

**§872. Proof of equipment ownership for employers using foreign laborers**

**1. Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Bond worker" means a person who has been described under 8 United States Code, Section 1101(a)(15)(H)(ii) and granted permission to work temporarily in the United States. [PL 2009, c. 637, §3 (NEW).]

B. "Logging equipment" means equipment used directly in the cutting and transporting of logs to the roadside, the production of wood chips in the field, the construction of logging roads and the transporting of logs or other wood products off-site or on roadways. [PL 2009, c. 637, §3 (NEW).]

[PL 2009, c. 637, §3 (RPR).]

**2. Proof of ownership required.** An employer in this State who applies for a bond worker in a logging occupation shall provide proof of the employer's ownership of any logging equipment used by that worker in the course of employment, including proof of ownership of at least one piece of logging equipment for every 2 bond workers employed by the employer in a logging occupation. The employer shall provide proof of ownership as required by this subsection on a form provided by the Commissioner of Labor. The proof required by this subsection must include, but not be limited to, a receipt for payment for the equipment purchased in a bona fide transaction and documentation of payment of any tax assessed on the equipment pursuant to Title 36, chapter 105 for the year in which the bond worker is employed by the employer. Proof of ownership must be carried in the equipment and, upon request by the department or its designee, the operator of equipment subject to this section shall provide proof of ownership. If proof of ownership is not provided within 30 calendar days of such a request, a fine of not less than \$5,000 and not more than \$25,000 may be assessed against that employer and collected by the Commissioner of Labor. Notwithstanding section 3, information regarding proof of ownership is not confidential and may be disclosed to the public. If the equipment is leased by the employer, the employer shall provide the name, address and telephone number of the leasing company and its affiliates and subsidiaries; the names, addresses and telephone numbers of the leasing company's owner or owners, its agent and members of its board of directors; and a copy of the lease document. A lease is sufficient to meet the ownership requirement of this section only if it is a bona fide lease and:

A. The lease consists of an arm's length transaction between unrelated entities or is a transfer of equipment between affiliated companies; [PL 2009, c. 637, §4 (NEW).]

B. The lease document contains a specific duration and lease amount; [PL 2009, c. 637, §4 (NEW).]

C. The lessor is not an entity owned or controlled by a bond worker or a bond worker's spouse, parent, child, sibling, aunt, uncle or cousin or person related to a bond worker in the same manner by marriage, or by any combination of a bond worker and the bond worker's family members described in this paragraph; [PL 2011, c. 620, §1 (AMD).]

D. The lessor is a leasing business as evidenced by a lease of logging equipment to at least 3 different, unrelated entities within each of the past 3 years; and [PL 2011, c. 620, §1 (AMD).]

E. The lessor provides proof of payment of personal property tax assessed on the leased equipment. [PL 2011, c. 620, §1 (NEW).]

[PL 2011, c. 620, §1 (AMD).]

**2-A. Notification.** An employer filing for certification from the United States Department of Labor to hire a bond worker to operate logging equipment shall at the time of filing notify the Maine Department of Labor and provide, for the year in which the bond worker is employed, the number of

bond workers requested; a list of each piece of logging equipment, including serial number, a bond worker will operate; receipts for payment for the logging equipment purchased in bona fide transactions; and documentation of payment of any tax assessed on the logging equipment pursuant to Title 36, chapter 105. An employer shall notify the Maine Department of Labor within 30 calendar days of the date on which a bond worker begins work in the State and shall specify the name of the bond worker and the anticipated locations where the bond worker will be conducting work and shall provide a copy of the United States Customs and Border Protection's entry form for that worker. If the notification is not provided within 30 calendar days of the date on which a bond worker begins work, a fine of not less than \$5,000 and not more than \$25,000 must be assessed against that employer and collected by the Commissioner of Labor.

[RR 2013, c. 1, §42 (COR).]

**2-B. Violation.** Upon an employer's conviction of a violation of subsection 2, the Commissioner of Labor may prohibit the employer from employing bond workers in this State for 2 years.

[PL 2011, c. 620, §1 (AMD).]

**3. Equipment covered by federal prevailing wage exempt.** This section does not apply to equipment for which the United States Department of Labor, Division of Foreign Labor Certification has established a prevailing wage under the federal Service Contract Act of 1965 for persons using that equipment.

[PL 2005, c. 461, §1 (NEW).]

**4. Enforcement; rules.** The Commissioner of Labor may adopt rules to implement and enforce the provisions of this section, including rules regarding the receipt of documentation and the investigation and prosecution of employer proof of ownership of logging equipment. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2011, c. 620, §1 (AMD).]

**5. Penalty; enforcement.**

[PL 2011, c. 620, §1 (RP).]

**6. Assistance.** The Department of Agriculture, Conservation and Forestry and the Department of Administrative and Financial Services, Bureau of Revenue Services shall provide interagency support and field information to assist the Department of Labor in enforcing this section.

[PL 2009, c. 637, §9 (AMD); PL 2011, c. 657, Pt. W, §5 (REV).]

#### SECTION HISTORY

PL 2005, c. 461, §1 (NEW). PL 2009, c. 201, §11 (AMD). PL 2009, c. 381, §§1-3 (AMD). PL 2009, c. 637, §§3-9 (AMD). PL 2011, c. 620, §1 (AMD). PL 2011, c. 657, Pt. W, §5 (REV). RR 2013, c. 1, §42 (COR).

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