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April 15, 2013

By Fax (202-693-2726), Email (etapagemaster@dol.gov) and Certified Mail

Gay M. Gilbert, Administrator
Office of Unemployment Insurance
Employment and Training Administration
U.S. Department of Labor
Frances Perking Building
200 Constitution Avenue, N.W.
Washington, DC 20210

By Fax (202-693-7020), Email (hotline@oig.dol.gov) and Certified Mail

Daniel R. Petrole
Deputy Inspector General
Office of Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-5506
Washington, D.C. 20210

Re: Maine Employment Lawyers Association's Request for Investigation of Maine's Governor and Other High-Level Officials for Violations of Federal Laws Requiring the Impartial and Prompt Administration of Unemployment Insurance Benefits

Dear Administrator Gilbert and Deputy Inspector General Petrole:

The Maine affiliate of the National Employment Lawyers Association requests an immediate investigation of the recent public disclosures of unlawful actions taken by Maine Governor Paul LePage (and other high-level officials of his administration) that violate federal laws requiring the impartial and prompt administration of unemployment insurance benefits. Our Maine NELA affiliate is made up of over fifty active members who specialize in representing employees in employment cases, including claims for unemployment compensation benefits.

I am attaching several news articles that detail specific information about how Governor LePage and his assistants have pressured the hearing officers

with the Maine Department of Labor's Division of Administrative Hearings to favor employers over employees when ruling on claims for unemployment compensation benefits. In summary, we are especially concerned about the following reported violations:

- Soon after Governor LePage took office, hearing officers began receiving unprecedented criticisms from their supervisors about their specific appeal decisions in favor of employees. They were told “that they too often rule on appeals in favor of employees.” For example, there was negative feedback “after a company owner apparently complained to the LePage administration following an appeals hearing that ended with a ruling in favor of the employee.” The hearing officers then learned that their administrative assistants had been secretly instructed to send all draft appeal decisions in favor of employees to supervisors for further review but to continue to finalize and mail all draft decisions in favor of employers. That one-sided review practice was ended after a few months only because it was causing a major backlog in issuing appeal decisions.
- Governor LePage has admitted the accuracy of the news report that he “summoned more than a dozen employees [including about ten hearing officers] to a luncheon on March 21[, 2013] that lasted more than an hour and a half, sources said, to discuss the unemployment hearing process. Their presence was required in an early March email and attendance was taken at the [Maine’s Governor’s Mansion known as the] Blaine House . . . Also attending the luncheon were political appointees, including the department's commissioner, Jeanne Paquette, and Jennifer Duddy, chairwoman of the Unemployment Insurance Commission.”
- Governor LePage’s official spokesperson, Peter Steele, confirmed the March 21 meeting and told Maine Public Radio that “LePage was simply attempting to alert the hearing officers to complaints he had received. Those complaints, Steele says, were from employers who have given up on the appeals system because they believe it is weighted against them.” He told the Kennebec Journal that “the March 21 meeting was designed to update hearing officers on complaints about the arbitration process. He said the governor’s office received numerous complaints from business owners that the results of appeals hearings were skewed toward former employees.”
- Governor LePage’s Senior Economic Advisor, John Butera, helped organize the March 21 meeting and he also attended the meeting. He has told the Maine Wire (a conservative press outlet) that “[t]he meeting was prompted by constituent complaints – business owners who told the Governor that the unemployment system in Maine was unfairly hurting their bottom lines.”

- “LePage was asked by someone at the luncheon meeting about the 30-day federal deadline for holding an appeals hearing and what to do if an employer were to argue that more time was needed to prepare a case. LePage, who is not a lawyer, said that if allowing additional time for employers meant missing the federal deadline, ‘so be it.’”
- Governor LePage has released to the press emails and a memo confirming that 10 permanent hearing officers “were expected to attend” the March 21 meeting with the Governor. The materials released to the public by the Governor are attached.
- The memo released by the Governor makes strong criticisms of the work of the hearing officers, including two cases of allegedly “erroneous rulings on evidence,” both of which were against employers. The release of this memo violated Maine’s Civil Service Law at 5 M.R.S.A. 7070 (mandating that “Performance evaluations” and “complaints, charges or accusations “shall be confidential and not open to public inspection”).
- The memo released by the Governor list four other types of errors by the hearing officers. All but one of these alleged errors were in favor of employees.
- The memo released by the Governor proposed four changes in the law, all of which are designed to help employers. This part of the memo contains a proposed change in the law to expand the grounds for denying benefits to employees who are absent from work due to illness caused by reckless behavior and the following handwriting by the Governor: “This is critical. Employees have to be made accountable for their actions.”
- The [Lewiston] Sun Journal reported that it learned about the March 21 “luncheon meeting through a number of sources whose names are being withheld because they fear retribution by the administration. Nearly a dozen people who attended the meeting were contacted by the Sun Journal by phone, email or both.” “As for the state employees who spoke up with their concerns, all of whom asked the Sun Journal for confidentiality to protect their jobs.” According to those sources:
- “Governor LePage, who campaigned for governor on a pro-business platform, said at the luncheon that the actions of the hearing officers were destroying the business climate in Maine, according to sources.”
- During the meeting Governor LePage stated that he had called a Maine judge into a meeting to discuss the merits of a specific case. The clear message he

- was intentionally sending the hearing officers is that all judges in Maine are answerable to him and must do his bidding or else.
- “Some of the agency's workers said they felt abused, harassed and bullied by LePage's tone and rhetoric, which they found intimidating and made them afraid they could lose their jobs if they didn't skew the outcomes of their appeals cases in favor of employers, sources said.”
- “Gov. Paul LePage pressured hearing officers at the Department of Labor to decide unemployment-benefit cases in favor of business owners over workers, sources to the Sun Journal have said. At that gathering, LePage scolded about eight administrative hearing officers and their supervisors, complaining that too many cases on appeal from the Bureau of Unemployment were being decided in favor of employees. He said the officers were doing their jobs poorly, sources said.”
- “When he fired a worker during his time as a business manager, LePage told the group, it was always for good reason.”
- “Administrative hearing officers, whose salaries are federally funded, explained to the governor at the meeting that they're required to adhere to federal guidelines in deciding cases, sources said.”

These specific reports are based on undisputed facts and highly credible sources. It is significant that the permanent hearing officers all earned their just cause, permanent positions with the State in a competitive, merit-based hiring process.

These reports warrant an immediate and thorough investigation because the reported actions of the Governor and his political appointees clearly violate the fundamental requirements of federal law regarding the payment of unemployment compensation benefits.

First, the Governor is breaking the federal law requiring that as a condition for a state to receive administrative grants for its Unemployment Compensation program that it must have “methods of administration” to ensure that eligible claimants are paid promptly “when due.” 42 U.S.C. § 503(a)(1). The United States Supreme Court has ruled that the words “when due” in § 503(a)(1) mean “at the earliest stage of unemployment that such payments [are] administratively feasible after giving both the worker and the employer an opportunity to be heard.” *Calif. Dep't of Human Resources Develop. v. Java*, 402 U.S. 121, 131 (1971).

In short, Congress had the “objective of getting money into the pocket of the unemployed worker at the earliest point that is administratively feasible. That is what the Unemployment Insurance program was all about.” *Java*, 402 U.S. at 135. As the Supreme Court has explained (*id.* at 131-132):

The purpose of the Act was to give prompt if only partial replacement of wages to the unemployed, to enable workers "to tide themselves over, until they get back to their old work or find other employment, without having to resort to relief." Unemployment benefits provide cash to a newly unemployed worker "at a time when otherwise he would have nothing to spend," serving to maintain the recipient at subsistence levels without the necessity of his turning to welfare or private charity. Further, providing for "security during the period following unemployment" was thought to be a means of assisting a worker to find substantially equivalent employment. The Federal Relief Administrator testified that the Act "covers a great many thousands of people who are thrown out of work suddenly. It is essential that they be permitted to look for a job. They should not be doing anything else but looking for a job." Finally, Congress viewed unemployment insurance payments as a means of exerting an influence upon the stabilization of industry. "Their only distinguishing feature is that they will be specially earmarked for the use of the unemployed at the very times when it is best for business that they should be so used." Early payment of insurance benefits serves to prevent a decline in the purchasing power of the unemployed, which in turn serves to aid industries producing goods and services.

By delaying the processing of unemployment claims with a requirement for hearing officers to submit all decisions granting (but not denying) claims for benefits to further review by supervisors, the Governor was directly violating this critical requirement of prompt payment of benefits when due. Similarly, by telling hearing officers to ignore the 30-day requirement for a benefits decision the Governor was flouting the prompt payment provision in federal law. Given the economic reality that most American families and workers live paycheck by paycheck to pay for basic necessities such as housing and food, it is obvious why federal law mandates prompt payment of unemployment benefits.

Second, Governor LePage is breaking federal law by interfering with the right of workers to “an opportunity for a fair hearing, before an impartial tribunal, for all persons whose claims for unemployment compensation have been denied.” 42 U.S.C. § 503(a)(3). In addition, the U.S. Department of Labor defines an impartial tribunal as a “civil servant who is protected from discharge

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or other types of sanctions” assigned to hear cases “to ensure that they decide the case based on the facts and the proper application of the law.” This pressure on hearing officers to favor employers destroys the tribunal’s impartiality.

In short, Governor LePage in intentionally interfering with the neutrality and basic fairness of the appeals system in order to favor employers over workers. Federal law clearly prohibits exactly such interference.

Thank you for considering this request. I would be glad to provide any further information or assistance that might be helpful.

Respectfully,

Maine Employment Lawyers Association

A handwritten signature in cursive script that reads "David Webbert".

By: Its President David G. Webbert

cc: Honorable Senator Susan M. Collins
Honorable Senator Angus S. King, Jr.
Honorable Representative Michael H. Michaud
Honorable Representative Chellie M. Pingree