

# Changes in federal and state unemployment insurance legislation in 2016

*State legislation included provisions to change work-search requirements; exclude and include services in the definition of employment; permit electronic filing by employers, claimants, and other parties; compute the minimum and maximum weekly benefit amounts, the total benefit amount, and benefit duration; recover benefit overpayments by using various methods; determine employer contribution rates; and add confidentiality/disclosure provisions.*

On the pages that follow is a summary of some important changes in state unemployment insurance laws that occurred in 2016.



## Alabama

**Nonmonetary eligibility.** Notwithstanding any provision of law, with respect to any week of unemployment beginning on or after May 1, 2015, benefits based on service in employment with a private company that provides direct services to schools may not be paid with respect to services rendered to an educational institution

- when the services are performed by an individual employed by an employer primarily or exclusively engaged in the provision of its employees to perform work for educational institutions,
- for any week commencing during the period between 2 successive academic years or terms, or for any week that commences during an established and customary vacation period or holiday recess,
- if the individual performs services for the educational institution in the period immediately before the vacation period or holiday recess, and
- there is a reasonable assurance that such individual will perform the same or similar services for the educational institution in the period immediately following the vacation period or holiday recess.

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(Previously, the law stated that for any week commencing during the period between 2 successive academic years or terms, or for any week that commences during an established and customary vacation period or holiday recess for the period that the individual does not perform his or her duties because of a holiday or weather).

## Alaska

**Administration.** Employers with taxable wages of \$1 million or more must file electronically.

The filing of benefit claims by mail is eliminated.

## Arizona

**Administration.** The Office of Economic Opportunity was established on May 19, 2016. The Director of Office of Economic Opportunity shall be appointed by the governor. Among other things, the director shall serve as this state's workforce planning coordinator; provide staffing support to the workforce Arizona council; provide stewardship of the state workforce data evaluation system; provide economic and demographic research and analysis, including constitutionally required population estimates; provide employment and unemployment estimates; and develop labor market information for the development of the state workforce strategy.

The Office of Economic Opportunity and the Department of Economic Security shall enter into a memorandum of understanding on or before September 30, 2016, to (1) establish that the Office of Economic Opportunity is the designated office, for this state, with the responsibility for fulfilling unemployment insurance data requests from the listed entities, and (2) establish workforce data stewardship to support the evaluation of workforce and education programs and the development of labor market information.

The Office of Economic Opportunity and the department, in the memorandum of understanding, shall establish specifications for quarterly data transmissions of unemployment insurance information to the Office of Economic Opportunity. The initial transmission shall include all archived data available.

The workforce data task force is established in the Office of Economic Opportunity to oversee workforce system evaluation data sharing. The Departments of Economic Security and of Education and the Office of Economic Opportunity shall notify all applicants of and participants in Workforce Innovation and Opportunity Act programs for which this state has reporting, monitoring, or evaluating responsibilities that information obtained on the application and during participation may be used to evaluate program effectiveness and to conduct research of the labor market.

All workforce evaluation system research products produced with the use of unemployment insurance information must be submitted to the Office of Economic Opportunity for archival purposes. Research products that do not contain personally identifiable information must be made available to the public, and the Secretary of State shall hold this information for long-term retention. "Research products" means the statistical analyses and reports that state entities produce with the use of unemployment insurance information pursuant to Section 23-722.04 of the Employment Security Act of Arizona. Section 23-722.04 of the Employment Security Act of Arizona provides that the department or the Office of Economic Opportunity may disclose unemployment insurance information to the following entities:

1. Any federal, state, or local governmental agency in the investigation of fraud relating to public programs or the misuse of public monies
2. Divisions of the department, including the employment and rehabilitation services administrations, for program and research purposes
3. The Department of Education to evaluate adult education program performance and for other primary and adult education program and research purposes
4. The Arizona board of regents, universities under the jurisdiction of the Arizona board of regents, and community college districts to evaluate program performance and for other program and research purposes
5. The U.S. Department of Labor, or its agents, or the U.S. Census Bureau, or its agents, as required by law or in connection with the requirements imposed because of receiving federal funding
6. Department contractors or subcontractors, or their agents, for the sole purpose of providing for the processing, storing, and transmitting of information. (This disclosure must be consistent with these disclosure provisions.)

On the request of one of the aforementioned entities to the department or the Office of Economic Opportunity, the department or the Office of Economic Opportunity shall disclose unemployment insurance information to the entity pursuant to guidelines established by the workforce data task force and pursuant to a written data sharing agreement with the requesting entity, in a form determined by the workforce data task force pursuant to the laws of this state and applicable federal regulations. The department or the Office of Economic Opportunity may disclose the unemployment insurance information only after the requesting entity has demonstrated that the information will be kept confidential, except for those purposes for which the information was provided to the requesting entity, and that the requesting entity has security safeguards in place to prevent the unauthorized disclosure of the information.

Except as otherwise allowed by law or as otherwise authorized by agreement between the department and the U.S. Department of Labor, neither the department or the Office of Economic Opportunity may use federal unemployment insurance grant monies to pay for any costs incurred in processing and handling requests for disclosure of unemployment insurance information. The department and the Office of Economic Opportunity, in consultation with the workforce data task force, shall establish a rate structure that complies with 20 CFR (Code of Federal Regulations) 603.8 for costs incurred in processing requests for disclosure of unemployment insurance information.

The requesting entity may not make public any unemployment insurance information that identifies an individual or the individual's employer. Any unauthorized disclosure, including security breaches, shall be reported to the department and the Office of Economic Opportunity immediately. Any person who knowingly discloses confidential unemployment insurance information in violation of these disclosure provisions without prior written authorization from the department or the Office of Economic Opportunity, or authorization as otherwise provided by law, is guilty of a class 3 misdemeanor.

The Office of Economic Opportunity may use unemployment insurance information to perform economic analysis for the development of labor market information and a state workforce evaluation data system and for other program and research purposes.

These disclosure provisions do not prohibit disclosure that is required or allowed by federal law.

The director is added to the list of directors that shall serve as technical advisors to the board of directors that governs the Arizona commerce authority to enhance collaboration among state agencies, to meet infrastructure needs, and to facilitate growth opportunities throughout this state.

Among other things, the authority shall, notwithstanding any other law, on request of the Office of Economic Opportunity disclose to the Office of Economic Opportunity applicant information for incentives administered, in whole or in part, by the authority. Any confidentiality requirements provided by law applicable to the information disclosed apply to the Office of Economic Opportunity.

The director may

1. contract and incur obligations reasonably necessary or desirable within the general scope of the office's activities and operations to enable the Office of Economic Opportunity to adequately perform its duties;
2. use monies, facilities, or services to provide matching contributions under federal or other programs that further the objectives and programs of the office; and
3. accept gifts, grants, matching monies, or direct payments from public or private agencies, or private persons and enterprises, to conduct programs that are consistent with the general purposes and objectives of Chapter 53 of the Arizona Revised Statutes.

The Office of Economic Opportunity shall be terminated on July 1, 2023.

Title 41, Chapter 53, of the Arizona Revised Statutes enacting general provisions establishing the Office of Economic Opportunity shall be repealed on January 1, 2024, if the office (1) has no outstanding contractual obligations with the United States or any United States agency; (2) has no debts, obligations, or guarantees that were issued; and (3) has otherwise provided for paying or retiring such debts or obligations.

If any debt or obligation mentioned in the previous paragraph exists and no satisfactory provision has been made to pay or retire the debt or obligation, the Office of Economic Opportunity and statutes continue in existence until the debt or obligation is fully satisfied.

**Appeals.** The following language is repealed: A party dissatisfied with the decision of the appeals board may file a request for review within 30 days from the date of the decision, which shall be a written or electronic request and memorandum stating the reasons why the appeals board's decision is in error and containing appropriate citations of the record, rules, and other authority. On motion, and for good cause, the appeals board may extend the time for filing a request for review. The timely filing of such a request for review is a prerequisite to any further appeal. The appeals board shall notify all parties of the filing of a request for review and shall allow 15 days from the date of the notice for any party to respond. Thereafter, the appeals board shall issue a decision on review affirming, modifying,

or reversing its decision or ordering the taking of additional testimony. All parties shall be given written notice by mail of the decision on review.

With the just-mentioned review step eliminated, a party dissatisfied with the decision of the appeals board is entitled to judicial review. A party may file an application for appeal to the court of appeals with the clerk of the appeals board within 30 days after the date of mailing or electronic transmission of the decision, except decisions concerning tax liability, collection, or enforcement may be appealed to the tax court.

The number of members on the appeals board is changed from four to three. If a decision is issued by at least two concurring members (previously, three members) of the appeals board and the appeals board is not unanimous, the decision of the majority will control. The minority may file a dissent from the decision, setting forth the reasons for the dissent.

**Coverage.** Provisions are established concerning a declaration of independent business status that prescribes the employment relationship between an employing unit and an independent contractor. Compliance with these provisions and the execution of a declaration of independent business status in compliance with these provisions are not mandatory to establish the existence of an independent contractor relationship between an employing unit and an independent contractor. The failure of a party to execute a declaration does not create any presumptions and is not admissible to deny the existence of an independent contractor relationship.

Any employing unit contracting with an independent contractor may prove the existence of an independent contractor relationship by the independent contractor executing a declaration of independent business status and by the employing unit acting in a manner substantially consistent with the declaration. Compliance creates a rebuttable presumption of an independent contractor relationship between the independent contractor and the employing unit with whom the independent contractor contracts.

Any declaration of independent business status shall be signed by the independent contractor, be dated, and substantially comply with the form provided in the establishing provisions.

This declaration of independent business status is made by the contractor in relation to services performed by the contractor for or in connection with the contracting party. The contractor must state, declare, and acknowledge those specifics contained in the established provisions.

The execution of a declaration of independent business status and substantial compliance with the declaration pursuant to the established provisions does not operate to the same effect as or otherwise act as a substitute for a written agreement.

**Financing.** The payment of contributions is not required if the quarterly amount of the contribution or taxes is less than \$10.

From December 31, 2016, Section 23-765 of the Employment Security Act of Arizona is repealed. This section provided that if at any time before the computation date, shared work benefits are paid under the shared work plan of an employer or its predecessor, the employer's contribution rate for the ensuing calendar years shall be increased by adding to that rate (1) 1 percent if the employer's negative reserve ratio is at least 5 percent but less than 15 percent or (2) 2 percent if the employer's negative reserve ratio is 15 percent or more.

**Nonmonetary eligibility.** The work-search requirement is changed to one job contact per day on 4 separate days (previously, three work-search contacts during the week).

## California

**Administration.** The confidentiality and conformity provisions are amended to grant access to quarterly wage records to a list of state officials and state organizations for the purposes of complying with the Workforce Innovation and Opportunity Act, and subsequent regulatory changes. The list of state officials is as follows:

- California Workforce Development Board
- Chancellor of the California Community Colleges
- Superintendent of Public Instruction
- Department of Rehabilitation
- State Department of Social Services
- Bureau for Private Postsecondary Education
- Department of Industrial Relations
- Division of Apprenticeship Standards
- Employment Training Panel

**Coverage.** Provisions requiring each state or local government agency or community action agency, or any private organization contracting with a state or local government agency, that provides specified employment services to verify the legal status or authority to work status of applicants prior to providing services are repealed.

Provisions requiring each state or local government agency or community action agency, or any private organization contracting with a state or local government agency, that provides specified employment services to post notice in plain sight of the need to verify legal status or work authority are repealed.

## Colorado

**Administration.** Exceptions to time limits are made for the provisions concerning work registration and requested reports, continued claims, and initial, additional, and reopened claims. An individual must show good cause for untimely filing; however, no filing under these provisions will be allowed, for any reason, after 6 months. An individual has 12 days to request a cancellation of a valid claim, after which a request for cancellation will be denied.

Good cause for failing to file for a week of unemployment exists when an individual has established to the satisfaction of the division that he or she exercised no control over that failure. Failing to file for a week of unemployment at an itinerant service point and establishing to the satisfaction of the division that he or she exercised no control over that failure are removed from the list of what is considered good cause.



A week of unemployment for an individual who has failed to file shall be the earliest calendar week in which the individual established to the satisfaction of the division that he or she exercised no control over the circumstances of the failure to act timely. (Previously, a week of unemployment for an individual who has failed to file shall be the calendar week in which such individual became unemployed, if the individual establishes, in accordance with these regulations, that he or she has good cause for such failure).

The provisions on enhanced unemployment insurance compensation benefits are deleted.

A waiver of regulatory restrictions (at the discretion of the division) is provided for claimants in approved training for industries in crisis.

**Coverage.** To improve the process of determining the classification of an individual for federal unemployment insurance tax purposes, including any audits performed, the state Department of Labor and Employment will

- (1) develop guidance to enhance employer education and outreach with regard to worker classification and continue to improve its audit processes with compliance in mind;
- (2) clarify the process by which an employer or individual may submit further information in response to a determination by the Department and prior to an appeal;
- (3) establish an individual to serve as a resource for employers by providing guidance on (1) the proper classification of workers, (2) audit findings, and (3) options for curing or appealing an audit;
- (4) establish internal methods to improve the consistency among auditors; and
- (5) establish an independent review of a portion of audit and appeal results at least twice a year to monitor trends and improve the audit process.

**Financing.** The amount of \$36,750 is appropriated to the state Department of Labor and Employment for the 2016–17 state fiscal year for use by the Division of Unemployment Insurance. This appropriation is from the general fund and is based on an assumption that the division will require an additional 0.5 full-time equivalent. To implement the classification provisions, the division may use this appropriation for program costs.

**Nonmonetary eligibility.** Rule 13654 provides that specified groups of jobseekers shall be allowed participation in dedicated services at the local workforce center. Participation shall be voluntary and replace employer contacts with other workforce center staff-directed activities designed to help them return to work and shorten the period of unemployment, including assistance with resume writing and job-interview skills. Tangible evidence of work-search activity shall mean a written record that can be verified and that includes the date and location of the activity, the name of the provider of the activity, and phone number, email address, or other reliable contact information for the provider. The division, in cooperation with workforce center staff, shall encourage participants to continue their sustained efforts to prepare for, seek, and find employment.

Note: Rule 13654 replaced Rule 13615, 2016, that expired April 17, 2016. Rule 13615 provided that specified groups of job-seekers shall be allowed participation in dedicated services at the local workforce center. Participation shall be voluntary and replace employer contacts with other workforce center staff-directed activities designed to help them return to work and shorten the period of unemployment, including assistance with resume writing and job-interview skills. Tangible evidence of work-search activity shall mean a written record that can be verified and that includes the date and location of the activity, the name of the provider of the activity, and phone

number, email address, or other reliable contact information for the provider. The division, in cooperation with workforce center staff, shall encourage participants to continue their sustained efforts to prepare for, seek, and find employment.

## Connecticut

**Administration.** The language providing that an individual filing a new claim for unemployment compensation shall be permitted to change a previously elected withholding status one time in a benefit year is removed.

Claims for benefits shall be made in a manner prescribed by the administrator (previously, in accordance with such regulations as the administrator may prescribe, at the public employment bureau or branch most easily accessible from the individual's place of residence or from the place of his most recent employment, as designated by the administrator).

The term "Workforce Investment Act of 1998, P.L. 105-220" is replaced with the term "Workforce Innovation and Opportunity Act of 2014, P.L. 113-128."

The state Labor Department, upon the request of the Secretary of the Office of Policy and Management, shall furnish unemployment compensation records maintained by the Labor Commissioner. Nothing in this paragraph shall be construed as limiting the secretary's authority to request or receive information from the state Labor Department. (Previously, the Secretary of the Office of Policy and Management shall be an authorized representative of the Labor Commissioner or administrator of unemployment compensation under Chapter 567 and shall receive upon request by the secretary any information in the Labor Commissioner's possession relating to employment records that may include, but need not be limited to employee name, Social Security number, current residential address, name and address of the employer, employer North American Industry Classification System code, and wages. In addition, the state Labor Department, upon the request of the Secretary of the Office of Policy and Management, shall furnish unemployment compensation wage records contained in the quarterly returns required and maintained by the Labor Commissioner.)

Section 31-3hh of the Connecticut General Statutes concerning the adoption of regulations setting forth standard contract provisions that shall be included in each contract entered into by a regional workforce development board with any public or private entity and funded by state or federal moneys allocated to a regional workforce development board is repealed (effective June 6, 2016).

Section 31-11x of the Connecticut General Statutes that

(1) defines the terms "underemployed," "unemployed," "economically disadvantaged," and "comprehensive job training and related services;"

(2) establishes a program of grants for

(a) job training and related services or job opportunities programs for economically disadvantaged, unemployed and underemployed individuals, including persons of limited English-speaking ability, through opportunities industrialization centers and other community-based organizations and

(b) the establishment and operation in the state of these centers and organizations; and



(3) adopts regulations establishing criteria and requirements for the distribution of funds is repealed, effective June 6, 2016.

Section 31-40t of the Connecticut General Statutes that defines the terms “person,” “employer,” “employee,” and “hazardous condition,” and provides provisions concerning working in or exposure to a hazardous condition in the workplace is repealed, effective June 6, 2016.

**Appeals.** “Records” mean the official records, files, and data maintained by the Employment Security Division.

In addition to an individual inquiring for records through oral testimony or by written and printed means, an individual may inquire for records electronically.

The administrator or an examiner may prescribe a hearing by telephone or in person at his or her discretion.

The time limit for filing an appeal to the administrator of the state Labor Department and to the Board of Review is within 21 calendar days after such notice was provided (previously, after such notice was mailed to his last known address).

The time limit for filing an appeal to the superior court for the judicial district of Hartford or for the judicial district wherein the appellant resides is 30 calendar days after the date on which a copy of the decision is provided (previously, is mailed) to the party.

In addition to filing appeals by mail, appeals may be filed electronically; and if an appeal is filed electronically, such appeal shall be considered timely if it is received within the given time period.

Every decision of a referee or the board shall be issued in a manner prescribed by the appeals division, which may include, but need not be limited to, in writing, in-person delivery, by mail or electronically, to the parties concerned immediately following its rendition (previously, every decision of a referee, or the board, shall be in writing and delivered in person or by mail to the parties concerned immediately following its rendition).

**Extensions and special programs.** The definition of “additional benefits” is amended to mean benefits payable to exhaustees by reason of conditions of high unemployment (previously, by reason of conditions of high unemployment or by reason of other special factors under the provisions of Section 31-232a of the Connecticut Unemployment Compensation Law).

Section 31-232a of the Connecticut Unemployment Compensation Law concerning additional benefits payable during periods of substantial unemployment is repealed (effective June 6, 2016).

**Financing.** Section 31-268 of the Connecticut General Statutes providing for the adoption of regulations concerning the adjustment of contributions without interest if made through error and without fraudulent intent is repealed (effective June 6, 2016).

**Monetary entitlement.** The language providing that dependency allowances shall be counted in the amount of maximum benefits provided in Section 31-232a of the Connecticut Unemployment Compensation Law is removed.

**Nonmonetary eligibility.** No employer may require an employee to submit to a urinalysis drug test unless the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol that adversely affects or could adversely affect such employee’s job performance. (The following sentence was removed from this paragraph: The Labor Commissioner shall adopt regulations in accordance with Chapter 54 to specify

circumstances, which shall be presumed to give rise to an employer having such a reasonable suspicion, provided nothing in such regulations shall preclude an employer from citing other circumstances as giving rise to such a reasonable suspicion.)

**Overpayments.** Any person who, through error, has received any sum as benefits while any condition for the receipt of benefits was not fulfilled in his or her case or has received a greater amount of benefits than was due him or her shall be charged with an overpayment of a sum equal to the amount so overpaid to him or her, provided such error has been discovered and brought to such person's attention within 1 year of the date of receipt of such benefits. A person whose receipt of such a sum was not due to fraud, willful misrepresentation, or willful nondisclosure by himself or herself or another shall be entitled to a determination of eligibility (previously, to a hearing before an examiner) that shall be based upon evidence or testimony presented in a manner prescribed by the administrator, including in writing, by telephone, or by other electronic means. The examiner may prescribe a hearing by telephone or in person at his or her discretion, provided, if an in-person hearing is requested, the request may not be unreasonably denied by the examiner. Notice of the time and place of such hearing and the reasons for such hearing shall be given to the person not fewer than 5 days prior to the date appointed for such hearing. The determination of overpayment shall be final unless the claimant, within 21 days after notice of such determination was provided to the claimant (previously, was mailed to him) at his or her last-known address, files an appeal from such determination to a referee.

Any person charged with the fraudulent receipt of benefits or the making of a fraudulent claim shall be entitled to a determination of eligibility (previously, to a hearing before the administrator, or a deputy or representative) that shall be based upon evidence or testimony presented in a manner prescribed by the administrator, including in writing, by telephone, or by other electronic means. The administrator may prescribe a hearing by telephone or in person at his or her discretion, provided, if an in-person hearing is requested, the request may not be unreasonably denied by the administrator. Any person determined by the administrator to have, on the basis of facts, committed fraud shall be liable for repayment for any benefits collected fraudulently, as well as any other penalties assessed. Until such liabilities have been met, such person shall forfeit any right to receive benefits. Notification of such decision and penalty shall be provided to such person (previously mailed to such person's last known address) and shall be final unless such person files an appeal no later than 21 days after the date such notification was provided to such person.

## Delaware

**Nonmonetary eligibility.** An individual shall be disqualified for benefits if such individual has been determined to have made a false statement or representation knowing it to be false or knowingly has failed to disclose a material fact to obtain benefits to which the individual was not lawfully entitled.

When the state Division of Unemployment Insurance crossmatches an individual's eligibility to receive benefits through a wage or other matching program and determines that wages were not reported by the individual, or otherwise discovers wages not reported by the individual, prior to taking any adverse action against the individual, the division shall send the individual a notice providing the individual with an opportunity to submit additional information to contest the information discovered by the division. The individual will have 7 days from the date the notice is mailed to respond to the notice. If the individual does not respond timely to the notice, the division will make a decision based on the information it has obtained through its investigation. If the individual responds timely

to the notice, the division will make a decision based on all information obtained through its investigation, including the individual's response.

**Overpayments.** With regard to recoupment of fraud or nonfraud overpayments of benefits from claimants and to collection of assessments, penalties, and interest as debt to the unemployment compensation fund from employers, the department may (in addition to other means of collection) collect overpayments, interest, penalties, and other liabilities due as provided in Section 545 of title 30 of the Delaware Code; Section 5402 of the Federal Internal Revenue Code (26 U.S.C.); Section 503(m) [sic] of the Social Security Act (42 U.S.C.); and any other means available under federal or state law.

With regard to repayment of benefits, whoever received, by reason of a nondisclosure or misrepresentation by a person or by another of a material fact (regardless of whether such nondisclosure or misrepresentation was known or fraudulent) any sum as benefits will be liable for a sum equal to the amount so received and (in addition to other means of collection) will be liable to have such sum collected by the department as provided in Section 545 of title 30 of the Delaware Code; Section 5402 of the Federal Internal Revenue Code (26 U.S.C.); and Section 503(m) [sic] of the Social Security Act (42 U.S.C.).

## District of Columbia

**Administration.** The Unemployment Benefits Modernization Emergency Amendment Act of 2016 amends, on an emergency basis, provisions of law necessary to support the fiscal year 2017 budget and expires October 20, 2016.

The following sentence is removed from the unemployment compensation law: All benefits shall be paid through employment offices, in accordance with such regulations as the Board may prescribe.

All payments of benefits shall be made by the Chief Financial Officer and shall be subject to a subsequent, but not a prior, audit by the Office of the Inspector General. (Previously, all payments of benefits shall be made by checks drawn by the Director of Department of Employment Services or the director's duly authorized agent, shall be made through the employment offices designated by the director, and shall be subject to a post, but not a prior, audit by the Office of the Inspector General.)

**Monetary entitlement.** The maximum weekly benefit amount increases from \$359 to \$425, effective October 1, 2016.

Section 51-101(5) of the Official Code of the District of Columbia provides that an individual shall be deemed "unemployed" with respect to any week during which he or she performs no service and with respect to which no earnings are payable to him or her or with respect to any week of less than full-time work if 66 percent (previously, 80 percent) of the earnings payable to him or her with respect to such week are less than his or her weekly benefit amount plus \$50 (previously, \$20).

A. The following language provides that effective January 1, 2018, and for each calendar year thereafter, the maximum weekly benefit amount shall be determined by the director, subject to subparagraph D of this paragraph, by using the Department of Labor State Benefit Financing Model;

B. The director shall consider increasing the maximum weekly benefit amount in proportion to any increase in the consumer price index for urban consumers in the Washington metropolitan statistical area, published by the U.S. Department of Labor, Bureau of Labor Statistics, in making a determination but may increase the maximum weekly benefit amount by a lesser amount or may not increase it when necessary to preserve an adequate balance in the District unemployment compensation trust fund through the financial plan.

C. (1) By September 30, 2017, and by September 30 of each subsequent year, the director shall recommend to the mayor the maximum weekly benefit amount, which shall become the maximum weekly benefit amount for the next calendar year, unless the council passes a resolution disapproving the director's recommendation pursuant to sub-subparagraph (2) of this subparagraph.

(2) The mayor shall promptly submit the recommendation, with a proposed resolution, to the council for a 45-day period of review. If the council does not approve or disapprove the recommendation, by resolution, within the 45-day period of review, the recommendation shall be deemed approved.

D. If the council passes a resolution of disapproval, the maximum weekly benefit amount then in effect shall continue in effect for the next calendar year.

Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to 26 times his or her weekly benefit amount (previously, equal to 26 times his or her weekly benefit amount or 50 percent of the wages for employment paid to such individual by employers during his or her base period, whichever is the lesser).

Subsection (e) of Section 51-107 of the Official Code of the District of Columbia provides that any individual who is unemployed in any week and who meets the conditions of eligibility for benefits and is not disqualified shall be paid with respect to such week an amount equal to the individual's weekly benefit amount less any earnings payable to the individual with respect to such week deductible in accordance with the following formula. Fifty dollars (previously \$20) will be added to the weekly benefit amount; from the resulting sum will be subtracted 66 percent (previously, 80 percent) of any earnings payable to the individual for such week. The resulting benefits, if not a multiple of \$1, shall be computed to the next lower multiple of \$1. In no event shall the amount paid for any week exceed the individual's established weekly benefit amount.

## Florida

**Financing.** An out-of-state business or out-of-state employee performing emergency-related work in Florida during a disaster response period (a period which begins 10 calendar days before the first day a state of emergency is declared and ends on the 60th calendar day after the end of the declared state of emergency) is not considered to have established a level of presence in Florida that would require that business to register, file, and remit state or local taxes or fees or require that business to be subject to any registration, licensing, or filing requirements in Florida. Therefore, activities conducted by the out-of-state business are not subject to "reemployment assistance taxes" among other business taxes. Any business that remains in Florida beyond the disaster response period is subject to the state's normal standards for establishing presence or residency or doing business in the state.

## Georgia

**Administration.** Section 34-8-130(a) and (b) are added to the Georgia Employment Security Law and provides that

(a) To enforce the provisions of this article and to prevent fraud and abuse of the state unemployment trust fund, the Commissioner of the Georgia Department of Labor or his or her duly authorized representative may submit to the state revenue commissioner the names and Social Security numbers of any individuals who are required to report earnings to the department along with the amount of earnings such individuals have reported to the department during specified time periods. The state revenue commissioner shall compare the submitted earnings of such individuals with income reported by such individuals to the state Department of Revenue and shall verify and report back to the department that the submitted earnings of each such individual are either equal to, greater than, or less than the amount of income reported by each such individual to the Department of Revenue. Furthermore, the department may submit to the state revenue commissioner the name of any employer along with the number of employees who are being reported to the department by such employer during specified time periods. The state revenue commissioner shall compare such records submitted by employers to the department with the number of employees reported by each such employer to the Department of Revenue and shall verify and report back to the department that the number of employees reported to the department is either equal to, greater than, or fewer than the number of employees reported to the Department of Revenue for state income tax withholding purposes for the specified time period. The department shall pay the state revenue commissioner for all costs incurred by the Department of Revenue pursuant to this subsection. No report contemplated by this subsection shall be provided by the Department of Revenue to the department without a cooperative data sharing agreement executed by the two departments that is specific to the subject matter of this subsection. Any tax information secured from the federal government by the Department of Revenue pursuant to the provisions of Section 6103 of the Internal Revenue Code shall not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information under the authority of this subsection shall be subject to the provisions of Georgia Code Section 48-7-60 and to all penalties provided under Georgia Code Section 48-7-61 for unlawful divulging of confidential tax information, as well as the penalties provided under Code Section 34-8-125 of the Georgia Employment Security Law.

(b) Nothing in this code section shall prevent the Department of Revenue or any other governmental agency from having access to records or information as provided for under Code Section 34-8-125 of the Georgia Employment Security Law.

**Financing.** The contribution rate increases from 2.62 percent to 2.64 percent for new or newly covered employers for periods on or after January 1, 2017, but on or before December 31, 2022, and to 2.70 percent for periods after December 31, 2022.

For the periods on or after January 1, 2000, but on or before December 31, 2022 (previously, 2016), variations from the standard rate of contributions remain the same. The contribution rate for employers with positive reserve accounts range from 2.110 percent to 0.025 percent, and the contribution rate for employers with deficit reserve accounts range from 2.15 percent to 5.40 percent.

For the periods prior to April 1, 1987, or after December 31, 2022 (previously, 2016), variations from the standard rate of contributions remain the same. The contribution rate for employers with positive reserve accounts range from 2.16 percent to 0.04 percent, and the contribution rate for employers with deficit reserve accounts range from 2.2 percent to 5.40 percent.

For the periods on or after January 1, 2017, but on or before December 31, 2022, the quarterly administrative assessment decreases from 0.08 percent to 0.06 percent to be assessed upon all wages as defined in code Section 34-8-49, except the wages of

- (1) those employers who have elected to make payments in lieu of contributions as provided by code Section 34-8-158 or who are liable for the payment of contributions as provided in said code section or
- (2) those employers who, by application of the statewide reserve ratio as provided in Code Section 34-8-156, have been assigned the minimum positive reserve rate or the maximum deficit reserve rate.

For the periods on or after January 1, 2017, but on or before December 31, 2022, in addition to the rate paid under Code Section 34-8-151, each new or newly covered employer shall pay an administrative assessment of 0.06 percent (previously 0.08 percent) of wages payable by it with respect to employment during each calendar year until it is eligible for a rate calculation based on experience, except as provided in Code Section 34-8-158.

The repeal date of the administrative assessment is extended from December 31, 2016, to January 1, 2023.

## Hawaii

***Extensions and special programs.*** A temporary program limited to Maui County is created to provide state additional benefits to unemployed workers as follows:

- “State additional benefits eligibility period” means the period beginning on September 4, 2016, and ending on October 28, 2017.
- An individual will be eligible to receive a payment of state additional benefits with respect to a week of unemployment provided that the
  - benefit year for the most recent initial claim filed by the individual begins on or after March 1, 2015;
  - individual had at least 2 quarters of insured employment in Maui County during the base period of the initial claim filed under (1);
  - individual exhausted regular benefits within the state additional benefits eligibility period;
  - individual filed an initial claim and filed continued claim certifications for state additional benefits during the state additional benefits eligibility period;
  - week of unemployment falls within the state additional benefits eligibility period;
  - individual is not receiving unemployment benefits under federal law or the laws of any other state, or any federal or federal–state extended benefits program or adjustment assistance under Chapter 2 of



Title II of the Trade Act of 1974, as amended, during the same weeks within the state additional benefits eligibility period for which state additional benefits are claimed; and

- individual has met all other conditions of eligibility that apply to regular benefits except that no individual will be required to serve a waiting period in the state additional benefits eligibility period.
- The weekly state additional benefits amount payable to an eligible individual for a week of total unemployment within the state additional benefits eligibility period will be an amount equal to the weekly benefit amount payable in the individual's current or most recently expired benefit year within the state additional benefits eligibility period.
- The maximum state additional benefits amount payable to any eligible individual during the state additional benefits eligibility period will be 13 times the individual's weekly state additional benefits amount.
- No state additional benefits will be payable for any week beginning prior to the state additional benefits eligibility period or for any week beginning after the state additional benefits eligibility period ends.
- Except when the result would be inconsistent with the Hawaii Revised Statutes, the provisions of Chapter 383, Hawaii Revised Statutes, which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, state additional benefits.
- No provision will apply when the balance of the unemployment compensation trust fund is below the adequate reserve fund. The additional program provisions are repealed on October 28, 2017.

**Financing.** The following financing provisions concern the temporary program limited to Maui County:

- State additional benefits paid will be charged against the account of any of the individual's base-period employers in the same manner as regular benefits were charged on the individual's current or most recently expired benefit year within the state additional benefits eligibility period consistent with Section 383-65, Hawaii Revised Statutes.
- Out of the general revenues of the state, the sum of \$650,000 or so much thereof as may be necessary for fiscal year 2016–17 is appropriated to carry out the purposes of this program, effective July 1, 2016.
- The funds for state additional benefits payable will be withdrawn from the unemployment compensation trust fund. If necessary, additional moneys may be allocated from the state general fund and used for the payment of expenses incurred for the administration of state additional benefits.

## Idaho

**Appeals.** Parties to a claim are entitled to a written or digital notice of administrative or other deadline including, but not limited to, determinations, revised determinations, special redeterminations, decisions, and letters from the state Department of Labor requiring a response within a specified time.

The appeals procedures concerning the

- (a) financing of benefit payments by nonprofit organizations and governmental entities provisions,



(b) mandatory transfers of experience rating accounts and federal conformity provisions regarding transfers of experience and assignment of rates, and

(c) liability of successor provisions are clarified by providing that administrative determinations shall become final unless, within 14 days after notice as provided in Code Section 72-1368(5) of the Idaho Employment Security Law, an appeal is filed with the department in accordance with the department's rules. Appeal proceedings shall be in accordance with the provisions of Code Section 72-1361.

Procedures concerning the determination and redetermination of a taxable wage rate provide that a taxable wage rate determination becomes conclusive and binding upon the employer, unless an application for redetermination is filed within 14 days after notice as provided in Code Section 72-1368(5) (previously, within 14 days after delivery or mailing of the notice thereof to his or her last known address). An employer's redetermination becomes final unless an appeal is filed within 14 days after notice as provided in Code Section 72-1368(5) (previously, within 14 days after delivery or mailing of the notice thereof to his or her last known address).

Appeal proceedings concerning a determination of chargeability shall be in accordance with the provisions of Code Section 72-1361.

An administrative determination of covered employment shall become final unless, within 14 days after notice as provided in Code Section 72-1368(5), an appeal is filed with the department setting forth the grounds for such appeal. The following sentence is removed: A notice shall be deemed served if delivered to the person being served or if mailed to his or her last known address; service by mail shall be deemed complete on the date of mailing.

Within 14 days after notice as provided in Code Section 72-1368(5) (previously, within 14 days after the mailing of such notice to the applicant's last known address, or in the absence of such mailing, within 14 days after delivery thereof), the applicant may appeal to the Director, state Department of Labor, for a hearing with regard to the rejection of any application for refund or credit for any amount paid, setting forth the grounds for such appeal.

A determination of amounts due of wages paid in covered employment because of an employer's failure to make a report becomes final unless the employer, within 14 days after notice as provided in Code Section 72-1368(5) (previously, within 14 days after the mailing of the notice to the employer's last known address or in the absence of such mailing, within 14 days after delivery thereof) files an appeal with the department. The following sentence is removed: The director shall give written notice of the determination to the employer.

A jeopardy assessment will be issued when it has been determined that the collection of any amounts due from any covered employer will be jeopardized by delay, and it shall become conclusive and binding upon the employer unless, within 14 days after notice as provided in Code Section 72-1368(5), the employer files an appeal to the department setting forth grounds for such appeal. (Previously, the law stated within 14 days after the mailing of such declaration to the last known address of such employer or in the absence of such mailing, within 14 days after personal delivery upon the employer.)

Code Section 72-1361, which contains language concerning appeals to the department and to the Industrial Commission provides that upon appeal from a denial of a claim for refund or credit, determination of amounts due upon failure to report, of rate of contribution, of coverage, of chargeability, jeopardy determination, cost reimbursement determination, of mandatory transfer of experience rating, or of successor liability, the director may

transfer the appeal directly to an appeals examiner pursuant to Code Section 72-1368(6) or he or she may issue a redetermination affirming, reversing, or modifying the initial determination. (The wording added to the provision was “cost reimbursement determination, determination of mandatory transfer of experience rating, or determination of successor liability.”)

Note: Code Section 72-1368(5), in part, provides that a notice shall be deemed served if delivered to the person being served, if mailed to his or her last known address, or if electronically transmitted to him.

Monetary entitlement. Obsolete language for determining the taxable wage rates for calendar years 2005 and 2006 is removed. Obsolete language for establishing the maximum weekly benefit amount for calendar year 2005 is removed.

The formula determining the base tax rate so that the base tax rate shall not be less than 0.6 percent (previously, not less than 0.63 percent) and shall not exceed 3.4 percent (previously, not exceed 3.364 percent) is amended.

The maximum weekly benefit amount shall be 55 percent of the state average weekly wage paid by covered employers for the preceding calendar year. (Previously, for calendar year 2006 and the calendar years thereafter, prior to December 31 of each year, the maximum weekly benefit amount was determined based on a table using a percentage of the state average weekly wage paid by covered employers for the preceding calendar year and the base tax rates. From the highest to the lowest, with base tax rates ranging from 0.630 percent to less than 0.840 percent, the average weekly wage percentage was 60 percent, and with base tax rates ranging from 3.045 percent to less than 3.360, the average weekly wage percentage was 52 percent.)

The maximum weeks of entitlement are based on a sliding scale of seasonally adjusted unemployment rates for the state for a minimum of 10 weeks to a maximum of 26 weeks, depending on the unemployment rate in effect for the months of February, May, August, and November. (Previously, the maximum weeks of entitlement were based on the ratio of total base-period earnings to highest quarter earnings, ranging from 1.25 to 1.60 qualifying for 10 weeks and ranging from 3.5601 to 4.00 qualifying for 26 weeks.)

Nonmonetary eligibility. For purposes of work-search requirements, the maximum number of weeks for an individual to be considered job attached increases from 12 to 16. If the individual returns to work temporarily during this period, the individual's period of job attachment shall be extended by 1 week for each week of verified full-time employment.

## Illinois

**Administration.** The Director of the Illinois Department of Revenue may exchange information with the state Treasurer's Office and the Department of Employment Security for the purpose of implementing, administering, and enforcing the Illinois Secure Choice Savings Program Act.

Small employers' use of automatic enrollment for employees in the Illinois Secure Choice Savings Program Act is subject to final rules from the U.S. Department of Labor. Utilization of automatic enrollment by small employers may be allowed only if it does not create employer liability under the federal Employee Retirement Income Security Act.

The Director of the state Department of Employment Security will make information available to the state Treasurer's Office and the state Department of Revenue to facilitate compliance with the Illinois Secure Choice Savings Program Act, including employer contact information for employers with 25 or more employees and any other information the director deems appropriate that is directly related to the administration of this program.

## Indiana

**Administration.** The provisions creating the Indiana Unemployment Insurance Board are repealed. The Indiana Unemployment Insurance Board is abolished, and all powers, duties, agreements, liabilities, and other assets of the board are transferred to the state Department of Workforce Development on April 1, 2016. The board and the department are required to cooperate to provide for the orderly transition beginning April 1, 2016, and expiring January 1, 2017. All references to the Indiana Unemployment Insurance Board are henceforth considered references to the department.

**Nonmonetary eligibility.** Not later than the fourth week after the week an individual begins receiving benefits, the individual must be scheduled to visit and receive an orientation to the services available through a one-stop center in order to maintain eligibility to receive benefits, effective July 1, 2016. The individual's orientation must be completed not later than the sixth week after the week the individual begins receiving benefits, unless the department waives the requirement only when one of the following applies to the individual:

- (a) The individual is attending training or retraining approved by the department.
- (b) The individual is a job-attached worker with a specific recall date that is not more than 60 days after the individual's separation date.
- (c) The individual is using a hiring service, a referral service, or another job placement service as determined by the department.
- (d) The individual is receiving a supplemental unemployment benefit under a contract or agreement.

## Iowa

**Financing.** The state Department of Workforce Development is authorized to join a consortium with the states of Idaho and Vermont to modify the Idaho unemployment benefit payment software system so that it can be used to pay unemployment insurance benefits by the state of Iowa.

Out of funds made available to the state of Iowa under Section 903 of the Social Security Act, as amended, the sum of \$1,076,000, or so much thereof as may be necessary, is appropriated. The funds will be used under the direction of the department to modify the Idaho unemployment insurance benefit payment software system so that it can be used to pay unemployment insurance benefits by the state of Iowa and to acquire programming, software, and equipment required to provide an administrative and payment system for the Iowa unemployment insurance program. The funds appropriated will not be obligated after May 27, 2018.

The amount obligated will not exceed at any time the amount by which the aggregate of the amounts transferred to the account of this state in the unemployment trust fund pursuant to Section 903 of the Social Security Act, as amended, exceeds the aggregate of the amounts obligated for administration and paid out for unemployment

insurance benefits and required by law to be charged against the amounts transferred to the account of this state in the unemployment trust fund.

The amount of \$4,875,000, or so much thereof as may be necessary, of incentive payment funds credited with respect to the Assistance for Unemployed Workers and Struggling Families Act (Public Law 111-5, Division B, Title II, Section 2003, as codified in 42 U.S.C. Section 1103) is permitted as a special transfer made under Section 903(g) of the Social Security Act. Under the direction of the department, the funds will be used to modify the Idaho unemployment insurance benefit payment system so that it can be used to pay unemployment insurance benefits by the state of Iowa and to acquire programming, software, and equipment required to provide an administrative and payment system for the Iowa unemployment insurance program. The funds appropriated will not be obligated after May 27, 2018.

**Overpayments.** Notwithstanding Section 96.3, Subsection 7, and Section 96.3, Subsection 10, paragraph “d,” of the Iowa Employment Security Law, the department will not pursue the recovery of any overpayments of unemployment insurance benefits made to individuals caused by a telephone system malfunction on March 8, 2014.

The department is authorized to make a one-time transfer of \$528,379.68, or so much thereof as may be necessary, from moneys transferred to the state on March 13, 2002, pursuant to Section 903(d) of the Social Security Act, to be deposited in the state unemployment compensation fund for the payment of unemployment insurance benefits. The funds authorized will not be obligated after May 27, 2018.

## Louisiana

**Extensions and special programs.** A state of emergency is declared because of flooding and damage to the state.

Because of the extreme volume of unemployment claims to be processed, the Louisiana Workforce Commission has requested the Governor to suspend for disaster-related claims and for the effective period of this order the application of Louisiana Revised Statute

- 23:1533, which provides for claimants’ benefits to be charged against base-period employers for purposes of employers’ tax experience rating and the protesting of such changes by employers;
- 23:1552, which provides for the charging of claimants’ benefits to certain employers;
- 23:1600(2) and (3) to the extent they require claimants to register and search for work (does not suspend reporting to an employment office as prescribed, and the requirements that claimants be able to work and available to work); and
- 23:1601(1), (2), (7)(a), (b), and (c), which provide certain disqualifications for otherwise eligible claimants. Claimants filing disaster-related claims were not discharged, nor did they quit or leave employment.

Executive Order JBE 2016-63 is effective upon signature (September 2, 2016) for those parishes already covered by the Major Disaster Presidential Declaration, dated August 14, 2016, and to those parishes covered by any subsequent expansion of the August 14, 2016, Declaration. This order applies retroactively from Friday, August 12,

2016, and continues through Monday, September 12, 2016, unless amended, modified, terminated, or rescinded by the Governor prior thereto.

**Financing.** Benefits paid to a spouse who resigned to relocate with an active-duty military serviceperson who received an order of permanent change of station will not be charged against the experience rating of an employer from whom an employee leaves to relocate; however, benefits paid will be recouped as a social charge to all employers.

**Nonmonetary eligibility.** No individual who is otherwise eligible for benefits will be disqualified for benefits if

- he or she is the spouse of an active-duty military serviceperson;
- his or her spouse receives an order of permanent change of station; and
- he or she has resigned his or her employment to relocate with his or her spouse pursuant to an order of permanent change of station.

## Maryland

**Coverage.** Work is not covered employment when performed by a holder of a limited license to provide nail technician services who leases or otherwise agrees to the use of a chair, booth, or space from a holder of a barbershop permit, a beauty salon permit, or an owner-manager permit who operates a barbershop or beauty salon if

- the holder of a limited license to provide nail technician services and the permit holder have entered into a written lease or other written agreement that is in effect;
- the holder of a limited license to provide nail technician services
  - pays a stipulated amount or commission for use of the chair, booth, or space;
  - is not required to make any further accounting of income to the permit holder; and
  - has access to the premises at all hours and may set personal work hours and prices; and
- the lease or other written agreement expressly states that the holder of a limited license to provide nail technician services knows
  - of the responsibility to pay state and federal income taxes and make contributions to Social Security for self-employment and
  - that the work is not covered employment.

The following language is removed from the definition of messenger service business: The term “messenger service business” means a business that does not have an exclusive contractual delivery arrangement with an individual or a commercial establishment.

Work that a messenger service driver performs for a person who is engaged in the messenger service business is not covered employment if, among other things, compensation is by commission only, which may include any of the following:

1. schedule of compensation that is calculated from a percentage of revenue or some other measure of revenue that the driver generates for the messenger service business
2. A fixed amount of compensation for the completion of a specific delivery job
3. A guaranteed minimum amount of compensation for the driver remaining available to provide delivery service (The law is construed to apply retroactively and shall be applied to and interpreted to affect all determinations of (1) rates of contributions for employing units for all calendar years beginning on or after January 1, 2013, and (2) benefit charges for unemployment insurance claims for benefits based on work performed on or after January 1, 2013.)

The definition of “knowingly” is moved from Section 8-201.1 of the Maryland Unemployment Insurance Law that concerns failure to properly classify employees to Section 8-101 that contains definitions. Removing this term changes the numbering of Section 8-201, and amends the text to correspond to the renumbering.

**Financing.** Subsection (f) of Section 8-612 is added to provide that for any calendar year beginning on or after January 1, 2017, the table of rates in effect for the immediately preceding calendar year shall continue to apply if

- the unemployment insurance fund balance on September 30 of the immediately preceding calendar year was at a level that would result in a table of rates that had lower rates being applied under Subsection (d) of Section 8-612 and
- the federal funding goals requirement in 20 C.F.R. Section 606.32 were not met as of December 31 of the second immediately preceding calendar year.

Subsection (f) of Section 8-612 is applicable to all rate tables.

**Nonmonetary eligibility.** The provision that an individual may not be denied unemployment benefits for failure to actively seek work if the individual is at least 60 years old and has been furloughed temporarily and is subject to recall is repealed (applies only to initial and reopened unemployment insurance claims filed on or after July 3, 2016).

**Overpayments.** Sections 8-101(t) through (aa), respectively, are renumbered to be Sections 8-101(u) through (bb), respectively.

The term “knowingly” is redefined to mean “except as otherwise provided in this title, having actual knowledge, deliberate ignorance, or reckless disregard for the truth” (added, “except as otherwise provided in this title”).

The Secretary of the Department of Labor, Licensing and Regulation may recover benefits paid to a claimant who was not entitled to the benefits

- (1) by deduction from benefits payable to the claimant in the future (previously, by deduction from benefits payable to the claimant in the future, excluding the 1.5-percent monetary penalty and the 1.5-percent monthly interest);

- (2) in the manner for the collection of past due contributions; or
- (3) through other reasonable means of collection, including those permitted under
  - (i) state law for the collection of debts owed to the state or
  - (ii) federal law.

The secretary may recover benefits paid to a claimant who knowingly made a false statement or representation or knowingly failed to disclose a material fact to obtain or increase a benefit or other payment, in addition to disqualification of the claimant

- (1) in the manner for the collection of past due contributions;
- (2) through other reasonable means of collection, including those permitted under
  - (i) state law for the collection of debts owed to the state or
  - (ii) federal law; or
- (3) if the deduction is made by another jurisdiction under an intergovernmental agreement providing for the recovery of overpaid benefits, by deduction from benefits for which the claimant is eligible in the future under the law of the jurisdiction that made the deduction, excluding the monetary penalty of 15 percent of all benefits paid and interest of 1.5 percent per month on the amount of all benefits paid to the claimant.

If any of the amounts just mentioned that may be or are required to be recovered have not been recovered within 5 years after the date of the decision to recover the amount, the secretary may consider the amount uncollectible.

If the best interests of the state will be served, the secretary may adjust, compromise, or settle interest due under Subsection (b) of Section 8-809 or under Section 8-1305.

In addition to the penalty under Subsection (a) of Section 8-1305, a person who violates Section 8-1301

- (1) shall make full restitution of the benefit unlawfully received and pay a monetary penalty of 15 percent of the benefit unlawfully received, including interest at a rate of 1.5 percent a month on the total amount of restitution plus the monetary penalty from the date the secretary notifies the person of the amount to be recovered;
- (2) shall be disqualified from receiving benefits for any week of unemployment, including the week in which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact, until
  - (I) the secretary determines that
    - 1. the benefit unlawfully received has been repaid in full and
    - 2. the monetary penalty of 15 percent and interest at a rate of 1.5 percent a month on the total amount of benefit unlawfully received plus the monetary penalty have been paid in full or
  - (II) the secretary determines that



1. in the secretary's sole discretion under Section 8-809(f)(3) the benefit unlawfully received and interest are uncollectible and
  2. the claimant has paid the 15 percent monetary penalty in full; and
- (3) shall be disqualified from receiving benefits if
- (I) no other previous determinations were made that the individual violated Section 8-1301 of this subtitle during the immediately preceding 4 benefit years, for 1 year from the date on which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact;
  - (II) previous determinations were made that the individual violated Section 8-1301 in only 1 of the immediately preceding 4 benefit years, for 2 years from the date on which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact; and
  - (III) previous determinations were made that the individual violated Section 8-1301 in more than 1 of the immediately preceding 4 benefit years, for 3 years from the date on which a determination is made that the individual filed a claim involving a false statement, false representation, or failure to disclose a material fact.

The foregoing overpayment provisions apply to fraud determinations made on or after October 3, 2016. Only a fraud determination made on or after October 3, 2016, may count as a previous determination for the purpose of applying Section 8-1305(b)(3).

## Massachusetts

**Administration.** The state Department of Labor and Workforce Development shall disclose, upon request, such information in the following circumstances:

- To the heads of the Departments of Career Services, Transitional Assistance, Revenue, Veterans' Services, Office of Medicaid, and Industrial Accidents, information necessary in the performance of their official duties
- To the heads of governmental agencies who are partners in the Workforce Innovation and Opportunity Act, information necessary for the purpose of complying with performance reporting requirements of the Workforce Innovation and Opportunity Act, Public Law 113-128 (previously, disclosed to the Commissioners of Public Welfare, Revenue, Veterans' Services, Medical Security, and Industrial Accidents, information necessary in the performance of their official duties)

The rules concerning the medical security plan for the unemployed are rescinded.

**Financing.** The provisions establishing the payment and collection of the fair share employer contribution are rescinded.

The phrase “unemployment health insurance contributions” is changed to “employer medical assistance contributions.” Employer medical assistance contributions support the provision of subsidized healthcare services funded by the Commonwealth Care Trust Fund, the Catastrophic Illness in Children Fund, and the Health Safety Net Trust Fund. The provisions concerning the employer medical assistance wage base and the liability of contributions have been amended.

(1) *Employer medical assistance wage base.* Except as otherwise provided, employer medical assistance contributions are payable on the employer medical assistance wage base, provided that remuneration paid to any employee during any quarter in which the employer has fewer than six employees is not subject to the contributions. Such remuneration is not wages for purposes of the employer medical assistance wage base.

(2) *Liability of newly subject employers.*

(a) To ease the burden on newly formed businesses and organizations, any newly subject employer is exempt from payment of employer medical assistance contributions until it has been an employer for not fewer than 12 consecutive months.

(b) Employers otherwise liable for employer medical assistance contributions whose “newly subject” status expires on the preceding December 31 shall make employer medical assistance contributions as follows in the 2 subsequent calendar years:

- First calendar year: 12 percent of the employer medical assistance wage base
- Second calendar year: 24 percent of the employer medical assistance wage base

(3) *Employer medical assistance contributions rates for companies involved in ownership changes.*

Section 430 CMR 10.08(4) provides instruction in determining the contribution rates for companies involved in a change of ownership during the calendar year. In developing Section 430 CMR 10.08(4), the Department was guided by the existing law governing rate-setting for unemployment insurance contributions.

(a) *Acquisition.* The following rate-setting and payment procedures apply under Massachusetts General Law (MGL) Chapter 149, Section 189, whenever an employer acquires another employer during the calendar year or acquires substantially all assets of said employer:

- If otherwise liable for contributions under MGL Chapter 149, Section 189, the acquiring employer retains its employer medical assistance contributions rate for the remainder of the calendar year in which the acquisition takes place.
- The acquiring employer is allowed “credit” for employer medical assistance contributions paid by the acquired employer on employee wages prior to the acquisition.
- Beginning January 1 following the acquisition, the higher of the two rate schedules that would have been applicable to the acquiring or acquired employer shall become the effective rate.

- Following the acquisition, if some portion of the acquired employer still exists as a separate entity, that employer, if otherwise liable for contributions under MGL Chapter 149, Section 189, continues with the same rate that applied prior to the acquisition.
- Said employer would receive credit for payments made prior to the acquisition for any employees who remain with that employer.

(b) *Partial successorship*. If an employer acquires part of the business, organization, or trade of another employer, the employer medical assistance contribution rates of the two employers will remain unchanged because of the ownership change. The acquiring company will not be credited with payments remitted on wages paid by the former employer during the calendar year.

(c) *Consolidation*. If two or more employers merge to form a new corporation, the new entity is not a “newly subject” employer within the meaning of MGL Chapter 149, Section 189(d). For the year in which the consolidation takes place, the higher of the employers’ rate schedules prior to consolidation will be applied to wages paid by the new entity. Contributions on wages paid by the transferring employers during the calendar year in which the consolidation takes place will be credited to the new entity.

(d) *Whole successorship*. If an employing unit not subject to MGL Chapter 151A acquires an employer, the resulting entity is not considered “newly subject” within the meaning of MGL Chapter 149, Section 189(d). The rate schedule of the acquired firm applies to wages paid by the newly formed organization. Contributions on wages paid by the acquired employer during the calendar year in which the ownership change takes place will be credited to the new entity.

**Monetary entitlement.** The provisions establishing standards and procedures concerning seasonal employment and the receipt of benefits by seasonal employees are amended as follows:

- “Seasonal employment” means service performed by an employee for wages for a certified seasonal employer during a period or periods of fewer than 20 (previously, 16) weeks in a calendar year.
- “Seasonal employer” means an employer determined by the Director of the state Department of Labor and Workforce Development to be seasonal because it customarily operates all or a functionally distinct occupation within its business only during a regularly recurring period or periods of fewer than 20 (previously, 16) weeks in a calendar year because of climatic conditions or the nature of the product or service.
- “Seasonal employee” means an individual who has been
  - employed by a seasonal employer in seasonal employment during a regularly recurring period or periods of fewer than 20 (previously, 16) weeks in a calendar year for all seasonal periods and
  - notified in writing by the employer at the time hired, or immediately following the seasonal determination made by the director, that the individual is performing services in seasonal employment for a seasonal employer and such employment is limited to the beginning and ending dates of the seasonal employment as certified by the director.

- “Seasonal claimant” means an individual who was employed by a certified seasonal employer for fewer than 20 (previously, 16) weeks in a calendar year and who has filed a claim for unemployment benefits.
- “Seasonal determination” means a certification by the director that an employer operates all or a functionally distinct occupation within its business during a regularly recurring period(s) of fewer than 20 (previously, 16) weeks in a calendar year because of the nature of the product or service or because of climatic conditions.
- “Less than 20 weeks,” (previously, 16) means a maximum of 19 calendar weeks (previously, 15) as defined by MGL Chapter 151A, Section 1(t), plus any additional days of work that total at least 1 workday fewer than the customary workweek of the employer as specified on its seasonal application.
- An employer’s application seeking seasonal status must attest to the fact that
  - either the entire business operation is seasonal because it will be in operation for fewer than 20 (previously, 16) weeks in a calendar year or
  - a functionally distinct occupation within the business is seasonal because the assigned duties or activities as a whole are identifiably distinct under the usual and customary practice of the industry and such duties or activities will be performed during a period of fewer than 20 (previously, 16) weeks in a calendar year because of the climate or the nature of the product or services.
- A seasonal employer shall give written notice to the director if the certified seasonal employment equals or exceeds 20 (previously, 16) weeks in a calendar year. Such notice shall be filed within 5 days after completion of the 20th (previously, 16th) week of employment.

The deadline to apply for extended benefits while in approved training is the 20th (previously, 15th) week of a new or continued claim.

The state Labor Commissioner must put into regulations “the circumstances under which the application [for extended benefits while in approved training] deadline may be waived for good cause.”

If the claim for regular benefits was denied and the reversal of the denial did not occur until after the 31st week of the claimant’s benefit year, the claimant shall not be barred from applying for and commencing training, even if the benefit year has expired, so long as the claimant applies for training within 21 weeks of the notice of reversal and commences training with the first available program.

The notice to claimant must now be provided to the claimant in the claimant’s primary language and include a notification that a claimant shall submit any application for additional benefits while in approved industrial or vocational training no later than the 20th week of a new or continued claim unless the period is tolled by regulation or waived for good cause.

## Michigan

**Financing.** A person recording a lien or a discharge of a lien must pay to the registrar of deeds a recording fee that is equivalent to the fee for entering and recording a mortgage as authorized under Section 2567 of the revised

Judicature Act of 1961, 1961 Public Act 236, Michigan Compiled Law 600.2567. (Previously, such person was required to pay a fee of \$2.00 for recording a lien and a fee of \$2.00 for recording a discharge of a lien.)

If the state unemployment agency does not record the discharge of lien with the registrar of deeds and seek reimbursement for that recording fee, the unemployment agency shall provide the discharge of lien document and a notice of lien recording fee to the debtor, who will then be responsible for recording the discharge and paying the applicable amounts required under Section 2567 of the revised Judicature Act of 1961, 1961 Public Act 236, Michigan Compiled Law 600.2567. The notice of lien recording fee must state the amount of the recording fee the unemployment agency paid for recording the lien that is the subject of the discharge and may include any other relevant information.

In addition to any other remedy provided under Act 228, the unemployment agency may seek to recover unemployment compensation debt as provided by 26 U.S.C. 6402(f), 42 U.S.C. 503(m), or other applicable federal law. The debtor is liable for any fee the federal government imposes with respect to implementing the deduction from a federal tax refund.

**Monetary entitlement.** The unemployment agency shall not use prorated quarterly wages to establish a reduction in benefits because of earning or receiving remuneration, including partial remuneration.

**Overpayments.** The unemployment agency shall issue a notification to the claimant of claimant rights and responsibilities within 2 weeks after the initial benefit payment on a claim and 6 months after the initial benefit payment on the claim. If the claimant selected a preferred form of communication, the notification must be conveyed by that form. Issuing the notification must not delay or interfere with the claimant's benefit payment. The notification must contain clear and understandable information pertaining to all the following:

- Determinations that a person has obtained benefits to which that person is not entitled because of benefits improperly paid
- Penalties and other sanctions as provided in this enactment
- Legal right to protest the determination and the right to appeal through the administrative hearing system
- Other information needed to understand and comply with agency rules and regulations not specified in this enactment

For benefit years beginning on or after May 1, 2017, to establish fraud based on unreported earnings, the unemployment agency must have in its possession the weekly wage information from the employer.

An unemployment agency determination establishing fraud shall not be based solely on a computer-identified discrepancy in information supplied by the claimant or employer. An unemployment agency employee or agent must examine the facts and independently determine that the claimant or the employer is responsible for a willful or intentional violation before the agency makes a determination.

Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall not initiate administrative or court action to recover improperly paid benefits from an individual more than 3 years after the date that the last determination, redetermination, or decision establishing restitution is final. Except in the case of benefits improperly paid because of suspected identity fraud, the unemployment agency shall issue a determination on an issue within 3 years from the date the claimant first received benefits in the benefit year in

which the issue arose, or in the case of an issue of intentional false statement, misrepresentation, or concealment of material information in violation of Section 54(a) or (b) or Sections 54a to 54c, within 3 (previously, 6) years after the receipt of the improperly paid benefits unless the unemployment agency filed a civil action in a court within the 3-year (previously, within the 3-year or 6-year) period; the individual made an intentional false statement, misrepresentation, or concealment of material information to obtain the benefits; or the unemployment agency issued a determination requiring restitution within the 3-year (previously within the 3-year or 6-year) period. The time limits do not prohibit the unemployment agency from pursuing collection methods to recover the amounts found to have been improperly paid.

An unemployment agency determination that a claimant made an intentional false statement, misrepresentation, or concealment of material information that is subject to sanctions shall not be based solely on a computer-identified discrepancy in information supplied by the claimant or employer. An unemployment agency employee or agent must examine the facts and independently determine that the claimant or the employer is responsible for a willful or intentional violation before the agency makes a determination.

## Minnesota

***Extensions and special programs.*** An iron ore mining and related industry extended unemployment benefits program is established retroactive from August 31, 2015.

Extended unemployment benefits are available to workers in iron ore mining and related industries who were laid off because of lack of work after March 1, 2015. Eligible applicants are eligible to receive benefits for any week through the week ending June 25, 2017.

An applicant for extended benefits must meet the same requirements as for regular unemployment benefits under Minnesota statutes, have the majority of wage credits come from an iron ore mining or related industry employer, and also have exhausted the maximum amount of regular unemployment benefits.

If an applicant qualifies for the new regular benefits account after exhausting the maximum amount of regular unemployment benefits on the previous benefit account, the applicant must establish a new regular benefits account. The applicant must first request benefits under whichever program, either the extended unemployment benefits or the new regular benefit account, has greater weekly benefits. The applicant is ineligible for the program with lower weekly benefits until the maximum amount of benefits available under the first program has been exhausted.

Extended benefits paid may not be used to compute the future unemployment tax rate of a taxpaying employer nor charged to the reimbursing account of a governmental or nonprofit employer.

An applicant who is eligible for trade readjustment allowance benefits is ineligible for extended unemployment benefits under this program.

***Financing.*** The unemployment insurance tax limits are established as follows:

- (a) If the trust fund balance on December 31 of any calendar year is 4 percent or more above the amount equal to an average high cost multiple of 1.0, future unemployment taxes payable must be reduced by all amounts above 1.0. The amount of tax reduction for any taxpaying employer is the same percentage of the

total amount above 1.0 as the percentage of taxes paid by the employer during the calendar year is of the total amount of taxes that were paid by all nonmaximum experience-rated employers during the year.

(b) Employers that were at the maximum experience rating for the year or high experience rating industry employers (such as employers engaged in construction; sand, gravel, or limestone mining; manufacturing of concrete products; or road building and repair) are excluded from the reduction.

(c) The tax reduction applies to taxes paid between March 1 and December 15 of the year following the December 31 computation.

(d) The amount equal to the average high cost multiple of 1.0 on December 31, 2012, must be used for the calculation under paragraph (a) but only for the calculation made on December 31, 2015.

Notwithstanding paragraph (c), the tax reduction resulting from the application of this paragraph applies to unemployment taxes paid between July 1, 2016, and June 30, 2017.

## Mississippi

**Financing.** A special fund to be known as the “Mississippi Works Fund,” which shall consist of funds collected from Mississippi Works contributions, is created in the Treasury of the state of Mississippi.

The cost of collection and administration of the Mississippi Works contribution shall be allocated based on a plan approved by the U.S. Department of Labor (USDOL). The Mississippi Community College Board shall pay the cost of collecting the Mississippi Workforce Enhancement Training contributions, the state Workforce Investment Board shall pay the cost of collecting the state Workforce Investment contributions, and the state Department of Employment Security shall pay the cost of collecting the Mississippi Works contributions. Payments shall be made semiannually with the cost allocated to each based on a USDOL-approved plan on a pro rata basis for periods ending in June and December of each year. Payment shall be made by each organization to the department no later than 60 days after the billing date. Cost shall be allocated under the USDOL-approved plan and in the same ratio as each contribution type represents to the total to be collected for the period.

Workforce Enhancement Training contributions and state Workforce Investment contributions for calendar years 2014 and 2015 shall be distributed as follows, regardless of when the contributions were collected:

- (i) For calendar year 2014, 94.75 percent shall be distributed to the Mississippi Workforce Enhancement Training Fund, and the remainder shall be distributed to the state Workforce Investment Board bank account.
- (ii) For calendar years subsequent to calendar year 2014, 93.75 percent shall be distributed to the Mississippi Workforce Enhancement Training Fund, and the remainder shall be distributed to the state Workforce Investment Board bank account.

Interest earnings and/or interest credits for the state Workforce Investments funds shall be used for the payment of banking costs, and excess amounts shall be used in accordance with the rules and regulations of the state Workforce Investment Board expenditure policies.



The Mississippi Works funds allocated shall only be utilized for the training of unemployed persons, for immediate training needs for the net new jobs created by an employer, for the retention of jobs, or for the creation of a work-ready applicant pool of Mississippians with credentials and/or postsecondary education. Not more than 25 percent of the funds may be allocated for the retention of jobs and/or creation of a work-ready applicant pool. Not more than \$500,000 may be allocated annually for the training needs of any one employer. Training conducted utilizing these Mississippi Works Funds may be subject to a minimal administrative fee to be paid from the Mississippi Works Fund. All costs associated with the administration of these funds shall be reimbursed to the department from the Mississippi Works Fund.

Mississippi Workforce Enhancement Training contributions, state Workforce Investment contributions, and Mississippi Works contributions shall be collected at the following rates:

1. For calendar year 2014 only, the rate of 0.19 percent based upon taxable wages, of which 0.18 percent shall be the Workforce Enhancement Training contribution and 0.01 percent shall be the state Workforce Investment contribution.
2. For calendar year 2015 only, the rate of 0.16 percent based upon taxable wages, of which 0.15 percent shall be the Workforce Enhancement Training contribution and 0.01 percent shall be the state Workforce Investment contribution.

Mississippi Workforce Enhancement Training contributions, state Workforce Investment contributions, and Mississippi Works contributions shall be collected at the following rates:

1. For calendar year 2016 only, at a rate of 0.24 percent based upon taxable wages, of which 0.15 percent shall be the Workforce Enhancement Training contribution, 0.01 percent shall be the state Workforce Investment contribution and 0.08 percent shall be the Mississippi Works contribution.
2. For calendar years subsequent to calendar year 2016, at a rate of 0.20 percent based upon taxable wages, of which 0.15 percent shall be the Workforce Enhancement Training contribution, 0.01 percent shall be the State Workforce Investment contribution and 0.04 percent shall be the Mississippi Works contribution. The Mississippi Works contribution shall be collected for calendar years in which the general experience ratio, adjusted based on the trust fund adjustment factor and reduced by 50 percent, results in a general experience rate of less than 0.2 percent. In all other years the Mississippi Works contribution shall not be in effect.

The Mississippi Workforce Enhancement Training Fund contribution, the state Workforce Investment contribution, and the Mississippi Works contribution shall be in addition to the general experience rate plus the individual experience rate of all employers but shall not be charged to reimbursing or rate-paying political subdivisions or institutions of higher learning, or reimbursing nonprofit organizations.

The required suspension of the Workforce Enhancement Training Fund contributions shall occur if the insured unemployment rate exceeds an average of 5.5 percent for the 3 consecutive months immediately preceding the effective date of the new rate year following such occurrence, and shall remain suspended throughout the duration of that rate year. Such suspension shall continue until the 3 consecutive months immediately preceding the effective date of the next rate year that has an insured unemployment rate of less than an average of 4.5 percent.

Upon such occurrence, reactivation shall be effective upon the first day of the rate year following the event that lifts suspension, shall be in effect for that year, and shall continue until a subsequent suspension event occurs.

No employer's unemployment contribution general experience rate plus individual unemployment experience rate shall exceed 5.4 percent.

Benefits shall not be charged to an employer's experience-rating record if the individual was paid benefits because of a fraudulent claim, provided notification to the Mississippi Department of Employment Security in writing or by email by the employer, within 10 days of the mailing of the notice of claim filed to the employer's last-known address.

The general experience rate shall be 0.0 percent unless the general experience ratio for any tax year as computed and adjusted on the basis of the trust fund adjustment factor and reduced by 50 percent is an amount equal to or greater than 0.2 percent; then the general experience rate shall be the computed general experience ratio and adjusted on the basis of the trust fund adjustment factor and reduced by 50 percent. However, in no case shall the sum of the general experience plus the individual experience unemployment insurance rate exceed 5.4 percent. For rate years subsequent to 2014, Mississippi Workforce Enhancement Training contribution rate, and/or State Workforce Investment contribution rate, and/or Mississippi Works contribution rate, when in effect, shall be added to the unemployment contribution rate, regardless of whether the addition of this contribution rate causes the total contribution rate for the employer to exceed 5.4 percent.

## Missouri

**Coverage.** The definition of "employee" excludes a taxicab driver of the company that leases the taxicab to the driver or that provides dispatching or similar rider referral services, unless the driver is shown to be an employee of that company by application of the Internal Revenue Service 20-factor right-to-control test.

**Overpayments.** If the individual or employer fails to repay the unemployment benefits and penalty assessed as a result of a determination that the individual or employer obtained or denied unemployment benefits by fraud, such sum shall be collectible in the manner provided in Subsection 14 of Missouri Senate Bill 702, enacted July 14, 2016, for the recovery of overpaid unemployment compensation benefits (previously, provided in Sections 288.160 and 288.170 of the state Employment Security Law for the collection of past due contributions). If the individual or employer fails to repay the unemployment benefits that the individual or employer denied or obtained by fraud, the Division of Employment Security may offset from any future unemployment benefits otherwise payable the amount of the overpayment or may take such steps as are necessary to effect payment from the individual or employer. Future benefits may not be used to offset the penalty due. Money received in repayment of fraudulently obtained or denied unemployment benefits and penalties shall first be applied to the unemployment benefits overpaid, then to the penalty amount due. Regarding payments made toward the penalty, an amount equal to 15 percent of the total amount of benefits fraudulently obtained shall be immediately deposited into the state's unemployment compensation fund upon receipt and the remaining penalty amount shall be credited to the special employment security fund. (Previously, payments made toward the penalty amount due shall be credited to the special employment security fund.)

Any sum of benefits received by any person by reason of the nondisclosure or misrepresentation by such person or by another of a material fact may be recovered in accordance with the provisions of Subsection 14.

Any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the division, has received any sum of benefits while any conditions for the receipt of benefits were not fulfilled in such person's case or while such person was disqualified from receiving benefits shall after an opportunity for a fair hearing pursuant to Subsection 2 of Section 288.190, in the discretion of the division, either be liable to

- have such sums deducted from any further benefits payable to such person or
- repay to the division for the unemployment compensation fund a sum equal to the amounts so received by him or her.

The division may recover such sums in accordance with the provisions of Subsection 14. However, the division may elect not to process such possible overpayments in which the amount of same is not over 20 percent of the maximum state weekly benefit amount in effect at the time the error or omission was discovered. (Previously, any person who, by reason of any error or omission or because of a lack of knowledge of material fact on the part of the division, has received any sum of benefits while any conditions for the receipt of benefits were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall after an opportunity for a fair hearing pursuant to Subsection 2 of Section 288.190 have such sums deducted from any further benefits payable to such person provided that the division may elect not to process such possible overpayments where the amount of same is not over 20 percent of the maximum state weekly benefit amount in effect at the time the error or omission was discovered.)

Subsection 14 provides that recovering overpaid unemployment compensation benefits shall be pursued by the division against any person receiving such overpaid unemployment compensation benefits through billing, setoffs against state and federal tax refunds to the extent permitted by federal law, intercepts of lottery winnings under Section 313.321, and collection efforts as provided for in Sections 288.160, 288.170, and 288.175.

## Montana

**Nonmonetary eligibility.** An individual must report all wages (previously, only wages for insured work) earned for each week payment is requested.

The benefit payment date is the date printed on a physical check, the date of release of electronic funds transfer, or the date cash was tendered, and an individual is allowed up to 14 calendar days for reporting discrepancies.

Registration for work at a temporary employment agency is a required work-search contact. The provision that inquiring for work at a temporary employment agency does not constitute a valid work search is repealed.

**Overpayments.** A lump-sum payment of over 50 percent of the amount due on a nonfraud overpayment may be accepted by the state Department of Labor and Industry on the basis of circumstances or the reason for the overpayment, the overpayment balance, and how long it would take to recover the debt with just monthly payments.

## Nebraska

**Extensions and special programs.** Regulations are established for the short-time compensation (STC) program, including procedures for filing a plan application, computation of benefit amounts, and requirements for employers and employees during the duration of the plan.

For purposes of STC eligibility, once the plan has been approved, if an individual also works for some other employer and a separation from that other employer occurs, no disqualification will be imposed on the STC claim. However, if the individual files a claim for regular benefits, then that separation would be adjudicated at that time, assuming it would affect benefit eligibility.

## New Hampshire

**Administration.** For assessing governmental performance and accountability, the Commissioner of the Department of Employment Security may provide information to the Wage Record Interchange System, the Wage Record Interchange System 2, the Federal Employment Data Exchange System, or any other similar system or combination thereof in effect on or before July 1, 2018, developed by the U.S. Department of Labor as administered by the U.S. Department of Labor, or its designee, and utilized by each state's Performance Accountability and Customer Information Agency. The use of the information shall be limited to the purposes contained in the federal Workforce Innovation and Opportunity Act of 2014 (previously, Workforce Investment Act) or the Wagner-Peyser Act of 1933. The department may only provide aggregate statistical reports to entities participating in federal- or state-supported workforce training programs and only for assessing and evaluating those programs. The department shall require any such qualifying entity to enter into an agreement with the department that sets forth terms and conditions that are consistent with federal and state law prior to being provided any aggregate statistical reports. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place.

**Extensions and special programs.** Procedures are established to implement the self-employment assistance (SEA) program, known as Pathways to Work (PTW). Terms are defined applicable to the SEA program, including the PTW program, the New Hampshire Small Business Development Center, SEA activities, the self-employed individual, and the worker profiling system, as well as what constitutes an unsuitable business.

Claimant requirements to be considered for the PTW program include that a claimant must

- be eligible to receive regular benefits;
- be identified as likely to exhaust regular benefits by obtaining a statistical score of 0.50 or greater through the worker profiling system;
- participate in SEA activities, which include attending a self-employment orientation followed by a one-on-one interview and are approved by the state agency;
- actively engage on a full-time basis in SEA activities;
- have a balance of regular benefits equal to at least 18 times the individual's weekly benefit amount and at least 18 weeks remaining in the individual's benefit year at the time of application; and
- propose to enter a type of business that is allowable in New Hampshire.

The PTW program establishes

- the process by which the applications are reviewed,
- requirements for continued weekly claim filing,
- eligibility requirements for the SEA allowance,
- program participation requirements and monitoring,
- exhaustion of program allowance,
- termination of participation in the program,
- appeal procedures for nonacceptance into the program or termination from the program following acceptance, and
- enrollment limitations—the number of individuals enrolled at any given time in the SEA program is limited to 2.5 percent of all individuals receiving regular benefits at that time.

**Nonmonetary eligibility.** Statutory references changed from the “Workforce Investment Act” to the “Workforce Innovation and Opportunity Act.”

Eligible employees may participate, as appropriate, in training (including employer-sponsored training or worker training funded under the Workforce Innovation and Opportunity Act of 2014) (previously, the Workforce Investment Act of 1998) to enhance job skills, if such program has been approved by the Commissioner of the Department of Employment Security.

## New Jersey

**Administration.** Individuals who have served in the military, worked for the federal government, or worked outside the state of New Jersey are permitted to file a claim online.

## New Mexico

**Financing.** For each calendar year if, as of the computation date for that year, an employer has been a contributing employer throughout the preceding 24 months, the contribution rate for that employer shall be determined by multiplying the employer’s benefit ratio by the reserve factor as determined pursuant to Subsection H of Section 51-1-11 of the state Unemployment Compensation, and for each calendar year beginning in calendar year 2017, then multiplying that product by the employer’s experience history factor as determined under Subsection I of Section 51-1-11, provided that an employer’s contribution rate shall not be less than 0.33 percent or more than 5.4 percent. An employer’s benefit ratio is determined by dividing the employer’s benefit charges during the immediately preceding fiscal years, up to a maximum of 3 fiscal years, by the total of the annual payrolls of the same period, calculated to four decimal places, disregarding any remaining fraction. (Inserted “and, for each calendar year beginning in calendar year 2017, then multiplying that product by the employer’s experience history factor as determined under Subsection I of Section 51-1-11” to the paragraph.)

Subsection I provides that, for each calendar year beginning in calendar year 2017, as of the computation date for that calendar year, if an employer has been a contributing employer throughout the preceding 24 months, the employer's experience history factor shall be determined as of the computation date and shall be based on the employer's reserve. The employer's reserve shall be calculated as the difference between all of the employer's previous years' contribution payments and all of the employer's previous years' benefit charges, divided by the average of the employer's annual payrolls for the immediately preceding fiscal years, up to a maximum of 3 fiscal years (see text table).

<i>If an employer's reserve is (in percent)</i>	<i>The employer's experience history factor is</i>
6.0 and over	.4000
5.0 to 5.9	.5000
4.0 to 4.9	.6000
3.0 to 3.9	.7000
2.0 to 2.9	.8000
1.0 to 1.9	.9000
.0 to .9	.9500
Under .0	1.0000

Effective calendar year 2017, any other provision of law notwithstanding, an employer's contribution rate plus the employer's excess claims rate, if any, shall increase by no more than 2 percentage points from one calendar year to the next.

## New York

**Coverage.** The definition of "employment" is amended to exclude service by any person engaged in the trade or business of delivering or distributing newspapers or shopping news (or any services directly related) if substantially all the remuneration (paid in cash or not) is directly related to sales or other output rather than to the number of hours worked and if the services are performed pursuant to a written contract and the contract provides that the person will not be treated as an employee for federal tax purposes. This exclusion does not apply to commercial goods transportation services performed for a commercial goods transportation contractor.

## North Carolina

**Appeals.** The Board of Review is no longer required to issue a written higher authority decision that includes instructions for requesting any postdecision relief or reconsideration. The rules concerning the requirements for filing a written request for postdecision relief or reconsideration is rescinded (expired November 26, 2016). Note: These regulations were promulgated as temporary and have since expired. They were promulgated with the intent to help clarify new requirements created by the passage of North Carolina Senate Bill 15 on September 10, 2015.

**Coverage.** Continuity of control exists if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the new employer. Control may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise. Control is not affected by changes in the form of a business enterprise, reorganization of a business enterprise, or expansion of a business enterprise. (Previously, a new employer shall not be assigned a discrete employer number when there is an acquisition or change in the form or organization of an existing business enterprise, or severable portion thereof, and there is a continuity of control of the business enterprise. That new employer shall continue to be the same employer as before the acquisition or change in form. The following assumptions apply in this subsection:

(1) Control of the business enterprise” may occur by means of ownership of the organization conducting the business enterprise, ownership of assets necessary to conduct the business enterprise, security arrangements or lease arrangements covering assets necessary to conduct the business enterprise, or a contract when the ownership, stated arrangements, or contract provide for or allow direction of the internal affairs or conduct of the business enterprise.

(2) A “continuity of control” will exist if one or more persons, entities, or other organizations controlling the business enterprise remain in control of the business enterprise after an acquisition or change in form.

Evidence of continuity of control includes

- changes of an individual proprietorship to a corporation, partnership, limited liability company, association, or estate;
- a partnership to an individual proprietorship, corporation, limited liability company, association, estate, or the addition, deletion, or change of partners;
- a limited liability company to an individual proprietorship, partnership, corporation, association, estate, or to another limited liability company;
- and a corporation to an individual proprietorship, partnership, limited liability company, association, estate, or to another corporation or from any form to another form.

**Financing.** Any new employer that has continuity of control with an existing business enterprise will continue to be the same employer as the existing business enterprise was before the existence of the new employer. Any new employer with continuity of control will be assigned to the account of the existing business enterprise. Any new employer with continuity of control will not request or maintain an account other than the account of the existing business enterprise. If a new employer receives a new account and the state Unemployment Insurance Division subsequently finds that such new employer has continuity of control with an existing business enterprise, the annual tax rates will be recalculated based on the combined annual account balances of the new employer and the existing business enterprise.

**Nonmonetary eligibility.** With respect to work search, “application for a position” means supplying the information required by an employer to place an individual in a particular position or opening. Such information may include proof of the qualifications or license required by the position or opening, employment history, and personal



information, such as full name, Social Security number or other identification numbers, telephone number, and current address. An “application for a position” may be accomplished in whatever manner acceptable to an employer, including completing a designated form, submitting a written resume, or applying verbally (expired November 26, 2016). Note: These regulations were promulgated as temporary and have since expired. They were promulgated with the intent to help clarify new requirements created by the passage of North Carolina Senate Bill 15 on September 10, 2015.

The requirements necessary for a job contact to be counted as a “valid job contact” for work-search purposes are established (expired November 26, 2016). Note: These regulations were promulgated as temporary and have since expired. They were promulgated with the intent to help clarify new requirements created by the passage of North Carolina Senate Bill 15 on September 10, 2015.

## Ohio

**Administration.** Payment of contributions or payment in lieu of contributions shall be made (in addition to other methods) by electronic funds transfer methods approved by the state Director of Job and Family Services.

An employer’s account will be credited as of the transmission date of the payment only if the payment, upon presentation, clears the employer’s bank.

Employers making any payment by electronic funds transfer that is returned for reason of insufficient funds or for any other reason may be denied the privilege of making future payments by electronic funds transfer.

Payroll and employment records shall be made available by the employer for audit upon the request of the director. Records may be submitted by mail, through an in-person interview, or electronically. Audits may take place at the employer’s place of business, at the office of its duly authorized representative within the state of Ohio, or at any other location deemed appropriate by the director. Audits shall be held during regular daytime business hours. (Previously, payroll and employment records shall be made available by the employer for audit at the employer’s place of business or at the office of its duly authorized representative within the state of Ohio, during regular daytime business hours.)

**Appeals.** An appeal filed is considered timely filed if it is filed within 21 days of the date (previously, 21 days after) the director’s notice of determination or redetermination is sent to the last known post office address. The notice may also be provided electronically if an individual elects to receive notifications via electronic correspondence. In determining whether an appeal was filed timely, the director and the unemployment compensation review commission shall take administrative notice of and accept the “date issued” (previously, “date mailed”) appearing on the notice of determination or redetermination as sufficient evidence to establish the date on which the determination or redetermination was sent.

**Nonmonetary eligibility.** The prior rule requiring registration and deeming that an individual is registered upon filing a claim for benefits is rescinded. Note: Ohio statute requires registration and includes the provisions that are included in the rescinded rule; thus, the prior rule is unnecessary.

**Extensions and special programs.** The rule defining full-time employment, for purposes of the Alternative Trade Adjustment Assistance, to be 35 hours per week, by custom, or as specified in contract is rescinded.

## Oklahoma

**Appeals.** The following language is added to the section entitled “The Rules and Procedures in Appeals:” The Oklahoma Employment Security Commission shall create and maintain a precedent manual to reflect current statutes and statutory changes along with current case law that is applicable to questions of law which may arise during hearings or appeals. The precedent manual shall be updated by the commission within 30 days of the effective date of any statutory changes and shall be available at the offices of the commission and on any Internet website maintained by the commission.

The following provision is amended in the section entitled “The Rule of Decision:” A final decision of the Board of Review and the principles of law declared in arriving at such decision, unless expressly or impliedly overruled by the passage of a more recent statute, by a later decision of the Board of Review, or by a court of competent jurisdiction, shall be binding upon the commission and appeal tribunal referees in subsequent proceedings that involve the same questions of law or fact. In no event shall a decision of the Board of Review, or by a court of competent jurisdiction, decided prior to a change in law by the Legislature supersede or be binding upon the commission, appeal tribunal referees, Board of Review, or any court of competent jurisdiction in proceedings subsequent to the passage of statutory changes. (Previously, a final decision of the Board of Review or of an appeal tribunal referee and the principles of law declared in arriving at such decision, unless expressly or impliedly overruled by a later decision of the Board of Review or by a court of competent jurisdiction, shall be binding upon the commission and appeal tribunal referees in subsequent proceedings, which involve the same questions of law).

**Financing.** The section of the law entitled “Benefit Wage Ratio” is amended by changing “contribution rate” to “tax rate.”

The section entitled “Minimum Contributions” changes to “Unemployment Tax Rate” and provides that each employer unless otherwise prescribed in Section 3-111.1, 3-701, or 3-801 of the Oklahoma Employment Security Act shall pay unemployment taxes as follows:

1. All employers shall have an assigned tax rate of 1.5 percent until sufficient experience history exists in the employer’s account to meet the at-risk rule set out in paragraph 3. If the account meets the at-risk rule, the employer will qualify for an earned tax rate calculated pursuant to the provisions of Part 1 of Article III of the Employment Security Act of 1980. (Previously, all employers shall have a rate of 1.5 percent until the calendar year following the eighth consecutive calendar quarter in which the employer employed at least one individual in covered employment, at which time the employer shall qualify for an earned rate calculated pursuant to the provisions of Part 1 of Article III of the Employment Security Act of 1980);
2. If an employer qualified for an earned tax rate under paragraph 1, or under a prior law, and at the time the employer’s tax rate is being determined for a subsequent year the employer account lacks sufficient experience history to meet the at-risk rule of paragraph 3, the employer shall revert to the assigned tax rate of 1.5 percent. The employer shall pay at the assigned tax rate until the provisions of paragraph 1 are met (previously, if an employer qualifies for an earned rate under Subsection A of this section and subsequently ceases to employ at least one person, the employer shall revert to the minimum contribution rate of 1.5 percent if, throughout the 1 calendar year immediately preceding the calculation of the employer’s contribution rate, there was no individual who could have filed a claim in each quarter of that year

establishing a base period, as defined by Section 1-202 of Title 40 of the Oklahoma statutes, which would include wages from that employer. The employer shall pay at the minimum contribution rate until the provisions of Subsection A of this section are met); and

3. The at-risk rule means that an employer is required to be at risk for a claim of unemployment benefits before an earned tax rate is calculated. An employer shall meet the at-risk rule and be eligible for an earned tax rate if, throughout the calendar year immediately preceding the year for which the employer's tax rate is being determined, there was an individual who could have filed a claim for unemployment benefits in each quarter of that year establishing a base period, which would include wages from that employer.

The section entitled "Successor and Predecessor Employers—Special Rules on Transfer of Rates and Experience" is amended by providing that notwithstanding any other provision of law, the following shall apply regarding assignments of rates and transfers of experience:

- If an employer transfers its trade or business, or a separate and distinct establishment, or unit thereof, to another employer or an entity that does not meet the definition of an employer at the time of the transfer and there is substantially common ownership, management, or control of the two employers or entities at the time of the transfer, then the experience rating account attributable to the transferred trade or business shall be combined with the experience rating account of the employer to whom such business is so transferred. The employer transferring its trade or business shall be the predecessor employer and the employer or entity acquiring the transferred trade or business shall be the successor employer. The successor employer shall acquire the experience rating account of the predecessor employer, including the predecessor's actual tax and benefit experience, annual payrolls, and tax rate. The successor employer shall also become jointly and severally liable with the predecessor employer for all current or delinquent taxes, interest, penalties, and fees owed to the Oklahoma Employment Security Commission by the predecessor employer. In the case of the transfer of a separate and distinct establishment or unit within the predecessor employer, the successor employer shall acquire that portion of the items identified above that relate to the establishment or unit acquired or its pro rata share. (Previously, if an employer transfers its trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management, or control of the two employers, then the experience rating account attributable to the transferred trade or business shall be combined with the experience rating account of the employer to whom such business is so transferred.)
- Whenever a person who is not an employer under the Employment Security Act of 1980 at the time it acquires the trade or business of an employer, the experience rating account of the acquired business shall not be transferred to that person if the commission finds that the person acquired the business solely or primarily for the purpose of obtaining a lower tax rate. Instead, the person shall be assigned a tax rate under Section 3-110. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower tax rate, the commission shall examine
  - objective factors, which may include the cost of acquiring the business,
  - whether the person continued the business enterprise of the acquired business,

- how long the business enterprise was continued, or
- whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition. (Previously, whenever a person who is not an employer under the Employment Security Act of 1980 at the time it acquires the trade or business of an employer, the experience rating account of the acquired business shall not be transferred to such person if the commission finds that the person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, the person shall be assigned the minimum contribution rate under Section 3-110 of title 40 of the Oklahoma statutes. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the Commission shall use objective factors that may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition).

The section entitled “Required Filings by Professional Employer Organizations—Payment of Contributions—Change of Election” is amended by providing that a professional employer organization may choose one of two options under which it will report and pay all contributions. Option two now consists of subparagraphs a. through e. (previously a. through d.). Subparagraph e. of option two provides that the professional employer organization shall file quarterly tax returns to report the wages of all covered employees under the direction and control of each client and pay all contributions due on those wages under the account assigned to that client by the Oklahoma Employment Security Commission, provided a professional employer organization choosing this option shall produce all documentation and information necessary for the Oklahoma Employment Security Commission to create the client account within 60 days of choosing this option. If the information needed by the commission is not produced within this 60-day period, the professional employer organization shall revert to reporting under option one.

A new section is added to the Act entitled “Professional Employer Organizations—Transfer of Experience History” that provides, if a professional employer organization chooses the option to file quarterly tax returns under the account assigned to its client as outlined in option two and if the client has an experience history from a previous account assigned to that client that can be used in calculating an earned tax rate, then that experience history shall be transferred to the account assigned to that client as a coemployer of that professional employer organization.

The following Oklahoma Unemployment Insurance Reporter Regulation, Section 3-103, entitled “Computation—Percentage of Wages Payable,” is repealed: Beginning January 1, 2016, each employer, unless otherwise prescribed in Sections 3-111, 3-111.1, 3-701 or 3-801 of this title or Section 14 of this Act, shall pay contributions equal to 1.5 percent of taxable wages paid by the employer with respect to employment.

The following Oklahoma Unemployment Insurance Reporter Regulation, A through D of Section 3-111, entitled “Successor and Predecessor Employers,” is repealed:

- A. Language that determines when an employing unit shall become a successor employer and acquire the experience rating account, actual contribution and benefit experience, annual payrolls, and contribution rate of the predecessor employer and that the successor employer shall also become jointly and severally

liable with the predecessor employer for all current or delinquent contributions, interest, penalties, and fees owed to the Oklahoma Employment Security Act Commission by the predecessor employer

B. Language concerning an employing unit acquiring or transferring substantially all the trade, employees, organization, business, or assets of an employer and whether the employing unit shall acquire or not acquire that portion of the experience rating account, including the taxable payrolls and benefit wages, of the predecessor employer that is applicable to the establishment or establishments

C. Language that if the commission finds that any report required to complete a determination of contribution rate that has not been filed or was filed incorrectly or insufficiently and any such fact or information has not already been established or found in connection with some other proceeding, an estimate may be made of the information required on the basis of the best evidence reasonably available to it at the time

D. Language providing that determinations made under this section may be appealed

The date of receipt of payment by the Employment Security Commission is defined as the date postmarked on a properly addressed envelope, the date on which an electronic payment was authorized for immediate payment, and the date received by the commission for all other payments of money.

An employer may request electronic notice of benefit claims through the employer portal. The employer will have responsibility to access its account regularly through the employer portal to check for notices concerning unemployment benefit claims that are posted there. Deadlines shall be computed from the date the electronic notification is sent by the commission.

**Monetary entitlement.** Provisions for seasonal employers and seasonal workers are created. Unemployment benefits based on services by a seasonal worker performed in seasonal employment are payable only for weeks of unemployment that occur during the normal seasonal work period. Benefits shall not be paid based on services performed in seasonal employment for any week of unemployment that begins during the period between two successive normal seasonal work periods to any individual if that individual performs the service in the first of the normal seasonal work periods and if there is a reasonable assurance that the individual will perform the service for a seasonal employer in the second of the normal seasonal work periods. A notice of reasonable assurance shall be given by the employer to the employee in writing on or before the last day of work in the season. If benefits are denied to an individual for any week solely as a result of these provisions and the individual is not offered an opportunity to perform in the second normal seasonal work period for which reasonable assurance of employment had been given, the individual is entitled to a retroactive payment of benefits each week that the individual previously filed a timely claim for benefits.

Not fewer than 20 days before the estimated beginning date of a normal seasonal work period, an employer may apply in writing for designation as a seasonal employer. Within 90 days after receipt of the application, the commission shall determine if the employer is a seasonal employer. The employer may appeal this decision. If the employer is determined to be a seasonal employer, the employer shall give notice to each employee of the employer's status as a seasonal employer and the beginning and ending dates of the employer's normal seasonal work periods, and this notice shall be given to the employee within the first 7 days of employment. On or before the last day of work in the season, if the employer intends to issue a notice of reasonable assurance of employment for the next season, the employer shall also give notice to each employee advising that the employee shall timely

file an initial application for unemployment benefits at the end of the current seasonal work period and file timely weekly continued claims thereafter to preserve his or her right to receive retroactive unemployment benefits if he or she is not reemployed by the seasonal employer in the subsequent normal seasonal work period. Failure of the employer to give adequate notice as required will result in the termination of the employer as a seasonal employer.

The issuance of an appealable determination terminating an employer's status as a seasonal employer for good cause or upon the written request of the employer is permitted. An employer whose status as a seasonal employer is terminated shall not reapply for a seasonal employer status determination until after a regularly recurring normal seasonal work period has begun and ended.

If a seasonal employer informs an employee who received assurance of being rehired that, despite the assurance, the employee will not be rehired at the beginning of the employer's next normal seasonal work period, the employee is not prevented from receiving unemployment benefits in the same manner and to the same extent he or she would receive benefits from an employer who has not been determined to be a seasonal employer.

A successor of a seasonal employer is considered a seasonal employer unless the successor provides the commission, within 120 days after the transfer, with a written request for termination of its status as a seasonal employer.

At the time an employee is hired by a seasonal employer, the employer shall notify the employee in writing if the employee will be a seasonal worker. The employer shall provide the worker with written notice of any subsequent change in the employee's status as a seasonal worker. If an employee of a seasonal employer is denied benefits because that employee is a seasonal worker, the employee may contest that designation by filing an appeal.

"Normal seasonal work period" means that period or those periods of time during which an individual is employed in seasonal employment.

"Seasonal employment" means the employment of one or more individuals primarily hired to perform services during regularly recurring periods of 26 weeks or fewer in any 52-week period other than services in the construction industry.

"Seasonal employer" means an employer, other than an employer in the construction industry, who applies for designation as a seasonal employer and is determined to be an employer whose operations and business require employees engaged in seasonal employment.

"Seasonal worker" means a worker who has been paid wages by a seasonal employer for work performed only during the normal seasonal work period.

**Overpayments.** The following sentence is added to the section entitled "Benefit Overpayments:" An individual may voluntarily repay an administrative overpayment with private funds.

## Oregon

**Administration.** How the Oregon Employment Department applies exception to sharing confidential information is clarified by redefining



- the “one-stop delivery system” to mean the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act (previously, meant the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act and HB 3835 [Chapter 684, Oregon Laws 2001] and described in local Memorandums of Understanding or Regional Partnership Agreements developed by workforce investment boards and approved by the Governor’s Office of Education & Workforce Policy) and
- the “one-stop delivery system partner” to mean an entity described in Section 101(30) of the Workforce Investment Act of 1998, including entities that carry out appropriate federal, state, local, or private programs not specifically enumerated in the Act. (Previously, the term meant entities authorized by the Workforce Investment Act and HB 3835 [Chapter 660; Oregon Laws 2001] and described in local Memorandums of Understanding or Regional Partnership Agreements developed by workforce investment boards and approved by the Governor’s Office of Education & Workforce Policy. Entities may include private sector businesses that are a contracted agent of a governmental entity that is a partner and are responsible for the delivery of Workforce Investment Act related services.)

Rule 37850 adopted January 29, 2016, clarifies the law that allows exceptions in which the Employment Department may disclose confidential information, including to partners for administering state workforce programs. The Employment Department is authorized to disclose confidential customer information or records to one-stop delivery system partners under certain circumstances. The term “one-stop delivery system” means the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act. The term “one-stop delivery system partner” means an entity described in Section 101(30) of the Workforce Investment Act of 1998, including entities that carry out appropriate federal, state, local, or private programs not specifically enumerated in the Act. A “partner” under the Workforce Innovation and Opportunity Act fits within the definition of “partner” under the Workforce Investment Act of 1998 as codified in Public Law 105-220.

Notwithstanding the definition of “one-stop delivery system partner” just noted, this rule further provides that Oregon does not permit disclosure of confidential unemployment compensation information to private entities, unless the private entity has on file a written and signed informed consent release from the individual whose information is being sought.

Rule 37850 is temporary and expires on July 26, 2016.

***Extensions and special programs.*** The beginning date for a shared work plan is no earlier than the week after the plan is approved, and initial claims submitted prior to the start week of a plan will be considered filed the week the plan is effective. The original date on incomplete forms will be honored if the employer returns requested information within 7 calendar days.

Under a shared work plan, an employee

- may use other paid time (such as vacation) to bring the work-hour reduction to the required amount (20 percent to 40 percent) when the individual’s work schedule is reduced by more than 40 percent in a week;



- during a week the employee is not eligible for shared work benefits and files a claim for regular unemployment, will be considered actively seeking work if the employee remains in contact with the employer and has a date of return to work or shared work that is within 4 calendar weeks of the date the employee did not meet the hourly reduction requirement for shared work; and
- is responsible for providing information to the employer related to any earnings for another employer, missed work opportunities, or paid time used during the week claimed.

The employer will complete continued claims for benefits and submit the employee's shared work claim no later than 7 days following the week the claim is filed.

**Financing.** An employer is charged for temporary lockout benefits in the manner provided for charging employers for regular benefits.

**Monetary entitlement.** An individual is eligible to receive temporary lockout benefits (equal to the weekly benefit amount of the individual's most recent unemployment benefit claim) for a week if

- (a) prior to the week of benefits, the individual has received all the regular benefits available to the individual;
- (b) the individual is not eligible for any other benefits; and
- (c) at the time of filing an initial or additional claim, the individual is unemployed because of a lockout at the individual's place of employment.

The maximum temporary lockout benefit amount is 26 times the weekly benefit amount of the individual's most recent unemployment benefit claim.

Provides that notwithstanding the forgoing, temporary lockout benefits otherwise payable may not be paid for weeks that begin after the week in which the lockout ends.

The forgoing paragraphs apply to weeks that begin on or after March 8, 2016, except that, with respect to individuals who are unemployed because of a lockout on March 8, 2016, and who are otherwise eligible to receive temporary lockout benefits, the forgoing paragraphs apply to weeks that begin before, on, or after March 8, 2016.

Temporary lockout benefits that are retroactively payable must be claimed by the eligible individual in the manner for claiming regular benefits within 60 days after March 8, 2016 (May 11, 2016).

**Nonmonetary eligibility.** The maximum number of weeks of attendance in an instructional program for apprentices for which an unemployed individual participating in an apprenticeship program would be eligible for unemployment insurance benefits increased to 10 (previously, 5) (applicable to weeks beginning on or after March 3, 2016).

## Rhode Island

**Nonmonetary eligibility.** Notwithstanding any other provision to the contrary, individuals with a definite return-to-work date that is within 12 weeks of their last day of physical work, as certified by their employer on the employer separation notice, will be exempt from the work-search requirements.

## South Carolina

**Coverage.** Notwithstanding any other provision of law, a written agreement between a nonprofit youth sports organization and a coach which specifies that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and which also otherwise satisfies other requirements constitutes conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is that of an independent contractor relationship rather than an employment relationship and that the nonprofit youth sports organization is not obligated to

- (1) secure compensation for the coach pursuant to the workers' compensation law and
- (2) withhold federal and state income taxes from money paid to the coach for services he or she provides to the organization pursuant to the contract.

A written agreement must contain a conspicuously located disclosure appearing in bold-faced, underlined, or large type. This agreement must be acknowledged by the parties as indicated by their signatures, initials, or other means to evince that the parties have read and understand the disclosure. This disclosure clearly must state that the coach is

- (1) an independent contractor and not an employee of the nonprofit youth sports organization;
- (2) not entitled to workers' compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and
- (3) obligated to pay federal and state income tax on any money paid pursuant to the contract for coaching services and that, consequently, the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

This written agreement may not, in and of itself, be construed as conclusive evidence that an independent contractor relationship exists for purposes of required coverage under the state unemployment compensation law or any civil action instituted by a third party.

"Nonprofit youth sports organization" means an organization that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and is primarily engaged in conducting organized sports programs for persons under 21 years of age.

**Financing.** The rebuilding period for subsequent rebuilds is changed from 5 years to 4 years for the solvency of the state unemployment trust fund.

The state Department of Employment and Workforce is required to annually calculate the income necessary to pay benefits and reach the fund adequacy target for the unemployment trust fund. The total income needed is determined as follows:

- (1) Projected benefits will be determined for the next tax year in consultation with the U.S. Department of Labor and with annual data provided by the Congressional Budget Office, subject to Subsection (2).
- (2) The income needed to pay benefits and return the unemployment trust fund to the fund adequacy target may also include a solvency surcharge. A solvency surcharge shall be in effect for each tax year that the trust fund reserve is less than the fund adequacy target as of June 30, subject to Section 47-501(2)(a)

of the South Carolina Code of Regulations. The aggregate amount of the solvency surcharge will be determined for each tax year to be the amount calculated to return the unemployment trust fund to the fund adequacy target within 5 years subject to the following:

(a) When actual benefits paid in the prior fiscal year are greater than the actual tax collections received in the prior fiscal year, then the cap, as defined in Section 47-500(7) of the South Carolina Code of Regulations, is triggered. For purposes of this section, tax collections shall exclude all penalties, interests, contingency surcharges, and recording fees. Once the cap is triggered

(i) if projected benefits for the next year are less than the cap, then the solvency surcharge shall be the difference between the cap and the projected benefits and

(ii) if projected benefits for the next tax year are equal to the cap, then no additional solvency surcharge will be added for the next tax year.

(3) The aggregate amount of the solvency surcharge for the trust fund rebuild that began with tax year 2016 will be determined for each tax year to be the amount calculated to return the unemployment trust fund to the fund adequacy target within 5 years. Once the fund adequacy target has been met pursuant to this item, future fund adequacy targets shall be met pursuant to item (4).

(4) The fund adequacy target has been reached pursuant to item (3) or after the cap has been triggered, as described in Section 47-501(2), and in the prior fiscal year, actual benefits paid were less than actual tax collections, then tax rates for the next tax year will be set based on returning the unemployment trust fund to the fund adequacy target within the next 4 years.

(5) If the balance of the unemployment trust fund, as of the end of the most recently completed fiscal year, is greater than the fund adequacy target, then the state Department of Employment and Workforce may use the surplus amount to reduce taxes in the next tax year.

(6) Notwithstanding the provisions of Section 47-501(2), once the fund adequacy target has been met, in subsequent tax years the solvency surcharge shall be set in the event the unemployment trust fund balance does not meet the fund adequacy target, as of the end of the most recently completed fiscal year, as shown in the text table:

<i>Percentage the unemployment trust fund balance is below the fund adequacy target</i>	<i>Rebuilding period (years)</i>
More than 0.0000 but less than 2.5000	1
2.5000 or more but less than 5.0000	2
5.0000 or more but less than 7.5000	3
7.5000 or more	4

(7) In a fiscal year in which the fund adequacy target is reached, the department will determine tax rates for the following tax year without a solvency surcharge and pursuant to South Carolina Code of Law Annotated, Section 41-31-50.

## Tennessee

**Financing.** The taxable wage base will be adjusted in accordance with existing provisions adjusting the taxable wage base depending on the trust fund balance. If the balance is below the trigger level at the subsequent reading of the unemployment trust fund balance, the taxable wage base will not change. The adjustment of the taxable wage base, if any, based on findings made and published on June 30, will be effective on January 1 of the following year. The adjustment of the taxable wage base, if any, based on findings made and published on December 31, will be effective on July 1 of the following year.

**Monetary entitlement.** The implementation date of the seasonal employment provisions is changed from July 1, 2016, to July 1, 2020, and certain provisions are revised.

“Seasonal employer” is redefined to mean an employer that customarily employs workers only during a regularly recurring period of 26 consecutive weeks or fewer within a calendar year and has been determined to be a seasonal employer by the state Department of Labor and Workforce Development (previously, defined “seasonal employer” as one that, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year).

The provision indicating that any successor to a seasonal employer will be deemed a seasonal employer unless the successor requests cancellation of the seasonal employer status within 120 days after the acquisition is removed.

Applications for a seasonal employer determination must be submitted between September 1 and October 31 of each year (previously, required applications for a seasonal determination to be made at least 30 days prior to the beginning date of the period of production operations for which a determination is requested).

Applicants must have an experience rating, have no unpaid liability, and not be delinquent in submitting any premium and wage reports or required payments in the 4 quarters preceding the application.

A determination of seasonal employer status will be effective January 1 through December 31 and will not have retroactive effect. The department will determine the employer’s active seasonal period.

Wages from seasonal employment will not be included in the base period for any week of unemployment commencing during the inactive seasonal period between two successive active seasonal periods, if the claimant performs the services in an active seasonal period and a reasonable assurance is provided that the claimant will perform the service for the seasonal employer during the following active seasonal period. If benefits are denied to a seasonal worker for any week solely as a result of this provision and the seasonal worker is not offered an opportunity to perform in the next active seasonal period for which there was a reasonable assurance of employment, the seasonal worker will be entitled to retroactive payment of benefits for each week that the seasonal worker previously filed a timely claim for benefits. Wages from seasonal employment will be included in the base period for any week of unemployment commencing during the employer’s active seasonal period. (Previously, benefits based on seasonal employment were payable to a seasonal worker in the employment of a seasonal employer for weeks of unemployment that occur during such employer’s active period of seasonal pursuit. Benefits are not paid based on services performed in seasonal employment for any week of unemployment beginning after July 1, 2016, that begins during the period between two successive normal active

periods of seasonal pursuit to any seasonal worker if that seasonal worker performs the service in the first of the normal active periods and if there is a reasonable assurance that the seasonal worker will perform the service for a seasonal employer in the second of the active periods. If benefits are denied to a seasonal worker for any week solely as a result of these provisions and the seasonal worker is not offered an opportunity to perform in the second normal active period for which reasonable assurance of employment had been given, the seasonal worker is entitled to a retroactive payment of benefits for each week that the seasonal worker previously filed a timely claim for benefits. The benefits payable to any otherwise eligible seasonal worker are calculated in accordance with these provisions for any benefit year which is established on or after the beginning date of a determination by the department that an employer is a seasonal employer if such seasonal worker was employed by the seasonal employer during the base period applicable to such benefit year, as if such determination had been effective in such base period.)

**Nonmonetary eligibility.** The Administrator of the Division of Employment Security shall verify whether claimants are complying with the requirement of contacting at least three employers per week or accessing services at a career center. The administrator shall disqualify any claimant receiving benefits who the administrator finds has provided false work-search information. (Previously, the administrator was required to (1) conduct random verification audits of 1,500 claimants weekly to determine if claimants are complying with the requirement of contacting at least three employers per week or accessing services at a career center and (2) disqualify for a period of not fewer than 8 benefit weeks any claimant receiving benefits who the administrator finds, as the result of a random audit or on information provided to the administrator, has provided false work-search information.)

The provisions concerning the disqualification for benefits are in Tennessee Code Annotated, Section 50-7-303(a)(1)(A)(i), and are modified as follows: A claimant shall be disqualified for benefits if the administrator finds that the claimant has left the claimant's most recent work voluntarily without good cause connected with the claimant's work. Except as otherwise provided in subdivision (a)(1)(A)(ii)(b), the disqualification shall be for the duration of the ensuing period of unemployment and until the claimant has secured subsequent employment covered by the unemployment compensation law of this state, another state, or the United States and was paid wages by the subsequent employment 10 times the claimant's weekly benefit amount (added the language: except as otherwise provided in subdivision (a)(1)(A)(ii)(b)). This disqualification shall not apply to a claimant who left the claimant's work in good faith to join the Armed Forces of the United States.

**Overpayments.** Any person who has received unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact or by making a false statement or false representation without a good faith belief as to the correctness of the statement or representation, after a determination by the Commissioner of the Employment Security Law that such a violation has occurred, must repay the amount of benefits received. Penalties in such situations are as follows:

- A. The commissioner will assess a penalty equal to 15 percent of the overpaid benefits, which monies are deposited into the state's unemployment compensation fund; and
- B. For overpayments made prior to July 1, 2016, the commissioner will further assess a penalty equal to 7.5 percent of the overpaid benefits; and

C. For overpayments made on or after July 1, 2016, the commissioner will further assess a penalty equal to 15 percent for the first instance of overpaid benefits. The commissioner will further assess a penalty equal to 35 percent for the second and each subsequent instance of overpaid benefits. The first instance means all consecutive claim weeks of unemployment benefits paid within a benefit year to any person when such benefits were received by knowingly misrepresenting, misstating, or failing to disclose any material fact.

D. Monies collected by penalties set out in (B) and (C) will be used to defray the costs of deterring, detecting, or collecting overpayments. (Previously, the law assessed a penalty equal to 15 percent of the overpaid benefits to be deposited into the state's unemployment compensation fund and further assessed a penalty equal to 7.5 percent of the overpaid benefits to be used to defray the costs of deterring, detecting, or collecting overpayments.)

## Texas

**Financing.** When a partial acquisition occurs requiring transfer of compensation experience, the employing units involved may (previously, shall) file with the Texas Workforce Commission (Agency) the information necessary to establish a contribution rate pursuant to Section 204.085(a) of the Texas Unemployment Compensation Act. The submission shall be filed with the agency within 1 year of the date the partial transfer was completed, if the partial transfer was completed prior to September 1, 2015. Otherwise, the submission is due according to other deadlines stipulated in Section 204.085(a-1). (Previously, the required submission shall be filed with the agency within 1 year of the date the partial transfer is completed.)

## Utah

**Administration.** The claimant is required to provide, among other things, any other information requested by the state Department of Workforce Services. The claimant is required to return telephone calls and respond to requests that are made electronically, verbally, or by U.S. mail. Generally, claimants will be given 48 hours, excluding hours during weekends or legal holidays, to respond to requests made verbally or electronically and 5 full business days to respond to requests mailed through the U.S. mail. (Previously, any other information included requests for documentary evidence, written statements, or oral requests. Claimants are required to return telephone calls when requested to do so by department employees.)

**Coverage.** "Federal executive agency" means an executive agency as defined in 5 U.S.C. Section 105 of the federal government.

In determining whether two or more persons are considered joint employers, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law or adopted by statute or rule.

"Franchise," "franchisee," and "franchisor" mean the same as those terms are defined in 16 C.F.R. Section 436.1.

A franchisor is not considered an employer of (i) a franchisee or (ii) a franchisee's employee.

With respect to a specific claim for relief made by a franchisee or a franchisee's employee, a franchisor is considered an employer of a franchisee or a franchisee's employee under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

## Washington

**Administration.** Claims and other documents may be filed or are required to be filed by using the Washington Employment Security Department's "online services."

The department will no longer assign certain days of the week on which a claimant may file a claim by telephone.

**Appeals.** Interested parties are allowed to file an appeal or a petition for hearing by using the department's online services in addition to mailing it or faxing it.

Interested parties are allowed to file a written petition for review by using the department's online services. The written petition, any reply to the petition for review, a petition for reconsideration, and any argument in support thereof must be filed by using the department's online services or by mailing it to the Commissioner's Review Office.

**Financing.** When an employer incorrectly reports an individual's wages and a claimant's weekly benefit amount or maximum benefits payable is reduced because of a later correction in wages, the department will charge that employer for the benefits that should not have been paid, but nonetheless were paid as a result of the employer's incorrect reports, except the department will charge only for the percentage of benefits that represent their percentage of base-period wages.

**Monetary entitlement.** If an employer does not report hours worked and a former employee applies for benefits, the department will estimate the hours worked as follows:

- (a) For Washington reportable wages, the reported wages will be divided by the state's minimum wage in effect at the time to estimate the hours worked.
- (b) For all out-of-state wages, the reported wages will be divided by the federal minimum wage to estimate the hours worked.

**Nonmonetary eligibility.** The effective date of a claim is modified by providing that an unemployment claim will be effective on the Sunday of the calendar week in which the application for benefits is filed or, when requested, backdated to a calendar week prior to the calendar week in which the application is filed (previously, on the Sunday of the calendar week in which the application for benefits is filed).

The definition of "conditional payments" is modified by adding that a conditional payment also means a payment issued. A conditional payment is payment issued

- (a) to a claimant after already having received benefits but during a period in which the department questions the claimant's continued eligibility for benefits or



(b) when a claimant has provided reasonable evidence of authorization to work in the United States, but the department is paying benefits pending verification by the federal government (added (b) to the definition).

“Domestic partner” means

(a) two adults who have registered as a domestic partnership with the Washington Secretary of State or

(b) a legal union of two persons of the same sex that was formed in and is legal in any state or jurisdiction. “Domestic partner” does not include partnerships formed by individuals of the opposite sex except as provided by Revised Code of Washington (RCW) 26.60.030 or the equivalent law of another state. (Previously, “domestic partner” or state registered “domestic partner” meant (a) two adults who meet the requirements of RCW 26.60.030 and have been issued a certificate of state-registered domestic partnership by the Washington Secretary of State.)

When applying for benefits, claimants should be prepared to provide all of their employers during the past 18 months (previously, past 2 years). Other information may be required (previously, requested) in individual circumstances.

Any employer who receives a notice of a claimant filing for unemployment benefits and has information that might make the applicant ineligible for benefits must report this information to the department at the address indicated on the notice within 5 days (previously, 10 days), plus reasonable mailing time, if any, beginning on the date the notice was sent. If the employer does not reply within this time frame (previously, 10 days), the department may allow benefits to the individual if he or she is otherwise eligible.

The definition of “standby” is partially amended to mean a claimant is temporarily unemployed because of a lack of work, but the claimant

- (i) expects to return to work with his or her regular employer within 4 weeks,
- (ii) expects to begin full-time work with a new employer within 2 weeks, or
- (iii) is temporarily unemployed because of natural disaster.

The claimant can ask to be on standby for up to 4 weeks, beginning with the date of the request.

The claimant’s regular employer may ask to extend the claimant’s standby status for more than 4 weeks, but no more than 8, except due to a natural disaster or in other extraordinary circumstances when applied for in writing. Standby can be approved if the claimant has obtained a definite offer of bona fide full-time work that has a probable (previously, definite) start date within 2 (previously, 4) weeks, which includes the week of the job offer and up to 2 additional weeks. If the standby request is part of the claimant’s initial claim, standby begins with the date of the request. For standby approval, the job, however (among other things), must be with a new employer or with a former employer to whom the claimant is no longer attached. As a condition for the approval of standby, the claimant must have a probable (previously, definite) return to work date for the claimant’s regular employer.

Standby will not be approved with the claimant’s regular employer unless the employment is covered by the state unemployment insurance laws, the comparable laws of another state, or the federal government.

Except for claimants who qualify as part-time eligible workers, standby will not be approved if the claimant regularly works less than full-time. "Full time" means 40 hours each week or the number of hours that are full time for the claimant's occupation and labor market area.

The location to register for work is changed from the claimant's local WorkSource office to the department.

Claimants are required to actively seek work unless participating in three approved in-person job-search activities through the WorkSource office or the equivalent public employment agency in the state in which the claimant resides (previously, or local employment center), or any combination of employer contacts, or in-person job-search activities, for a total of three.

Claimants are required (previously, allowed) to use job-search methods that are customary for their occupation and labor market area when making a job-search contact. In addition to posting a resume, an application or contact with an employer for a job (previously, specific job) must be submitted to count as one of the required weekly job-search contacts.

"In-person job-search activity" is redefined to mean an activity provided or monitored through the WorkSource office or the equivalent public employment agency in the state in which the claimant resides (previously, or local employment center) that will assist the claimant in his/her reemployment efforts. It includes, but is not limited to, job-search workshops, training classes, or other facilitated services provided or monitored by WorkSource staff or other affiliated agencies and approved by the local WorkSource office (previously, by the administrator). For claimants residing in Washington state, an in-person job-search activity must be documented in the department's computer system (previously, Services, Knowledge and Information Exchange System [SKIES]) to qualify. For interstate claimants, the activity must be documented by the equivalent public employment agency (previously, in the one-stop system) in the state in which the claimant resides.

Claimants are required to keep a record or log of their job-search contacts and the in-person job-search activities they receive through the WorkSource office, other affiliated agency, or equivalent public employment agency in the state in which they reside, with certain exceptions. The job-search log must contain sufficient information to establish to the department's satisfaction that the job-search requirements are met. The department will supply a job-search log (previously, Form [EMS 10313]) to use in tracking job-search activities. Claimants may use their own form or tracking method as long as it meets the specified requirements (previously, as long as all information required is recorded). Logs should be kept for at least 30 (previously, 60) days after the end of the benefit year or 30 days after receiving final payment on any extension of benefits, whichever is later.

Language concerning the recording of in-person or telephone job-search contacts is rescinded.

For in-person job-search activities at the WorkSource office, other affiliated agency, or the equivalent public employment agency in the state in which the claimant resides (previously, or local reemployment center), record the date contact was made and a description of the services the claimant received or the activities in which the claimant participated.

Employer contacts and other job-search activities on the claimant's log may (previously, will) be verified by the department. (Previously, the claimant must bring a copy of his/her job-search log to any job-search review

interview [see Washington Administrative Code (WAC) 192-180-025] for which the claimant has been scheduled, and his/her log will be verified with the listed employers on a random basis.)

Job-search review interviews are replaced with job-search reviews (JSRs), which are a review of claimants' job-search activities by the department. At a minimum, the department will review the job-search documentation, the claimant's ability to work, availability for work, and efforts to find work. The department may also promote an active search for work by directing the claimant to resources that will assist him/her with job-search efforts. Claimants are required to provide their job-search log to the department when requested. The department will review the claimant's log, review his/her eligibility for benefits as required by RCW 50.20.010(1)(c), and, when appropriate, provide feedback on areas in which the job search can be improved. (Previously, the employer contacts and job-search activities included in the claimant's log will be verified at random, and the interviewer may further verify any reported contacts at his or her discretion.)

If the documentation shows the claimant met the job-search requirements for that week, no further action will be taken at that time except as provided in WAC 192-180-020(2). The claimant may be scheduled for another JSR at a later date. If the documentation shows that the claimant substantially complied with the job-search requirements, the claimant will not be scheduled for an all-weeks JSR. However, the claimant's benefits may be denied for that week and the department will issue a work-search directive explaining how the job-search efforts or documentation of those efforts must be modified. If the job-search documentation fails to show that the claimant substantially complied with the job-search requirements, the department will reschedule a second JSR in which the job search for all weeks claimed will be reviewed.

If a claimant fails to participate in the initial JSR, the department will determine if the failure is excused or unexcused. If an absence is excused, the department will reschedule a JSR of 1 week of the claimant's job-search documentation. The claimant may be excused from participating in the initial JSR only for good cause including

- illness or disability or that of a member of the claimant's immediate family that prevents him/her from participating,
- employment or presence at a job interview scheduled with an employer,
- natural disaster or similar acts of nature, or
- factors specific to the claimant's situation that would prevent a reasonably prudent person in similar circumstances from participating.

If the claimant has an unexcused absence, the department will schedule him/her for a JSR of job-search activities for all weeks claimed and deny benefits for the week of the initial JSR unless he/she can show good cause for not participating.

The department will verify claimants' identity at the JSR interview. Claimants must be prepared to provide the department with sufficient information to verify their identity.

If a claimant fails to participate in a JSR when directed, benefits will be denied for the specific week or weeks in which he/she failed to participate. Benefits will be denied for failing to

- (a) meet the minimum job-search requirements,
- (b) provide information about job-search activities,
- (c) provide a copy of his/her job-search logs upon request if she/he has been paid 5 or more weeks of benefits, or
- (d) comply with any job-search directive.

Such failure will be considered a misrepresentation for purposes of redetermination under RCW 50.20.160(3). Such misrepresentation, however, will not be treated as fraud unless all criteria in WAC 192-100-050(1) are established. If the claimant failed to participate in an all-weeks JSR without good cause, benefits are denied under RCW 50.20.010(1)(c) and RCW 50.20.240. The denial is indefinite and will continue until the claimant participates in a scheduled JSR with the department.

**Overpayments.** If a potential overpayment exists, the department will provide a claimant with a written overpayment advice of rights explaining (among other things) in a statement that the claimant has 10 (previously, 5) days plus reasonable mailing time, if any, to submit information about the possible overpayment and whether the claimant is at fault. If the claimant does not provide the information within this time frame (previously, within 10 days), the department will make a decision based on available information about the overpayment and the claimant's eligibility for waiver.

When a decision is issued creating an overpayment, the department will send an application for waiver if the claimant is potentially eligible, which must be completed and returned with supporting documents by the response deadline (previously, 10-day response deadline) indicated in the notice, which will be no fewer than 5 days plus reasonable mailing time, if any. If not provided by the deadline (previously, within 10 days), the department will make a decision about the claimant's eligibility for waiver based on available information.

In addition to the principal amount, interest will accrue on the overpayment based on the total of the overpayment including, but not limited to, interest, penalties, court costs, charges for dishonored payments, and related charges or fees. Interest is calculated on a monthly cycle as follows:

- (a) For fraud overpayments, interest accrues beginning on the date the determination of fraud is effective.
- (b) For nonfraud overpayments, interest accrues immediately, beginning after the due date.

A claimant may ask to repay an overpayment by offset on a valid benefit year. If the new balance available on the current benefit year is greater than the balance of the overpayment, the claimant can choose the amount of benefits to be offset from each payment. However, if the new balance available on the current benefit year is equal to or less than the balance of an overpayment on that benefit year, offset will be done at the rate of 100 percent.

The amount to be offset to repay a nonfraud overpayment will be 50 percent of benefits payable for each week claimed, or such other percentage the claimant requests, up to 100 percent of benefits payable. The percent deducted is based on the total weekly benefit amount, before deductions for such items as pensions, child support, income taxes. (Previously, for nonfraud overpayments, the amount to be deducted will be 50 percent of benefits payable for each week claimed. However, the claimant may request the overpayment be repaid at 100 percent of

benefits payable for each week claimed. The 50 percent deduction is based on the total weekly benefit amount, before deductions for such items as pensions, child support, income taxes.)

## West Virginia

**Financing.** The Governor of West Virginia may borrow funds from the Revenue Shortfall Reserve Fund (previously, the Revenue Center Construction Fund) for deposit into the state's Unemployment Compensation Fund, which may only be used to pay benefits.

The amount of funds borrowed and outstanding may not exceed \$50 million (previously, \$20 million) at any one time, or the amount the Governor determines is necessary to adequately sustain the balance in the Unemployment Compensation Fund at a minimum of \$50 million (previously, \$20 million), whichever is less. Unless it is projected that the state's Unemployment Compensation Fund will be fewer than \$50 million (previously, \$20 million) at any time during the next 30 days, funds may not be borrowed.

Borrowed funds shall be repaid from funds on deposit in the state Unemployment Trust Fund in excess of \$50 million (previously, \$20 million) or from other funds legally available for such purpose without interest and redeposited to the credit of the Revenue Shortfall Reserve Fund within 180 days of their withdrawal. No amounts may be borrowed after September 1, 2017 (previously 2011).

## Wisconsin

**Administration.** Documents are allowed to be electronically delivered or mailed (added, electronically delivered) to the last-known address of each party.

**Appeals.** The following provision is repealed: Unless a party has filed a timely request for review of the decision of an appeal tribunal by the Labor and Industry Review Commission or has commenced a timely action for the judicial review of the decision of the commission, the state Department of Workforce Development may set aside or amend any appeal tribunal decision adverse to a claimant that has been issued under Section 108.09, 1995, of the Wisconsin Unemployment Insurance and Reserves Act, within the 4-year period immediately preceding January 4, 1998, or may reverse, modify, or set aside any decision of the commission adverse to a claimant that has been issued under Section 108.09, 1995, within the 4-year period immediately preceding January 4, 1998, if the department finds that the benefits paid or payable to the claimant have been affected by wages earned by the claimant which have not been paid, and the department is provided with notice from the appropriate state or federal court or agency that a wage claim for those wages will not be paid in whole or in part.

Sections 108.09(4)(d) 1 and 2 of the statutes are amended as follows:

1. If an appellant fails to appear at a hearing held and due notice of the hearing was electronically delivered to the appellant or mailed (previously, was mailed) to the appellant's last-known address, the appeal tribunal shall issue a decision dismissing the request for hearing unless subdivision 2 applies.
2. If an appellant submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision is electronically delivered or mailed under subdivision 1, an appeal tribunal shall review the appellant's explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal

tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding and such a decision may be issued without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under subdivision (3)(b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision. (Previously, if the appellant delivers or transmits a written explanation for nonappearance to the department, which is received before a decision under subdivision 1 is mailed, the department may so notify each party and schedule a hearing concerning whether there was good cause for the appellant's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. If, after hearing testimony, the appeal tribunal finds that the appellant's explanation establishes good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under subdivision (3)(b) after conducting a hearing concerning any matter in the determination.)

Section 108.09(4)(d)3 of the statutes is repealed and recreated to read

3. If the appellant submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received within 21 days after a decision is electronically delivered or mailed under subdivision 1, an appeal tribunal shall review the appellant's explanation. The appeal tribunal shall electronically deliver or mail to the respondent a copy of the appellant's explanation. The respondent may, within 7 days after the appeal tribunal electronically delivers or mails the appellant's explanation to the respondent, submit to the appeal tribunal a written response to the appellant's explanation. If the appeal tribunal finds that the appellant's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the appellant's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and the decision may be issued without a hearing. The appeal tribunal shall then set aside the original decision and schedule a hearing concerning any matter in the determination. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under subdivision (3)(b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.

Section 108.09(4)(e) of the statutes is amended to read

(e) Respondent's failure to appear.



1. If the respondent fails to appear at a hearing but the appellant is present and due notice of the hearing was electronically delivered to the respondent or mailed to the respondent's last-known address, the appeal tribunal shall hold the hearing. The appeal tribunal shall consider records and information already submitted to the department by the appellant and the respondent regarding the determination or the appeal, take the testimony of the appellant and any witnesses, and issue a decision under subdivision (3)(b) unless subdivision 2 applies. (Previously, if the respondent fails to appear at a hearing but the appellant is present and due notice of the hearing was mailed to the respondent's last-known address, the appeal tribunal shall hold the hearing and shall issue a decision under subdivision (3)(b) unless subdivision 2 applies.)
2. If the respondent submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received before a decision favorable to the respondent is electronically delivered or mailed under subdivision 1, the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent submits to the appeal tribunal a written explanation for failing to appear that is received before a decision unfavorable to the respondent is electronically delivered or mailed under subdivision 1, an appeal tribunal shall review the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the respondent's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under subdivision (3)(b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision. (Previously, if the respondent delivers or transmits a written explanation for nonappearance to the department which is received before a decision favorable to the respondent is mailed under subdivision 1 the appeal tribunal shall acknowledge receipt of the explanation in its decision but shall take no further action concerning the explanation at that time. If the respondent delivers or transmits a written explanation for nonappearance to the department which is received before a decision unfavorable to the respondent is mailed under subdivision 1, the department may so notify each party and may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing for further testimony concerning any matter in the determination. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding. The same or another appeal tribunal established by the department for this purpose shall also issue a decision based on the testimony and other evidence presented at the hearing at which the respondent failed to appear. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation establishes good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding. The same



or another appeal tribunal established by the department for this purpose shall then issue a decision under subdivision (3)(b) after conducting a hearing concerning any matter in the determination. If such a 2nd hearing is held concerning any matter in the determination, the appeal tribunal shall only consider testimony and other evidence admitted at that hearing in making a decision.)

3. If the respondent submits to the appeal tribunal a written explanation for failing to appear at the hearing that is received within 21 days after a decision favorable to the respondent is electronically delivered or mailed under subdivision 1, the appeal tribunal shall notify the respondent of receipt of the explanation and that since the decision was favorable to the respondent, no further action concerning the explanation will be taken at that time. If the respondent submits to the appeal tribunal a written explanation for failing to appear that is received within 21 days after a decision unfavorable to the respondent is electronically delivered or mailed under subdivision 1, an appeal tribunal shall review the respondent's explanation. The appeal tribunal shall electronically deliver or mail to the appellant a copy of the respondent's explanation. The appellant may, within 7 days after the appeal tribunal electronically delivers or mails the respondent's explanation to the appellant, submit to the appeal tribunal a written response to the respondent's explanation. If the appeal tribunal finds that the respondent's explanation does not establish good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. If the appeal tribunal finds that the respondent's explanation establishes good cause for failing to appear, the appeal tribunal shall issue a decision containing this finding, and such a decision may be issued without a hearing. The appeal tribunal shall then set aside the original decision and schedule a hearing concerning any matter in the determination. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under subdivision (3)(b) after conducting a hearing concerning any matter in the determination. If such a hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision. (Previously, if the respondent delivers or transmits a written explanation for nonappearance to the department which is received within 21 days after a decision favorable to the respondent is mailed under subdivision 1, the department shall notify the respondent of receipt of the explanation and that since the decision was favorable to the respondent no further action concerning the explanation will be taken at that time. If the respondent delivers or transmits a written explanation for nonappearance to the department which is received within 21 days after a decision unfavorable to the respondent is mailed under subdivision 1, the appeal tribunal may set aside the original decision and the department may schedule a hearing concerning whether there was good cause for the respondent's nonappearance. The department may also provisionally schedule a hearing concerning any matter in the determination. If the original decision is not set aside, the appeal tribunal may, on its own motion, amend or set aside that decision within 21 days after the decision concerning whether there was good cause for the respondent's nonappearance is mailed under subdivision 1. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation does not establish good cause for nonappearance, the appeal tribunal shall issue a decision containing this finding and, if necessary, reinstating the decision which was set aside. If, after hearing testimony, the appeal tribunal finds that the respondent's explanation establishes good cause for nonappearance, the same or another appeal tribunal established by the department for this purpose shall issue a decision containing this finding. The same or another appeal

tribunal established by the department for this purpose shall then issue a decision under subdivision (3)(b) after conducting a hearing concerning any matter in the determination. If such a 2nd hearing is held concerning any matter in the determination, the appeal tribunal shall only consider the testimony and other evidence admitted at that hearing in making a decision.)

The department is also allowed to file timely petitions for review of the appeal tribunal decision by the commission.

If departmental records relating to benefits claims are admitted in any hearing before an appeal tribunal and made the basis of a decision, the record may constitute substantial evidence under Section 108.09(7)(f) (previously, Section 102.23(6) of the state Worker's Compensation law) (effective August 1, 2016).

All testimony at any hearing will be recorded by electronic means (previously, taken down by a stenographer or recorded by a recording machine) and a copy of the electronic recording furnished to the parties upon payment of any fee required. Among other things, the commission will use the electronic recording of the hearing in its review of the decision of an appeal tribunal.

Any party that is not the department may commence an action for the judicial review of a decision of the commission after exhausting the remedies provided. The department may commence an action for the judicial review of a commission decision, but the department is not required to have been a party to the proceedings before the commission or to have exhausted the remedies provided. In an action commenced by a party that is not the department, the department will be a defendant and will be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve the commission as required, the court will dismiss the action (effective August 1, 2016). (Previously, the department or either party may commence action for the judicial review of a decision of the commission after exhausting the remedies provided if the party or the department has commenced such action in accordance with Section 102.23 within 30 days after a decision of the commission is mailed to a party's last-known address.)

Any judicial review will be confined to questions of law and will be in accordance with this paragraph. In any such judicial action, the commission may appear by any licensed attorney who is a salaried employee of the commission and has been designated by it for that purpose, or, at the commission's request, by the state Department of Justice. In any such judicial action, the department may appear by any licensed attorney who is a salaried employee of the department and has been designated by it for that purpose (effective August 1, 2016). (Previously, any judicial review will be confined to questions of law, and the provisions of Chapter 102 of the Wisconsin Unemployment Insurance and Reserves Act with respect to judicial review of orders and awards will likewise apply to any decision of the commission reviewed. In any such judicial action, the commission may appear by any licensed attorney who is a salaried employee of the commission and has been designated by it for this purpose, or, at the commission's request, by the state Department of Justice.)

Effective August 1, 2016, provisions for the judicial review of unemployment insurance decisions issued by the commission are as follows:

- The findings of fact made by the commission acting within its powers will, in the absence of fraud, be conclusive. The order of the commission is subject to review only as provided in this subsection. Within 30 days after the date of an order made by the commission, any party or the department may, by serving a complaint and filing the summons and complaint with the clerk of the circuit court, commence an action against the commission for judicial review of the order. In an action for judicial review of a commission

order, every other party to the proceedings before the commission will be made a defendant. The department will also be made a defendant if the department is not the plaintiff. If the circuit court is satisfied that a party in interest has been prejudiced because of an exceptional delay in the receipt of a copy of any order, the circuit court may extend the time in which an action may be commenced by an additional 30 days.

- Except as otherwise provided, the proceedings will be in the circuit court of the county where the plaintiff resides, except that if the plaintiff is the department, the proceedings will be in the circuit court of the county where a defendant other than the commission resides. The proceedings may be brought in any circuit court if all parties appearing in the case agree or if the court, after notice and a hearing, so orders. Commencing an action in a county in which no defendant resides does not deprive the court of competency to proceed to judgment on the merits of the case.
- A complaint will be served with an authenticated copy of the summons and will state the grounds upon which a review is sought. Service upon the commission or its authorized agent constitutes complete service on all parties, but there will be left with the person so served as many copies of the summons and complaint as there are defendants, and the commission will mail one copy to each other defendant.
- Each defendant will serve its answer within 20 days after the service upon the commission, which answer may ask for the review of the order referred to in the complaint.
- Within 60 days after appearing in an action for judicial review, the commission will make return to the court of all documents and materials on file in the matter, all testimony that has been taken, and the commission's order and findings. Such return of the commission, when filed in the office of the clerk of the circuit court, will constitute a judgment roll in the action. After the commission makes return of the judgment roll to the court, the court will schedule briefing by the parties. The court may confirm or set aside the commission's order but may set aside the order only upon certain grounds.
- The court will disregard any irregularity or error of the commission or the department unless it appears that a party was damaged by that irregularity or error.
- The record in any case will be transmitted to the commission within 5 days after expiration of the time for appeal from the order or judgment of the court, unless an appeal is taken from the order or judgment.
- If the commission's order depends on any fact found by the commission, the court will not substitute its judgment for that of the commission as to the weight or credibility of the evidence on any finding of fact. The court may, however, set aside the commission's order and remand the case to the commission if the commission's order depends on any material and controverted finding of fact that is not supported by credible and substantial evidence.
- Any party aggrieved by a judgment entered upon the review of any circuit court order may file an appeal to the court of appeals.
- The clerk of any court rendering a decision affecting a decision of the commission will promptly furnish all parties a copy of the decision without charge.

No fees may be charged by the clerk of any circuit court for the performance of any service required, except for the entry of judgments and for certified transcripts of judgments. In proceedings to review an order, costs as between the parties will be in the discretion of the court. Notwithstanding Section 814.245 of the Wisconsin Legislative Statutes, no costs may be taxed against the commission or the department (previously, notwithstanding Sections 102.26 (1) and 814.245, upon review of a decision of the commission, costs as between the parties will be in the discretion of the court, but no costs may be taxed against the department).

The department may be a party in any proceedings before an appeal tribunal.

The employing unit may commence an action for the judicial review of a commission decision, provided the employing unit has exhausted the remedies provided. The department may commence an action for the judicial review of a commission decision, but the department is not required to have been a party to the proceedings before the commission or to have exhausted the remedies provided under this section. In an action commenced by a party that is not the department, the department will be a defendant and will be named as a party in the complaint commencing the action. If a plaintiff fails to name either the department or the commission as defendants and serve them as required, the court will dismiss the action. The scope of judicial review, and the manner thereof insofar as applicable, will be the same as that provided in Section 108.09(7) (effective August 1, 2016). (Previously, the department or the employing unit may commence action for the judicial review of a commission decision, provided the department, or the employing unit, after exhausting the remedies, has commenced such action within 30 days after such decision was mailed to the employing unit's last-known address. The scope of judicial review, and the manner thereof insofar as applicable, will be the same as that provided in Section 108.09(7). In an action commenced by an employing unit, the department will be an adverse party under Section 102.23(1)(a) and will be named as a party in the complaint commencing the action.)

Any determination by the department or any decision by an appeal tribunal or by the commission is conclusive with respect to an employing unit unless the department or the employing unit (previously, it) files a timely request for a hearing or petition for review.

**Coverage.** A franchisor is not considered an employer of a franchisee or of an employee of a franchisee, unless the franchisor has agreed in writing to assume that role or the state Department of Workforce Development has found that the franchisor has exercised a type or degree of control over the franchisee or the franchisee's employees that is not customarily exercised.

Section 102.07(8)(d) and Section 111.327 of the Wisconsin Legislative Statutes providing that any employer engaged in the construction of roads, bridges, highways, sewers, water mains, utilities, public buildings, factories, housing, or similar construction projects, or engaged in the painting or drywall finishing of buildings or other structures who willfully and with intent to evade any requirement of Chapter 102 misclassifies or attempts to misclassify an individual who is an employee of the employer as a nonemployee will be fined \$25,000 for each violation are repealed (effective October 2, 2016).

Any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who knowingly and intentionally provides false information for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee will, for each incident, be assessed a penalty in the amount of \$500 for each employee who is misclassified, but not to exceed \$7,500 per incident. The following will be considered in determining if the employer is misclassifying or attempting

to misclassify such individual: whether the employer was previously found to have misclassified an employee in the same or a substantially similar position and whether the employer was the subject of litigation or a governmental investigation relating to worker misclassification and the employer, as a result of that litigation or investigation, received an opinion or decision from a federal or state court or agency that the subject position or a substantially similar position should be classified as an employee (effective October 2, 2016).

Any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who, through coercion, requires an individual to adopt the status of a nonemployee will be assessed a penalty in the amount of \$1,000 for each individual so coerced, but not to exceed \$10,000 per calendar year (effective October 2, 2016).

Any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who, after having previously been assessed a misclassification administrative penalty by the department, knowingly and intentionally provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee will be fined \$1,000 for each employee who is misclassified, subject to a maximum fine of \$25,000 for each violation. The department may refer violations for prosecution by the state Department of Justice or the district attorney for the county in which the violation occurred (effective October 2, 2016). (Previously, any employer in the construction industry or engaged in the painting or drywall finishing of buildings or other structures who willfully provides false information to the department for the purpose of misclassifying or attempting to misclassify an individual who is an employee of the employer as a nonemployee will be fined \$25,000 for each violation.)

The definition of “employer” excludes a private agency that serves as a fiscal agent or contracts with a fiscal intermediary to serve as a fiscal agent under Section 46.272(7) of the Wisconsin Legislative Statutes as to any individual performing services for a person receiving long-term support services under Section 46.272(7)(b).

An individual who is an officer, employee, member, manager, partner, or other responsible person holding at least 20 percent of the ownership interest of a corporation, limited liability company, or other business association and who has control or supervision of or responsibility for filing any required contribution reports or making payment of contributions and who willfully fails to file such reports or to make such payments to the department or to ensure that such reports are filed or that such payments are made may be found personally liable for such amounts, including interest, tardy payment or filing fees, costs and other fees, in the event that after proper proceedings for the collection of such amounts, the corporation, limited liability company, or other business association is unable to pay such amounts to the department. Ownership interest of a corporation, limited liability company, or other business association includes ownership or control, directly or indirectly, by legally enforceable means or otherwise, by the individual, by the individual’s spouse or child, by the individual’s parent if the individual is under age 18, or by a combination of two or more of them, and such ownership interest of a parent corporation, limited liability company, or other business association of which the corporation, limited liability company, or other business association unable to pay such amounts is a wholly owned subsidiary. The personal liability of such officer, employee, member, manager, partner, or other responsible person survives dissolution, reorganization, bankruptcy, receivership, assignment for the benefit of creditors, judicially confirmed extension or composition, or any analogous situation of the corporation, limited liability company, or other business association and will be set

forth in a determination or decision (added “partner, or other responsible person,” and “or other business association”).

**Financing.** The department is required to charge to the fund’s balancing account the regular benefits paid to an employee and the state’s share of extended benefits paid to an employee that are otherwise chargeable to the account of a contributing employer, if the employee voluntarily terminates employment with that employer because of the illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

The assessments imposed on employers in the construction industry or engaged in the painting of drywall finishing of buildings or other structures for misclassifying or attempting to misclassify employees or requiring an individual to adopt the status of a nonemployee will be deposited in the unemployment program integrity fund (effective October 2, 2016).

Effective October 2, 2016, the department may terminate any election of reimbursement financing as of the close of any calendar year if any of the following apply:

1. The employer has failed to make the required reimbursement payments.
2. The employer has failed to pay the required assessments authorized by Subsection (7) or Section 108.155.
3. The employer no longer satisfies the requirements of Subsection (4).
4. Section 108.16(8) applies with respect to the employer.

If an Indian tribe or tribal unit fails to pay, among other things, required assessments within 90 days of the time that the department transmits to the tribe a final notice of delinquency,

- (1) the U.S. Internal Revenue Service and the U.S. Department of Labor will be immediately notified of that failure,
- (2) any valid election of reimbursement financing is terminated as of the end of the current calendar year, and
- (3) the department may consider the Indian tribe not to be an employer and may consider services performed for the tribe not to be employment (effective October 2, 2016).

Provisions concerning the liability of reimbursable employers because of identity theft are as follows: On October 2, 2016, \$2,000,000 will be set aside in the balancing account for accounting purposes. On an ongoing basis, the amounts allocated to the reimbursable employers’ accounts will be tallied and deducted from the amount set aside plus any interest. On each June 30, beginning with June 30, 2016, the fund’s treasurer will determine the current result of those calculations and will determine the amount that was allocated to the reimbursable employers’ accounts because of an erroneous payment resulting from a false statement or representation about an individual’s identity and the employer was not at fault for the erroneous payment. On the basis of those calculations and the determined amount allocated to the account, the reimbursable employer will be assessed the sum that will be imposed or the assessment will be postponed. The rate of an assessment will be determined for a



given calendar year. Reimbursable employers will be billed the imposed assessment in September of each year. Among other things, a reimbursable employer's election of reimbursement financing may be terminated if delinquent in paying the assessment (effective October 2, 2016).

Provisions concerning contributions to the administrative account and unemployment interest payment and program integrity funds are as follows:

- (a) Except as provided in paragraph (b), each employer, other than an employer who finances benefits by reimbursement in lieu of contributions under Sections 108.15, 108.151, or 108.152 will, in addition to other contributions payable under Section 108.18 and this section, pay an assessment for each year equal to the lesser of 0.01 percent of its payroll for that year or the solvency contribution that would otherwise be payable by the employer under Section 108.18(9) for that year. Assessments under this paragraph will be deposited in the unemployment program integrity fund.
- (b) The levy prescribed under paragraph (a) is not effective for any year unless the department, no later than the November 30 preceding that year, publishes a class 1 notice under Chapter 985, giving notice that the levy is in effect for the ensuing year. The department will consider the balance of the unemployment reserve fund before prescribing the levy under paragraph (a). The Secretary of the Department of Workforce Development will consult with the council on unemployment insurance before the department prescribes the levy under paragraph (a).
- (c) Notwithstanding paragraph (a), the department may, if it finds that the full amount of the levy is not required to effect the purposes specified in Subsection (1s)(b) for any year, prescribe a reduced levy for that year and in such case will publish in the notice under paragraph (b) the rate of the reduced levy.

Any excess amounts collected from the 75-percent assessment to pay interest due on advances from the federal unemployment account under title XII of the Social Security Act will be used to pay interest owed in subsequent years on such advances. If additional interest obligations to pay interest due are unlikely, the excess amounts will be transferred to the balancing account of the fund, the unemployment program integrity fund, or both in amounts determined by the department (previously, will transfer the excess to the balancing account of the fund).

A separate, nonlapsible trust fund designated as the unemployment program integrity fund is created. Payments, amounts, and assessments will be deposited into the fund as follows:

- (1) All amounts collected under Section 108.04(11)(bh)—15-percent penalty other than the amounts required to be deposited in the fund under Section 108.16(6)(n)
- (2) Assessments levied and deposited into the unemployment program integrity fund under Subsection (1f)—the yearly assessment equal to the lesser of 0.10 percent of the employer's payroll or the solvency contribution for that year
- (3) Amounts transferred under Subsection (1m)—the assessment to pay interest due on advances
- (4) Assessments under Section 108.221(1) and (2)—administrative fees for misclassification and coercing an individual to adopt the status of nonemployee



“Contribution” also includes the identity-theft assessment imposed on reimbursable employers (effective October 2, 2016).

The fund’s balancing account will be charged with the benefits paid to an employee that are otherwise chargeable to the account of an employer that is subject to the contribution requirements of Sections 108.17 and 108.18 if the employee voluntarily terminates employment with that employer and paragraph (a), (c), (cg), (e), (L), (q), (s), or (t) applies (added (cg)).

**Monetary entitlement.** The following provisions are repealed: each eligible employee shall be paid benefits for each week of total unemployment commencing on or after January 4, 2009, and before January 5, 2014, at the weekly benefit rate specified; the benefit rate schedule of quarterly wages and corresponding weekly benefits rates indicating the minimum weekly benefit rate of \$54; and the maximum weekly benefit rate of \$363.

The following provisions are repealed from the Wisconsin Legislative Statutes and instead are published on the state’s Internet site: each eligible employee shall be paid benefits for each week of total unemployment commencing on or after January 5, 2014, at the weekly benefit rate specified; and the benefit rate schedule of quarterly wages and corresponding weekly benefits rates as calculated. The calculation formula in the Wisconsin Legislative Statutes is used to calculate the minimum weekly benefit rate at \$54 and the maximum weekly benefit rate at \$370.

Section 108.05(2) entitled “the Semiannual Adjustment of Maximum and Minimum Benefit Rates” is repealed as follows:

- (2) (a) The maximum weekly benefit rate, as to weeks of unemployment in a given half year starting January 1 or July 1, shall be based on the “average wages per average week” of the preceding “base year,” ended 6 months before the starting date of the given half year, pursuant to this subsection;
- (b) (introduction) The department shall determine the following four items by each December 1 and June 1 for the last completed base year, ended June 30 or December 31, respectively, from reports to the department submitted by employers other than government units financing benefits under Section 108.15 covering their employees in employment and any corrections thereof filed by September 30 or March 31 for that base year:
  1. The gross wages thus reported by all such employers as paid in that year for such employment
  2. The average of the 12 mid-month totals of all such employees in employment thus reported for that year
  3. The quotient obtained by dividing said gross wages by said average
  4. The amount called “average wages per average week” in this section, obtained by dividing such quotient by 52
- (c) The maximum weekly benefit rate, as to weeks of unemployment in the ensuing half year, shall equal the result obtained by rounding 66 2/3 percent of the “average wages per average week” to the

nearest multiple of \$1, and the minimum weekly benefit rate shall be an amount that is 14.6 percent of the maximum rate and adjusted, if not a multiple of \$1, to the next lower multiple of \$1;

(d) Whenever, for any half year ending on June 30 or December 31, the new maximum and minimum weekly benefit rates are higher or lower than the rate for the previous half year in the current benefit rate schedule, the department shall amend the starting lines and wage classes so that the first line shows the quarterly wages below the least amount necessary to qualify for the minimum weekly benefit rate and the 2nd line shows the new minimum weekly benefit rate and the highest quarterly wage class to which it applies. The department shall amend the closing lines so that the next-to-last line shows a weekly benefit rate which is \$1 less than the new maximum weekly benefit rate and the quarterly wage class to which it applies and the last line shows the new maximum weekly benefit rate and a quarterly wage class which starts 1 cent above the higher wage figure of the next-to-last line and ranges upward without limit. The department shall consecutively number the intervening lines of the schedule with a separate line for each \$1 change in the weekly benefit rate and the applicable quarterly wage class for each weekly benefit rate;

(e) The department shall publish as a class 1 notice under Chapter 985 the “average wages per average week,” the corresponding maximum and minimum weekly benefit rates, and the resulting schedule of quarterly wage classes and weekly benefit rates, within 10 days after each determination. The schedule shall then apply to all weeks of unemployment in the ensuing half year;

(f) The department shall certify such schedule to the reviser of statutes, who shall when publishing the statutes include the latest such schedule then available;

(g) Any change in the minimum benefit rate does not affect benefits payable to a claimant for a benefit year that begins prior to the effective date of a new rate schedule; and

(h) Whenever January 1 or July 1 does not fall on Saturday, Sunday, or Monday, any change in weekly benefit rates under this subsection shall apply after the first ensuing Sunday.

Section 108.05(2)(m) entitled “Suspension of Adjustments” is repealed as follows: notwithstanding subdivision (2), no adjustments may be made by the department in any benefit rate under that subsection. This subsection applies only for purposes of benefit payments.

***Nonmonetary eligibility.*** Section 108.02(24g) providing that “suitable work” has the meaning specified by the department by rule under Section 108.14(27) is repealed.

Except as provided in Section 108.062(10), if an employee is absent from work for 16 hours or fewer in the first week of his or her leave of absence or in the week in which his or her employment is suspended or terminated because of the employee’s unavailability for work with the employer or inability to perform suitable work otherwise available with the employer, the employee’s eligibility for benefits for that week will be determined under paragraph 108.04(1)(bm). (Previously, except as provided in subdivision 2 and Section 108.062(10), if an employee’s employment is suspended by the employee or the employee’s employer or an employee is terminated by the employee’s employer, due to the employee’s unavailability for work or inability to perform suitable work otherwise

available with the employee's employer, or if the employee is on a leave of absence, the employee is ineligible for benefits while the employee is unable to work or unavailable for work.)

A claimant will, when the claimant first files a claim for benefits and during each subsequent week the claimant files for benefits, inform the department whether he or she is receiving Social Security disability insurance payments, as defined in Subsection (12)(f)2m (previously, receiving Social Security disability insurance benefits under 42 U.S.C. Chapter 7, Subchapter II) (retroactive to January 5, 2014).

Except as otherwise provided, an individual is ineligible for benefits for each week in the entire month in which a Social Security disability insurance payment is issued to the individual. This prevents the payment of duplicative government benefits for the replacement of lost earnings or income, regardless of an individual's ability to work (previously, provided that any individual who actually receives Social Security disability insurance benefits under federal law in a given week is ineligible for benefits paid or payable in that same week) (effective retroactive to January 5, 2014).

"Social Security disability insurance payment" means a payment of "Social Security disability insurance benefits" as defined in federal law (effective retroactive to January 5, 2014).

In the first month a Social Security disability insurance payment is first issued to an individual, the individual is ineligible for benefits for each week beginning with the week the Social Security disability insurance payment is issued to the individual and all subsequent weeks in that month. Following a cessation of Social Security disability insurance payments to an individual and upon the individual again being issued a Social Security disability insurance payment, the individual is ineligible for benefits for each week beginning with the week the Social Security disability insurance payment is issued to the individual and all subsequent weeks in that month. Following a cessation of Social Security disability insurance payments, an individual may be eligible for benefits, if otherwise qualified, beginning with the week following the last Saturday of the month in which the individual is issued his or her final Social Security disability insurance payment (effective retroactive to January 5, 2014).

Any individual who receives a temporary total disability payment or a permanent total disability payment for a whole week under state or any federal law that provides for payments on account of a work-related injury or illness as provided in state law will be ineligible for benefits paid or payable for that same week, unless otherwise provided by federal law. A temporary total disability payment, a temporary partial disability payment, or a permanent total disability payment received by an individual for part of a week will be treated as wages for purposes of eligibility for benefits for partial unemployment (effective May 1, 2016) (adds "or a permanent total disability payment").

Any individual who receives a temporary total disability payment or a permanent total disability payment for a whole week under the workers' compensation program or under any federal law that provides for payments on account of a work-related injury or illness analogous to those provided under the workers' compensation program will be ineligible for benefits paid or payable for that same week under the unemployment compensation law unless otherwise provided by federal law. A temporary total disability payment, a temporary partial disability payment, or a permanent total disability payment under those workers' compensation provisions received by an individual for part of a week will be treated as wages for purposes of eligibility for benefits for partial unemployment (effective May 1, 2016).

An employee who voluntarily terminates work has good cause and is eligible to receive benefits if the employee terminated his or her work but had no reasonable alternative because of the verified illness or disability of the employee. (Previously, an employee who voluntarily terminates work is not ineligible to receive benefits if the employee terminated his or her work but had no reasonable alternative because the employee was unable to do his or her work or that the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave; however if the employee is unable to work or unavailable for work, the employee is ineligible to receive benefits while such inability or unavailability continues.)

An employee who terminates work has good cause and is eligible to receive benefits if the employee terminated his or her work because of the verified illness or disability of a member of his or her immediate family and the verified illness or disability reasonably necessitates the care of the family member for a period of time that is longer than the employer is willing to grant leave.

An employee who terminates work has good cause and is eligible to receive benefits if the employee accepted work that the employee could have failed to accept (previously, to accept with good cause) under Section 108.04(8) and terminated such work on the same grounds (previously, terminated such work with the same good cause) and within the first 30 calendar days after starting the work or that the employee accepted work which the employee could have refused under Section 108.04(9) and terminated such work within the first 30 calendar days after starting the work. For purposes of this paragraph, an employee has the same grounds (previously, the same good cause) for voluntarily terminating work if the employee could have failed to accept the work under Section 108.04(8)(d) when it was offered, regardless of the reason articulated by the employee for the termination (effective May 1, 2016).

An employee who fails to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for that employer has good cause for such failure, and the employee is eligible to receive benefits if the work offered would not be considered “suitable work” (effective May 1, 2016).

With respect to the first 6 weeks after the employee became unemployed, “suitable work” means work to which all the following apply: the work does not involve a lower grade of skill than that which applied to the employee on one or more of his or her most recent jobs, and the hourly wage for the work is 75 percent or more of what the employee earned on the highest paying of his or her most recent jobs (effective May 1, 2016). (Previously, an employee will have good cause for failing to accept suitable work when offered and returning to work with a former employer that recalls the employee with 52 weeks after last worked, regardless of the reason articulated by the employee for the failure, if the department determines that the failure involved work at a lower grade of skill pay or significantly lower rate of pay than applied to the employee on one or more recent jobs and that the employee had not yet had a reasonable opportunity, in view of labor market conditions and the employee’s degree of skill, but not to exceed 6 weeks after the employee became unemployed, to seek a new job substantially in line with the employee’s prior job skill and rate of pay.)

With respect to the 7th week after the employee became unemployed and any week thereafter, “suitable work” means any work that the employee is capable of performing, regardless of whether the employee has any relevant

experience or training, that pays wages that are above the lowest quartile of wages for similar work in the labor market area in which the work is located, as determined by the department (effective May 1, 2016).

Section 108.04(8)(e) of the Wisconsin Statutes is repealed as follows: If a failure to accept suitable work has occurred with good cause, but the employee is unable to work or unavailable for work, the employee will be ineligible for the week in which such failure occurred and while such inability or unavailability continues.

An employee will have good cause for failing to accept suitable work only if the failure related to the employee's personal safety, sincerely held religious beliefs, an unreasonable commuting distance, or another compelling reason that would have made accepting the offer unreasonable (effective May 1, 2016).

A new rule is created concerning preemployment drug testing, a substance abuse treatment program, jobs skill assessment, and terms related to the new rule.

An employing unit is allowed to report the results of a positive drug test for controlled substances if

- the test was conducted as a condition of an employment offer and the individual was informed that the results may be shared with the department prior to the test,
- the test was conducted or confirmed by a certified laboratory,
- there is no evidence of a valid prescription for the controlled substance, and
- the employing unit complies with all of the provisions of the rule.

The information must be reported within 3 business days of receipt of the results and defines the information required to report the results to the department.

An employing unit is allowed to report an individual declining to submit to a test for controlled substances if the test was required as a condition of employment and the individual was informed that the results may be shared with the department prior to the test. The information must be reported within 3 business days of the date the individual declined the test and defines the information required to report the results to the department.

If the department receives information on a positive test result or that an individual has declined the test, the department must determine if the individual is receiving benefits and provide the documentation to the individual. If the department makes a determination based on the presumption that the individual failed, without good cause, to accept suitable work, the department must provide the individual an opportunity to overcome the presumption that the individual failed to accept suitable work.

For an individual whose determination was based on a positive test, the individual may overcome the presumption of failure to accept suitable work if any of the following are established:

- The employing unit did not extend an offer of employment contingent on submitting to a test or withdrew the offer before receiving the positive results.
- The individual held a valid prescription at the time of the test for each controlled substance detected.
- The test was not conducted or confirmed by a certified laboratory.
- Labor standards protections apply to the work offered.

- The department determines circumstances are beyond the individual's control.

For an individual whose determination was based on declining the test, the individual may overcome the presumption of failure to accept suitable work if any of the following are established:

- The employing unit did not extend an offer of employment contingent on submitting to a test.
- The individual was unable to complete a test due to medical reasons.
- The individual accepted an offer of employment before or at the time the individual declined the test.
- The individual was required to pay for the test.
- Labor standards protections apply to the work offered.
- The department determines circumstances are beyond the individual's control.

An individual deemed to have failed to accept suitable work because of a positive drug test or by declining to take the test is ineligible to receive benefits until the individual earns wages equal to at least 6 times the individual's weekly benefit rate in covered employment.

The individual must be otherwise eligible for benefits and enroll in an approved substance abuse treatment program to maintain eligibility; enrollment is limited to one time per benefit year. Compliance requirements for participation in the substance abuse program include the requirement that the individual must contact a treatment provider to schedule an assessment within 5 working days of being directed by the department.

The department must pay for reasonable costs of the services provided in the treatment plan for each week the individual is eligible for benefits.

The individual participating in the substance abuse program must complete a job skills assessment; failure to complete the assessment results in ineligibility until the individual earns wages in covered employment equal to 6 times the individual's weekly benefit rate.

The above provisions related to preemployment drug testing, substance abuse treatment program, and job skills assessment expired January 30, 2017.

**Overpayments.** With respect to fraudulent claims, "conceal" means to intentionally mislead (previously, mislead or defraud) the department by withholding or hiding information or making a false statement or misrepresentation.

A claimant has a duty of care to provide an accurate and complete response to each inquiry in connection with his or her receipt of benefits. The following factors will be considered in determining whether a claimant intended to mislead the department:

- a. Whether the claimant failed to read or follow instructions or other communications of the department related to a claim for benefits
- b. Whether the claimant relied on the statements or representations of persons other than an employee of the department who is authorized to advise claimant regarding his or her claim for benefits



- c. Whether the claimant has a limitation or disability and, if so, whether the claimant provided evidence to the department of that limitation or disability
- d. The claimant's unemployment insurance claims filing experience
- e. Any instructions or previous determinations of concealment issued or provided to the claimant
- f. Any other factor that may provide evidence of the claimant's intent

Nothing requires the department, when making a finding of concealment, to determine or prove that a claimant had an intent or design to receive benefits to which the claimant knows he or she was not entitled.

Effective October 2, 2016, to correct any erroneous payment not so adjusted from the account of an employer that is subject to reimbursement financing, the department will do one of the following:

- a. If recovery of an overpayment is permitted under Section 108.22(8)(c), credit to the account benefits that would otherwise be payable to, or cash received from, the employee, unless subdivision 4c applies.
- b. If recovery of an overpayment is not permitted under Section 108.22(8)(c), restore the proper amount to the employer's account and charge that amount in accordance with Section 108.07(5).

Subdivision 108.04(13)(d) 4c was added and provides that if the erroneous payment resulted from a false statement or representation about an individual's identity and the employer was not at fault for the erroneous payment, restore the proper amount to the employer's account and reimburse the balancing account by crediting to it benefits that would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment (effective October 2, 2016).

## Wyoming

**Appeals.** Any employer not satisfied with the determination of his or her liability for contributions or liability resulting from an audit must file within 28 (previously, 15) days after mailing or personal delivery of the final audit determination a request for a hearing and reconsideration of the employer's contribution liability. Such request must be made in writing and state the grounds for the request.

After the close of the hearing, the examiner will issue a decision with findings of fact and conclusions of law. That decision shall be mailed to the alleged employer's address of record. The division staff and the alleged employer will have 28 (previously, 15) days from the day the decision is sent to the employer to file an appeal. If an appeal is not filed within that period, the examiner's decision is final.

If an appeal of the examiner's decision is filed within the 28-day (previously, 15-day) period as provided above, the Unemployment Insurance Commission will consider the case at one of its monthly meetings. The commission will review the record and the evidence and may affirm, reverse, or modify the examiner's decision, remand the case to the examiner, or take such other action as it deems appropriate. The commission will send a copy of its decision to the alleged employer by certified mail. A petition for judicial review then may be filed pursuant to the Wyoming Administrative Procedure Act.

A party desiring rehearing or reopening of a case before the appeals examiner must file a written application to do so with the examiner no later than 28 (previously, 15) days after the mailing of the examiner decision to the party's address of record. If good cause is shown for failing to appear at the examiner hearing, the examiner may rehear or reopen the matter. The rehearing may be held solely for taking the absent party's evidence without granting him the right to cross-examine opposing witnesses who testified at the first hearing.

If the examiner denies the request to reopen or rehear, he or she shall issue a written decision to that effect. The aggrieved party shall have 28 (previously, 15) days from the date that decision was mailed to his or her address of record to file an appeal to the commission.

**Overpayments.** The payment of benefits to which individual was not entitled may also be offset through the treasury offset program of the U.S. Treasury.

#### SUGGESTED CITATION

Loryn Lancaster, "Changes in federal and state unemployment insurance legislation in 2016," *Monthly Labor Review*, U.S. Bureau of Labor Statistics, August 2017, <https://doi.org/10.21916/mlr.2017.21>

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