

# Changes in unemployment insurance legislation in 1999

*At the Federal level, enactments dealt with trade adjustment assistance and with the tax treatment of employer-provided educational assistance; some States addressed issues such as job loss associated with avoiding domestic abuse and the conditions under which wage information gathered for the program could be released to third parties*

Robert Kenyon, Jr.

Several Federal enactments during 1999 affected the Federal-State unemployment compensation program. Public Law 106–113, Consolidated Appropriations Act, 2000, reauthorizes programs under the Trade Adjustment Assistance Act and the North American Transitional Assistance Act through September 30, 2001. In order to receive allowances under these Acts, individuals must have been entitled to unemployment compensation during a specified period and must have exhausted all rights to such benefits, along with other conditions. The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L.106–170) extends the exclusion from the definition of wages for Federal unemployment tax purposes of employer-provided educational assistance for undergraduates. The provision is effective with respect to courses beginning after May 31, 2000, and before January 1, 2002. This Act also allows States the option of permitting domestic service employers to file annual, rather than quarterly, wage reports required under section 1137 of the Social Security Act, thereby

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aligning the reporting of wages with the payment of income taxes for certain employers. Section 1137 provides for an income and eligibility verification system for certain federally funded public benefits. The provision is effective upon enactment.

The States made few significant changes to their unemployment insurance laws during 1999. Three States—Delaware, Georgia, and Florida—increased their maximum weekly benefit amounts through 1999 legislation; in some other States, the weekly benefit amounts increase automatically. Maine will increase its taxable wage base on January 1, 2000. Three States—New York, Colorado, and Wyoming—have made an exception to the voluntary quit provision for a separation from work caused by domestic abuse. Several States enacted provisions addressing Reed Act distributions for fiscal years 1999, 2000, and 2001.<sup>1</sup> Four States—Illinois, Indiana, Oregon, and Florida—now allow administrators of the unemployment insurance program to disclose an individual's wage information to his or her creditors, upon the individual's written consent.

Following is a summary of some significant changes in State unemployment insurance laws during 1999.

## Arizona

*Benefits.* The definition of “unemployed” is changed to require that the reason for less than full-time work be without fault of the individual.

## Arkansas

*Administration.* Reed Act funds credited with respect to Federal fiscal year 1999 may be used for the purpose of construction and improvement of buildings, rent or lease costs, acquisition of land, or for the payment of salaries and related benefits of local office staff. Monies credited with respect to Federal fiscal years 2000 and 2001 shall be used solely for administration of the unemployment compensation program, or as otherwise prescribed in the Social Security Act, as amended. The amount that a counsel or agent can charge or receive for services rendered at an administrative appeal was raised from \$250 to \$500. The Director of Employment Security is now required to establish safeguards protecting confidential information that is disclosed for purposes appropriate to the Department of Employment Security’s operation.

*Benefits.* An in-person hearing must be granted, upon the request of an interested party, in an intrastate claim for which the Board of Review directs that additional evidence be taken. Individuals owing overpayment of benefits are made subject to intercept of State income tax refunds. The 50-percent restriction on the amount of benefits that may be used to repay overpayments is eliminated, effective July 1, 1999. Unemployment benefits are now subject to Internal Revenue Service (IRS) tax levies, so long as the State has an agreement with the IRS that provides for the payment of all administrative costs associated with processing the levies. The provision that excluded services performed for a community program licensed by the Division of Developmental Disabilities from the between terms denial was repealed. The length of time that an individual on layoff is exempt from registering for work is increased from 8 weeks to 10 weeks. The standard for misconduct is amended so that willful violation of employer safety rules or customs must be a violation of “bona fide” rules or customs in

order for it to disqualify an individual from receiving benefits. “Persons” is added to the list of individuals that may be affected by the behavior in order for it to be disqualifying.

*Coverage.* Excluded from the definition of employment are: services performed in the employ of a governmental entity as an election official or election worker, if the amount of remuneration received during the calendar year is less than \$1,000 (beginning January 1, 1999); and services performed by a person committed to a penal institution (beginning July 1, 1999).

*Financing.* An additional 2-percent contribution assessment is assigned to employers with a 6-percent contribution rate for the 2 preceding calendar years and a negative balance in both of 2 preceding computation years. The assessment is increased from 2 percent to 4 percent for employers that have been assigned the additional contribution assessment for 2 consecutive years if they have a negative balance in 2 or more of the 3 preceding computation periods.

## California

*Benefits.* The period during which individuals out of work due to freezing conditions in December 1998 can file claims for benefits is extended from August 8, 1999, to July 31, 2000. An individual shall receive weekly benefits under the special programs equal to the weekly benefit amount less the amount of wages in excess of \$200, after serving a 1-week waiting period. The weekly benefit amount shall be rounded up to the next dollar amount.

## Colorado

*Benefits.* An individual may now be required to provide a written medical statement, issued by a licensed physician, addressing his or her health matters if the individual left employment for health reasons. An eligibility condition is added that provides that an individual is eligible to receive benefits if he or she is not absent from work due to an authorized and approved voluntary leave of absence. Provided certain conditions are met, an individual may be awarded benefits if he or she left employment because of domestic abuse. The strike

provisions are modified to provide that individuals unemployed due to an offensive lockout are eligible for benefits and that individuals unemployed due to a defensive lockout are ineligible for benefits. “Offensive lockout” is now defined as any lockout other than a defensive lockout. Definitions also are implemented for “coordinated bargaining,” “lockout,” “multi employer bargaining unit,” and “strike or labor dispute.” The qualifying requirement for benefits is changed from earnings equal to 40 times the weekly benefit amount to earnings of \$2,500 or 40 times the weekly benefit amount, whichever is greater.

*Financing.* The employer is now not charged for benefits paid to the claimant if the claimant’s separation is due to domestic abuse. The distribution of the surcharge tax is changed from 80 percent to the unemployment compensation fund and 20 percent to the unemployment support fund to 50 percent to each fund. Beginning in calendar year 2000, determination of the surcharge tax changes from a computation based on benefits ineffectively charged to a fixed rate of 0.22 percent; the distribution remains 50 percent to each fund. The law now makes clear that monies collected through the surcharge tax allocated to the employment support fund will be used to offset funding deficits for program administration, including information technology initiatives. The provision that reduced funds available to the employment support fund if Reed Act monies are appropriated is deleted.

## Connecticut

*Benefits.* The per-week dependency allowance per dependent is increased from \$10 to \$15. The dependency allowance cap is increased from 50 percent to 100 percent of the claimant’s weekly benefit rate, but the provision retains the five-dependent limit. Individuals who leave work in order to protect themselves, or children residing with them, from domestic violence, and who have made a reasonable effort to keep their employment, will be eligible to receive unemployment insurance benefits. No charge shall apply to the employer’s account for benefits paid to an employee who quit to escape domestic violence.

## Delaware

*Benefits.* The order in which payments on account are applied to a fraud overpayment debt is changed; payments will be applied first to principal, then to accrued interest. If the balance in the trust fund account is greater than or equal to \$250 million, the maximum weekly benefit amount increases from \$300 to \$315 for all new claimants establishing a benefit year on or after July 1, 1999.

*Financing.* Established is a new supplemental assistance rate table that provides for a rate of 0.3 percent when the State's trust fund account balance is equal to or greater than \$250 million. Previously, the minimum supplemental assistance rate was 0.5 percent when the balance was equal to or greater than \$215 million.

## Florida

*Administration.* The State is now required to provide creditors secured electronic access to employer-provided information relating to quarterly wage reports. Creditors and consumer reporting agencies must safeguard the confidentiality of the information, and may only use it to support a single consumer transaction. If the confidentiality agreement between the consumer reporting agencies and creditors and the Department of Labor and Employment Security is violated, the contract will be terminated. Any revenues generated by such a contract will be used to fund the entire cost of providing access to the information. All start-up and development costs will be paid to the department before any such wage and employment history information is released.

*Benefits.* The termination date for the Florida Training Investment Program is extended through June 30, 2002. Under this program, dislocated workers will no longer receive benefits after that date. The "voluntary quit without good cause" provision is amended to clarify that work means full-time, part-time, or temporary work.

The weekly benefit amount increases from \$250 to \$275. For the period January 1, 2000, through December 31, 2000, the additional 5 percent of the weekly benefit amount that is added for the first 8 weeks

increases the weekly benefit amount from \$262 to \$288. The maximum benefit entitlement rises from \$6,550 to \$7,150. Beginning January 1, 2000, through December 31, 2000, the additional 5 percent added to the weekly benefit amount for the first 8 payable weeks increases the maximum benefit entitlement from \$6,596 to \$7,254.

*Financing.* The 0.5-percent rate reduction applicable to certain employers' assigned tax rates is extended through calendar year 2000.

## Georgia

*Benefits.* The maximum weekly benefit amount increases from \$244 to \$264, effective July 1, 1999; to \$274, effective July 1, 2000; and to \$284, effective on and after July 1, 2001. On or after January 1, 2000, weekly benefit amount increases shall not be in effect when the statewide reserve ratio is 1.25 percent or less.

*Financing.* The reduced contribution rate for employers implementing a drug-free workplace is eliminated, thereby resolving a conformity issue. The effective dates of new-employer contribution rates are changed, and a new rate (2.62 percent) is established. Rates are as follows: a 2.64-percent rate in effect from April 1, 1987, to December 31, 1999 (instead of until June 30, 2001); a 2.62-percent rate (new rate) in effect from January 1, 2000, to December 31, 2005; and a 2.7-percent rate after December 31, 2005 (instead of after June 30, 2001). Effective dates on existing rate tables are changed as follows: April 1, 1987, to December 31, 1999, instead of until June 30, 2001; and after December 31, 2005, instead of after June 30, 2001. A new rate table is established for the period January 1, 2000, to December 31, 2005, effectively reducing rates: those for positive-balance employers now range from 0.025 percent to 2.110 percent (was 0.04 percent to 2.125 percent); those for negative-balance employers now range from 2.15 percent to 5.4 percent (was 2.16 percent to 5.4 percent).

Contribution rates for experience-rated employers are now limited to 1.0 percent of statutory contribution rates for January 1, 2000, to December 31, 2004. However, if the statewide reserve ratio reaches 1.25 or less for the period, that limitation shall become null and void and the rate table become effec-

tive. The Governor is authorized to suspend any portion of this rate reduction if "in the best interests of the State of Georgia." When, for the period on or after January 1, 2000, the statewide reserve ratio is 2.4 percent or more for any calendar year, contribution rates shall be reduced by 25 or 50 percent; when the reserve ratio is less than 1.7 percent, contribution rates shall increase by 25, 50, 75, or 100 percent, depending on the actual reserve ratio.

The rate of administrative assessment is increased from 0.06 percent to 0.08 percent, effective January 1, 2000, through December 31, 2005. The expiration date of the administrative assessment is extended from June 30, 2001, to December 31, 2005. Nonprofit and governmental entities and those assigned the minimum positive reserve rate or the maximum deficit reserve rate are exempted from the administrative assessment.

## Idaho

*Administration.* Reed Act distributions with respect to excesses in Federal fiscal years 1999, 2000, and 2001 shall be used only for purposes of unemployment compensation administration, and are not subject to appropriation by the legislature.

*Benefits.* The law now specifies the eligibility conditions for an individual who works for a staffing service and who has signed a written statement concerning the notification requirements following completion or termination of an assignment. "Staffing services" are defined as any person who assigns individuals to work for its customers and includes, but is not limited to, professional employers and the employers of temporary employees.

## Illinois

*Administration.* Effective January 1, 2000, the law permits the disclosure of information to an individual or an agent of the individual showing the amount of benefits the individual received during the 18 months prior to the date of request. Reed Act provisions are amended to conform with Federal Law in terms of State requisition and expenditure.

*Benefits.* Consistent with the changes in the taxable wage base, the standard average

weekly wage (used for determining the weekly benefit amount) is set at \$600 for benefit year 2004 (was previously \$524 for 2000). Effective January 1, 2000, an individual may not be denied benefits for giving false statements or for failure to disclose information if the previous benefits are being recouped or recovered.

*Financing.* The current taxable wage base of \$9,000 is extended through calendar year 2003 (was previously 1999). In the year 2004 (previously 2000 only), the wage base is \$10,000 and returns to \$9,000 in 2005 and thereafter.

### Indiana

*Administration.* The law now permits the disclosure of employee wage record information to creditors on the basis of written informed consent of the individual to which the information pertains. The creditor must retain the consent for at least 3 years or, if less, for the length of the loan. The period that reimbursing employers have to pay monthly bills is reduced by 1 day.

The commissioner of the unemployment insurance program may now release information obtained from any person in the administration of the Indiana Employment and Training Services Act, and the records of the department relating to the unemployment tax or the payment of benefits, to the department of State revenue or to State or local law enforcement agencies only if there is an agreement that the information will be kept confidential and used for legitimate governmental purposes. Employees of the aforementioned agencies who recklessly violate the provision are subject to criminal penalties.

### Iowa

*Administration.* The number of days during which a successor employer may make an application of approval with the department in regards to the partial transfer of a business with respect to the predecessor's payrolls, contributions, accounts, and contribution rates is changed from 60 to 90 days. Reed Act distributions with respect to excesses in Federal fiscal years 1999, 2000, and 2001 shall be used only for purposes of unemployment compensation administration.

### Louisiana

*Administration.* Reed Act distributions with respect to excesses in Federal fiscal years 1999, 2000, and 2001 shall be used only for purposes of unemployment compensation administration, and are not subject to appropriation by the legislature.

The type of property that a notice of assessment covers is changed from real or personal to movable or immovable. A notice of assessment will not affect liens, privileges, chattel mortgages, and security interests under the Louisiana Commercial Laws. The filing of an assessment notice, however, must be sufficient to cover all unpaid contributions, interest, and penalties that may accrue after the filing. The employer's property will be subject to seizure and sale for payment of such contributions, interest, and penalties according to the rank of the lien, privilege, security interest, and mortgage.

### Maine

*Administration.* The process for claims filing is amended to require an employer to issue, with a few exceptions, a completed partial unemployment claim form to each of its employees (those who are customarily employed full-time) whose hours have been reduced below full-time hours during a week due to lack of work, or who are given no work for a week due to a lack of work, and who are still employed with the employer. The partial unemployment claim forms for a week must be provided no later than the day on which the payroll is available to employees. An employer that fails to provide forms to its employees shall be fined \$25 per day per form for each day the form is late. If no work is given to employees for 2 or more consecutive weeks, the Director of Unemployment Compensation may authorize the use of the partial unemployment claim form.

*Coverage.* The definition of employment now excludes services performed as an author of a publisher under certain circumstances and if the employment is not subject to the Federal Unemployment Tax Act.

*Financing.* Any business that is purchased free and clear of liens through bankruptcy will be assigned the State average contribution rate, if the contribution rate for the

predecessor business is greater than the State average contribution rate. Otherwise, the successor business assumes the predecessor's experience rating.

The taxable wage base rises from \$7,000 to \$12,000, effective January 1, 2000. Also effective on that date, the definition of "reserve multiple" is changed from the current fund reserve ratio as a multiple of the composite cost rate to the current fund reserve ratio as a multiple of the average benefit cost rate. An array system is established for determining tax rates, based on employers' reserve ratios and taxable payrolls, with a phasing in of experience factors. The State commissioner of the unemployment insurance program will now determine the contribution rates effective for a rate year by multiplying the predetermined yield (the ratio of total wages to taxable wages for the preceding calendar year, multiplied by the planned yield) by the experience factors for each employer contribution category. The new-employer rate is changed from the average contribution rate to 1 percent or a predetermined yield, whichever is greater.

### Maryland

*Administration.* The Self Employment Assistance (SEA) program is extended through June 1, 2000.

### Massachusetts

*Administration.* Reed Act distributions with respect to Federal fiscal years 1999, 2000, and 2001 shall be used only for purposes of unemployment compensation administration.

### Mississippi

*Benefits.* A waiver for the 1-week waiting period is provided in the event that the President of the United States declares a major disaster. The benefits paid for the waiver of the 1-week waiting period are nonchargeable to the employer.

### Montana

*Administration.* The Internal Revenue Service is permitted to tax unemployment benefits under certain conditions. The offset

provision is amended to permit 100-percent (rather than only 50-percent) offset of the weekly benefit amount in cases of theft or fraud.

*Financing.* The administrative assessment for experience-rated employers is increased from 0.1 percent to 0.13 percent. The unemployment insurance tax rate on taxable wages for experience-rated employers is increased by 0.03 percent in all schedules. The rounding calculation of the tax rate for an employer who has failed to file payroll reports is changed from the nearest one-tenth of 1 percent to the nearest one-hundredth of 1 percent.

## Nebraska

*Administration.* Lien filing procedures are revised to provide that liens be filed in accordance with the Uniform State Tax Lien Registration and Enforcement Act. The lien must set forth the amount of combined tax and interest in default and be continued and enforced as provided in that Act. This provision applies to nonprofit employers that elect to make payments in lieu of contributions, as well as to for-profit employers. The new procedures are effective for defaults on or after May 1, 1999. Liens filed prior to May 1, 1999, are governed by prior procedures. The State Commissioner of Labor is now allowed to levy upon, seize, and sell real and personal property belonging to the taxpayer if the taxpayer fails to pay taxes or deficiencies.

Reed Act distributions with respect to excesses in Federal fiscal years 1999, 2000, and 2001 shall be used only for purposes of unemployment compensation administration, and are not subject to appropriation by the legislature.

*Benefits.* A definition of paid vacation leave is added to the law, to mean a period, while employed or following separation from employment, during which an individual renders no services to the employer but is entitled to receive vacation pay equal to or exceeding his or her base weekly wage. An individual is now to be considered employed when wages are received for a specified time during which the vacation is actually taken within a period of temporary layoff or plant shutdown. Vacation pay will be

prorated in an amount reasonably attributable to each week claimed, and will be considered payable with respect to that week.

*Coverage.* Wages for employment are redefined to include payment for personal services paid under a contract of hire. The exclusion from employment with respect to the sale, delivery, and distribution of newspapers or magazines is modified to require a written contract which specifies that the services and the individual performing the services are not covered.

## Nevada

*Financing.* Effective July 1, 2000, a check that is offered on or before the due date for payment of contributions, but is later refused by the financial institution on which it is drawn, does not constitute timely payment unless it is determined that the refusal occurred due to an error by the financial institution. An additional fee of not more than \$25 for handling may be charged to a person who presents a check that is not valid. Effective May 29, 1999, a debtor of an employing unit who is notified of nonpayment of a debt when due may not transfer, pay over, or make any other disposition of money or property belonging to the delinquent employing unit until the Administrator agrees in writing or until 30 days have elapsed after the receipt of the notice. Effective July 1, 2000, the rate of interest payable on overdue unemployment insurance contributions changes from 0.5 percent to 1.0 percent per month.

## New Hampshire

*Administration.* The fact-finding approach for an employer is changed to provide that notice of claim filing be sent to the last employing unit or to any employer who may be charged with benefits in cases for which the claimant's reason for leaving their employment was material to the claim. The notice will no longer require the employer to show up in person at a specific date and time to present information, but rather provides that the employer only contact the department to provide the material information.

*Benefits.* The definition of most recent employer is amended to include an alterna-

tive of employment in excess of 9 weeks immediately preceding 13 weeks of receiving no benefits. A definition of a "high unemployment period" was added, to mean an extended benefit period during which the insured unemployment rate is 8 percent or greater. The law now provides that 20 weeks of extended benefits will be payable during a high unemployment period, up to a maximum 46 weeks of total benefits.

## New Mexico

*Benefits.* A temporary services employer is now required to provide the employee with a written notice that the employee must notify the temporary service upon the completion of an assignment and that failure to do so may result in benefit denial. If the employee receives the notice and fails to be available for future assignments with the employer upon the completion of an assignment, it shall be deemed that the employee voluntarily left employment without good cause connected with the work.

## New York

*Benefits.* An individual who leaves his or her last job due to domestic violence may now be deemed to have voluntarily quit for good cause.

## North Carolina

*Benefits.* Benefits may not be denied to an individual based on separation from work or refusal of a job resulting from undue family hardship. A case of undue family hardship is defined as being unable to accept a particular job because the individual is unable to obtain adequate child care or elder care. Benefits paid in such cases are not charged to employer accounts.

## North Dakota

*Administration.* Reed Act distributions with respect to excesses in Federal fiscal years 1999, 2000, and 2001 shall be used only for purposes of unemployment compensation administration, and are not subject to appropriation by the legislature.

*Benefits.* The provisions governing the termination of the State maximum weekly

benefit amount have been changed to: provide that the maximum weekly benefit is 62 percent (formerly 60 percent) of the State average weekly wage; delete the provision raising the maximum weekly benefit if the trust fund account is greater than or equal to a specified amount; and retain the provision raising the maximum weekly benefit to 65 percent if the State's average contribution rate is below the U.S. average for the previous year.

A temporary services employer is now to provide the employee with notice that he or she must notify the temporary service upon the completion of an assignment, and that failure to do so may result in benefit denial. If the employee receives the notice and fails to be available for future assignments with the employer upon the completion of an assignment, it shall be deemed that the employee voluntarily left employment without good cause connected with the work.

*Coverage.* Excluded from the definition of employment are services performed by election officials or workers if the remuneration for such services is less than \$1,000 in a calendar year.

## Oklahoma

*Financing.* The period during which there is a 50-percent contribution rate reduction is extended until December 31, 2001 (formerly December 31, 1999). The provision preventing the rate reduction from going into effect if any conditional factor exists in any calendar year is deleted.

## Oregon

*Administration.* An individual's employer is now given 30 days following issuance of the initial determination notice to affected parties to notify the Director of the unemployment insurance program of a discharge for misconduct due to the individual's commission of a felony or theft in connection with the individual's work in order for all benefit rights based on wages earned prior to the date of the discharge to be canceled. Employing units are required to annually (rather than quarterly) file the report of taxes due exclusively for domestic service in a private home, local college club, or local chapter of a college

fraternity or sorority if cash remuneration for total domestic service is \$1,000 or more in any calendar quarter. This requirement is operative only if the Social Security Act is amended to allow annual filing of wage record reports.

For the period January 1, 2000, through December 31, 2003, a pilot project is established to provide for a Hearing Officer Panel within the Employment Department that will assign hearing officers to conduct unemployment insurance hearings and hearings for certain other State agencies. The hearing officers are allowed to address issues raised by evidence in the record, including but not limited to the nature of the separation, notwithstanding the scope of the issues raised by the parties or the arguments in a party's request for hearing. The Employment Appeals Board is not required to use hearing officers from the panel. For the hearing officer panel, the Employment Department's chief administrative officer or board of the agencies are required to transfer to the chief hearing officer the permanent employees in the regular service of the agency whose job duties relate to providing administrative services required for the conduct of contested case proceedings. Hearing officers will be assigned, as requested by agencies, to continue the conduct of, and to conclude, proceedings pending. The Chief Hearing Officer is allowed to contract for the services of persons to act as hearing officers. However, no agency is required to use a hearing officer assigned from the panel if Federal law requires that a different hearing officer be used, or if use of a hearing officer from the panel could result in a loss of Federal funds. Immediately before the January 1, 2004, repeal of the pilot project, the chief hearing officer for the Hearing Officer Panel is required to return all records or personnel still employed by the panel to the chief administrative officer or board of each agency that was required to transfer records or personnel to the panel. The chief administrative officer or board shall take possession of the records and personnel and employ them in the conduct of contested case proceedings on behalf of the agency.

In accordance with the pilot project, the following measures become effective January 1, 2000, and are to be rescinded as of January 1, 2004:

- A hearing officer from the hearing officer panel will be assigned to conduct the

hearing when a request for hearing upon a claim has been filed. (The requirement that the Employment Director designate a referee to conduct the hearing is eliminated);

- The provision requiring that the conduct of hearings be in accordance with the regulations prescribed by the Employment Department Director is eliminated;
- A provision is deleted that required the regulations prescribed by the Employment Department Director to be used for determining the rights of the parties, whether or not such regulations conformed to common law or statutory rules of evidence and other technical rules of procedure;
- When a hearing request is filed in a timely manner by an employer after notification of tax rates, a new provision requires that a hearing be conducted by a hearing officer assigned from the Hearing Officer Panel, and deletes the requirement that a referee designated by the Employment Department Director grant a hearing;
- The requirement that hearings be conducted in accordance with the rules of the Employment Department Director is deleted;
- The provision that the Director of the Employment Department may adopt rules to govern proceedings and hearings before referees appointed by the Director is deleted;
- The provision is deleted that permitted the Director of the Employment Department or the authorized agent of the Director to issue subpoenas to any party upon request, upon a showing of general relevance, reasonable scope of the evidence sought, and determination that the testimony would not be unduly repetitious. (No showing of general relevance or reasonable scope of the evidence sought shall be required upon the request for a subpoena of a claimant's personnel records either during or after the pilot project);
- The provision is deleted that required hearings to be conducted in accordance with the rules adopted by the Director when employers request hearings from decisions assessing a penalty because good cause was not shown for failure to

file quarterly reports on employees' wages and hours of work on time;

- If a valid application for hearing on whether an employing unit is an employer or for determining contributions and interest is filed within the required time, a hearing officer (instead of a referee designated by the director) will review the determination or assessment and grant a hearing and give notice of time and place of hearing to the director and employing unit;
- The provision that hearings will be conducted in accordance with the rules and regulations of the Director is deleted.

In enactments unrelated to the pilot project, the law now provides additional conditions under which base-period employers may request relief of charges for benefits when a notification for an initial valid determination of a claim has been received, and extends the request period from 10 to 30 days. Requirements are established for the Director in handling such requests. The provision that required the Director to relieve an employer's account of benefits if the benefits claimant was not employed by the employer prior to claiming a week of benefits during the benefit year is eliminated. The Employment Department is permitted to accept the State's Reed Act funds to pay for unemployment insurance administrative expenses. The confidentiality provision is amended to provide that wage information shall be released and employer information may be released to consumer reporting agencies for verification of information connected with a credit transaction if the individual to whom the information pertains provides written consent. The consumer reporting agency must pay all fees related to the release.

*Benefits.* The maximum number of weeks during which an individual may attend an apprenticeship program and still be eligible to receive unemployment insurance benefits is changed from 3 to 5.

An authorized representative making a disqualification determination on a claim is now permitted to address separation and other issues raised by information before the representative, notwithstanding the way the parties characterize those issues.

An individual may not be disqualified from receiving benefits for voluntarily leav-

ing working without good cause, and shall be deemed laid off, if he or she works under a collective bargaining agreement; elects to be laid off when the employer has decided to lay off employees; and is placed on the referral list under the collective bargaining agreement.

*Coverage.* The definition of employee now excludes an individual who volunteers or donates his or her services (to a religious or charitable institution, or to a governmental entity) without receiving remuneration or without expectation or contemplation of remuneration. Excluded from the definition of employment are services performed by an individual on a fishing boat other than his or her own when the owner of that boat has an arrangement in which he or she does not pay the individual remuneration unless it is from the proceeds of the catch from the boat, the remuneration is less than or equal to \$100, and the boat is made up of a crew of less than 10.

*Financing.* The employer will now be noncharged for benefits paid to an individual without any disqualification with respect to a discharge for being unable to satisfy a job prerequisite required by law or administrative rule.

The law now requires the Director of the Employment Department to adopt rules for partial transfer of experience and payroll when an employer has transferred an identifiable and segregable portion of an employing unit to a successor employing unit, and specifies the conditions of the partial transfer of experience and payroll. The law also denies the application for partial transfer of experience and payroll if the transfer is made solely to qualify for a reduced tax rate or if contributions or tax reports are delinquent, and provides that a hearing may be requested if an application is denied. The new regulations are effective for tax years beginning after December 31, 1997, and apply only to transfers that occur on or after January 1, 1998. Application for partial transfer of experience and payroll commences on or after July 1, 2000. With respect to any such transfer, refunds are not permitted on monies paid into the Unemployment Compensation Trust fund for wages paid between January 1, 1998, and July 7, 1999; however, employing units may apply for, and the Director may allow,

an equal amount of credit against future contributions.

Reed Act funds provided under the Social Security Act, as amended, are available for administrative expenses relating to the computation of unemployment insurance tax rates until July 1, 2001.

## Rhode Island

*Administration.* The State is now allowed to use Unemployment Insurance wage record data to measure progress in meeting performance measures developed for the Workforce Investment Act of 1998. The State may share this information with agencies of other States (with reimbursement for the costs incurred) in the performance of their public duties if such sharing is required by the U.S. Secretary of Labor.

The offset of lottery winnings and personal income taxes for benefit overpayments and interest is now required: the Department of Labor and Training must periodically furnish the lottery director with the names of individuals who owe \$500 or more for benefit overpayments and interest. An individual who has a benefit overpayment and interest in the amount of \$500 or more shall have that deficit offset by any payment of lottery monies in which the individual has won more than \$600.

If a claim is filed for both child support payments and benefit overpayments and interest, the first priority goes to the Department of Human Services for repayment of child support.

*Benefits.* Individuals who leave work without good cause connected with the work will be ineligible for benefits for the week in which the quit occurred. Those who are discharged for misconduct connected with the work will be ineligible for the waiting period credit. The practice of making lag-day payments at the beginning of an individual's claim is eliminated. The waiting period provisions are amended to provide that the period begin on Sunday of the week in which the claimant files a claim for benefits.

*Coverage.* The definition of wages now excludes any amount paid by the employee or employer under a benefit plan organized under a cafeteria plan.

## Tennessee

*Administration.* The Department of Employment Security (the Unemployment Compensation agency), which formerly was an independent agency, is now a division within the newly created Department of Labor and Workforce Development.

The collections provision is changed to provide that recording of notice of a lien shall constitute notice of both original and subsequent liabilities of a delinquent employer. Any lien created against an employer for unpaid unemployment taxes shall now have the same priority, in relation to other liens and security interests created under Tennessee law, as any other lien for taxes or fees administered by the commissioner of revenue.

Effective for reports due for the quarter beginning July 1, 2000, the penalty for employers that are required to report on magnetic media, but that fail to do so, increases from a range of \$10 to \$50 per month to \$50 per month, but the total penalty for each report shall not exceed \$500.

*Benefits.* The law now provides additional causes under which an individual may be discharged for misconduct connected with the work, and disqualified from benefits: failing a drug test in which the test was administered properly according to Tennessee law; failing an alcohol test (being administered properly according to Tennessee law) when the blood alcohol concentration level is 0.10 percent by weight for nonsafety-sensitive positions, and 0.04 percent for safety-sensitive positions; and refusing to submit to a drug or alcohol test that is authorized under Tennessee law, when the discharge is based on substantial and material evidence of the refusal.

*Coverage.* Exempted from the definition of employment are services performed as an election official or election worker, if the amount of remuneration received during the calendar year is less than \$1,000. Also exempt are services performed by a person committed to a custodial or penal institution.

## Texas

*Administration.* The time during which an employer may protest a potential chargeback is changed from 14 days to 30 days after the

notice was mailed or right to protest is waived.

*Benefits.* The law now makes clear that individuals who, during any benefit period, are working their customary full-time hours, regardless of their earnings for that benefit period, are ineligible to receive unemployment compensation.

*Coverage.* The definition of employment is amended to exclude services performed by an inmate for all entities, rather than just for those owned and operated by the State or a political subdivision of the State.

## Utah

*Administration.* Reed Act funds must now be allocated to the Public Employment Service System and be obligated within a 2-year period from the date of appropriation by the legislature.

*Benefits.* An individual is exempted from the 1-week waiting period when he or she is in approved mandatory apprenticeship-related training.

*Financing.* Benefits payable to an individual for the first week of mandatory apprenticeship training are noncharged to the employer.

## Virginia

*Administration.* The length of time that an employer has to respond to a tax assessment or determination notice is increased from 20 to 30 days. The length of time that an individual has to file a request for review is increased from 10 to 30 days from the date of mailing of the decision. The length of time that an individual has to file an appeal after delivery of notice of determination or decision; mailing of notice of determination or decision to last known address; or mailing of notice of determination or decision to last known address of an interstate claimant is increased from 21 to 30 calendar days. The appeal extension period for determinations and decisions increases from 21 to 30 days if good cause is shown. The length of time that an individual has to file an appeal after the date of notification or mailing of a tribunal decision is increased from 21 to 30 days.

The appeal extension period for tribunal decisions increases from 21 to 30 days if good cause is shown.

## Washington

*Administration.* Reed Act distributions with respect to excesses in Federal fiscal years 1999, 2000, and 2001 shall be used only for unemployment compensation administration.

## Wyoming

*Administration.* The department of employment is now permitted to maintain any or all of its records on a computer imaging system. The law provides for the admissibility of documents generated by such a system in court or in administrative hearings under the same conditions that the original would be admissible.

An individual who knowingly and with intent to defraud allows or authorizes another person to sign his or her name or to use his or her personal identification number to make or file a claim for benefits on the individual's behalf is subject to the penalties for fraud or making a false statement or misrepresentation of material fact.

A new enactment makes it clear that monetary determinations may be reconsidered if a deputy finds an error in computation or identity, or discovers wages of the claimant relevant to but not considered in the determination. Nonmonetary or chargeability determinations may be reconsidered if the department or a party entitled to notice files a protest in writing within 15 days of the date on which the determination was mailed (except in the case of determinations relating to certain statutory denials and disqualifications for misconduct or voluntary quits). Certain other procedures governing notices and determinations also are revised. The statute of limitations on proceedings for foreclosure on employer property due to nonpayment of contributions or interest is increased from 5 to 10 years.

*Benefits.* An exception is added to the requirements of registering for and actively seeking work for individuals who are recalled to full-time work by an employer who paid 50 percent or more of the individual's base-period wages or who are recalled within 12



weeks by an employer. The law now provides that training no longer needs to be in a program consisting of a maximum of 24 consecutive months, and that training can be either accredited or licensed (formerly only licensed) by the appropriate agency in order to be approved. The number of weeks within which an individual who is a member of a labor organization must apply for or accept suitable nonunion work in his or her customary occupation in order to remain eligible for benefits is changed from 4 to 12. An exception is added to the disqualification for voluntarily quitting without good cause for individuals forced to leave their most recent work as a result of being victims of documented domestic abuse.

*Financing.* With respect to a voluntary quit without good cause or a discharge for misconduct, the law now provides that chargeability of an employer's account be based solely on the last separation that occurred before the filing of the claim (for which the claimant is monetarily eligible), rather than on a separation that occurs after the filing of the initial claim and during the benefit year. An employer acquiring another employer's business may be given a delinquency rate only on a delinquency on its own account or when the acquiring employer is owned or operated, in whole or in part, by any person or entity who owns an interest in the selling employer or by a member of the immedi-

ate family of the selling employer. □

## Notes

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<sup>1</sup> The Employment Security Administrative Funding Act of 1954 (also known as the Reed Act) provided that the annual excess, if any, of Federal Unemployment Tax Act revenues over Federal and State administrative expenses and Federal Extended Benefits and loan fund requirement be allocated to States in proportion to covered payrolls. Reed Act monies represent a flexible funding source that States can use for a variety of special outlays. A State can use Reed Act funds: (1) to pay compensation (§903(c)(1), Social Security Act) or, (2) subject to State legislative appropriation, for administrative expenses (§903(c)(2), Social Security Act).