

Changes in State unemployment insurance legislation in 2008

Federal enactments extend benefits, providing Federal funds to the States to cover costs; State enactments include new minimum and maximum weekly benefit amounts and new confidentiality and disclosure guidelines

Loryn Lancaster

During 2008, there were five Federal legislative enactments and one final rule that affected the Federal-State unemployment compensation program.

Title IV of the Supplemental Appropriations Act, 2008 (P.L. 110–252) established the Emergency Unemployment Compensation (EUC08) program. Effective from July 2008 through March 2009, up to 13 weeks of benefits are available under this program to eligible jobless workers in all States. Individuals with benefits remaining in their EUC08 accounts at the end of March can collect those benefits through June 2009. This enactment also provided \$110 million in grants to States for administrative costs of the unemployment insurance program. These benefits and administrative costs are entirely Federally financed.

The Social Security Income Extension for Elderly and Disabled Refugees Act of 2008 (P.L. 110–328) amended the Internal Revenue Code of 1986 to provide for the collection of certain unemployment compensation debts resulting from fraud using the Treasury Offset Program (through offset of Federal income tax refunds).

The Emergency Economic Stabilization Act, 2008 (P.L. 110–343) included a 1-year extension of the 0.2-percent Federal Unemployment Tax Act (FUTA) surtax through 2009.

The Unemployment Compensation Extension Act of 2008 (P.L. 110–449) expanded the current EUC08 program to provide up to 7 additional weeks of unemployment compensation to eligible individuals in all States. This enactment also expanded the EUC08 program by providing a second tier of benefits of up to 13 additional weeks for eligible individuals in those States with high unemployment rates. These benefits are

available for weeks of unemployment beginning on or after November 21, 2008, through March 31, 2009, and no EUC08 payment may be made for any week of unemployment beginning after August 27, 2009. These benefits are entirely Federally funded.

The Worker, Retiree, and Employer Recovery Act of 2008 (P.L. 110–458) repealed the provision in the Pension Protection Act of 2006 (P.L. 109–280) that amended the Federal Unemployment Tax Act concerning treatment of pensions, retirement pay, annuities, or other similar payments. The 2008 legislation provides that unemployment compensation will not be reduced as a result of any payments of pension, retirement pay, annuity or other similar payments that may not be included in the gross income of the individual for the taxable year in which it was paid because it was part of a rollover distribution.

The Department of Labor issued a final rule (effective January 6, 2009) amending its regulations governing combined-wage claims under the unemployment compensation program. This rule amends the definition of “paying State” as follows: any “single State” in which the claimant had base period wages and employment, and in which the claimant qualifies for unemployment benefits, may be a “paying State.”

The unemployment insurance confidentiality or disclosure final rule (effective October 27, 2006) required State laws to meet the rule requirements within 2 years. As of October 27, 2008, all State laws met the confidentiality or disclosure requirements.

Following is a summary of some significant changes in State unemployment insurance laws that occurred during 2008:

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Alabama

Financing. The quarterly 0.06-percent special assessment used to fund the Employment Security Enhancement Fund, applicable to certain employers, and the current tax rate structure for determining an employer's contribution rate, are extended from March 31, 2008, to September 30, 2010.

Up to \$7,940,119 of Reed Act monies may be withdrawn from the Unemployment Compensation Trust Fund for administrative purposes, effective from May 29, 2008, to September 30, 2009. Whatever amount is withdrawn will not change the Employer Tax Schedules for the calendar year beginning January 1, 2010.

The State Unemployment Tax Act (SUTA) dumping prevention provisions that mandate transfer of experience by requiring that the rates of both employers be recalculated and made effective in accordance with the date such transfer or transfers occurred were modified. (Previously, the rates were effective January 1 of the year the transfer or transfers occurred.)

Monetary entitlement. With respect to benefit years effective on or after July 6, 2008, an individual will serve a 1-week waiting period with no benefits payable after the 13th compensable week of paid benefits within a benefit year and prior to the 14th compensable week of benefits. The waiting week will not be counted as a week of unemployment.

The weekly maximum benefit amount increases from \$235 to \$255 for benefit years beginning on or after July 6, 2008, and to \$265 for benefit years beginning on or after July 5, 2009.

Alaska

Administration. New requirements were established concerning the confidentiality and disclosure of certain Departmental records, reports, and wage and unemployment compensation information, including required disclosure to the Department of Homeland Security, the Internal Revenue Service, and the Department of Health and Human Services, for specified purposes only.

Financing. The percentage of the average benefit cost rate used to determine each employer's contribution rate changes from 80 percent to 76 percent beginning January 1, 2009, and to 73 percent beginning January 1, 2010.

The percentage of the average benefit cost rate used to determine the contribution rate of each employee of a contributing employer changes from 20 percent to 24 percent beginning January 1, 2009, and to 27 percent beginning January 1, 2010.

Monetary entitlement. The minimum weekly benefit amount increases from \$44 to \$56, and

the maximum weekly benefit amount increases from \$248 to \$370 effective January 1, 2009. The minimum base period wages required for the minimum weekly benefit amount increases from \$1,000 to \$2,500 effective January 1, 2009. The minimum base period wages required for the maximum weekly benefit amount increases from \$26,750 to \$42,000 effective January 1, 2009.

Arizona

Administration. The Department has the option of serving determination and reconsideration notices to employing units by electronic means and no longer requires that such notices be certified when they are mailed.

Financing. An employer's obligation is extinguished for any contributions, payments in lieu of contributions, interest, or penalties that are required to be collected by the Department for any period, if not previously satisfied, 6 years after the amounts were determined due unless one of the following circumstances applies:

- the Department has commenced civil action to collect the debt;
- the taxpayer has agreed in writing to extend the time period before the time period expires;
- an enforced collection has been stayed by the operation of Federal or State law during the period, and the period of limitations is extended by the period of time that the Department was stayed from engaging in enforced collections.

Previous law required no time limit for collecting contributions, payments in lieu of contributions, interest, or penalties. If a tax obligation is extinguished, any related liens for those obligations are also extinguished.

Any amount of contributions, interest or penalties for wages and periods that are assessed by the Internal Revenue Service as subject to the Federal Unemployment Tax Act against which credit may be taken for contributions required to be paid into a State unemployment fund by employers subject to the Federal law must be determined by the Department to be due regardless of the date the contributions, payments in lieu of contributions, interest, or penalties became delinquent.

The provision requiring the Department to issue a release to the person against whom the lien is claimed once the lien has been satisfied and enacts new provisions regarding the release or subordination of liens was repealed.

Colorado

Administration. The Department is required to electronically notify employers quarterly

of the Federal law against hiring or continuing to employ unauthorized aliens and of the availability of the optional participation requirements for the Federal electronic verification program (e-verify program) to verify the work eligibility status of new employees. The Department and the Secretary of State are required to post this information on their respective Web sites and to provide a link to the e-verify program.

Nonmonetary eligibility. An individual who quits to relocate due to the transfer of the individual's spouse who is an active duty member of the U.S. Armed Forces is eligible for benefits. (Previously, eligibility was limited to individuals who relocated due to the spouse's transfer for medical-related purposes in time of war or armed conflict.) The provision is repealed effective July 1, 2018.

The requirement for a claimant who quits to relocate with a military spouse to report all job separations when an additional claim is filed during a benefit year due to a recurrence of unemployment has been deleted.

An exception has been created to the requirement that deputies of the Division of Employment and Training in the Department of Labor and Employment issue decisions on all claims for unemployment benefits to exclude cases in which the claimant did not file a continued claim for benefits.

Connecticut

Financing. Employers and persons or organizations that function as employer agents who make contributions or payments in lieu of contributions for 250 or more employees are required to contribute (pay) electronically.

Nonmonetary eligibility. The provision stipulating that an individual will not be ineligible for benefits for voluntarily leaving suitable employment that occurs on or after July 1, 2007, to accompany a spouse who is on active duty with the U.S. Armed Forces and is required to relocate by the Armed Forces is now permanent.

Florida

Nonmonetary eligibility. An individual hired as a day laborer with a temporary help firm has voluntarily quit and is disqualified for benefits for failing to report for reassignment the next business day, provided the individual was given notice upon completion of the latest assignment that work is available the next business day and that the individual must report for reassignment the next business day.

The definition of "temporary help firm" has been modified to include a labor pool and the definition of "temporary employee" has been modified to include a day laborer performing day labor employed by a labor pool.

Idaho

Administration. New requirements concerning the confidentiality and disclosure of certain employment security information and new civil penalties for persons who receive and make unauthorized disclosure of employment security information in violation of the confidentiality provisions have been established.

Nonmonetary eligibility. The option of a claimant being able to demonstrate good cause for failure to attend job training has been eliminated. Claimants enrolled in approved training who fail to attend or otherwise participate in such training are ineligible if they are not able to work nor available for work unless they have an illness or disability (under certain circumstances) or compelling personal circumstances.

Overpayments. If a determination is made finding that an employer has colluded with an employee or former employee to file a false or fraudulent claim, a penalty of 10 times the weekly benefit amount of such employee or former employee must be added to the liability of the employer. (This penalty for colluding is in addition to current law providing penalties for employers that induce, solicit, or coerce such employees or former employees to file a false or fraudulent claim.)

Illinois

Financing. Noncharges benefits paid to individuals who left work to accompany a spouse reassigned from one military assignment to another will be paid.

Nonmonetary eligibility. An individual who has not left work voluntarily without good cause to accompany a spouse reassigned from one military assignment to another is eligible.

Indiana

Administration. The Department may operate a data match system with each financial institution doing business in Indiana. New legislation sets forth the conditions, requirements, and procedures to follow for both the institutions and the Department. It provides that all information provided by a financial institution is confidential and is available only to the Department or its agents for use only in the collection of unpaid financial assessments. It provides that certain individuals who knowingly or intentionally disclose for a purpose other than the collection of unpaid final assessments information provided by a financial institution that is confidential has committed a Class A misdemeanor.

Financing. The provision relating to the expenditure, use, authorization, and approval of the special employment and training services fund for acquiring lands, building and erection

of buildings, and leases and contracts and construction necessary for the proper administration of the unemployment insurance law was removed. These funds will be used for specified training purposes.

Nonmonetary eligibility. For the purpose of deductible income only, remuneration for services from employing units does not include compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure, without regard to how the compensation is characterized by the contract or agreement.

Deductible income does not include a supplemental unemployment insurance benefit made under a valid negotiated contract or agreement.

The definition of "deductible income" was modified to include a week in which a payment is actually received by an individual, payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure; or except as otherwise provided, the part of a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure if that part is attributable to a week and the week occurs after an individual receives the payment, and it was used under the terms of a written agreement to compute the payment.

A person who accepts a layoff under an inverse seniority clause of a validly negotiated contract and otherwise meets the eligibility requirements is entitled to receive benefits in the same amount, under the same terms, and subject to the same conditions as any other unemployed person; however, this does not apply to a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments; except as otherwise provided, a person who (1) accepts an offer of payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure; and (2) is otherwise eligible is entitled to receive benefits in the same amount, under the same terms, and subject to the same conditions as any other unemployed person. (Applicable to initial claims filed for weeks that begin after March 14, 2008.)

Iowa

Financing. An accounting firm, unemployment insurance accounting firm, or other entity that demonstrates a continuous pattern of failing to participate in initial determinations to award benefits must be denied permission to represent any employers in unemployment insurance matters.

The penalty for each delinquent or insufficient report must not be less than \$35. (Previously, it was not less than \$10 for the first delinquent or insufficient report; not less than

\$25 for the second; and not less than \$50 for subsequent.) An employer must pay all costs associated with a subpoena, including service fees and court costs, for investigations of an employer liability issue, to complete audits, secure reports, or assess contributions. Refusing or negligently failing to honor a subpoena must result in a penalty of \$250.

Overpayments. Benefits paid to an individual and not received as the result of fraud or willful misrepresentation must not be recovered, if the employer did not participate in the initial determination and the overpayment occurred as a result of a subsequent reversal on appeal.

Kentucky

Administration. New requirements concerning the confidentiality and disclosure of certain unemployment compensation information and records have been established. A penalty for persons receiving unemployment compensation information and records who violate the confidentiality provision was established.

The receipt date for reports, contributions or payments, protests or appeals is the date it is delivered to the Department or the date of the postmark applied by the U.S. Postal Service or commercial postal service. Privately held postage meter dates will not be considered in determining the date of receipt. If the due date falls on a day the office of the Department or post office is closed, the due date will be the next day the office or post office is open.

Louisiana

Administration. The Department's name has been changed from the Department of Labor to the Louisiana Workforce Commission; the Secretary's title was changed from Secretary of Labor to Executive Director.

New requirements were established concerning the confidentiality and disclosure of certain employment data including disclosure for compiling statistics for performance and certain research purposes. New civil and criminal penalties for persons who violate such provisions also were established.

Financing. Procedure 3 has been revised and procedure 4 was added to the table that provides for the taxable wage base, the formula for computing benefits, and the maximum weekly benefit amount (MWBA) based upon the applied trust fund balance range as follows.

When the applied trust fund balance is

- equal to or greater than \$1.15 billion, but less than \$1.4 billion, the wage base is \$7,000, the MWBA is \$258, and the applicable benefit computation will be computed without the 7 and 5 percent discounts, multiplied by 1.05 and that

amount multiplied by 1.20.

- greater than \$1.4 billion, the wage base is \$7,000, the MWBA is \$284, and the applicable benefit computation will be computed without the 7 and 5 percent discounts, multiplied by 1.05 and that amount multiplied by 1.32.

Each employer will be given a 10-percent contribution rate reduction if at the computation date in any year, the fund balance, including all monies in the benefit transfer account, exceeds \$1.4 billion.

The benefits paid pursuant to specific executive orders and hurricane-related layoffs that are chargeable to employers' accounts and reimbursable must not be recouped. (Prior law required that the charges be deferred, without assessment of penalty and interest until July 1, 2008, to allow time for such benefit charges to be identified and quantified and for payment arrangements to be made through loans, grants, or State or Federal legislation.)

In the event that any employer pursuant to this provision was insured by private entities offering any form of insurances, bonds, certificates of deposit, or any other form of guarantee against unemployment claims chargeable to the employer's account, the State will have the right to recoup such funds from those private entities or their insurer for repayment of funds paid out of the unemployment compensation trust fund for any unemployment claims covered in this provision.

The provision was repealed authorizing the administrator upon request by the employing unit to negotiate payment terms for benefit charges assessed as a result of Hurricanes Katrina and Rita; specific executive orders specifying the payment terms without assessment of penalty and interest will be made quarterly for periods not to exceed 2 years, beginning July 1, 2008.

Monetary entitlement. The maximum weekly benefit amount increased from \$258 to \$284.

The duration of benefits changed from the lesser of 26 times the weekly benefit amount or 27 percent of wages in insured work to 26 times the weekly benefit amount (from 21 to 26 weeks to 26 weeks).

Maryland

Appeals. A Lower Appeals Division in the Department of Labor, Licensing, and Regulation, was established to hear and decide appeals from the determinations of the claims examiners conducted by hearing examiners.

A claimant or employing unit entitled to a notice of a determination or redetermination may appeal to the Lower Appeals Division within 15 days after mailing or delivery of such notice.

The decision of the hearing examiner is

final unless an appeal is filed with the Board of Appeals within 15 days after the notice was mailed or delivered. The time of appeal may be extended for good cause. The Board of Appeals is required to hear and decide appeals from the decisions of the Lower Appeals Division and claims for benefits. Hearing examiners will not be appointed to the Board of Appeals, and hearings and appeals before the Board of Appeals will not be conducted by hearing examiners.

Financing. If authorized or directed by the U.S. Department of Labor, the Department may directly collect from employers the Federal unemployment insurance tax set forth in the Federal Unemployment Tax Act. These funds must be used only to administer programs and services designated for the unemployment insurance and employment services offices. Any agreement reached with the Federal government must be submitted to the Joint Committee on Unemployment Insurance Oversight. This act remains effective for 5 years, ending September 30, 2013.

Nonmonetary eligibility. It is good cause for an individual to voluntarily quit to follow a spouse if the spouse serves in the U.S. military or is a civilian employee of the military or of a Federal agency involved in military operations, and the spouse's employer requires a mandatory transfer to a new location.

Massachusetts

Financing. For calendar year 2008, the minimum experience rate is set at 1.12 percent, and the maximum rate is set at 10.96 percent (table D).

Minnesota

Extensions and special programs. Extra benefits are provided to eligible applicants laid off due to lack of work from the Ainsworth Lumber Company plant in Cook, Minnesota; eligibility conditions were established; the weekly amount of extra benefits is the same as the weekly regular benefit amount, and the maximum amount of extra benefits available is equal to 13 times the weekly benefit amount. The program expired on December 27, 2008 (effective May 30, 2008, and it applies retroactively from January 1, 2008.)

The Commission is required to accept initial and continued requests for unemployment benefits and pay such benefits to residents of Hubbard County who are employed as a technician or an inspector for Northwest Airlines and who stopped working because of a labor dispute between the Aircraft Mechanics Fraternal Association and Northwest Airlines (effective May 30, 2008, and it applies

retroactively from August 21, 2005.)

Financing. Extra benefits paid will not be used in computing the experience rating of the Ainsworth Lumber Company (effective May 30, 2008, and it applies retroactively from January 1, 2008).

Mississippi

Monetary entitlement. The weekly maximum benefit amount increases from \$210 to \$230 for benefit years beginning on or after July 1, 2008, and to \$235 for benefit years beginning on or after July 1, 2009. This provision is repealed July 1, 2010.

Missouri

Administration. A notice of each initial claim filed by an individual who establishes a benefit year must be promptly mailed to each base period employer, except to any contributing base period employer that paid such individual gross wages in the amount of \$400 or less during such individual's base period.

Any notice of claim or notice of determination required to be mailed to an employer or claimant may be transmitted electronically if requested. The date the division transmits such notice of claim or notice of determination must be deemed the date of mailing for purposes of filing a protest to the notice or claim or filing an appeal concerning a notice of determination.

The law concerning the disclosure of confidential information obtained from any employing unit or individual was modified. Penalties were established for violating the disclosure provisions for confidential information.

Appeals. If the last employer or any base period employer files a written protest against the allowance of benefits based upon the refusal to accept suitable work when offered, either through the division or directly by such last or base period employer, and such protest is filed within 10 calendar days of the claimant's refusal of work, such employer must be deemed an interested party to any determination concerning the claimant's refusal of work until such time as the issue or issues raised by the protest are resolved by a determination or decision that has become final.

Any base period employer or any employing unit that employed the claimant since the beginning of the base period who files a written protest against the allowance of benefits based upon not being able to work or available for work must be deemed an interested party to any determination concerning the claimant's ability to work or availability for work until such time as the issue or issues raised by the protest are resolved by a determination or decision which has become final.

Financing. For calendar years 2009, 2010, and 2011, each employer liable for contributions, except employers with a contribution rate equal to zero, must pay an annual unemployment automation surcharge equal to 5 one-hundredths of 1 percent of such employer's total taxable wages for the 12-month period ending the preceding June 13. This percentage may be reduced to ensure that the total amount of surcharge due from all employers will not exceed \$13 million annually. Each employer liable to pay such surcharge must be notified of the amount due by March 31 of each year, and such amount will be considered delinquent 30 days thereafter. Delinquent unemployment automation surcharge amounts may be collected in the manner provided and must be deposited in the unemployment automation fund.

For calendar years 2009, 2010, and 2011, the otherwise applicable unemployment contribution rate of each employer liable for contributions will be reduced by 5 one-hundredths of 1 percent, but will not be less than zero.

The Unemployment Automation Fund was created. It will consist of the unemployment automation surcharge money collected and such other State funds appropriated by the general assembly. Upon appropriation, it requires money in the fund to be used solely for the purpose of providing automated systems and the payment of associated costs to improve the administration of the State's unemployment insurance program.

Nonmonetary Eligibility. In order to be eligible for benefits, the claimant is required to make a claim for benefits within 14 days from the last day of the week that is being claimed. An extension from 14 to 28 days for good cause may be allowed.

A claimant is eligible for benefits if the claimant has reported to an employment office to participate in a reemployment assessment and reemployment services as directed by the deputy or designated staff of an employment office, unless the deputy determines that good cause exists for failure to participate and the claimant is ineligible for failing to report beginning on the first day of the week that the claimant was scheduled to report and ending on the last day of the week preceding the week during which the claimant does report in person.

A "war on terror veteran" is a Missouri resident who serves or has served in the military and is or was a member of the National Guard or a member of a U.S. Armed Forces Reserves unit who was officially domiciled in the State of Missouri immediately prior to deployment. (Previous law required that the person be a member of the Missouri National Guard.)

Overpayments. The method for recovering

an overpayment for a war on terror veteran was changed by providing that the Division of Employment Security must pursue recovery of overpaid unemployment compensation benefits against any person receiving such overpaid benefits through billing, setoffs against State tax refunds, setoffs against Federal tax refunds to the extent permitted by Federal law, intercepts of lottery winnings, and collection efforts.

Nebraska

Financing. The law was amended to not charge the employer's experience account for benefits paid during a week when an individual was participating in training approved under the Federal Trade Act.

New Hampshire

Financing. The effective date was extended from July 1, 2007, to July 1, 2008, of the provision for the discount rate in the contribution rates based on the amounts in the unemployment fund on September 30 of the preceding calendar year, and of the provision that stipulated that the minimum contribution rate cannot be less than 0.10 percent.

Effective July 1, 2008, if the unemployment compensation trust fund balance is \$200 million or more on September 30 of the preceding calendar year, and if the Commissioner of the Department of Employment Security determines that the health of the New Hampshire business environment and the security of existing jobs would be threatened by decreasing the discount rate from every employer's contribution rate, then the Commissioner may adjust the discount rate to 0.5 percent more than otherwise applicable. In addition, the term "discount rate" is defined to mean the amount to be subtracted from every employer's contribution rate. These provisions are repealed effective July 1, 2009.

Nonmonetary eligibility. The term "full-time work" is defined to mean work in employment of at least 37.5 hours per week. The term "part-time work" is defined to mean work in employment of at least 20 hours per week but less than 37.5 hours a week.

The benefit eligibility conditions were amended to provide that an unemployed individual will be eligible to receive benefits under the following conditions:

- if ready, willing, and able to accept and perform suitable full-time or part-time work on all of the shifts and during all of the hours for which there is a market for the services he or she offers and that he or she has exposed him- or herself to employment to the extent commensurate with the economic conditions and

the efforts of a reasonably prudent person seeking work; and

- he or she is available for and seeking permanent, full- or part-time work for which he or she is qualified, provided that if availability is limited to part-time work, the claim for unemployment benefits is based on wages earned in part-time work.

The disqualification for benefits conditions were amended to replace the terms "work or full-time work" with "full-time or part-time work" in the provisions relating to labor standards in which no work will be deemed suitable and benefits will not be denied to any otherwise eligible individual for refusing to accept new full- or part-time work under certain conditions. An individual who is seeking only part-time work will be deemed to be partially unemployed only in any week during which the individual was employed for fewer than 20 hours. (Previously, the individual had to meet certain eligibility requirements related to part-time workers.) The provisions were repealed that limited eligibility of individuals seeking part-work to seeking part-time work for certain reasons.

New Jersey

Administration. The Division of Revenue in the Department of the Treasury is designated as the State government's centralized debt management agency. A State agency unable to collect a debt owed to the agency within 90 days of recording of the delinquency is required to transfer the delinquent account no later than the 91st day following the recording of the debt to the Division of Revenue. Each State agency or designee is required to provide an inventory for each fiscal year of the total debt owed to and collected by the agency, and debt owed to but uncollected by the agency, within 90 days of recording of the delinquency.

Financing. The date for calculating the Unemployment Trust Fund Reserve Ratio was changed from March 31, 2008, to June 30, 2008. An amount of \$260 million was appropriated to the Department from the General Fund for deposit in the unemployment compensation fund. The taxable wage base increases from \$27,700 to \$28,900 for calendar year 2009. The contribution rate on wages for governmental entities and instrumentalities electing to pay contributions remains at 0.5 percent for calendar year 2009.

Monetary entitlement. The maximum weekly benefit amount increases from \$560 to \$584 effective January 1, 2009. The amount needed to establish a base week remains at \$143 per week for calendar year 2009.

Temporary disability insurance. The maximum weekly benefit amount for State plan benefits increases from \$524 to \$546 effective January 1, 2009. The taxable wage increases from \$27,700 to \$28,900 for calendar year 2009. The amount needed to establish a base week remains at \$143 per week for calendar year 2009.

Nevada

Financing. A revised schedule of contribution rates with 18 classes that changes the range of reserve ratios for each class was created to be used to assign rates to eligible employers for calendar year 2009.

New York

Administration. New requirements were established concerning the confidentiality and disclosure of certain unemployment insurance information including requirements for informed consent, and provision for disclosure to law enforcement agencies, local social service districts, the Office of Vocational and Educational Services, and the Commission for the Blind and Visually Handicapped.

Nonmonetary eligibility. In addition to being allowed to elect to have Federal income tax deducted and withheld from unemployment benefits, individuals may elect to have Federal or State (or both) income tax deducted and withheld, and the Commissioner must deduct and withhold Federal or State (or both) income tax from benefits if the individual elects such withholding.

North Carolina

Financing. The language was deleted that provided that any nonprofit employer formerly paying contributions or an Indian tribe employing unit that had been paying contributions for at least 3 consecutive calendar years that elects and qualifies to change to a reimbursement basis may be relieved of paying the mandatory 1.0 percent of taxable wages if certain conditions are met based on the experience ratings of 1.7 or less, 2.7 but more than 1.7, and 2.7 or more.

Any nonprofit organization electing to make payments in lieu of contributions is required to secure such election by posting a surety bond from an insurance company duly licensed to conduct business in this State or obtain an irrevocable letter of credit with the Commission to insure the payments in lieu of contributions. Any surety bond posted must be in force for at least 2 calendar years and renewed with the approval of the Commission. The Commission is allowed to adopt rules to implement this requirement.

The language was deleted that provided

that as of August 1, any credit balance remaining in the employer's account or Indian tribe employing unit's account (after all applicable postings) in excess of the allowable amounts for the 12 months ending on June 30 preceding the computation date must be refunded, and that any such refund must be made prior to February 1 following the computation date.

The language was deleted that provided that upon a change in election from reimbursement to contribution payments, or upon termination of coverage and after all applicable benefits paid based on wages paid prior to such change in election or termination of coverage have been charged, any credit balance in the account must be refunded to the employer or to the Indian tribe employing unit.

Oklahoma

Administration. The Oklahoma Security Commission, on or before December 31, 2008, must provide a method for employers to file the Employer's Quarterly Contributions and Wage Report for State unemployment taxes through the Internet, as well as a method to pay such taxes through an electronic payment system utilizing the Internet.

New legislation defines the terms "reopened claim" and "continued claim series."

In addition, new legislation provides various methods of delivering the drug or alcohol testing policy to employees and persons offered employment.

The provision was deleted that required claims for exemptions and any other matter relating to the levy of unemployment compensation to be filed with 10 days of the date of service of the levy and instead provides that an order of exemption may relate back no more than 30 days before the filing of the claim for exemption and must extend no further than the expiration date or termination of the levy.

Appeals. The Board of Review must certify and file with the court a certified copy of the record of the case within 60 days of the date of service of the petition. (Previously, the case had to be recorded within 60 days of the filing of the petition.)

Financing. An Indian tribe or tribal unit electing to make payments in lieu of contributions must notify the Commission in writing before the last day of January of the calendar year in which the tribe wishes to begin making reimbursement payments. The Indian tribe will be liable for reimbursement payments in lieu of contributions if the Commission determines the Indian tribe is eligible to exercise its option.

Nonmonetary eligibility. The law clarified

that when adjudicating a separation from employment in an initial claim or additional initial claim, disqualification continues for the full period of unemployment next ensuing after leaving work voluntarily without good cause connected to the work and until becoming reemployed and having earned wages equal to or in excess of 10 times the weekly benefit amount.

When adjudicating a separation from employment during a continued claim series, disqualification will be for the week of the occurrence of leaving work voluntarily without good cause connected to the work.

Promptly after notification of the claimant's separation from an employment obtained during a continued claim series, written notification must be given to the last separating employer. Notices to separating employers during a continued claim series must be given to the last employer in the claim week without regard to length of employment.

The provision concerning post-accident testing for drugs or alcohol that provides that no employee who tests positive for the presence of certain substances, alcohol, illegal drugs, or illegally used chemicals will be eligible for compensation, unless the employee proves by a preponderance of the evidence that the substances were not the proximate cause of the injury or accident, no longer applies to unemployment compensation.

South Carolina

Coverage. Services performed by a juvenile participating in the Department of Juvenile Justice's Youth Industries Program are excluded from coverage. Such a juvenile is not considered an employee of the State and is not eligible for unemployment compensation upon termination from the program.

Monetary entitlement. If the Division of Child Support is notified by the Commission that an obligor is receiving unemployment insurance benefits, the division must notify the court for the intercept of these benefits if a delinquency occurs and the obligor's case is a Title IV-D case.

Tennessee

Administration. New requirements concerning the confidentiality and disclosure of employment security records and reports and new penalties for violating the confidentiality and disclosure provisions are established.

Utah

Administration. An independent contractor data base was created for use in identifying when a person holds someone out as an independent contractor or engages in the perfor-

mance of work as an independent contractor not subject to an employer's right to control the person; it requires the data base to include a process to compare information in the data base to identify a worker who may be misclassified as an independent contractor, to promote employer compliance in making payments for unemployment insurance, and to reduce employer intentional misclassification of a worker as an independent contractor among other things; it creates an Independent Contractor Enforcement Council; it provides that the data base may be used and accessed by the Department of Workforce Services and the State Tax Commission; it provides that the council may study how to reduce costs resulting from misclassification of workers as independent contractors and extend outreach and education efforts regarding the nature and requirements of independent contractor status; and it provides for confidentiality of information in the data base. The Act is repealed July 1, 2013.

The Commissioner may not disclose information obtained from a professional employer organization except in aggregate form that does not identify an individual professional employer organization or client. The Commissioner is allowed to disclose information to a government entity if the information is required to perform the government entity's duties. Co-employer agencies must treat this information obtained as confidential unless disclosure is required under the unemployment insurance law or the Government Records Access and Management Act.

The confidentiality provisions have been modified to clarify the requirements to enter into a written agreement, and to provide to whom and for what purposes certain information will be disclosed.

Financing. The social contribution rate calculation was changed by rounding to three decimal places. The definition of "adequate reserve" (used to calculate the reserve factor) was changed to be between 18 and 24 months of benefits at the average of the five highest benefit cost rates in the last 25 years (previously defined as between 17 and 19 months).

New requirements for professional employer organizations were defined and established. A covered employee of the professional employer organization is considered an employee of the professional employer organization. The professional employer organization must

- pay contributions, penalty, or interest required on wages paid to covered employees;
- report and pay a required contribution to the unemployment compensation fund when due using the State employer account number and the contribution rate of the professional employer organization; and

- unless a client is otherwise eligible for experience rating, a client is treated as a new employer without a previous experience record beginning on the day that the agreement between the client and the professional employer organization terminates or the professional employer organization fails to submit a report or make a tax payment when it is due as required by the chapter.

Nonmonetary eligibility. Unemployed individuals are eligible to receive benefits if they have registered for work with the Department and acted in good faith effort to secure employment during each and every week for which the individual made a claim for benefits. Once unemployed individuals have registered for work, they no longer are required thereafter to continue to report at an employment office to be eligible to receive benefits.

Extensions and special programs. The Department may waive or alter either or both the requirements to make a claim for benefits and to register for work as to a disaster in Utah declared by the President of the United States or by the State's Governor after giving due consideration to factors directly associated with the disaster, including the following:

- the disaster's impact on employers and their ability to employ workers in the affected area in Utah;
- the disaster's impact on claimants and their ability to comply with filing requirements in the affected area in Utah; and
- the magnitude of the disaster and the anticipated time for recovery.

Vermont

Coverage. The definition of "wages" excludes foster care payments excluded from the definition of gross income under Title 26 of the Internal Revenue Code.

Extensions and special programs. Electronic submission of an employer's short-time compensation plan is now provided for, and an employer is now required to maintain records of the plan for a period of 3 years.

The requirement that individuals filing an initial claim for short-time compensation serve a waiting week was eliminated.

Virginia

Coverage. The definitions of "employer" and "employment" were changed to include services performed for an Indian tribe that resulted in unemployment insurance coverage of such services. The term "tribal units" is de-

finied to include subdivisions, subsidiaries, or business enterprises wholly owned by an Indian tribe. Tribes are allowed to pay contributions or elect to make reimbursements on the same schedule as nonprofit organizations. An Indian tribe that elects to make reimbursements is required to file a surety bond or post a deposit. Failure to make required payments within 90 days will result in the loss of the option to make reimbursements. Reinstatement can be made after 1 year when failure is corrected. Failure to make required payments will cause loss of coverage of services performed for the tribe and cause the tribe to be liable for Federal Unemployment Tax Act taxes. The Commissioner will notify the Internal Revenue Service of any termination or reinstatement of coverage of services provided for a tribe. Extended benefits not reimbursed by the Federal government must be reimbursed by the tribe.

Extensions and special programs. An individual is required to have had during his or her base period 20 weeks of full-time insured employment (or the equivalent in insured wages) to be eligible to receive extended benefits. The term "or the equivalent in insured wages" is defined to mean more than 40 times the individual's most recent weekly benefit amount.

Monetary entitlement. For claims effective on or after July 6, 2008, but before July 5, 2009, the minimum weekly benefit amount is \$54 and the maximum weekly benefit amount is \$378; a total of \$2,700 in the two high quarters of the base period is needed to qualify monetarily, and a minimum of \$18,900.01 is required for the maximum weekly benefit amount.

For claims effective on or after July 5, 2009, the minimum weekly benefit amount is \$60 and the maximum weekly benefit amount is \$378; a total of \$3,000 in the two high quarters of the base period is needed to qualify monetarily, and a minimum of \$18,900.01 is required for the maximum weekly benefit amount.

Nonmonetary eligibility. The definition of "misconduct" was amended to include an employee's confirmed positive test for a nonprescribed controlled substance in which a test must have been a U.S. Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy.

The disqualification provision was amended such that, if in connection with an offer of suitable work, an individual has a confirmed positive test for a nonprescribed controlled substance, if the test is required as a condition of employment and is a U.S. Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide drug policy.

Washington

Coverage. The definition of “employment” has been amended to exclude services performed by independent contractors using the “ABC” test and other criteria.

Nonmonetary eligibility. An individual is not disqualified from benefits for leaving work to enter an apprenticeship program approved by the Washington State apprenticeship training council, and benefits are payable beginning Sunday of the week prior to the week active participation in such program begins.

Wisconsin

Administration. The Department must prescribe the manner and form for filing quarterly wage reports electronically, not only by using the Internet (first applicable with respect to reports required to be filed for the third quarter of 2008). An employer who elects to defer payment of its first quarter contributions must file contribution reports quarterly, unless excused (first applicable with respect to contributions payable for the first quarter of calendar year 2009).

The following types of employers must file certain reports electronically:

- employers of at least 25 employees (formerly 50) not using an employer agent must file electronic contribution reports in the manner and form prescribed by the Department (first applicable with respect to reports required to be filed for the third quarter of 2008);
- employers electing to defer payment of first quarter contributions must file the election electronically, and they must file their employment and wage reports electronically in the manner and form prescribed by the Department (first applicable with respect to contributions payable for the first quarter of 2009);
- an employer agent that prepares reports on behalf of less than 25 employers must file contribution reports electronically, unless the Department waives the requirement (first applicable with respect to reports required to be filed for the third quarter of 2008);
- delinquent employers of at least 25 employees (formerly 50) not using an employer agent must file quarterly reports electronically in the manner and form prescribed by the Department, unless excused from filing (first applicable with respect to reports required to be filed for the third quarter of 2008).

The language regarding the electronic filing requirements for employer agents that file

those reports on behalf of 25 or more employers has been removed (first applicable with respect to reports required to be filed for the third quarter of 2008).

Each employer whose net total contributions paid or payable for any 12-month period ending on June 30 are at least \$10,000 must pay all contributions by means of electronic funds transfer (beginning with the next calendar year), and the employer must continue these payments by such means, unless that requirement is waived. Each employer agent must pay all contributions on behalf of each employer that is represented by the agent by means of electronic funds transfer (first applicable with respect to contribution payments made after December 31, 2008).

The option of considering any report or payment from contributing employers to be timely if, when mailed, it is either postmarked no later than the due date or is received by the Department no later than 3 days after the due date was removed (first applicable with respect to reports required to be filed for the third quarter of 2008).

Appeals. In a hearing before an appeal tribunal, a Departmental record relating to benefit claims constitutes prima facie evidence and must be admissible to prove that an employer provided or failed to provide complete and correct information in a fact-finding investigation of the claim (first applicable with respect to appeals filed on April 6, 2008).

Financing. The provisions that require that benefits be charged unless benefits are erroneously paid without fault on the part of the employer are now permanent.

Except as otherwise specified, the employer's contribution rate will be 2.5 percent of its payroll (previously 2.7 percent) for each of the first 3 calendar years after becoming liable or electing contributory status in each of the following circumstances (applicable with respect to payrolls beginning on January 1, 2009):

- each time a contributing government unit elects or reelects contribution financing; or
- when a nonprofit organization elects reimbursement financing and the election is terminated; or
- if an Indian tribe or tribal unit terminates an election; or
- for contributing employers, except as otherwise provided, and except as additional contributions apply.

A revised experience rate tax table with four schedules—A, B, C, and D—was pro-

vided. The range of rates for the most favorable schedule is 0.0 percent to 8.5 percent and for the least favorable schedule is 0.07 percent to 8.5 percent (applicable with respect to payrolls beginning on January 1, 2009). A revised solvency tax table with four schedules—A, B, C, and D—was provided. The minimum solvency rate is 0.0 percent and the maximum solvency rate is 1.35 percent (applicable with respect to payrolls beginning on January 1, 2009).

Employers' solvency contribution payments are due on the same date that their quarterly contribution payments are due.

The law clarified that each professional employer organization that enters into an employee leasing agreement with a client during any calendar quarter must submit a report no later than the due date for payment of contributions (first applicable with respect to contributions payable for the third quarter of 2008).

The taxable wage base increases from \$10,500 to \$12,000 for calendar years 2009 and 2010, to \$13,000 for calendar years 2011 and 2012, and to \$14,000 for calendar years after 2012.

The period that contributing employers must pay an assessment to the administrative account was extended from each year prior to the year 2008 to each year prior to the year 2010.

The Department may electronically provide a means whereby an employer that files its employment and wage reports electronically may determine the amount of contributions due for payment by the employer for each quarter. If an employer that owes a payment of contributions electronically files its quarterly employment and wage reports as prescribed, the Department may require the employer to determine electronically the amount of contributions due for payment by the employer based on the employer's contribution rate for each quarter. In such a case, the employer is excused from filing contribution reports as otherwise required. Payments are due for each quarter at the close of the next month following the end of the applicable calendar quarter, except as otherwise authorized, or as the Department may assign a later due date.

Any employer delinquent in making any quarterly wage report must pay a tardy filing fee of \$50 for each delinquent quarterly report. (Previously, the tardy fee was \$25 for 1 to 100 employees and \$75 for more than 100 employees.) In addition to the \$50 fee, an employer or employer agent failing to file electronic reports in the manner and form prescribed may be assessed a penalty of \$15 (previously \$10). (This change is first applicable with respect to reports required to be filed for the third quarter of 2008.) The additional \$15 tardy fee increases to \$20 with respect to reports required to be filed for the third quarter of 2009.

In addition to the \$50 tardy filing fee, an employer or employer agent failing to make re-

quired contributions by electronic funds transfer and paying contributions inconsistent with the law will be assessed a penalty of the greater of \$50 or 0.5 percent of the total contributions paid by the employer or employer agent for the quarter in which the violation occurs. This penalty must be paid to the administrative account and may be used by the Department to make certain payments (first applicable with respect to contribution payments made after December 31, 2008).

Except as otherwise provided, an employer that has a first quarter contribution liability of \$1,000 (previously \$5,000) or more may elect to defer payment to later due dates beyond the established due date of not more than 60 percent of its first quarter contribution liability, and under certain conditions, without payment of interest (first applicable with respect to contributions payable for the first quarter of calendar year 2009.)

If an employer fails to electronically file its employment and wage report by a specified due date, then all unpaid contribution liability for the first quarter is delinquent, and interest thereon is payable from April 30 of the year in which the liability accrues. (This is first applicable with respect to contributions payable for the first quarter of calendar year 2009.)

Monetary entitlement. The provision was eliminated that limited an individual's maximum benefit amount to 10 times the weekly benefit amount in those instances where a parent is employed by a partnership or limited liability company that is treated as a partnership or by a corporation or limited liability company treated as a corporation, provided the partnership or corporation is owned by their child (applicable with respect to benefit years which begin on or after April 6, 2008).

For qualifying purposes, a claimant must have combined base period wages equal to at least 35 times (formerly 30) the claimant's weekly benefit rate to start a benefit year. The qualifying requirement of 4 times the weekly benefit rate in one or more quarters outside the highest quarter of the base period still applies (applicable with respect to benefit years which begin on or after April 6, 2008).

Beginning January 4, 2009, the minimum weekly benefit amount increases from \$53 to \$54, and the maximum weekly benefit amount increases from \$355 to \$363. The minimum high quarter wages required for the minimum weekly benefit amount increases from \$1,325 to \$1,350 beginning January 4, 2009. The minimum base period wages required for the minimum weekly benefit amount increases from \$1,590 to \$1,890 beginning January 4, 2009. The minimum high quarter wages required for the maximum weekly benefit amount increases from \$8,875 to \$9,075 beginning January 4, 2009. The minimum base period wages required for the maximum

weekly benefit amount increases from \$10,650 to \$12,705 beginning January 4, 2009.

All amounts forfeited by employing units who aid and abet or attempt to aid and abet claimants in acts of concealment and administrative assessments collected from persons making a false statement or representation in order to obtain benefits in the name of another person must be credited to the administrative account (applicable with respect to specific determinations issued on or after April 6, 2008).

When a claimant is ineligible to receive benefits for any week for concealing wages, the provision disregarding the first \$30 of wages and reducing the weekly benefit payment by 67 percent will not apply (applicable with respect to specific determinations issued on or after April 6, 2008)

The law clarified that an individual will not be disqualified or have a reduction in benefits due solely to time spent in specified training.

Nonmonetary eligibility. If a claimant is absent from work with a current employer for 16 hours or less in a given week (including the first week of an absence resulting from a leave of absence, or the week in which a suspension or termination occurs) because the claimant was unable to work or unavailable for work, the claimant may be eligible for some benefits for that week under the benefit reduction formula. However, if a claimant is absent from work with a current employer for any of these reasons for more than 16 hours in a given week, the claimant is ineligible for any benefits for that week. A claimant remains eligible for benefits while the claimant is enrolled in certain employment related training. (This is applicable with respect to specific determinations issued on or after April 6, 2008.)

Except as provided in the case of an employee that is absent from work for 16 hours or less, if an employee's employment is suspended by the employee or the employee's employer or an employee is terminated by the employee's employer, due to the employee's unavailability for work or inability to perform suitable work otherwise available with the employee's employer, or if the employee is on a leave of absence, the employee is ineligible for benefits while the employee is unable to work or unavailable for work (applicable with respect to specific determinations issued on or after April 6, 2008).

The provision was repealed that provided that the employee's eligibility for benefits for a partial week will be reduced by the amount of wages that the employee could have earned in work had leave not been granted or had the suspension or termination not occurred.

If an employee is not disqualified for being discharged for failure to notify the employer of an absenteeism or tardiness, the employee may be disqualified for being discharged under the misconduct connected with the employee's

work provision.

The provisions concerning a discharge for failure to notify the employer of absenteeism or tardiness by repealing the effective dates are now permanent.

Overpayments. The provisions were modified regarding fraudulent claims by providing that a claimant must forfeit the following amount of benefits and be disqualified from receiving benefits if a claimant in filing (1) an application for benefits or claim for any week conceals any eligibility material fact or (2) a claim for any week conceals any wages earned in or paid or payable for that week:

- an amount equal to the claimant's weekly benefit rate for the week for which the claim is made for each single act of concealment occurring before the date of the first determination of concealment;
- an amount 3 times the claimant's benefit rate for the week in which the claim is made for each single act of concealment occurring after the date of the first determination of concealment in which a penalty is applied under the first bullet point but, on or before the date of the first determination of concealment in which a penalty is applied; and
- an amount 5 times the claimant's benefit rate for the week in which the claim is made for each single act of concealment occurring after the date of the first determination of concealment in which a penalty is applied under the second bullet point.

Formerly, the claimant had to forfeit not less than 25 percent of not more than 4 times the claimant's benefit rate which results in no overpayment, or in the case of an overpayment of less than 50 percent of the benefit rate of not less than 1 or more than 4 times the claimant's benefit rate when the concealment results in an overpayment of 50 percent or more of the benefit rate. (The above provisions are applicable with respect to specific determinations issued on or after April 6, 2008.)

The provision was repealed that stated that any forfeiture amount by a claimant of less than \$1 will be rounded up to the nearest whole dollar (applicable with respect to specific determinations issued on or after April 6, 2008).

Language was added to provide that any employing unit that attempts to aid and abet a claimant in committing an act of concealment may be penalized by having to forfeit an amount equal to the amount of the benefits improperly received due to the concealment, and additional penalties will be imposed as indicated (applicable with respect to specific determinations issued on or after April 6, 2008).

Any employing unit that aids and abets a claimant in committing or attempts to aid and abet a claimant in committing an act of concealment must pay additional penalties by forfeiting an amount as follows:

- \$500 for each single act of concealment occurring before the date of the first determination of concealment;
- \$1,000 for each single act of concealment occurring after the date of the first determination that the employing unit has so acted and for which a penalty was applied

under the first bullet point, but on or before the date of the first determination that the employing unit has so acted in which a penalty is applied; and

- \$1,500 for each single act of concealment occurring after the date of the first determination that the employing unit has so acted and for which a penalty was applied under the preceding second bullet point.

The preceding provisions are applicable with respect to specific determinations issued on or

after April 6, 2008.

The overpayment provision was modified regarding persons making a false statement or representation to obtain benefits in the name of another person by changing the administrative assessment amount that may be assessed from an administrative assessment in an additional amount equal to not more than 50 percent of the amount of benefits obtained to an administrative assessment in an additional amount equal to the amount of benefits obtained (applicable with respect to specific determinations issued on or after April 6, 2008).