



TARA G. REARDON
COMMISSIONER

NEW HAMPSHIRE EMPLOYMENT SECURITY

32 SOUTH MAIN STREET
CONCORD, NH 03301-4857
(603) 228-4000



August 6, 2009

Cheryl Atkinson, Administrator
Office of Workforce Security
200 Constitution Avenue NW
Room S-4231
Washington, DC 20210

Dear Ms. Atkinson:

Please accept this letter as the State of New Hampshire's application for the remaining two-thirds incentive payment of \$20,934,147 under Section 2003(a) of Public Law 111-5.

On July 15, 2009, New Hampshire Governor John Lynch signed into law SB 144-FN removing the disqualification for unemployment compensation (UC) for separations due to certain compelling family reasons. Since August 26, 2008, New Hampshire has been granting UC to workers who limit their availability to part time work (defined by New Hampshire RSA 282-A:9, IX as at least 20 hours per week but less than 37.5 hours per week) as long as some portion (defined as at least one day's worth) of the worker's annual earnings in the base period are for employment of less than 37.5 hours per week (Emp 501.15). All wages earned in the base period, whether for full- or part-time work are used to compute the claimant's weekly benefit amount.

With this letter, I certify that New Hampshire RSA 282-A:31, I., (c) and (d), the law allowing payment of UC to workers who seek only part time work, is currently in effect as a permanent provision of New Hampshire's UC Law, and it is not subject to discontinuation under any circumstances other than by repeal by the New Hampshire legislature.

I also certify that SB 144 Chapter 219 of the Laws of 2009, effective September 13, 2009, allowing the payment of UC to individuals who separate from employment due to certain compelling family reasons was passed as a permanent provision of New Hampshire's UC Law and is not subject to discontinuation under any circumstances other than by repeal by the New Hampshire legislature.



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It is the intent of the State of New Hampshire to use these incentive funds for the payment of unemployment compensation.

Please find attached the specific provisions, noted above, relating to eligibility for workers who limit availability to part time work, as well as eligibility for separations which occur as a result of certain compelling family reasons. Also included is a policy memorandum instructing staff of New Hampshire Employment Security on the interpretation of SB 144.

If you have any questions, or need additional information, please feel free to contact me.

Sincerely,



Tara G. Reardon
Commissioner

cc: Governor John Lynch
Holly O'Brien, Acting Regional Administrator



TARA G. REARDON
COMMISSIONER

NEW HAMPSHIRE EMPLOYMENT SECURITY

32 SOUTH MAIN STREET
CONCORD, NH 03301-4857
(603) 228-4000



August 7, 2009

Cheryl Atkinson, Administrator
Office of Workforce Security
200 Constitution Avenue NW
Room S-4231
Washington, DC 20210

RE: Addendum to New Hampshire's Application for Two-Thirds Incentive Payment

Dear Ms. Atkinson:

Inadvertently, New Hampshire omitted the required certification per Unemployment Insurance Program Letter 14-09, Change 1 issued by the United States Department of Labor on March 19, 2009.

I certify that our application for the remaining two-thirds incentive payment is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application was based.

If you have any questions regarding this addendum or the documents submitted previously, please feel free to contact me.

Sincerely,

Tara G. Reardon
Commissioner

CC: Governor John H. Lynch
Holly O'Brien, Acting Regional Commissioner

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282-A:31**TITLE [23] XXIII LABOR (Includes Chapters 273 - 283)
CHAPTER 282-A UNEMPLOYMENT COMPENSATION**

282-A:31 Benefit Eligibility Conditions.

I. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commissioner finds that:

(a) He has been classified in accordance with his experience and abilities and so registered for employment with and by the commissioner and has reported and continues thereafter to report at an employment office in accordance with such rules as the commissioner may adopt.

(b) He has made a claim for benefits in accordance with the provisions of RSA 282-A:43.

(c) He or she is ready, willing, and able to accept and perform suitable full-time or part-time work on all the shifts and during all the hours for which there is a market for the services he or she offers and that he or she has exposed himself or herself to employment to the extent commensurate with the economic conditions and the efforts of a reasonably prudent person seeking work.

(d) He or she is available for and seeking permanent, full-time 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.

(e) He has disclosed whether or not he owes child support obligations that are payable through any agency of the state of New Hampshire or its political subdivisions.

(f) He has participated in reemployment services when so directed by the commissioner unless he has completed such services or has good cause for failure to participate in such services.

(g) The individual has disclosed whether or not he or she owes an uncollected overissuance of food stamp coupons as defined in section 13(c)(1) of the Food Stamp Act of 1977 as amended.

II. An unemployed individual shall not be eligible to receive benefits:

(a) Based on services in an instructional, research, or principal administrative capacity for an educational institution for any week which commences during a period between 2 successive academic years or terms (or, when an agreement provides instead for a similar period between 2 regular but not successive terms during such period) to any individual if such individual performs such services in the first of such academic years or terms and there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(b) Based on services in any other capacity for an educational institution, including services for a service organization for any educational institution for any week which commences during a period between 2 successive academic years or terms to any individual if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms; provided, however, that, if compensation is denied to any individual for any week under this paragraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph.

(c) Based on services for an educational institution for any week which commences during an established and customary vacation period or holiday recess if such individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in

the period immediately following such vacation period or holiday recess.

II-a. For the purposes of paragraph II, an individual's selection of a period or percentage-time position with an educational institution, which consists of less than the number of hours of work available per year from the educational institution, or the provision of a percentage of normal and usual employee benefits to an individual during the weeks between academic years, terms or periods by the institution shall be deemed prima facie evidence of a reasonable assurance that such individual will perform services in the second academic year, term or period.

III. Subparagraph I(c) shall be waived for any week with respect to any individual who is otherwise entitled to unemployment compensation benefits and is selected by the department of employment security and enrolled in a vocational training program approved by the commissioner of the department of employment security and is as to such week in good standing in the training program, and has not failed without good cause to attend all scheduled sessions. Remuneration for services in connection with the training program paid to any such individual shall be wages for the purposes of RSA 282-A:14.

IV. Subparagraphs II(b) and II(c) shall apply only to services in the employ of the state or any political subdivision thereof, to Indian tribes, and to organizations defined in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

V. [Repealed.]

Source. 1937, 178:1. 1939, 138:9. 1941, 103:16. RL 218:3. 1943, 56:3, 4. 1945, 138:8. 1947, 59:10, 11; 267:1. 1949, 30:2; 99:1. 1951, 34:3; 140:7. RSA 282:3. 1955, 7:2; 141:8. 1961, 88:9; 228:2. 1965, 208:2. 1967, 400:5. 1971, 156:19, 35. 1973, 446:1. 1977, 441:11, 17. 1979, 328:9. 1981, 408:3. 1982, 35:6. 1983, 124:1, 2. 1988, 179:1. 1994, 72:3, eff. July 5, 1994. 1997, 40:1, eff. Oct. 1, 1997. 2003, 116:4, eff. Aug. 8, 2003; 116:5, eff. June 9, 2003. 2005, 239:11, eff. Jan. 1, 2006. 2007, 123:1, eff. Jan. 1, 2008. 2008, 297:2, 5, eff. Aug. 26, 2008.

282-A:9**TITLE [23] XXIII LABOR (Includes Chapters 273 - 283)
CHAPTER 282-A UNEMPLOYMENT COMPENSATION**

282-A:9 Employment.

I. "Employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied, together with service performed within the state which constitutes "employment" under the provisions of the Federal Unemployment Tax Act. Notwithstanding any other provision of this section, the term "employment" shall also include all service performed after January 1, 1947, by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that there is located within this state the operating office from which the operations of such vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed and controlled. The term "employment" shall include an individual's entire service, performed within or both within and without this state, if:

(a) The service is localized within the state (i.e., performed either entirely within the state or performed both within and without the state if the service performed without is incidental to that performed within); or

(b) If the service cannot be considered as localized in any state but some of the service is performed in the state and (i) the individual's base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in the state; or (ii) the individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

II. In no event shall services performed without this state be deemed to be employment subject to this chapter if contributions are required to be paid with respect thereto under an unemployment compensation law of any other state or of the federal government. The commissioner of the department of employment security may adopt rules by which an employing unit may elect that the services performed for it entirely without this state by a resident of this state shall be deemed to constitute employment subject to this chapter.

III. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner of the department of employment security that:

(a) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

(b) Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

IV. The term "employment" shall not include:

(a) Agricultural labor, as defined in RSA 282-A:19, unless such services are covered under section 3306(c)(1) of the Federal Unemployment Tax Act;

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, unless performed for a person who paid cash remuneration of \$1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(c) Casual labor not in the course of the employer's trade or business;

(d) [Repealed.]

(e) Service as an officer or member of a crew of an American vessel performed on or in connection with such vessel if there is not located in this state the operating office from which the operations of the vessel operating on navigable waters within or without the United States are ordinarily and regularly supervised, managed, directed and controlled;

(f) Service performed in the employ of the United States government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954 by virtue of any other provision of law; provided that, if this state should not be certified by the secretary of the United States department of labor under section 3304 of the Internal Revenue Code of 1954 for any year, then the contributions required of any instrumentalities of the United States government under this chapter with respect to such year shall be deemed to have been erroneously collected within the meaning of RSA 282-A:149 and shall be refunded by the commissioner of employment security from the fund in accordance with the provisions of said RSA 282-A:149;

(g) (1) Service performed in the employ of a school, college, hospital or university, if such service is performed by a student, intern or resident who is enrolled and is regularly attending classes or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student, intern or resident, and such employment will not be covered by any program of unemployment compensation;

(2) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(h) Service performed in the employ of a hospital if such service is performed by a patient of such hospital;

(i) Service performed by an inmate of a custodial or penal institution for the state, its political subdivisions, or an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code;

(j) Service performed after June 30, 1939, for an employer as defined in the Railroad Unemployment Insurance Act, and service performed after June 30, 1939, as an employee representative;

(k) Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(l) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution or service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(m) Service performed in any calendar quarter by an individual in the employ of a labor organization exempt from income tax under section 501 of the Internal Revenue Code of 1954 if the remuneration for such service during such calendar quarter does not exceed \$50;

(n) Service performed on behalf of or for a corporation or association by an officer or director thereof, for which service no wages, as defined in RSA 282-A:15 or in the rules of the commissioner, are paid or payable to such officer or director or any person, organization or association;

(o) Service performed by an individual in the exercise of duties:

(1) As an elected official;

(2) As a member of a legislative body or as a member of the judiciary of the state or political subdivision;

(3) As a member of the state national guard or the air national guard;

(4) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(5) In a position which is designated by state law as a major non-tenured policymaking or advisory position or as a policymaking or advisory position whose duties ordinarily do not require more than 8 hours per week to perform;

(6) As described in subparagraphs (p)(3) and (4), for the state or any of its political subdivisions;

(7) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for all such services is less than \$1,000.

(p) The following services performed in the employ of an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code:

(1) Service in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches or an elementary or secondary school operated primarily for religious purposes; or

(2) Service by a duly ordained, commissioned or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) Service in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(4) Service by an individual receiving work relief or work training as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof;

(q) Service performed by an individual for an employing unit as a licensed real estate broker or a licensed real estate salesman if performance of such service requires the holding of a license and all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(r) Service performed by a full-time student in the employ of an organized camp:

(1) If such camp:

(A) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or

(B) Had average gross receipts for any 6 months in the preceding calendar year which were not more than 33-1/2 percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(2) If such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year;

(s) Services by a direct seller if:

(1) Such person:

(A) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the commissioner prescribes by rule, for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or

(B) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment; or

(C) Is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(2) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subparagraph (s)(1) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(3) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal or unemployment compensation tax purposes;

(t) Service performed by an individual for an employing unit as a real estate appraiser if all such service performed by such individual for such employing unit is performed for remuneration solely by way of a fee; provided, however, that such exemption shall not apply to such service performed for the state or any of its political subdivisions or for an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

(u) Service performed by an individual in the employ of such individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's father or mother;

(v) Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

(1) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes; and

(2) Service performed on or in connection with a vessel of more than 10 net tons, as determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

(w) Service performed by an individual who, on a temporary, part-time, contract basis, demonstrates products, offers samples of products or promotional materials to customers, conducts store audits or performs mystery shopping as part of an advertising or sales promotion for the products when such activities are conducted in the field or over the telephone on premises not used or controlled by the person for whom such contract services are being provided, however such exemptions shall not apply to such service performed for the state or any of its political subdivisions or for an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

V. INCLUDED AND EXCLUDED SERVICE. If the services performed during 1/2 or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but, if the services performed during more than 1/2 of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this paragraph, the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the employee by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such services is excepted by subparagraph IV(j).

VI. HOMEWORKERS. Service performed wholly or in part at an individual's own home or any other place, whether done for himself or others, for which remuneration or payment is made on the basis of pieces of work done, or quantity

or lot of work done, or in proportion to the piece or part thereof completed, or by the hour, shall be employment; and the moneys so paid shall be wages within the meaning of this chapter. The employing unit which pays such wages shall be the employing unit of such individual for the purpose of this chapter.

VII. For the purposes of paragraph I, the exclusions under subparagraphs IV (o)(2), IV (o)(5), and IV (p)(4) shall apply to Indian tribes.

VIII. "Full-time work" is work in employment of at least 37.5 hours a week.

IX. "Part-time work" is work in employment of at least 20 hours a week but less than 37.5 hours a week.

Source. 1937, 178:1. 1939, 138:1-7. 1941, 103:1-11. RL 218:1. 1943, 56:1. 1945, 16:1; 58:1; 138:1-7. 1947, 59:1-6. 1949, 185:1-4; 262:1. 1950, 5, part 18. 1951, 34:1; 36:1; 105; 140:1, 2. 1953, 209:1. RSA 282:1(H). 1955, 141:1-6. 1957, 118:1; 313:1-3. 1961, 88:1-6. 1963, 194:1, 2. 1967, 400:2, 3. 1969, 460:1, 3. 1971, 156:1, 2, 4-16. 1973, 118:1; 589:7. 1975, 90:1; 393:1. 1977, 424:10; 441:2-4. 1979, 328:2, 13-16; 348:1, 2. 1981, 311:2; 408:3; 416:1. 1982, 35:10. 1985, 340:1. 1990, 106:1. 1991, 311:1, 2. 1993, 87:1, eff. July 1, 1993; 260:1, eff. Jan. 1, 1994. 1996, 49:1-3, 6, I, eff. Jan. 1, 1997. 1998, 98:1-3, eff. July 1, 1998. 1999, 244:1, eff. Jan. 1, 2000. 2000, 290:1, eff. June 21, 2000. 2003, 116:2, 3, eff. Aug. 8, 2003. 2008, 297:1, eff. Aug. 26, 2008.

Emp 501.15 Part-time Availability and Shift Availability.

(a) For purposes of RSA 282-A:32, I(d)(2)(D) and (E), "adult" means those persons who have attained the age of 18 years.

(b) For purposes of RSA 282-A:31, I(d) "based on wages earned in part-time work" means during the individual's "base period" as defined at RSA 282-A:2, some portion of the individual's "annual earnings" as defined at RSA 282-A:16 were for employment of less than 37.5 hours a week.

(c) For purposes of RSA 282-A:32, I(d)(2)(E), a child shall not be considered to be under the age of 16 during the week the child attains the age of 16 years.

(d) An individual who wishes to be exempt from applying for or accepting full-time or part-time work during the hours of a particular shift pursuant to RSA 282-A:32, I(d)(2)(E) shall provide the department with the date of birth of the individual's youngest, natural, adopted, step or foster child for which the individual is the only adult available for the care of such child.

(e) An individual who wishes to be exempt from applying for or accepting full-time or part-time work during the hours of a particular shift pursuant to RSA 282-A:32, I(d)(2)(D) or (E) shall:

(1) Advise the department of the reasons why the individual is unable to apply for or accept work during the hours of a particular shift;

(2) Specify the total number of hours the individual is able to work during a week;

(3) Specify the days of the week and time periods during each day when the individual is able to work.

(f) An individual who is only seeking part-time work shall report the number of hours the individual worked during each week for which the individual files a claim for benefits.

(g) An individual who is not available for full-time work shall inform the department whether, during the individual's "base period" as defined at RSA 282-A:2, some portion of the individual's "annual earnings" as defined at RSA 282-A:16 were for employment of less than 37.5 hours a week.

(h) An adult other than the individual claiming benefits shall be considered "available" for purposes of RSA 282-A:32, I(d)(2)(D) and (E) if the commissioner determines the adult is a suitable person to provide care.

(i) The commissioner shall consider the other adult to be a suitable person if, based on the information available to the commissioner:

(1) It appears likely the person will provide care in a responsible manner;

(2) The person is capable of providing the specific care required;

(3) The person has no physical or mental limitation that would prevent the provision of adequate care; and

(4) There are no other factors which negatively impact the likelihood the person will provide the care required.

Source. #8550, INTERIM, eff 1-26-06, EXPIRED: 7-25-06; ss by #8677, eff 7-8-06; ss by #9241, INTERIM, eff 8-26-08, EXPIRES: 2-22-09; ss by #9389, eff 2-13-09



OPAB Approval No. 12050222
Expires: 06/30/2010

To: US Department of Labor Employment and Training Administration Office of Workforce Security Room S-4231 200 Constitution Ave NW. Washington, DC 20210	From: (State) State of NH - Dept. of Emp. Security 32 South Main Street Concord, NH 03301
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Check Appropriate Box(es)

- Statutory Material - Proposed and Enacted Legislation
- Rules and Regulations - Proposed and Final
- Official Interpretations
- Decisions and Orders Issued by States Courts, including material related to Consent Orders
- Precedential Administrative Decisions
- Appellate Decisions in Federal UC Programs

Comments:

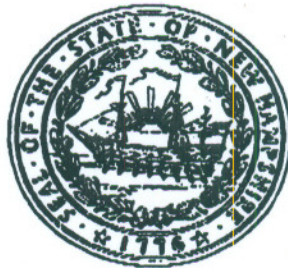
Adopted Legislation SB 144 Chapter 219 Laws of 2009
AN ACT allowing the unemployment compensation trust fund to be charged for benefits paid for certain employee terminations.

Signature of Designated Official	Typed Name and Title	Date
	Darrell L. Gates, Deputy Commissioner	7/23/2009

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondent's obligation to reply to these reporting requirements are mandatory (20 CFR 6012 and 601.3). Public reporting burden for this collection of information is estimated to average one minute per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of Workforce Security, Room S4231, 200 Constitution Avenue, N.W. Washington, D.C. 20210 (Paperwork Reduction Project 1205-0222).

State of New Hampshire

Office of Secretary of State



I, David M. Scanlan, Deputy Secretary of State of the State of New Hampshire do hereby certify that the following and hereto attached is a true copy of Chapter 219 of the Laws of 2009 (An act allowing the unemployment compensation trust fund to be charged for benefits paid for certain employee terminations.) as filed in this office and held in the custody of the Secretary of State.



In Testimony Whereof, I hereto set my hand and cause to be affixed the Seal of the State, at Concord, this twentieth day of July 2009.

A handwritten signature in black ink, appearing to read "DM Scanlan".

Deputy Secretary of State

CHAPTER 219
SB 144-FN - FINAL VERSION

03/11/09 0384s
04/01/09 1088s
04/01/09 1162s
06May2009... 1429h
03Jun2009... 1730h
06/24/09 2342eba

09-0956
08/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT allowing the unemployment compensation trust fund to be charged for benefits paid for certain employee terminations.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 219:1 Unemployment Benefit Eligibility. Amend RSA 282-A:32, I(a)(2)-(3) to read as follows:

2 (2) An individual terminates employment in good faith to accept better full-time
3 employment, which is to begin within a reasonable period, and subsequently becomes unemployed
4 from such employment due to unavailability of work before earning the requalifying wages set forth
5 in this section. Notwithstanding any other provision of this chapter, such subsequent employer shall
6 be deemed to be that individual's most recent employer: [ex]

7 (3) ~~The leaving of employment was necessary to protect the individual from~~
8 ~~domestic abuse, as defined in RSA 173-B:1 and in accordance with rules adopted by the~~
9 ~~commissioner, and the individual made all reasonable efforts to proscribe the employment, and in~~
10 ~~addition:~~

11 (A) ~~The individual relocated to escape the abuse; or~~

12 (B) ~~The individual, due to changed circumstances, is able to return to the~~
13 ~~individual's employment, but the employer is unable to return the individual to the individual's job,~~
14 ~~or to comparable work, due solely to:~~

15 (i) ~~A reduction in work force; or~~

16 (ii) ~~Other economic conditions, and the individual did all things that a~~
17 ~~reasonably prudent person would have done to continue the employer-employee relationship or the~~
18 ~~possibility of reemployment during the period the individual was unable to work due to the domestic~~
19 ~~abuse.] *The individual reasonably believes that separation from employment is necessary to protect*~~
20 ~~himself or herself or any member of his or her immediate family from domestic abuse, as defined in~~
21 ~~RSA 173-B:1. The existence of domestic abuse shall be verified by the department, through~~
22 ~~reasonable documentation, and the department shall keep such information confidential;~~

23 (4) *The individual is separated from employment because he or she has become*
24 *unable to perform some or all of his or her job duties due to pregnancy or to an illness or injury that*
25 *is not work-related, provided that a physician has attested to the individual's inability to perform*

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1 *work duties in a written notice. Nothing in this section shall relieve an employer of the duty to*
2 *provide reasonable accommodation as that term is defined by state or federal law;*

3 (5) *The leaving of employment was necessary to allow the individual to accompany*
4 *his or her spouse to a place from which it is impractical for the individual to commute due to a*
5 *change in location of the spouse's employment; or*

6 (6) *The leaving of employment was due to the illness or disability of a member of the*
7 *individual's immediate family as those terms are defined by the Secretary of the United States*
8 *Department of Labor.*

9 219:2 Unemployment Compensation Trust Fund. RSA 282-A:75 is repealed and reenacted to
10 read as follows:

11 282-A:75 Fund Chargeable. In assigning the charges for benefits to the account of the most
12 recent employer under this subdivision, no benefits shall be charged to the account of an individual
13 employer but shall be charged by the commissioner against the fund where:

14 I. Benefits are paid and are not chargeable against any employer's account in accordance
15 with the provisions of RSA 282-A:42 and RSA 282-A:44-52;

16 II. Benefits are paid to a claimant solely through error or inadvertence of the commissioner
17 or his or her authorized representative as provided in RSA 282-A:165;

18 III. Benefits are paid to an individual by reason of RSA 282-A:31, III;

19 IV. Benefits are paid to an individual by reason of RSA 282-A:32, I(a)(3); or

20 V. Benefits are paid to an individual by reason of RSA 282-A:32, I(a)(4).

21 219:3 Unemployment Compensation Trust Fund; Fund Chargeable; Effective January 1, 2010.
22 RSA 282-A:75 is repealed and reenacted to read as follows:

23 282-A:75 Fund Chargeable. In assigning the charges for benefits to the account of the most
24 recent employer under this subdivision, no benefits shall be charged to the account of an individual
25 employer but shall be charged by the commissioner against the fund where:

26 I. Benefits are paid and are not chargeable against any employer's account in accordance
27 with the provisions of RSA 282-A:42 and RSA 282-A:44-52;

28 II. Benefits are paid to a claimant as provided in RSA 282-A:165, II;

29 III. Benefits are paid to an individual by reason of RSA 282-A:31, III;

30 IV. Benefits are paid to an individual by reason of RSA 282-A:32, I(a)(3); or

31 V. Benefits are paid to an individual by reason of RSA 282-A:32, I(a)(4).

32 219:4 Contingency. If SB 89-FN of the 2009 legislative session becomes law, section 3 of this act
33 shall take effect on January 1, 2010 and section 2 of SB 89-FN shall not take effect. If SB 89-FN
34 does not become law, section 3 of this act shall not take effect.

35 219:5 Effective Date.

36 I. Section 3 of this act shall take effect as provided in section 4 of this act.

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1 II. The remainder of this act shall take effect 60 days after its passage.

2

3 Approved: July 15, 2009

4 Effective Date: I. Section 3 shall take effect as provided in section 4.

5 II. Remainder shall take effect September 13, 2009.

To: New Hampshire Employment Security Staff

From: Maria Dalterio, General Counsel



Date: August 6, 2009

Re: Voluntary Quit for Compelling Family Reasons

Senate Bill 144, signed into law by Governor Lynch on July 15, 2009, makes changes in RSA 282-A:32, I.(a), the provision stating the exceptions to the disqualification for leaving work voluntarily without good cause. Specifically, the voluntary quit is non-disqualifying when the work separation is due to the following "compelling family reasons":

(3) The individual reasonably believes that separation from employment is necessary to protect himself or herself or any member of his or her immediate family from domestic abuse, as defined in RSA 173-B:1. The existence of domestic abuse shall be verified by the department, through reasonable documentation, and the department shall keep such information confidential;

(5) The leaving of employment was necessary to allow the individual to accompany his or her spouse to a place from which it is impractical for the individual to commute due to a change in location of the spouse's employment; and

(6) The leaving of employment was due to the illness or disability of a member of the individual's immediate family as those terms are defined by the Secretary of the United States Department of Labor.

These changes in the statute will become effective on September 13, 2009.

What is reasonable documentation of domestic violence?

One reason for this memorandum is to communicate department policy regarding what documentation will be considered "reasonable" for purposes of verifying the existence of domestic violence.

The department may require evidence of domestic violence including, but not limited to, documentation from a counselor, shelter worker, attorney, member of the clergy, health worker, or other professional from whom the employee has sought assistance in addressing domestic violence and its effects.

The department must accept any other kind of evidence that reasonably proves domestic violence.

The department must accept, but may not require (1) an active or recently issued protective or other order documenting domestic violence, or (2) a police record documenting recent domestic violence. To require this level of documentation will create an unreasonable bar to benefits.

Once the department has been provided with one form of documentation that adequately verifies the existence of domestic violence, no other form of documentation shall be required since this would unfairly burden the claimant.

What is the definition of an immediate family member?

An immediate family member is a spouse, parent or minor child (under the age of 18).

Application of misconduct standard in separations due to compelling family reasons

The statutory changes made by SB 144 were necessary to allow NHES to be certified by the USDOL for \$20.9 million in incentive payments under the American Recovery and Reinvestment Act (ARRA). In addition, ARRA requires that “[a]n individual shall not be disqualified from regular unemployment compensation for **separating** from employment if that **separation** is for any compelling family reason.” Therefore, NHES must also make clear that, under the misconduct standard articulated in Appeal of New Hampshire Sweepstakes Commission, 130 N.H. 659 (1988), an employee who is **discharged** for compelling family reasons is not disqualified.

As you know, in Appeal of New Hampshire Sweepstakes Commission, the New Hampshire Supreme Court set forth a two-pronged test for misconduct:

- a) “Isolated or inadvertent instances of unsatisfactory conduct are not sufficient for a finding of ‘misconduct’ but recurring careless or negligent acts are enough to constitute ‘misconduct’...negligence need not be of such a degree or recurrence as to manifest wrongful intent or evil design or to show intentional and substantial disregard.”
- b) “... a single instance of misconduct may be sufficient for a finding of misconduct if it is a deliberate violation of a company rule reasonably designed to protect the legitimate business interests of the employer....Deliberate is a synonym for willful.”

When a discharge occurs because of something an employee did or neglected to do because of a compelling family reason, it should not be considered misconduct since it is, presumably, neither a deliberate violation of company policy, nor a negligent act. For example, if an individual is absent from work and unable to call in due to the need to seek shelter from domestic abuse, and the employer terminates the employment because the employee was previously warned about failing to call in when absent, no misconduct should be found. Another example would be one in which an individual is prevented by an injury resulting from domestic violence from notifying the employer of an absence. Or, if an employer discharges an individual when the individual has informed the employer of expected absences to care for an ill child, the individual must be considered to have separated from work due to compelling family reasons, and, once again, misconduct should not be found.

On the other hand, there are circumstances in which misconduct may exist despite the presence of what otherwise would be compelling family reasons. An example of this would be a situation in which an employer discharges an individual for chronic absenteeism, and only after the separation does the individual indicate that the absences were to care for a member of his/her immediate family. In this case, the failure of the employee to inform the employer of the reasons for the absences is not caused by the need to care for the ill family member, and the basis for the separation goes beyond compelling family reasons. If the reason for the discharge is employee

action or inaction that is not attributable to compelling family reasons, then misconduct may exist.

The general rule is that if domestic violence, the need to relocate to follow a spouse, or the need to care for an ill immediate family member is the reason the employee did or did not do something which then leads to discharge, the separation is not due to misconduct.