of assessing liability of an officer, director or member of the employer pursuant to Section 1225(1-B), the Bureau will rely on the factors set forth in the case of *Prescott v. State Tax Assessor*, 1998 ME 250, 721 A.2d 169, as follows:

1. It is the assessed person’s burden to show that he or she is not a responsible person;
2. The term “responsible” is given a broad interpretation, focusing on the individual’s status, duty and authority to determine whether bills should, or should not, be paid and when, including the ultimate decision whether the unemployment contributions should be paid when due;
3. Responsibility is imposed on all individuals who had the authority and responsibility to avoid the default in paying the contributions when due; each individual is jointly and severally liable for the total amount due;
4. Responsibility is based on the function of the individual in the business, not the title or level of office held;
5. The individual assessed must have exercised authority over the financial affairs or general management of the business, or must have had a duty to do so; this control does not have to be exclusive to the individual being assessed;
6. Indicia of responsibility to pay the contributions include, but are not limited to, the holding of corporate office, the authority to disburse corporate funds and stock ownership, the ability to hire and fire employees, check-signing authority, and managing of day-to-day responsibilities;
7. A superior’s instructions to another to not pay the contributions will not relieve that individual of the responsibility; delegating responsibility for financial matters will also not relieve the individual of responsibility;
8. The existence of authority in the general management and fiscal decisionmaking of the business, regardless of whether it is exercised, is determinative of the responsibility.

**16. Localization of Service**

1. For purposes of determining whether an individual’s service is localized in the state of Maine pursuant to Section 1043(11)(A), the Bureau will look at the employer’s intent or expectation at the time of hire as to which state where the individual will perform the services. If the individual is performing services in a state other than Maine, the Bureau will make the determination based on additional factors, including the base of operations or place from which the services are directed and controlled, or in cases where there is no one state in which the individual’s work is located, the individual’s state of residence.
2. An employer who employs individuals in more than one state is required to maintain coverage for its employees in the states in which the employees’ work is localized. If the employer cannot ascertain localization of work for its employees, it must establish an interstate coverage agreement with the states in which its employees are performing services.

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