

Changes in State unemployment insurance legislation in 2003

Enactments included increase of maximum weekly benefit amounts, noncharging of certain benefit costs, and excluding certain services from the term "employment"; enactments on the Federal side included a law was extended twice, one new law, and two regulations that affected the Federal-State unemployment insurance program

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The Temporary Extended Unemployment Compensation (TEUC) program, enacted in March 2002, and scheduled to expire in December 2002, was extended twice during 2003. The first extension was effective through May (P.L. 108-1) and the second, through December (P.L. 108-26). Under this program, up to 13 weeks of benefits are available to eligible individuals in all States, and up to an additional 13 weeks in States with high unemployment, for a total of 26 weeks. Individuals who have amounts remaining in their TEUC accounts at the end of December can collect that amount through March 2004. All TEUC benefits and administrative costs are federally financed.

Also, a special TEUC program for airline and related workers was created in April 2003 (P.L. 108-11) and extends through the end of December 2003. This program, called TEUC-A, provides benefits to workers employed by domestic air carriers, at a facility at an airport, or at an upstream producer or supplier for an air carrier and were separated from employment because of the terrorist acts of September 11, a security measure taken in response to the terrorist acts, or the military conflict in Iraq. Under TEUC-A, up to 39 weeks of benefits are available to eligible individuals in all States, and up to an additional 13 weeks in States with high unemployment. Individuals who have amounts remaining in their TEUC accounts at the end of December can collect that amount through December 2004.

All TEUC-A benefits and administrative costs are federally financed.

The Department of Labor issued a final rule (effective November 10, 2003) removing the Birth and Adoption Unemployment Compensation regulations. Following its review of the Birth and Adoption Unemployment Compensation experiment originally implemented in 2000, the Department concluded that this regulation was poor policy and a misapplication of Federal unemployment compensation law relating to the able-to-work and available-for-work requirements.

The Department of Labor issued final regulation (effective March 6, 2003) clarifying eligibility standards for unemployment assistance that is a direct result of a major disaster. This legislation defines when unemployment is considered a direct result of a major disaster for purposes of determining whether an individual is eligible for benefits under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. The disaster unemployment assistance program provides up to 26 weeks of income assistance to workers left jobless in the wake of an event that the President declares a major disaster and who are not eligible for regular unemployment insurance benefits.

Following is a summary of State unemployment insurance legislation enacted in 2003.

Arkansas

Administration. The provisions, as amended, concerning disclosure of information provide that:

- the director may, pursuant to a valid subpoena issued by a State

prosecuting attorney, the attorney general of Arkansas, a U.S. Attorney, a U.S. magistrate judge, or the Federal Bureau of Investigation, release information in the possession of the department to law enforcement officials who seek unemployment

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information for the investigation or prosecution of a crime, or to enforce an order of a court in a criminal matter;

- the director may release information in the possession of the department to Federal public officials in the performance of their official duties acting through the U.S. Attorney's office, and that the information will be disclosed under an Information Exchange Agreement with the U.S. Attorney's office which will ensure the protection of the confidentiality of the information and the cost of providing the information.

The amended provisions further provide that, except as provided above concerning a valid subpoena issued, that the director will:

- move to quash a subpoena; and
- honor a subpoena and subpoenas dealing with similar subject matter, only if a court of competent jurisdiction finds that the need to examine the subpoenaed information outweighs the express policy of maintaining confidentiality in matters involving individuals and employers dealing with the department.

Appeals. The appeals provisions were modified to allow for a reopening of a matter by any party and not just the party who filed an appeal by providing that if any party fails to appear at the initial tribunal hearing, that party may request that the matter be reopened by the tribunal.

The appeal rights for a party filing an administrative appeal to the Board of Review were changed to reflect that the party no longer has the right to an appeal because the decision was not unanimous.

Provisions concerning decisions of the board of review and judicial review were modified by:

- increasing to 30 calendar days (previously, 20 calendar days) from the date a decision is mailed to the party's last known address, the number of days a party has to request a judicial review of the decision of the board of review.
- specifying that, if mailed, a petition for review will be considered filed as of the date of the postmark on the envelope.

Coverage. The definition of "employment" now excludes service performed by a person committed to a penal institution.

Financing. The director may issue a redetermination concerning transfer of experience when a business is purchased, within 1 year of the original determination if, through his or her own investigation, the original determination is found to be in error.

Employee leasing companies are prohibited from moving the wages of a client from one leasing company account to another leasing company account with a lower rate.

The period for which a bank or savings and loan institution must withhold payment of any deposit subject to a lien by the Employment Security Department increased from 30 days to 60 days.

The taxable wage base increased from \$9,000 to \$9,500 for the calendar year beginning after December 31, 2002, and increased from \$9,500 to \$10,000 for any calendar year beginning after December 31, 2003.

Monetary entitlement. The maximum weekly benefit amount is \$345 for benefit years beginning July 1, 2003, through June 30, 2005.

Nonmonetary eligibility. A person will be deemed unemployed with respect to any week if, in addition to performing no services and having no wages for that week (or, for less than full-time work, having wages less than 140 percent of the weekly benefit amount), he or she is not on leave approved by an employer under the Family and Medical Leave Act, as in effect January 1, 2003.

No one will be disqualified from receiving unemployment benefits for voluntarily leaving work, if the individual left his or her last work because of voluntary participation in a permanent reduction in the employer's work force after the employer announced a pending reduction in its work force and asked for volunteers. Such actions initiated by the employer will be considered layoffs regardless of any incentives offered by the employer to induce its employees to volunteer, and any incentives received must be reported as receipt of other remuneration.

The provision concerning disqualification for unemployment benefits for receipt of other remunerations, was amended to provide that an individual receiving sick pay, if otherwise eligible, will be paid an amount equal to the weekly benefit amount less that part of the sick pay (if any) payable with respect to a week that is in excess of 40 percent of his or her weekly benefit amount, rounded to the nearest lower full dollar amount. However, any sick pay received due to a permanent separation from employment

will not be disqualifying or deductible. The employer must promptly report the week or weeks involved in the sick pay period as well as the corresponding amount of sick pay with respect to the week or weeks.

Overpayments. The disqualification penalty for false statement or misrepresentation increased from 13 weeks to a disqualification from the date of filing the claim until the claimant has 10 weeks of employment in each of which he or she has earned wages equal to at least his or her weekly benefit amount.

Colorado

Financing. The following amounts are appropriated from the March 13, 2002, Reed Act distribution:

- \$789,828 for unemployment insurance program administration,
- \$5,634,514 for employment and training program administration, and
- \$7,000,000 for the administration of public employment offices.

Delaware

Monetary entitlement. The maximum weekly benefit amount increased from \$320 to \$330, effective for the benefit year beginning January 1, 2004, without regard to the balance in the Unemployment Insurance Trust Fund.

Financing. Each employer's new employer rate or basic assessment, whichever is applicable to such employer, increases by a supplemental assessment rate of 0.2 percent beginning January 1, 2004, and thereafter, without regard to the balance in the Unemployment Insurance Trust Fund.

Georgia

Financing. The suspension of the overall rate increase is extended through December 31, 2004, unless the Statewide Reserve Ratio is less than 1 percent, in which case the Commissioner of Labor will have the option of imposing an increase in the overall rate of up to 35 percent, as of the date of computation, for each employer.

Nonmonetary eligibility. The disqualification provision relating to employees of temporary help firms who fail to contact the employer for reassignment to employees of leasing companies and professional employer organizations has been extended.

Hawaii

Nonmonetary eligibility. An alternative base period consisting of the four completed calendar quarters immediately preceding the first day of an individual's benefit year is used if an individual fails to establish a valid claim using the standard base period and certain other requirements are satisfied, effective for benefit years beginning January 1, 2004.

Employment and wages used to establish a benefit year cannot thereafter be reused to establish another benefit year.

Idaho

Financing. The same taxable wage base, \$27,600, in effect for calendar year 2002 will be in effect for calendar years 2003 and 2004. Tax rates for positive balance employers range from .2 percent to 1.4 percent for calendar years 2003 and 2004. Tax rates for negative balance employers range from 2.6 percent to 5.4 percent for calendar years 2003 and 2004.

Illinois

Administration. The Department of Employment Security must disclose, upon request, to a State's attorney of Illinois or a State attorney's investigator the current address or current information of an employer of a victim of a felony, a witness to a felony, or a person against whom an arrest warrant is outstanding.

Indiana

Appeals. The mailing period decreased: from 20 days to 10 days after mailing of notice that an individual has to file an appeal before an administrative law judge from a monetary determination notice and that an employer has to file an appeal from the employer's benefit liability notice; from 20 days to 10 days after mailing of notice to a claimant and employer that they have to file an appeal before an administrative law judge for cases in which the claimant's benefit eligibility or disqualification is disputed; and from 25 days to 15 days for parties located in Alaska, Hawaii, or Puerto Rico.

Financing. The first \$450,000 or less of skills 2016 training assessments must be annually deposited in the special employment and training services fund for training and counseling assistance; then the remainder of the assessments must be deposited in the skills 2016 training fund,

effective July 1, 2003.

The commissioner must allocate up to \$450,000 annually for training and counseling assistance provided by educational institutions or counseling provided by the department of workforce development for individuals who:

- remain unemployed for at least 4 weeks;
- are not otherwise eligible for training and counseling assistance under any other program; and
- are not participating in programs that duplicate industrial and building trade apprenticeship programs.

Training or counseling does not excuse the claimant from complying with able-to-work and available-for-work requirements. Eligibility for training and counseling will not be determined until after the 4th week of eligibility for unemployment training compensation benefits. These funded training and counseling assistance programs must be approved by the U.S. Department of Labor's Bureau of Apprenticeship Training. The allocation used to provide training to participants in both joint labor and management building trades and industrial apprenticeship programs increased from 40 percent to 50 percent of the money that has been allocated to the State educational institution from the skills 2016 training fund.

Certain provisions allocating money in the skills 2016 fund to other programs have been deleted. The provision changing skills 2016 training effective date from January 1, 2003, to December 31, 2005, was repealed. The department must prepare an annual report by April 30 each year of unobligated money in the skills 2016 fund, and the incumbent workers training board may reallocate the unobligated money shown in the annual report. The requirement that funds assessed for or deposited in the skills 2016 training fund be directed or transferred to the unemployment insurance benefit fund which was conditioned on the fund ratio or solvency of the unemployment insurance benefit fund was deleted.

Contribution rates for contributing employers were established as follows:

	<i>In percent</i>
	Most favorable
Positive balance employer	0.1 to 2.3
Negative balance employer	4.1 to 5.4
	Least favorable
Positive balance employer	1.1 to 4.1
Negative balance employer	4.4 to 5.6

Monetary entitlement. The term "wage credits" was defined as remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities. The wage credits not to exceed \$7,900 for calendar quarters beginning on and after July 1, 2002, will be effective until June 30, 2003. The wage credits were limited to \$8,216 for calendar quarters beginning on and after July 1, 2003, to June 30, 2004; to \$8,733 for calendar quarters beginning on and after July 1, 2004, to June 30, 2005; and to \$9,250 for calendar quarters beginning on and after July 1, 2005.

Nonmonetary eligibility. The mailing period decreased from 20 days to 10 days after mailing of notice that an initial or additional claim for benefits was filed that an employing unit, including an employer, has to notify the department of any facts which may affect eligibility or right to waiting period credits or benefits.

Kansas

Coverage. The definition of "employment" excludes service performed by agricultural workers who are aliens admitted to the United States to perform labor under the Immigration and Nationality Act (commonly called H-2A workers).

Extensions and special programs. Claimants who exhaust regular unemployment insurance or any other extended benefits may receive 2 weeks of shared work additional benefits during the period from July 1, 2003, through June 30, 2004. Employers will not be charged for additional benefits paid during the period from July 1, 2003, through June 30, 2004.

Nonmonetary eligibility. Social Security payments and Railroad Retirement benefits will not be deducted from unemployment benefits.

An individual may not be disqualified from receiving unemployment benefits on the basis that he or she left work voluntarily without good cause if the individual left work due to circumstances resulting from domestic violence, including:

- a reasonable fear of future domestic violence at or en route to or from the individual's place of employment; or
- a need to relocate to another geographic area in order to avoid future domestic violence; or

- a need to address the physical, psychological, and legal impacts of domestic violence; or
- a need to leave employment as a condition of receiving services or shelter from an agency that provides support services or shelter to victims of domestic violence; or
- a reasonable belief that termination of employment is necessary to avoid other situations that may cause domestic violence and to provide for the future safety of the individual or the individual's family.

An individual may prove the existence of domestic violence by providing one of the following:

- a restraining order or other documentation of equitable relief by a court of competent jurisdiction; or
- a police record documenting the abuse; or
- documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, where the victim was a family or household member; or
- medical documentation of the abuse; or
- a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate, or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or
- a sworn statement from the individual attesting to the abuse.

The nondisclosure of evidence of domestic violence experience by an individual, including the individual's statement and corroborating evidence, is required by the department of human resources, unless consent for disclosure is given by the individual.

Louisiana

Administration. Determinations will be issued to base-period employers regarding the chargeability of benefits. These determinations are conclusive and binding unless an employer files an application for review within 20 days.

The amount attorneys for the State Department of Labor can be paid for the

collection of delinquent unemployment insurance contributions is limited to 10 percent of the total dollars collected (previously, limited to 20 percent of the first \$2,000 collected, 10 percent of the next \$2,000 collected, and 5 percent of any amount over \$4,000 collected).

Financing. The limitation on voluntary employer contributions to experience rating accounts has been removed. An employer's experience rate will be transferred whenever an employing unit succeeds to or acquires the employees of a predecessor employer. The restriction that supplemental funds for unemployment insurance administration be used only for personnel costs associated with certain functions was eliminated; these funds can now be used for any costs associated with the functions.

If the legislature fails to renew the Incumbent Worker Training Program prior to calendar year 2008, amounts collected as a social charge from employers after 2007 that would have been used to fund the Incumbent Worker Training Program, will be deposited and applied to each individual employer's experience-rating record as a contribution.

Nonmonetary eligibility. Temporary or uncertified teachers or instructors, like other teachers, are not eligible for unemployment insurance between academic years or terms based on the instructional, research, or administrative services they provided during the year if reasonable assurance exists that they will perform such services in the next academic year or term.

Maine

Nonmonetary eligibility. Beginning January 1, 2004, an individual who is not available for full-time work is not disqualified from receiving benefits if the individual worked:

- less than full time for a majority of the weeks during that individual's base period and the individual is able and available for and actively seeking part-time work for at least the number of hours in a week comparable to those customarily worked in part-time employment during that individual's base period; or
- full time for a majority of the weeks during that individual's base period, but is able and available for and actively seeking only part-time work because of the illness or disability of

an immediate family member or because of limitations necessary for the safety or protection of the individual or his or her immediate family member.

This nondisqualification terminates for new applications for benefits on September 30, 2005, but continues to apply to individuals who have remaining entitlement as of that date.

Maryland

Administration. An Unemployment Insurance Funding Task Force to study taxation and charging for purposes of funding the Unemployment Insurance Trust Fund was established. The Task Force was required to report its findings and recommendations to the General Assembly on or before December 1, 2003.

Massachusetts

Appeals. Criteria was established for the State advisory council to follow when nominating persons who will be appointed or reappointed to the board of review. The criteria require the nominees to the board of review to be selected from a list submitted to the governor by the State advisory council, and also require that the member designated as chairman to be an attorney.

Financing. A surtax—a uniform secondary adjustment payment—will be added to every employer's contribution rate in an amount sufficient to ensure that the Federal loans can be repaid in full before September 30, payable when the commissioner determines the Unemployment Compensation Fund is insufficient to continue benefit payments or repay Federal loans; the secondary adjustment payments must be deposited into the Unemployment Compensation Fund or the Federal Loan Interest Fund; deduction of all administrative costs incurred for assessing this surtax is allowed prior to deposit; secondary adjustment payments must be credited to each employer's account for experience rating purposes; a notice must be sent within 10 days of determining that a secondary adjustment payment is due to the joint committee on commerce and labor of the amount necessary to collect; the secondary adjustment payment for positive balance employers ranges from 0.3 percent to 0.6 percent and for negative balance employers, from 0.7 percent to 0.9 percent.

The taxable wage base increased from \$10,800 to \$14,000, effective January 1, 2004.

A revised experience rate tax table with seven schedules is provided. The range of rates for the most and least favorable schedules is as follows:

	<i>In percent</i>
Negative percentage employers:	
Most favorable	4.60 to 7.80
Least favorable	9.08 to 15.40
Positive percentage employers:	
Most favorable	0.80 to 3.90
Least favorable	1.58 to 7.70

For calendar years 2004 through 2007, tax rates for negative balance employers range from 6.46 percent to 10.96 percent and for positive balance employers, from 1.12 percent to 5.48 percent.

The due dates for filing an updated fund balance report changed from the 15th day of the months of January, April, and August to the 15th day of every month.

If an employer or an officer or agent of an employer knowingly fails or refuses to pay any contribution, payment in lieu of contribution, or interest charge or attempts to evade or defeat such payments or who makes a false statement or misrepresents the employment status of an individual under his employ to avoid or reduce any contribution, he or she will be punished by a fine equal to the total amount of contributions owed, plus interest, in addition to a penalty equal to the total amount that the individual fraudulently collected during the period such individual was under his employ.

Withdrawals from the contingent fund are allowed to pay individuals who voluntarily provide information leading to establishment of an overpayment or to a determination of an employer filing false or fraudulent contribution reports an amount not to exceed 10 percent of the total penalty assessed and collected; employers are not to take adverse action against an informant, and an employer that does must be liable in a civil action for contempt or other proceeding to such employee for wages and employment benefits lost as a result of such action, litigation costs, and attorney fees; the employee may bring action in the district or superior court; the department must provide a toll-free number for reporting fraudulent acts and promote and advertise the number to the public.

Monetary entitlement. The total entitlement

to benefit weeks will decrease from 30 to 26 times the benefit rate when the State's unemployment rate for the last 12 months is equal to or below 5.1 percent in each of the 10 metropolitan statistical areas of the State.

Nonmonetary eligibility. A temporary employee of a temporary help firm is considered to have voluntarily quit and may be denied benefits for failure to contact the temporary help firm for reassignment before filing for benefits.

Overpayments. Individuals who fraudulently collect benefits while not in total or partial unemployment may be disqualified for each week of erroneous payment; the amount in question must be reduced by any earnings disregarded; erroneous payments may be deducted first from future benefit payment; each weekly deduction must not exceed 25 percent of the individual's weekly benefit rate; notification must be provided to the individual of the requirement to report earnings; the notification must meet certain requirements; individuals subject to a deduction have the right to an appeal and review.

The department may recover erroneously paid benefits provided that:

- there is no pending hearing or appeal from a decision determining that an individual knowingly and willfully failed to furnish information;
- no hearing or appeal from a decision on ineligibility for benefits is pending;
- no request for waiver is pending;
- no request for a redetermination is pending; and
- from a determination of overpayment, an opportunity for an interview and all appeal rights have been exhausted or not taken within the time allowed by law.

Michigan

Extensions and special programs. A total unemployment rate trigger on a temporary basis effective beginning May 25, 2003, and ending December 27, 2003, was established. Extended benefits are payable beginning August 17, 2003:

- for 50 percent of regular benefits up to 13 weeks when the average total unemployment rate for the most recent 3 months equals or exceeds 6.5 percent and the average State total unemployment rate equals or exceeds 110 percent of the average State total

unemployment rates in the corresponding 3-month period in either or both of the preceding 2 calendar years;

- for 50 percent of regular benefits up to 20 weeks when the average total unemployment rate equals or exceeds 8 percent as described immediately above.

Contributing employers' share of extended benefits based on the total unemployment rate trigger is charged to the nonchargeable benefits account, effective for benefit charges paid for weeks of unemployment beginning the week of August 17, 2003, and ending the week of January 17, 2004.

For reimbursing employers, the contingent fund is charged for the full amount of extended benefits based on the total unemployment rate trigger effective for benefit charges paid for weeks of unemployment beginning the week of August 17, 2003, and ending the week of January 17, 2004.

Financing. Solvency taxes collected and deposited in the contingent fund can no longer be used for the unemployment insurance automation project.

Minnesota

Administration. The commissioner of economic security was given authority to prescribe the manner and format in which each employer must file quarterly wage detail reports.

Each employer with 50 or more employees in a quarter must file its quarterly wage detail report electronically.

The charging of 1.5 percent interest per month for late payment of fees, assessments, surcharges, or certain penalties by employers is permitted.

A personal identification number (PIN) can be issued to each applicant for unemployment benefits and presumptions were established that the applicant is the individual using a PIN and received any unemployment benefit payment issued. The presumption may be rebutted by a preponderance of evidence to the contrary.

Biweekly filing of continued requests for unemployment benefits is allowed.

Coverage. Services of a member of a limited liability company, who has less than a 25-percent ownership share and is considered an employee under the common law, is "employment" (previously, any member of a limited liability company considered an

employee under the common law would be considered to be performing “employment”).

Financing. The base tax rate for a calendar year and any additional assessment will be determined based upon the amount in the trust fund on March 31 of the prior year as a percentage of total wages paid in covered employment and shall range from 0.1 percent (if the fund is equal to or more than 0.75 percent of total wages) to 0.4 percent (if the trust fund is less than 0.55 percent).

Effective January 1, 2005, a “falling fund adjustment” of 0.1 percent is allowed if the amount in the trust fund on March 31 of the prior year is less than 0.75 percent of total wages paid in covered employment and is either 10 percent or more below the amount in the trust fund on March 31 of the second prior year or is greater than the amount in the trust fund on June 30 of the prior year.

An additional assessment of 5 percent to 14 percent is allowed if the amount in the trust fund on March 31 of the prior year is less than 0.55 percent of total wages paid in covered employment.

The period for which paid benefits and taxable payroll will be used in determining an employer’s experience rate is reduced from 60 months to 48 months.

Any assessment, fee, or surcharge imposed under the State’s unemployment insurance law will be treated the same as, and considered as, a tax. Such assessments, fees, or surcharges will be subject to the same collection procedures that apply to past due taxes.

Monetary entitlement. The limit on the weekly benefit amount has been lowered to the higher of:

- 50 percent of an applicant’s average weekly wage during the base period, to a maximum of 66-2/3 percent of the State’s average weekly wage, or
- 50 percent of an applicant’s average weekly wage during the high quarter, to a maximum of 45 percent (previously, 50 percent) of the State’s average weekly wage.

The maximum weekly unemployment benefit amount based upon the high-quarter calculation will not be less than \$350. This provision expires September 1, 2006.

The State’s annual maximum weekly benefit amount will apply to benefit accounts established on or after the first Sunday in August and such benefit accounts will be unaffected by any subsequent August change to the maximum weekly benefit amount.

Nonmonetary eligibility. Effective for benefit accounts established August 3, 2003, and thereafter, that provision making an individual ineligible to receive unemployment benefits because of receipt of severance pay, bonus pay, vacation pay, sick pay, or other disqualifying income that is considered wages at the time of payment, applies to all weeks of payment (rather than only the first 4 weeks of payment and one-half the number of any additional weeks of payment).

An individual who quits employment because the applicant’s serious illness or injury made it medically necessary may be eligible for benefits if the individual informed the employer of the condition but no reasonable accommodation was made available (previously, required the applicant to make “reasonable efforts” to remain in employment).

An individual who fails without good cause to affirmatively request an additional job assignment within 5 days (previously, no time was specified) of completing a suitable temporary job assignment from a temporary staffing service employer, or who refuses without good cause an additional suitable job assignment offered, will be considered to have quit employment.

The definition of “misconduct” was amended to include intentional, negligent, or indifferent conduct that “evinces a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee.” Not included in the definition are a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, or good faith errors in judgment if judgment was required.

Conduct that was the result of the applicant, or the applicant’s minor child, being a victim of domestic abuse, is not employment misconduct.

Evidence of domestic abuse may be provided through a statement by an attorney who assisted an individual in dealing with the domestic abuse.

Limits now apply to the the disqualification from receiving benefits due to refusal of an offer of suitable employment to offers made during the claimant’s benefit year.

Missouri

Coverage. The definition of “employer” and “employment” includes service performed for an Indian tribe that results in unemployment insurance coverage of such service. An Indian tribe may either pay contributions or elect to make reimburse-

ments. The Indian tribe and all its tribal units will be jointly and severally liable for any and all contributions, payments in lieu of contributions, interest, penalties, and surcharges owed. An Indian tribe that elects to make reimbursements must file a surety bond. Under certain conditions, the reimbursement election and coverage are terminated when a tribe fails to make the required payments or to maintain the required surety bond.

Montana

Coverage. The definition of “employment” excludes service performed:

- by an individual as an official, including a timer, referee, umpire, or judge, at an amateur athletic event; such exclusion does not apply to State or local governmental entities, Indian tribes or tribal units, or nonprofit organizations under section 501(c) (3) of the Internal Revenue Code unless the service is excluded from employment for purposes of the Federal Unemployment Tax Act; or
- to provide companionship services or respite care for individuals who, because of age or infirmity, are unable to care for themselves when the person providing the service is employed directly by a family member or an individual who is a legal guardian.

Financing. The department may make changes to an employer’s classification and rate of contribution upon an oral request for redetermination by the employer, if the department finds that the department has made an error.

The ratios used to calculate unemployment insurance contribution rates have been revised resulting in the following rates:

	<i>In percent</i>
Eligible employers	
Most favorable	0.00 to 1.67
Least favorable	1.67 to 3.47
Deficit employers	
Most favorable	3.17 to 6.37
Least favorable	4.97 to 6.37

Monetary entitlement. The maximum number of benefit weeks to which an individual is eligible increased from 26 to 28. To qualify for the 28-week duration, an individual’s ratio of total base-period earnings to the highest quarter base-period earnings must be at least 3.50.

The percentage for calculating the maximum weekly benefit amount increases from 63 percent to 66.5 percent of the average weekly wage.

The minimum weekly benefit amount increases from \$70 to \$73 and the maximum weekly benefit amount from \$297 to \$306, effective July 7, 2003.

Nonmonetary eligibility. The provision that allows an individual, who leaves work or is discharged because of circumstances resulting from domestic violence, to receive unemployment benefits is now permanent because the July 1, 2003, termination date has been repealed.

Nebraska

Coverage. The commissioner must immediately notify the U.S. Internal Revenue Service and the U.S. Department of Labor if an Indian tribe fails to make required payments, including assessments of interest and penalty, within 90 days after a final notice of delinquency.

The definition of "employment" excludes service performed:

- in the employ of the State of Nebraska or any of its political subdivisions or instrumentalities if such service is performed by an individual in the exercise of his or her duties as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;
- at a penal or custodial institution by a person committed to a penal or custodial institution.

Financing. An amount of \$6,800,484 was appropriated from funds made available to the State in Federal fiscal year 2002 under section 903(d) of the Federal Social Security Act for administration of the Employment Security Law and public employment offices.

Nevada

Overpayments. The period for recovery of overpayments is extended from 3 years to 5 years.

New Hampshire

Administration. Delivery of a written notice for collection of State contributions by an authorized representative of the commis-

sioner must be deemed proper service of process.

The interstate collections provision allows the courts to entertain actions in the name of the commissioner to collect benefits for which liability has accrued under the employment security law of any other State or the Federal Government; and gives authority to the commissioner to collect any debts of benefits, contributions, or interest by civil action in any manner provided for the collection of contributions in the State's unemployment compensation law for debt collection.

The Reed Act distribution, transferred to the State on March 13, 2002, can only be used for the payment of benefits and for the payment of expenses incurred for the administration of the unemployment compensation law and public employment offices. The expenses for administration must be appropriated by the legislature and only if the expenses are incurred and the money is requisitioned after enactment of appropriation law which specifies the purpose for and use of the money. The obligation of the Reed Act distribution (except the special Reed Act distribution) is restricted within 2 years after the date of the enactment of appropriation law, and the amount which may be obligated is limited.

Appeals. The appeal provisions require that decisions from appeals be sent in whichever manner the commissioner determines to be most appropriate, including by first-class mail.

Coverage. The definition of "employer" includes service performed for an Indian tribe, resulting in unemployment insurance coverage of such services; and excludes coverage of certain services. An Indian tribe is considered as any subdivision, subsidiary, or business enterprise wholly owned by an Indian tribe. An Indian tribe is allowed to either pay contributions or elect to make reimbursements. Reimbursing tribe or tribal unit may be required to execute and file a surety bond or deposit money or securities at the discretion of the commissioner. Extended benefits not reimbursed by the Federal Government must be financed in their entirety by the Indian tribe. Under certain circumstances, the reimbursement election and coverage terminate when a tribe fails to make the required payments; reinstatement is provided when failure is corrected.

The definition of "employment" excludes services by a direct seller if engaged in the trade or business of the delivering or dis-

tribution of newspapers or shopping news, including any services directly related to such trade or business.

Extensions and special programs (effective September 6, 2003). An additional unemployment benefits program is established for individuals who exhaust benefits under the Temporary Unemployment Compensation Act of 2002 after May 31, 2002, and meet certain eligibility requirements.

Additional unemployment benefits are excluded from being used in computing the future tax rate of a taxpaying employer and charged to a government or nonprofit employer subject to reimbursing of benefits.

The additional unemployment benefits are funded from the March 13, 2002, Reed Act distribution, and the payment of additional unemployment benefits will terminate upon exhaustion of such Reed Act funds.

The weekly amount of additional unemployment benefits available to an individual is the same as the weekly benefit amount of regular benefits.

The maximum amount of additional unemployment benefits available is 13 times the individual's weekly additional unemployment benefit amount.

Nonmonetary eligibility. Individuals are ineligible for benefits between two successive academic years or terms and during vacation or holiday recess while performing services as a nonprofessional or for an educational institution only if applicable to such services in the employ of the State or any political subdivision thereof, to Indian tribes, and to certain nonprofit organizations, effective June 9, 2003.

An individual is disqualified for benefits for any week during which the individual resides other than in New Hampshire, another State, the District of Columbia, Puerto Rico, the Virgin Islands, or a contiguous country with which the United States has an agreement with respect to unemployment compensation.

The labor dispute provisions provide that a person unemployed due to a stoppage of work must have worked in 5 or more weeks (formerly, consecutive weeks) in employment as defined in the State's unemployment compensation law (except service performed in the employ of the United States), or wages earned in a like manner in another State to requalify for benefits.

Income support from any Federal reemployment account is considered wages when an individual is totally or partially unemployed.

Overpayments. The commissioner is allowed to waive interest, penalties, fees, and legal costs totaling \$50 or less related to overpaid benefits or contribution adjustments.

New Mexico

Extensions and special programs. Beginning July 1, 2003, an optional total unemployment rate program is established which triggers “on” for weeks of extended benefits when the average seasonal adjusted total unemployment rate for all States for the most recent 3-month period equals or exceeds 6.5 percent and the average total unemployment rate of the State for the most recent 3-month period equals or exceeds 110 percent of the total unemployment rates for either or both of the corresponding 3-month periods in the 2 preceding calendar years. The total extended benefit amount payable will be the least of the following three amounts:

- 50 percent of regular benefits;
- 13 times the individual’s average weekly benefit amount; or
- 39 times the individual’s average weekly benefit amount reduced by regular benefits, additional benefits, and readjustment allowances.

Beginning July 1, 2003, a high unemployment period is established for additional weeks of extended benefits when the average seasonally adjusted total unemployment rate for all States for the most recent 3-month period equals or exceeds 8.0 percent and the average total unemployment rate of the State for the same period equals or exceeds 110 percent of the total unemployment rates for either or both of the corresponding 3-month periods in the 2 preceding years. Provides that for weeks beginning in a high unemployment period the total extended benefit amount payable will be the least of the following three amounts:

- 80 percent of regular benefits;
- 2 times the individual’s average weekly benefit amount; or
- 46 times the individual’s average weekly benefit amount reduced by regular benefits, additional benefits and readjustment allowances.

The contributing employers’ account is not charged for the share of extended benefits paid based on the total unemployment rate trigger; the reimbursing employer’s and government entity’s account are charged the share of extended benefits paid based on the total unemployment rate trigger.

Financing. A contributing employer’s account is not charged with benefits paid for dependent’s allowance, separation due to domestic abuse, or individual’s enrolled in approved training or attending school on a full-time basis.

The reduced rate for the payment of contributions for new employers with less than 3 years of experience rating is changed from 2.7 percent to 2.0 percent, effective January 1, 2004.

An employer who is in business in another State(s), who is not currently doing business in New Mexico, and who establishes an account in New Mexico, may elect to receive a beginning contribution rate of 2.0 percent or a contribution rate based on the current contribution rate schedule, whichever is lower, if certain other conditions are met; rates for subsequent years will be determined by the condition of the account for the computation date.

A new tax rate schedule is added for use if the fund equals at least 3.7 percent of the total payrolls with rates ranging from 0.03 percent to 5.40 percent. This is the most favorable schedule.

An amount of \$2,592,401 was appropriated from Reed Act distribution funds made available to the State on March 13, 2002, to the unemployment compensation administration fund for expenditure in fiscal years 2004 through 2007 to implement the State’s unemployment insurance law; any unexpended or unencumbered balance remaining at the end of fiscal year 2007 reverts to the Reed Act distribution fund.

Monetary entitlement. The computation of the weekly benefit amount changed from 1/26th of the high quarter wages to 52.5 percent of the average weekly wage in the highest base period quarter, effective July 1, 2003.

A weekly dependent’s allowance of \$15 per dependent up to a maximum of four dependents is permitted, not to exceed 50 percent of the individual’s weekly benefit rate, effective January 1, 2004.

The use of an alternative base period is permitted consisting of the last four completed calendar quarters immediately preceding the first day of the individual’s benefit year for claimants earning insufficient wages in the regular base period (first four quarters of last five completed quarters) to be eligible for benefits, effective January 1, 2004.

Nonmonetary eligibility. Individuals able to work and available and actively seeking part-

time work in accordance with the terms, and conditions, and hours common in the occupation or business in which the individual is seeking work are eligible to receive benefits under certain conditions, effective January 1, 2004.

No otherwise eligible individual is to be denied benefits for any week because the individual is attending school on a full-time basis with the approval of the job training division, effective January 1, 2004.

Separation from employment due to domestic abuse evidenced by medical documentation, legal documentation, or a sworn statement from the claimant is good cause for voluntary leaving, and individuals are eligible to receive benefits, effective July 1, 2003; the term “domestic abuse” was defined.

New York

Extensions and special programs. The self-employment assistance program was reauthorized permitting eligible individuals to receive an allowance in lieu of regular unemployment benefits to assist them in establishing a business and becoming self-employed payable in the same amount as regular unemployment benefits (expires December 7, 2005).

For self-employment assistant participants, the requirements are waived (through December 7, 2005) that:

- benefits will be paid to claimants totally unemployed and unable to engage in their usual occupation or occupations for which they are trained or experienced; and
- no benefits will be payable to claimants who are incapable, not ready, willing, and able to work in their usual occupation or occupations for which they are trained or experienced.

Financing. The subsidiary rate for employers who have not been liable for contributions during at least the five completed calendar quarters ending on the computation date will be the highest percentage for those employers with a positive employer’s account percentage.

Negative balance employers are eligible for a rate reduction if they have a minimum of 17 quarters of liability (previously, there was no minimum liability period).

Monetary entitlement. Any claimant whose high calendar quarter remuneration during the base period is more than \$3,575 will have a weekly benefit rate no less than \$143.

North Carolina

Financing. No employer granted reimbursement will be allowed a refund of any previous balance used in a transfer to reimbursement status.

Nonmonetary eligibility. An individual will not be disqualified from receiving benefits for leaving work due to the disability or health condition of a minor child or aged or disabled parent of an individual, or a disabled member of the individual's immediate family if the individual gave the employer notice of the condition (previously, had to be a disability or health condition of the employee).

An individual will not be disqualified from eligibility for unemployment insurance solely on the basis that the individual is only available for part-time work. The individual may be considered able and available for work if:

- the claimant's monetary eligibility is based predominately on wages from part-time work;
- the claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued;
- the claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time services.

Any claimant leaving work to accompany his or her spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed to have good cause for leaving work.

The disqualification from receiving benefits is reduced from 5 weeks to 2 weeks for a claimant who leaves work to accompany his or her spouse to a new place of residence where the spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work.

New provisions expanded the category of claimants covered by the exception providing good cause for leaving work if a claimant leaves work or is discharged as a result of domestic violence. Previously, the exception applied only to those claimants given a protective order concerning domestic violence. The expansion also covers situations where there is "evidence" of domestic violence, sexual offense, or stalking, or the claimant has qualified for the State's new address confidentiality program.

North Dakota

Administration. The legislative council will consider studying the impact of pending Federal legislation that would significantly change the respective Federal-State responsibilities and funding for workforce development, workforce training, public labor exchange, and unemployment insurance programs.

The Legislative Council is directed to study the State's unemployment compensation system, including reserve guidelines for the unemployment trust fund, the system for rate setting, treatment of positive balance and negative balance employers, and the feasibility and desirability of creating an unemployment compensation board and to report its findings and recommendations, together with any legislation required to implement the recommendations, to the 59th Legislative Assembly.

Employers refusing to comply with recordkeeping requirements are subject to a civil penalty of \$500 for each offense. The agency must collect the penalty by civil action and deposit any penalty collected to the credit of the Federal advance interest repayment fund.

Extensions and special programs. The shared work unemployment compensation program was repealed.

Financing. The assignment of unemployment insurance tax rates for employers who fail to file required reports or filed insufficient reports has been changed as follows. Requires assigning the:

negative employer minimum rate to—

- experience-rated positive employers
- new positive nonconstruction employers

negative employer maximum rate to—

- experience-rated negative employers
- new positive construction employers
- new negative employers

With respect to noncharging for voluntary quits and discharge for misconduct, the quit or discharge must be during the base period and the employer must be the base-period employer.

An employer's account is not charged with benefits paid to an individual who is currently employed part time with that employer when the hiring agreement between the individual and the employer has not changed since the individual commenced work for that employer. This provision does not apply to an employee of a temporary help firm.

The 1.5-percent additional tax is eliminated for employers in highway and street construction, except elevated highways, when they fail to file reports in a timely manner, thus requiring them to pay the same penalty rate as all other employers.

Monetary entitlement. The 10 times the weekly benefit amount limitation on base-period wages used to establish a second benefit year and earned from employment by a partnership, corporation, or limited liability company, does not apply if at the time of filing a claim, the ownership interest has been ceded.

Nonmonetary eligibility. The definition of "wages" excludes qualifying supplemental unemployment payments financed and paid by employers to former employees if the payments are paid under a plan meeting certain requirements.

Ohio

Financing. Amounts totaling \$53.7 million for fiscal year 2004 and \$47.3 million for fiscal year 2005 have been appropriated from Reed Act funds for administration of the unemployment insurance program, employment services, and other allowable expenditures. This appropriation will increase, upon request of the director of Job and Family Services, for fiscal year 2004 by the amount remaining unspent from fiscal year 2003, and, for fiscal year 2005, by the amount remaining unspent from fiscal year 2004.

Oklahoma

Administration. Unemployment insurance claims can be filed by telephone or Internet without a claimant having to first appear in person at the Employment Security Commission office.

Unemployment insurance information can be disclosed to the Bureau of the Census of the U.S. Department of Commerce for the purpose of economic and statistical research.

Subpoenas to compel disclosure of confidential unemployment insurance information will not be valid, except for administrative subpoenas issued by Federal, State, or local government agencies that have been granted subpoena power by statute or ordinance. Confidential unemployment insurance information may be nevertheless obtained by order of a court of record that authorizes the release of the records in writing.

Appeals. All time periods allowed for unemployment insurance administrative appeals may be waived for good cause.

Claims for exemptions and any other matter relating to a levy for recovery of an overpayment must be filed with the Appeal Tribunal of the Oklahoma Employment Security Commission within 10 days of the date of service of the levy.

Financing. The maximum permissible probationary period has been extended from 45 days to 90 days, for which an employer may be noncharged for benefits paid to a former employee who was discharged for unsatisfactory performance during the probationary period.

The provision for noncharging of benefits for an employee or former employee who establishes a claim for unemployment benefits using an alternative base period has been eliminated.

The noncharging of benefits paid to an employee or former employee who leaves employment as part of a plan to escape domestic violence or abuse is permitted.

An amount of \$6,219,485 was appropriated out of the Reed Act distribution made available to the State on March 13, 2002, for administration of the Employment Service, One-Stop Career Center expenses attributable to the Employment Service and Unemployment Insurance Program, and the Unemployment Insurance Program. These funds must be expended between July 1, 2003, and June 30, 2004.

Nonmonetary eligibility. Separating from employment as part of a plan to escape domestic violence or abuse constitutes good cause for voluntarily leaving work.

When an employer hires a worker for a limited duration specified by the employer, the worker is considered to have been laid off due to lack of work at the end of the time period set by the employer, if the separation was due only to completion of work or the expiration of the time period.

When an employer hires a worker for a limited time specified by the worker, the worker is considered to have voluntarily quit work at the end of the time period set by the worker, if the separation was due only to the expiration of the time period.

Oregon

Appeals. An administrative law judge may dismiss a request for a hearing when:

- the request for a hearing is with-

drawn by the requesting party;

- in response to a request by the administrative law judge or his or her designee, the requesting party fails to provide, in a timely manner, the information necessary to allow the matter to be scheduled for a hearing;
- the requesting party fails to appear at the time of the hearing;
- the issues are resolved by cancellation or amendment of the decision that is the subject of the hearing request;
- the requesting party fails to file the request for a hearing within the time allowed by statute or rule and fails to show good cause for the delay;
- the request for a hearing is filed prior to the date of the written decision or written determination that is the subject of the request; or
- the request for a hearing is made by a person who is not entitled to a hearing or is not the authorized representative of a party who is entitled to a hearing.

Such a dismissal by the hearing officer is final unless the party whose request for a hearing has been dismissed files, within 20 days of mailing of the dismissal notice, an application for review. Further provides, however, that a requesting party whose request has been dismissed because that party failed to appear may file a request to reopen the hearing notwithstanding the 20-day time limit.

Coverage. The definition of members of the same family of corporate officers for whom the corporation may elect to exclude from "employment" services is expanded. Such exclusion does not apply to service performed for a nonprofit employing unit, political subdivision or for an Indian tribe.

Extensions and special programs. The State-financed emergency unemployment benefits have been extended for up to 13 weeks, for the period from April 6 to December 27, 2003. The director of the Employment Department is allowed to stop payments of emergency benefits when total payments would exceed \$29 million. Employers' accounts will not be charged (and reimbursing entities need not reimburse the State unemployment fund) for benefits paid under this extension.

The ending date of the State-financed emergency unemployment benefits program changed from December 27, 2003, to September 27, 2003.

The provision allowing the director of the Employment Department to stop payments of emergency benefits when total payments would exceed \$29 million was eliminated.

A totally State-financed temporary additional benefits program was established. Temporary additional benefits are payable to exhaustees of regular benefits after September 27, 2003, through February 14, 2004, during periods of high unemployment for weeks not within an extended benefit period. To trigger "on" a temporary additional benefits period, the 13-week insured unemployment rate must equal or exceed 4.0 percent or the 13-week total unemployment rate must equal or exceed 6.5 percent. An individual's benefit year must have expired after January 5, 2002, and he or she must not be eligible for any other unemployment benefits to receive temporary additional benefits. The amount of temporary additional benefits receivable is equal to the weekly benefit amount of the individual's most recent regular unemployment benefit claim. The maximum temporary additional benefits an individual may receive is 25 percent of the individual's most recent regular unemployment benefit claim. A contributing employers' accounts may not be charged for benefits paid under this extension, and reimbursing entities may not be relieved from paying an amount equal to the temporary additional benefits paid into the State unemployment fund.

Between July 3, 2003, and February 14, 2004, an additional benefit period may not begin or continue and additional benefits are not payable.

The supplemental benefits eligibility period is extended for 2 years through June 30, 2005, for those eligible dislocated workers who need to continue or complete professional technical training and who meet certain other requirements.

Financing. A report of taxes due for employment consisting exclusively of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority where in any calendar quarter, the cash remuneration for such service is \$1,000 or more, may be filed annually rather than quarterly.

The amount of bond or deposit that a nonprofit employing unit that elects to reimburse the Unemployment Compensation Trust Fund in lieu of paying taxes must provide to the director of the Employment Department was changed to 2 percent of the employing unit's total wages paid for the four calendar quarters im-

mediately preceding the effective date of the election (amount was previously determined according to a statutory schedule with rates ranging from 0.5 percent to 2.0 percent of payroll).

Nonmonetary eligibility. Individuals are disqualified from benefits until remuneration is received that equals or exceeds four times the individual's weekly benefit amount for:

- failure or refusal to take a drug or alcohol test as required by the employer's reasonable written policy;
- refusal to cooperate with or subverts or attempts to subvert a drug or alcohol testing process in any employment-related test required by the employer's reasonable written policy;
- being under the influence of intoxicants while performing services for the employer;
- possessing a drug unlawfully or in violation of the employer's reasonable written policy during work;
- testing positive for alcohol or an unlawful drug in connection with employment; or
- refusal to enter into or violates the terms of a last chance agreement with the employer.

An individual is not disqualified if, on the date of separation or within 10 days after the date of separation, he or she is participating in a recognized drug or alcohol rehabilitation program and provides documentation of participation in the program to the department. This does not apply to an individual who has refused to enter into or has violated the terms of a last chance agreement with the employer.

It is no defense or excuse against disqualification that the individual's separation resulted from alcohol use, marijuana use, unlawful drug use, alcoholism, or drug addiction.

Individuals are disqualified from benefits until remuneration is received that equals or exceeds four times the individual's weekly benefit amount when the individual voluntarily leaves work, fails to apply for available suitable work when referred by the employment office or the director, or fails to accept suitable work when offered:

- because the employer has or introduces a reasonable written drug-free workplace policy that is consistent with State unemployment compensation law;
- because the employer requires the

employee to consent to present or future drug or alcohol tests under a reasonable written policy that is consistent with State unemployment compensation law;

- to avoid taking a drug or alcohol test under a reasonable written policy that is consistent with State unemployment compensation law; or
- to avoid meeting the requirements of a last chance agreement.

Rhode Island

Financing. Excluded from the State employment security fund are Federal fund disbursements (that is, Reed Act funds) made to the State from the Employment Security Administration Account when calculating the State's unemployment insurance taxable wage base. Such funds may now be deposited in the State's Employment Tax Guarantee Fund.

South Dakota

Nonmonetary eligibility. Good cause for voluntarily leaving employment includes leaving to protect oneself from domestic abuse only if the employee:

- reports the abusive situation to law enforcement within 48 hours of any occurrence and cooperates fully in any subsequent investigation and criminal charge. Requires the law enforcement agency to complete and return to the department upon request, a certification form indicating whether the employee has complied with the requirements.
- has left the abusive situation and remains separate from the situation; and
- made reasonable efforts to preserve the employment before quitting.

Any person found to have good cause for leaving employment due to domestic abuse, and who returns to the abusive situation, is ineligible for benefits.

Texas

Administration. The responsibilities of the Texas Workforce Commission are now described. The commission may not:

- direct the day-to-day operations of the executive director or other commission staff; or
- establish the details for the implementation of commission policies or

direct the executive director or other commission staff about those details.

Appeals. The commission must develop, by rule, procedures to ensure that an appeal tribunal makes every effort in a hearing conducted by telephone to obtain all relevant facts and evidence.

Coverage. Effective for claims filed on or after September 1, 2003, the definition of "employment" excludes service performed by a nonresident alien during the period that the alien is temporarily in the United States under a H2-A visa (to perform agricultural service) if the service is not defined as employment under the Federal Unemployment Tax Act.

Financing. An employer who elects to make a voluntary contribution for the recomputation of the employer's experience rate must make the contribution as prescribed by rules adopted by the commission (previously, required voluntary contributions were required to be made no later than the 30th day after the date on which the commission mailed the annual notice of the employer's experience rate).

The commission may deny the transfer of an experience tax rate if it determines, based on credible evidence, that an acquisition was done primarily to qualify for a reduced unemployment insurance tax rate by:

- circumventing the experience rating system; or
- manipulating the experience rating system by minimizing the impact of chargebacks to the predecessor employer's tax account.

Among other things, for a transfer of experience to be approved, the following must occur:

- an application for such a transfer filed not later than the first anniversary of the effective date of the acquisition; and
- the applicants show that: (1) the acquired part of the organization, trade, or business is capable of operating independently and separately from the predecessor employer; and (2) the wages attributable to the acquired part of the organization, trade, or business are solely attributable to services provided on behalf of the acquired part of the organization, trade, or business.

An employer's account is noncharged for benefits paid to an employee or former

employee whose separation from employment results from the employee leaving the workplace to protect the employee from family violence or stalking as evidenced by:

- an active or recently issued protective order documenting family violence against, or the stalking of, the employee or the potential for family violence against, or the stalking of, the employee;
- a police record documenting family violence against, or the stalking of, the employee; and
- a physician's statement or other medical documentation of family violence against the employee.

An employer's account is noncharged for benefits paid:

- to an individual who leaves work to attend training approved by the commission,
- to an employee whose separation was based on a disaster resulting in a disaster declaration by the governor, and
- when separation from that employer is caused by the employer being called to active military service.

The computation of the numerator of the deficit assessment is changed by subtracting only the balance of the compensation fund from its floor, not any other liabilities of the fund.

The provision dealing with the transfer to a special administration fund is repealed.

The following provisions were effective June 20, 2003:

- the State agency was authorized to issue bond obligations to finance the payment of unemployment benefits in order to avoid borrowing from the Federal Unemployment Trust Fund or to repay principal and interest on previous advances from the Federal Unemployment Trust Fund;
- the advance interest trust fund is abolished, and all money in that fund is transferred to the new obligation trust fund for the payment of bond obligations; and
- an unemployment obligation assessment must be assessed annually on every employer entitled to experience rating if any bonds are outstanding, and the proceeds of that assessment are to be placed in the obligation trust fund.

Nonmonetary eligibility. An individual will not be disqualified from receiving benefits because the individual left work to protect the individual from family violence or stalking (prohibits evidence regarding an employee who leaves work for this reason to be disclosed to any person without the consent of the employee, except as provided by law).

Utah

Administration. An interim legislative committee will study and make recommendations regarding:

- the unemployment tax on self-employed individuals,
- options to provide limited health insurance benefits for the unemployed for up to 6 months,
- whether to provide health insurance coverage, without cost, to the unemployed, and
- issues related to unemployment insurance coverage.

Appeals. The limitation that the chair of the Workforce Appeals Board be a part-time employee compensated for no more than 40 hours of work in a 2-week period has been removed.

Coverage. The definition of "employer" has been modified to mean an individual or employing unit which employs one or more individuals for some portion of a day during a calendar year rather than an employing unit that pays \$140 in a calendar quarter and that is subject to the Federal Unemployment Tax Act.

Registration, rather than licensing, is required of professional employer organizations. Registration requirements have been established. The professional employer organization is responsible for the payment of unemployment insurance contributions, penalties, and interest on wages paid to employees covered under a professional employer agreement. Professional employer agreements must specify that the professional employer organization has responsibility to withhold, collect, report, and remit payroll-related and unemployment taxes for employees covered by the professional employer agreement. The professional employer organization must report and pay all required contributions to the unemployment compensation fund using its State employer account number and the contribution rate of the professional employer organization. At least quarterly, a professional employer

organization must have an independent certified public accountant review the organization's records and prepare a statement indicating whether all Federal, State, and local withholding taxes, unemployment taxes, FICA taxes, workers' compensation premiums, and employee benefit plan premiums have been paid.

On the termination of a contract between a professional employer organization and a client or the failure by a professional employer organization to submit reports or make tax payments as required, the client will be treated as a new employer without a previous experience record unless that client is otherwise eligible for an experience rating. Unlawful conduct includes the diversion of funds paid by a client to the professional employer organization, designated as payment for payroll or any related payroll taxes or employee benefits or insurance, to any other purpose or use other than designated, except in cases where a client has defaulted on the professional employer agreement or otherwise failed to pay the professional employer organization.

Extensions and special programs. A temporary additional unemployment compensation benefits program for individuals who have exhausted their regular benefits was established, effective until July 1, 2004. The eligibility provisions and department rules which apply to claims for, or payments of, regular benefits apply to claims for, and payments of, additional unemployment compensation benefits. An individual is eligible to receive additional benefits if he or she:

- has received or exhausted all of the regular benefits that were available to the individual;
- has insufficient wages to establish a new benefit year or has sufficient wages but does not meet the subsequent qualifying provisions;
- has no right to unemployment benefits or allowances under the Railroad Unemployment Insurance Act, and has not received, and is not seeking, unemployment benefits under the unemployment compensation law of any other State, Washington, D.C., the Virgin Islands, Puerto Rico, or Canada. If the individual is seeking those benefits and the appropriate agency finally determines that the individual is not entitled to benefits under that law, the individual may be eligible for additional benefits;
- filed an initial claim for regular

benefits on or after March 15, 2001; and

- files an initial application for additional benefits on or after June 1, 2003, and on or before December 27, 2003, and has an effective date no later than December 21, 2003.

For additional benefits, the first payable week is the week beginning June 1, 2003, and the last payable week is the week beginning January 25, 2004. The weekly additional benefit amount is the same as the weekly regular benefit amount payable. The total additional benefit amount payable is five times the individual's weekly regular benefit amount.

An individual is required to exhaust entitlement to benefits in the following order:

- (a) regular benefits;
- (b) Temporary Extended Unemployment Compensation, if available;
- (c) extended benefits;
- (d) additional benefits; and
- (e) Trade Readjustment Allowances.

Trade Readjustment Allowances and additional benefits cannot be paid for the same week.

A contributing base employer's account will not be charged with any portion of additional benefits paid to an individual. Reimbursable and Federal employers and branches of the military are not liable to pay for additional benefits.

The additional unemployment compensation benefits program date for repeal is July 1, 2004.

Overpayments. The provisions relating to penalties for unemployment insurance fraud have been moved to the Utah Criminal Code.

Virginia

Administration. The records and reports provisions have been modified to permit the Commission to furnish information to the Commonwealth's designated agent for the purpose of collecting fines, penalties, and costs owed to the Commonwealth or its political subdivisions.

A legislative commission was created and tasked with annually reporting on Virginia's unemployment compensation system. The commission expires July 1, 2006.

Coverage. The term "employment" excludes service performed by a licensed clinical social worker, licensed psychologist, licensed professional counselor, or licensed psychiatrist, if such individual:

- operates under a contract specifying that the individual is free from control or direction over the performance of such services;
- is licensed in the Commonwealth to perform independent clinical services;
- is compensated solely by way of fees charged for services rendered by such individual; and
- has a valid business license issued by the locality in which such individual performs such services.

Financing. The due date for the commission to provide covered employers with a statement of the benefit charges and taxes for the preceding fiscal year (formerly, calendar year) has been changed from July 1 to December 31.

Monetary entitlement. An alternative base period is the four most recent completed calendar quarters immediately preceding the first day of the claimant's benefit year for claimants earning insufficient wages in the regular base period to be eligible for benefits.

The minimum weekly benefit amount decreased from \$69 to \$59 and the maximum weekly benefit amount from \$368 to \$318 beginning January 5, 2003, for claims effective on or after January 5, 2003, but before July 6, 2003.

The minimum weekly benefit amount decreased from \$59 to \$50 and the maximum weekly benefit amount from \$318 to \$316 beginning July 6, 2003, for claims effective on or after July 6, 2003, but before July 4, 2004.

The \$50 minimum weekly benefit amount remains the same, and the maximum weekly benefit amount increases from \$316 to \$326 beginning July 4, 2004, for claims effective on or after July 4, 2004.

Nonmonetary eligibility. The amount deducted from the weekly benefit amount payable to an individual due to receipt of Social Security or railroad retirement benefits has been reduced from 100 percent to 50 percent of such benefits attributable to such week.

Washington

Administration. Effective January 4, 2004, the Employment Security Department must contract with employment security agencies in other States to ensure that individuals residing in those States and receiving Washington unemployment benefits are actively searching for work.

Effective on or after January 1, 2007, the average annual wage for contribution purposes will be calculated based on wage information from employers from the preceding calendar year only (formerly, based on wage information from the preceding 3 calendar years).

The basic penalty for failure of an employer to file timely and complete reports changed from a minimum of \$10 per violation to an amount determined by the commissioner of the Employment Security Department, but not to exceed \$250 or 10 percent of the quarterly contributions for each offense, whichever is less.

If an employer knowingly misrepresents the amount of his or her payroll to the Employment Security Department, the employer shall be liable for up to 10 times the amount of the difference in contributions paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums.

If a delinquency is due to an intent to evade successorship provisions, the commissioner will assign to the employer, and to any business found to be promoting the evasion of such provisions, a special tax rate for five consecutive calendar quarters, beginning with the calendar quarter in which the intent to evade such provision is found.

The Employment Security Department is required to:

- in consultation with an advisory committee equally representing business and labor, identify the programs funded by special administrative contributions and report to the advisory committee the expenditures for these programs annually and cumulatively since enactment;
- conduct a review of the type, rate, and causes of employer turnover in the unemployment compensation system, using unified business identifier information or other relevant data bases and methods;
- conduct a study of the potential for year to year volatility, if any, in the rate classes to which employers in the array system are assigned; and
- report its findings and recommendations to the legislature by December 1, 2003.

Interest penalties on overpayments must be used, first, to fund either Social Security number cross-match audits or other more effective activities to ensure that individuals are entitled to all amounts of benefits that

they are paid and second, to fund other detection and recovery of overpayment and collection activities.

A savings clause was added providing that if any part of this Washington Employment Security Act is found to be in conflict with Federal requirements, the conflicting part of the Act will be inoperative to the extent of the conflict.

Coverage. The definition of “employment” now excludes service performed by a nonresident alien agricultural worker for the period he or she is temporarily present in the United States as a non-immigrant under subparagraph (H)(ii) of the Federal Immigration and Naturalization Act (commonly called H-2A workers).

Financing. Effective January 1, 2004, the definition of “wages” excludes income attributable to the transfer of shares of stock to the employee pursuant to the individual’s exercise of a stock option granted for any reason connected with the individual’s employment.

For rate years 2005 and beyond, the system for assigning employer contribution rates was revised. A total of 40 rate classes have been created. The contribution rate for each employer will be the sum of an array calculation factor rate, a graduated social cost factor rate, and any solvency surcharge.

For contributions assessed for rate years 2005 and beyond, a solvency surcharge will go into effect when the balance in the unemployment compensation fund is determined to provide fewer than 6 months of unemployment benefits. The charge will be at the lowest rate necessary, to ensure that a total of 8 months of benefits are available in the unemployment compensation fund, but the rate shall not be more than 0.2 percent for each employer.

Restrictions on voluntary contributions were revised to account for the change in the number of rate classes.

For claims with effective dates on or after January 4, 2004, benefits will be charged only to an individual’s separating employer if the individual left work:

- for bona fide employment and became unemployed after having worked and earned wages in the bona fide employment;
- because the individual’s usual compensation was reduced by 25 percent or more;
- because the individual’s usual hours were reduced by 25 percent or more;

- because the individual’s worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual’s job classification and labor market;
- because the individual’s worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;
- because of illegal activities in the individual’s worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or
- because the individual’s usual work was changed to work that violates the individual’s religious convictions or sincere moral beliefs.

The definition of “person with marginal labor force attachment,” the employers of whom were formerly noncharged for certain benefits is repealed.

For transfers of employer experience on or after January 1, 2005, if a successor is not an employer at the time of transfer, the successor must pay contributions at either:

- the contribution rate of the predecessor employer, for the remainder of the rate year, after which the rate will be determined based on the transferred experience of the acquired business and the successor’s experience after the transfer, or
- a rate equal to the rate assigned to employers not qualified to be in the array, until the successor qualifies for a different rate in its own right.

If there is substantial continuity of ownership or management between the predecessor and successor, the successor will pay at the rate of the predecessor as described above.

If a successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor’s rate, until it qualifies in its own right for a new rate, will be the rate of the predecessor who had the largest taxable payroll in the completed calendar quarter immediately preceding the transfer, but not less than the rate assigned to employers not qualified to be in the array.

Amounts in the Federal interest payment fund must be used solely for the payment of interest on Title XII, Social Security Act,

advances. Funds set aside in an account in the administrative contingency fund for the financing of special programs to assist the unemployed and to finance the Employment Security Department’s administrative costs must be expended solely for unemployment insurance purposes.

Monetary entitlement. With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the commissioner finds that the State unemployment rate is 6.8 percent or less, benefits will be payable to any eligible individual during the individual’s benefit year in a maximum amount equal to the lesser of 26 times the weekly benefit amount or 1/3 of the individual’s base year wages.

With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, an individual’s weekly benefit amount will be an amount equal to 1/25th of the average quarterly wages of the individual’s total wages during the three quarters (previously, two quarters) of the individual’s base year in which such total wages were highest.

With respect to claims with an effective date on or after January 2, 2005, an individual’s weekly benefit amount will be an amount equal to 1 percent of the total wages paid in the individual’s base year.

For claims with an effective date on or after January 4, 2004, the maximum benefit amount changed from 70 percent of the average weekly wage to the greater of \$496 or 63 percent of the average weekly wage.

Nonmonetary eligibility. (Provisions in this section apply to claims with effective dates on or after January 4, 2004, unless otherwise indicated.) If, for a claimant actively seeking work, a labor agreement or dispatch rules apply, the customary trade practices that apply to the work search will be in accordance with the applicable agreement or rules.

The provision requiring the commissioner to consider only work-connected factors in deciding whether an individual has left work voluntarily without good cause was eliminated. The special provision concerning individuals whose marital status or domestic responsibilities caused them to leave employment was eliminated.

A claimant must have terminated his or her employment status and not be entitled to be reinstated to the same or comparable or similar provision in order for nondisqualification due to separation as a result of illness or disability to apply.

The provision exempting those who leave work to follow a spouse from the voluntary quit disqualification is limited to those whose spouse has been relocated due to a military transfer.

An individual is not disqualified from receiving benefits for voluntarily leaving work if:

- the individual's usual compensation was reduced by 25 percent or more;
- the individual's usual hours were reduced by 25 percent or more;
- the individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;
- the individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;
- the individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or
- the individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

"Misconduct," is defined as, but is not limited to:

- willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;
- deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;
- carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or
- carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

The following acts are considered misconduct:

- insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or

instructions of the employer;

- repeated inexcusable tardiness following warnings by the employer;
- dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;
- repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;
- deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;
- violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or
- violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

"Misconduct" does not include:

- inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;
- inadvertence or ordinary negligence in isolated instances; or
- good faith errors in judgment or discretion.

"Gross misconduct" is defined as a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee.

An individual will be disqualified from receiving benefits if he or she has been discharged for misconduct for 10 (previously, 7) calendar weeks and until he or she has obtained bona fide work in covered employment and has earned wages in that employment equal to 10 times (previously, 7 times) his or her weekly benefit amount.

An individual who has been discharged from his or her work because of gross misconduct will have either all hourly wage credits based on that employment or 680 hours of wage credits, whichever is greater, canceled. (The law previously provided

only that wage credits based on that employment would be canceled.)

If evidence of seeking work consists of documented in-person activities at the local reemployment center, the activities must occur at least three times per week to satisfy the job search requirements for claims of 5 or more weeks.

An individual who fails to comply fully with the requirements for actively seeking work will lose benefits for all weeks of noncompliance and will be liable for the repayment of such benefits.

With respect to claims that have an effective date on or after January 2, 2005, an otherwise eligible individual may not be denied benefits for any week, due to the application of provisions relating to availability for work, active search for work, or failure to apply for or refusal to accept suitable work, because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of 17 or fewer hours per week.

"Part-time worker" is defined as an individual who earned wages in "employment" in at least 40 weeks in the individual's base year, and did not earn wages in "employment" in more than 17 hours per week in any weeks in the individual's base year.

Effective upon enactment, the section providing that employees separated from employment due to wage garnishment will not be disqualified is repealed.

Wyoming

Financing. The threshold for computing the positive fund balance adjustment factor has been reduced from 4 percent to 3-½ percent of total payrolls (effective July 1, 2003).

The computed positive adjustment factor remains effective until the fund balance equals 3-½ percent (formerly, 4 percent) or more of total payrolls (effective July 1, 2003).

The special reserve contribution rate and its deposit in the clearing account was eliminated.

The base rate reduction changed from 20 percent to 14 percent, reflecting the elimination of the special reserve contribution rate.

The adjustment factor for noncharged and ineffectively charged benefits that must be allocated to the unemployment compensation fund has been reduced from 80 percent to 60 percent, and that portion of this adjustment factor that must be allocated

to the employment support fund increased from 20 percent to 40 percent.

The percentage of total payrolls used to determine whether the negative fund balance adjustment factor is applicable has been reduced from 5 percent to 4 percent.

The percentage of the total payrolls used to compute the negative adjustment factor has been reduced from 5 percent to 4 percent.

The computed negative adjustment factor remains effective until the fund balance is equal to or less than 4 percent (formerly, 5 percent) of the total payrolls.

The adjustment factors applied to an employer's contribution rate must not be less than zero.

Nonmonetary eligibility. The maximum weekly benefit amount will be no more than the statewide average weekly wage times 55 percent (without the former limitation of \$300).

The period during which the waiting week for initial or additional claims for benefits does not apply is extended for 1 additional year (to June 30, 2005).

An otherwise eligible individual is eligible for benefits if not receiving wages or compensation while participating in training in an apprenticeship program approved by the department if the individ-

ual meets certain conditions.

With respect to disqualification for voluntary quit without good cause, failure to search for work, and refusal of suitable work, the 12-week rework requirement is eliminated, and the requalifying earnings are lowered from 12 times to 8 times the weekly benefit amount.

With respect to disqualification for misconduct, the 12-week rework requirement is eliminated.

An individual is disqualified from benefit entitlement if receiving a retirement annuity, pension, or other payments from a base-period employer or a contributory base-period employer and the individual made no contribution to the annuity, pension, or other payment. No deduction from benefits will be made when an individual receives a retirement annuity, pension, or other payment that the individual contributed to (previously, a 50-percent deduction was required).

The recoupment period for offsetting overpayments without civil action against future benefits changed from within 3 years of the effective date of an overpayment determination to within 5 years of the effective date of the claim resulting in the overpayment.

The department must cancel the amount of overpayment or penalty due on any over-

payment when the individual is deceased with no estate or the estate is closed and all assets are distributed or the individual is adjudicated insolvent by a court of competent jurisdiction with no remaining assets.

The department is permitted to cancel the amount of overpayments or penalty due on any overpayment 5 years after the effective date of the claim resulting in an overpayment when:

- the individual cannot be located within the State of Wyoming;
- the individual is totally unable to work; or
- the department's records show the individual earned covered wages of less than one-half the average weekly wage within Wyoming in the most recent calendar year.

Certain religious, charitable, educational or other nonprofit employers and employers of domestic service, or agricultural labor, who met the State's unemployment insurance tax liability requirements for the first time during the preceding calendar year, are exempt from the delinquent rate provisions for the subsequent year, if the employer submits all reports and contributions by April 30 of the subsequent year.