

Changes in federal and state unemployment insurance legislation in 2011

Federal enactments extend benefits and provide federal funding to the states to cover costs, assess penalties for fraud, prohibit certain noncharging of employers' unemployment accounts, and require reporting of new hires; state enactments include provisions regarding extended benefits, the duration of benefits, tax schedules, and taxable wage bases

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In 2011, the federal government addressed a pair of issues concerning methodological aspects associated with the unemployment rate, as well as discontinuing an important surtax. First, regarding methodology, on June 13, 2011, the Department of Labor published a notice in the *Federal Register* informing states of the methodology used to calculate the “on” and “off” total unemployment rate indicators to determine when extended-benefit periods begin and end in a state. Also, retroactive to April 16, 2011, the methodology for calculating the 110-percent look-back requirement based on the total unemployment rate is switched from rounding at the fourth decimal place to rounding at the second decimal place. Second, to meet federal requirements, effective July 1, 2011, the 0.2-percent Federal Unemployment Tax Act surtax, originally enacted in 1976 and extended eight times thereafter, was discontinued. The tax had affected most employers.

During 2011, there were two federal legislative enactments that affected the Federal–State Unemployment Compensation Program.

Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112–78), enacted December 23, 2011

Emergency unemployment compensation. The ending date for the Emergency Unemployment Compensation (EUC) program was extended from January 3, 2012, to March 6, 2012,

for new entrants. The ending date for phaseout for current beneficiaries was extended from June 9, 2012, to August 15, 2012. The funding of EUC program benefits from the general revenue of the Department of the Treasury and of administrative costs from the employment security administration account was authorized to continue.

Extended benefits. The ending date for the 100-percent federal funding of extended benefits and for the provision expanding eligibility for extended benefits was extended from January 4, 2012, to March 7, 2012. The ending date for phaseout for current beneficiaries was extended from June 11, 2012, to August 15, 2012. The ending date of the provision for the federal funding of the first week of extended benefits in states with no waiting week was extended from June 10, 2012, to August 15, 2012. Finally, the ending date permitting states to temporarily modify the provisions concerning “on” and “off” indicators of extended benefits by increasing the look-back period from 2 years to 3 years was extended from the period ending on or before December 31, 2011, to the period ending on or before February 29, 2012.

Trade Adjustment Assistance Extension Act of 2011 (P.L. 112–40), enacted October 21, 2011

Mandatory penalty assessment for fraudulent claims. States are now required to assess a penalty of not less than 15 percent of the amount of the erroneous payment on claimants committing

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fraud in connection with state and/or federal unemployment compensation programs. States must deposit receipts for the penalty amounts into their unemployment fund. The penalties are mandatory for any fraudulent payments established after October 21, 2013.

Prohibition on noncharging due to employer fault. A state must not relieve an employer's unemployment account of charges when the employer, or an agent of the employer, has done both of the following:

- was at fault for failing to respond adequately or in a timely manner to a request from a state agency for information relating to a claim for unemployment compensation benefits that was subsequently overpaid.
- has established a pattern of failing to respond adequately or in a timely manner to requests from a state agency for information relating to claims for unemployment compensation benefits.

Also, a state must not relieve reimbursable employers from reimbursement, and the prohibition on noncharging applies to erroneous payments established after October 21, 2013.

Reporting of newly rehired employees to the state Directory of New Hires. Effective April 21, 2012, newly hired employees meeting either of the terms in the following definition must be reported to the state directories of new hires: A "newly hired employee" is "an employee who has not previously been employed by the employer, or was previously employed by the employer but has been separated from such prior employment for at least 60 consecutive days." The federal law establishes a transition period within which the state may meet the effective date if it is determined that the state must amend its law to implement this new requirement.

Following is a summary of some notable changes in state unemployment insurance laws that occurred in 2011:

Optional total unemployment rate provisions. Laws were amended in two states to provide for the optional extended-benefits "on" indicator based on the seasonally adjusted total unemployment rate. Up to 13 weeks of extended benefits are payable if the average total unemployment rate for the most recent 3 months is at least 6.5 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the previous 2 years. Up to 7 additional weeks of extended benefits are payable if the state is in a high-unemployment period, which occurs

when the average total unemployment rate for the most recent 3 months is at least 8 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the previous 2 years. In general, this provision is effective for weeks for which the federal government pays 100 percent of most extended-benefit costs, although the effective beginning and ending dates of the period vary among the states. The two states that temporarily added this provision are Maryland and New Mexico.

Base periods. Puerto Rico amended its unemployment compensation law to provide for the use of the most recently completed calendar quarter under certain circumstances in either the regular base period or an alternative base period.

Following is a list of modified or new provisions in state unemployment compensation laws, with the state or other jurisdiction that amended or passed the provision shown in parentheses at the end of each entry:

- Individuals will not be denied benefits under provisions relating to their availability for work, active search for work, or refusal to accept work solely because they are seeking only part-time work (Puerto Rico).
- Individuals will not be disqualified from receiving benefits because they were separated from employment if their separation is due to (1) a compelling family reason, such as domestic violence, illness, disability in the individual's immediate family, or sexual assault, or (2) the individuals' need to accompany their spouses to places from which it is impractical for them to commute because of a change in location of the spouses' employment (California and Puerto Rico).
- Individuals who have exhausted their rights to regular unemployment compensation and who are enrolled in an approved training program or in a job training program authorized under the Workforce Investment Act of 1998 will be entitled to an additional amount of benefits equal to 26 times their average weekly benefit amount for the most recent benefit year. Such training programs will prepare individuals who have been separated from a declining occupation or who have been involuntarily separated from employment due to a permanent reduction in operations at their place of employment for entry into a high-demand occupation (Washington).

The effective date of each provision varies with the state or other jurisdiction adopting it.

Three-year look-back provisions. Thirty-three states and the District of Columbia amended their provisions concerning the extended-benefits “on” and “off” indicators by increasing the look-back period from the previous 2 years to the previous 3 years. The following 16 jurisdictions amended their provisions for both the insured unemployment rate and the total unemployment rate:

California, Colorado, Connecticut, District of Columbia, Illinois, Indiana, Kansas, Maine, Massachusetts, Michigan, New York, North Carolina, Pennsylvania, Rhode Island, Washington, and Wisconsin. The following 18 states amended their provisions for the total unemployment rate: Alabama, Delaware, Florida, Georgia, Idaho, Kentucky, Maryland, Minnesota, Missouri, Nevada, New Jersey, New Mexico, Ohio, Oregon, South Carolina, Tennessee, Texas, and West Virginia. The effective date of the provision varies with the jurisdiction.

Arizona

Financing. Each employer must pay a special assessment in 2011 and 2012 at a rate determined by the director of the state Department of Economic Security. For calendar year 2011, the rate determined shall not exceed 0.4 percent of the taxable wages paid for the tax year; for calendar year 2012, the rate determined shall not exceed 0.6 percent of the taxable wages paid for the tax year. If the amount of an employer’s assessment in any one quarter is less than \$10, the assessment for the quarter is waived.

The special assessment will be reported and collected in accordance with the unemployment insurance law and will be payable on or before the date the quarterly contribution and wage reports are due, except that the assessment for taxable wages paid for the first three calendar quarters of tax year 2011 is payable with the employer’s quarterly state unemployment insurance contributions on or before October 31, 2011. The assessment for all other calendar quarters in tax years 2011 and 2012 is payable with the employer’s quarterly state unemployment insurance contributions.

An unemployment special assessment fund was created that consists of the monies collected from the special assessment. Notwithstanding any other law, if the state has an outstanding loan to pay unemployment insurance benefits, monies from the fund will be used to pay the costs of the loan as follows:

- Monies shall first be used to pay interest charges incurred on the loan. If the state is granted a waiver of interest charges in either 2011 or 2012, the amount of the assessment will be reduced by 0.1 percent in each calendar year in which the interest charge is waived.
- Monies shall then be used to retire the principal on the loan on or before November 10, 2012.

If the department determines that the monies from the fund will not be sufficient to pay

the interest charges and retire the principal on or before November 10, 2012, the department may increase the assessment for 2012 at a rate determined by the director that shall not exceed 0.2 percent of the taxable wages paid for the tax year.

Any monies remaining in the assessment fund after payment of all principal and interest on the loan must be transferred to the unemployment compensation fund.

The special assessment provisions are to be repealed on December 31, 2012.

Nonmonetary eligibility. When separated from employment, a spouse or an unemancipated minor shall not be disqualified from receiving benefits if the separation was to accompany the other spouse or a parent who is a member of the armed services and who is transferred to another locality as a result of official orders.

Arkansas

Administration. On or before January 1, 2012, the director of the state Department of Workforce Services shall make available, on the website of the department, a program that gives employers the option to receive and respond to notices of applications for unemployment benefits. Employers may choose to receive and respond to such notices through the mail or online, or both, whereupon a notice to the base-period employer shall be mailed, posted online, or both. Any base-period employer that fails to respond to the notice within 15 calendar days shall be deemed to have waived its right to respond. Notice of the filing of an initial claim shall be immediately mailed or posted online, or both, to the employing unit known to the claimant as his or her last employer. An employer that is notified of the filing of an initial claim may choose to receive and respond to such notice through the mail or through the online program, or both. Any last employer that fails to respond within 10 calendar days to a notice of the filing of an initial claim shall be deemed to have waived the right to respond. If a last employer’s right to respond has been deemed waived, the director of the Depart-

ment of Workforce Services may accept the statement given by the claimant as the reason for separation from the last employer and may base his or her determination on the claimant’s statement.

Extensions and special programs. The maximum number of weeks payable under the shared work plan was decreased from 26 to 25.

Financing. In previous legislation, the period for the proceeds of the stabilization tax in the amount of 0.025 percent of taxable wages collected to be deposited and credited to the state Department of Workforce Services Training Trust Fund was set at July 1, 2007, through June 30, 2011. In new legislation, the period was extended to July 1, 2007, through June 30, 2015. Monies in the fund are to be used for worker training.

Similarly, in previous legislation, the period for the proceeds of the stabilization tax in the amount of 0.025 percent of taxable wages collected to be deposited and credited to the Department of Workforce Services Unemployment Insurance Administration Fund was set at July 1, 2007, through June 30, 2011. In new legislation, the period was extended to July 1, 2007, through June 30, 2015. Monies in the fund are to be used for operating expenses of the unemployment insurance program that are necessary for the proper administration of the Department of Workforce Services Law, as determined by the director of the department.

The Unemployment Trust Fund Financing Act of 2011 (the Bond Act) was passed. Subject to the approval of the voters in a statewide election, the state Development Finance Authority is authorized to issue Unemployment Trust Fund Bonds in the amount of \$500,000,000, repaid or payable from revenues raised by an unemployment obligation assessment imposed on employers.

The unemployment obligation assessment shall be based on the aggregate principal amount of bonds issued for nonrefunding purposes and shall be determined by multiplying the employer’s contribution rate in effect on

the date that the governor issues a proclamation calling an election on the issuance of the bonds, for employers with accounts as of such date, and the employer's contribution rate as of the employer's liability date, for employers establishing accounts after the date of the proclamation, by

- 25 percent if the aggregate principal amount of bonds issued is \$350,000,000 or less;
- 30 percent if the aggregate principal amount of bonds issued is \$350,000,001 to \$400,000,000;
- 33.5 percent if the aggregate principal amount of bonds issued is \$400,000,001 to \$450,000,000; and
- 37.5 percent if the aggregate principal amount of bonds issued is \$450,000,001 to \$500,000,000.

Among other things, the purpose of the bond issuance shall be to (1) repay the principal and interest on Title XII advances from the federal trust fund; (2) pay the costs of issuance of the bonds; and (3) pay unemployment benefits by depositing bond proceeds into the Unemployment Compensation Fund.

The unemployment obligation assessment shall not be collected until the qualified voters of the state approve the issuance of bonds and shall be collected until the end of the quarter immediately following the repayment of all bonds authorized under the Bond Act.

The Development Finance Authority may issue Unemployment Trust Fund Bonds for the purpose of refunding bonds previously issued if the total amount of bonds outstanding after the refunding is completed does not exceed the total amount authorized.

To the extent that refunding bonds are issued and the principal amount of the refunding bonds is not greater than the outstanding principal amount of the bonds being refunded, the principal amount of the refunding bonds shall not be subject to the \$500,000,000 limit.

If the refunding bonds are issued in a greater principal amount than the principal amount of the bonds being refunded, the principal amount of the refunding bonds shall not count against the \$500,000,000 limit, so long as the aggregate debt service on the refunding bonds is less than the aggregate debt service on the bonds being refunded.

Each contributing employer must pay a separate and additional assessment, to be known as the unemployment obligation assessment, on wages paid by that employer with respect to employment, in addition to the contributions, stabilization and extended benefits taxes, and advance interest taxes levied.

The effective date of the unemployment

obligation assessment shall be the first day of the calendar quarter immediately following the month in which the secretary of state certifies the vote of the voters approving the unemployment obligation assessment and the issuance of the bonds, and the assessment is effective until the end of the quarter immediately following the repayment of all bonds.

This unemployment obligation assessment shall not be credited to the separate account of any employer.

The unemployment obligation assessment shall be levied and collected in the same manner as contributions are collected and shall be subject to the same penalty and interest, collection, impoundment, priority, lien, certificate of assessment, and assessment provisions and procedures under the state Employment Security Law.

Receipts from the unemployment obligation assessment, as well as any penalty and interest on the unemployment obligation assessment, shall be deposited into the state Unemployment Compensation Fund Clearing Account.

At least once each month, deposits of the unemployment obligation assessment payment, together with any interest and penalty payments applicable to the unemployment obligation assessment, shall be deposited into the Department of Workforce Services Bond Financing Trust Fund.

The debt service on the bonds shall be paid in a timely manner and shall not be paid directly or indirectly by an equivalent reduction in unemployment contributions or taxes imposed.

Upon retirement of all bonds, the following shall be transferred to the Unemployment Compensation Fund:

- surplus unemployment obligation assessment collections;
- delinquent taxes, penalties, or interest due under the unemployment obligation assessment.

A special restricted fund to be known as the Bond Financing Trust Fund is created, to be maintained and administered by the Department of Workforce Services, into which shall be deposited collections of the unemployment obligation assessment and any penalties and interest with respect to the unemployment obligation assessment.

Moneys in the Bond Financing Trust Fund may be used, among other things, to make refunds of the unemployment obligation assessment, to make interest and penalty payments that were erroneously paid, and to return monies to the Unemployment Compensation Fund Clearing Account that may have been incorrectly identified and erroneously transferred to the Bond Financing Trust Fund.

Monetary entitlement. The minimum weekly benefit amount will decrease from \$82 to \$81,

and the maximum weekly benefit amount will decrease from \$457 to \$451, effective July 1, 2012.

The formula for calculating the number of benefit weeks was changed from the lesser of 26 times the weekly benefit amount or 1/3 the base-period wages to the lesser of 25 times the weekly benefit amount or 1/3 the base-period wages.

The qualifying wages needed in the base period for a person to be eligible for unemployment benefits was changed from 37 times the weekly benefit amount to 35 times the weekly benefit amount.

To requalify for a succeeding benefit year, individuals must have been paid wages in insured work equal to at least 35 (previously 37) times their weekly benefit amount in at least 2 base-period calendar quarters and, subsequent to filing the claim that established the previous benefit year, they must have had insured work and must have been paid wages for work equal to 8 (previously 3) times their weekly benefit amount.

Nonmonetary eligibility. The disqualification for being discharged for misconduct is now 8 weeks of unemployment, except for a discharge that occurs from July 1, 2009, through June 30, 2013 (previously, June 30, 2011); this disqualification will continue until an individual has worked in covered employment for at least 30 days in Arkansas, another state, or the United States.

In all cases of discharge for absenteeism, the individual will be disqualified if the discharge was pursuant to the terms of a bona fide written attendance policy with progressive warnings, regardless of whether the policy is a fault or no-fault policy. (Previously, the law provided that the individual's attendance record for the 12-month period immediately preceding the discharge and the reasons for the absenteeism shall be taken into consideration for purposes of determining whether the absenteeism constitutes misconduct.) The disqualification shall continue until, subsequent to filing a claim, the individual has had at least 30 days of employment covered by an unemployment compensation law of Arkansas, another state, or the United States. (Previously, the law provided that the individual's disqualification for misconduct shall be for 8 weeks of unemployment.)

Misconduct includes the violation of any behavioral policies of the employer, as distinguished from deficiencies in meeting production standards or accomplishing job duties.

If an individual is discharged from his or her last work for misconduct in connection with the work on account of dishonesty; drinking on the job; reporting for work while under the influence of intoxicants, including a controlled substance; or willful violation of bona fide rules or customs of the employer pertaining to the employee's safety or the safety of

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fellow employees, persons, or company property, the employee shall be disqualified until, subsequent to the date of the disqualification, the claimant has been paid wages in two quarters for insured work totaling not less than 35 times his or her weekly benefit amount. (Previously, the law provided for disqualification from the date of filing the claim until 10 weeks of employment, in each of which earned wages were equal to at least the individual's weekly benefit amount.)

Among other things, if an individual is discharged for testing positive for an illegal drug pursuant to a U.S. Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide written drug policy, the individual is disqualified until, subsequent to the date of the disqualification, the claimant has been paid wages in two quarters for insured work totaling not less than 35 times his or her weekly benefit amount. (Previously, the law provided for disqualification from the date of filing the claim until 10 weeks of employment, in each of which earned wages were equal to at least the individual's weekly benefit amount.)

An individual shall not be deemed guilty of misconduct for poor performance in his or her job duties unless the employer can prove that the poor performance was intentional. Moreover, an individual's repeated act of commission, omission, or negligence despite progressive discipline shall constitute sufficient proof of intentional poor performance. An individual who refuses an "alternate suitable job" rather than being terminated for poor performance shall be disqualified until, subsequent to filing a claim, he or she has had at least 30 days of employment covered by an unemployment compensation law of Arkansas, another state, or the United States.

A disqualification for failing without good cause to apply for available suitable work when so directed by a Department of Workforce Services office or to accept available suitable work when offered shall continue until, subsequent to filing a claim, the individual has had at least 30 days of employment covered by an unemployment compensation law of Arkansas, another state, or the United States. The disqualification shall begin with the week in which the failure to apply for or accept available suitable work occurred. (Previously, the law provided that the disqualification shall be for 8 weeks of unemployment.)

A disqualification for rejecting a bona fide job offer of suitable work subject to the passage of a U.S. Department of Transportation-qualified drug screen when the disqualification is the direct result of a failure to appear for the screen or the direct result of a positive test on the screen for an illegal drug shall continue until, among other things, subsequent to the date of the disqualification, the claimant has been paid wages in two quarters for in-

sured work totaling not less than 35 times his or her weekly benefit amount.

Overpayments. The law was amended to provide that the federal income tax refund of a person held liable to repay the state Unemployment Compensation Trust Fund an amount of improper unemployment payments is subject to interception pursuant to federal law and to any rule adopted to implement that law. (Previously, the interception was allowed only as the result of a finding of fraud.)

Connecticut

Appeals. The 21-day limit to appeal fraud and nonfraud overpayments will be extended if the appealing party can show good cause for the late filing. If the last day for filing an appeal falls on a day when the offices of the state Employment Security Division are not open for business, such last day shall be extended to the next business day. An appeal filed by mail shall be considered timely if it was received within the 21-day period or if it bears a legible U.S. Postal Service postmark indicating that the appeal was placed in the possession of postal authorities within the 21-day period. In determining the timeliness of appeals filed by mail, posting dates attributable to private postage meters are excluded.

Florida

Administration. Notwithstanding any other provision of law, the state Agency for Workforce Innovation must contract with one or more consumer-reporting agencies to enable users to obtain secured electronic access to employer-provided information relating to the quarterly wages report submitted in accordance with the state's unemployment compensation law. Such access is limited to the wage reports for the appropriate amount of time for the purpose for which the information is requested. Procedures have been established for contracting with consumer-reporting agencies and users, as well as for the release, access, security, costs, confidentiality, and disclosure of information. Language has been provided concerning the termination of contracts due to violations.

Appeals. Procedures have been established relating to the receipt, admission, exclusion, and use of evidence for a hearing. Orders of the Unemployment Appeals Commission appealed to the courts for judicial review are subject to review only by notice of appeal in the District Court of Appeal in the appellate district in which a claimant resides or the job separation arose or in the appellate district where the order was issued. However, if the notice of appeal is filed solely with the Unemployment Appeals Commission, the appeal shall be filed in the District Court of Appeal in the appellate district in which the order was issued.

Extensions and special programs. The Extended Benefits program provisions concerning the extended-benefit "on" and "off" indicators were temporarily modified by using a 3-year look-back for the optional indicators that are based on the seasonally adjusted total unemployment rate for weeks of unemployment ending on or before December 10, 2011. The expiration date of an "on" indicator week and "high unemployment period" based on the seasonally adjusted total unemployment rate for the federal-state Extended Benefits program was changed from ending on or before May 8, 2010, to ending on or before December 10, 2011. The extended-benefit provisions apply to claims for weeks of unemployment in which the exhaustee establishes entitlement to extended benefits for the period between June 2, 2010, and January 4, 2012 (previously, between February 22, 2009, and June 2, 2010).

Financing. The following provision was established for the collection of past-due contributions and reimbursements and for delinquent, erroneous, incomplete, or insufficient reports: for an annual administrative fee not to exceed \$5, a contributing employer may pay its quarterly contributions due for wages paid in the first three quarters of 2012, 2013, and 2014 in equal installments if those contributions are paid in accordance with the conditions set forth in the following subparagraphs:

1. For contributions due for wages paid in the first quarter of each year, one-fourth of the contributions due must be paid on or before April 30, one-fourth must be paid on or before July 31, one-fourth must be paid on or before October 31, and one-fourth must be paid on or before December 31.
2. In addition to the payments specified in subparagraph 1, for contributions due for wages paid in the second quarter of each year, one-third of the contributions due must be paid on or before July 31, one-third must be paid on or before October 31, and one-third must be paid on or before December 31.
3. In addition to the payments specified in subparagraphs 1 and 2, for contributions due for wages paid in the third quarter of each year, one-half of the contributions due must be paid on or before October 31 and one-half must be paid on or before December 31.
4. The annual administrative fee assessed for electing to pay under the installment method shall be collected at the time the employer makes the first installment payment each year. The fee shall be segregated from the payment and shall be deposited into the Oper-

ating Trust Fund of the state Department of Revenue.

5. Interest does not accrue on any contribution that becomes due for wages paid in the first three quarters of each year if the employer pays the contribution in accordance with subparagraphs 1–4. Interest and fees continue to accrue on prior delinquent contributions and commence accruing on all contributions due for wages paid in the first three quarters of each year that are not paid in accordance with subparagraphs 1–3. Penalties may be assessed in accordance with the state law. The contributions due for wages paid in the fourth quarters of 2012, 2013, and 2014 are not affected by this paragraph and are due and payable in accordance with the state law.

Monetary entitlement. Effective January 1, 2012, during any benefit year, each otherwise eligible individual is entitled to a total amount of benefits equal to 25 percent of the total wages in his or her base period, not to exceed \$6,325 or the product arrived at by multiplying the weekly benefit amount by the number of weeks determined as follows, whichever is less: for claims submitted during a calendar year, the duration of benefits is limited to

- twelve weeks if the state’s average unemployment rate is at or below 5 percent.
- an extra week in addition to the 12 weeks, for each 0.5-percent increment in the state’s average unemployment rate above 5 percent.
- up to a maximum of 23 weeks if the state’s average unemployment rate equals or exceeds 10.5 percent.

Previously, entitlement was limited to \$7,150.

The term “the state’s average unemployment rate” means “the average of the 3 months for the most recent third calendar-year quarter of the seasonally adjusted statewide unemployment rates as published by the Agency for Workforce Innovation.”

Nonmonetary eligibility. The definition of misconduct was expanded to include such behavior, even when it occurs outside of the workplace or before or after working hours. The amended misconduct provisions include, but are not limited to,

- conduct demonstrating conscious (previously, willful or wanton) disregard of an employer’s interests and found to be a deliberate violation or disregard of the reasonable standards of behavior the employer expects (previously, has a right to expect) of his or her employee.

- carelessness or negligence to a degree or recurrence that manifests culpability or wrongful intent (previously, or evil design) or that shows an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to his or her employer.
- chronic absenteeism or tardiness in deliberate violation of a known policy of the employer, or one or more unapproved absences following a written reprimand or warning relating to more than one unapproved absence.
- a willful and deliberate violation of a standard or regulation of the state by an employee of an employer licensed or certified by the state, which violation would cause the employer to be sanctioned or have its license or certification suspended by the state.
- a violation of an employer’s rule, unless the claimant can demonstrate that
 1. he or she did not know, and could not reasonably know, about the rule’s requirements;
 2. the rule is not lawful or not reasonably related to the job environment and performance; or
 3. the rule is not fairly or consistently enforced.

The term “initial skills review” means “an online education or training program, such as that established under . . . state law, that is approved by the Agency for Workforce Innovation and [is] designed to measure an individual’s mastery level of workplace skills.”

Effective August 1, 2011, a claimant must be actively seeking work in order to be considered available for work, where “actively seeking work” means “engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed.” The claimant may be required to provide proof of such efforts to the one-stop career center as part of reemployment services. The Agency for Workforce Innovation is required to conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access the center’s reemployment services. The center is required to keep a record of the services or information provided to the claimant and to provide the records to the Agency for Workforce Innovation upon request by that agency.

Effective August 1, 2011, an individual is disqualified for benefits for any week in which he or she is receiving or has received severance pay. However, the number of weeks that an individual’s severance pay disqualifies the person is equal to the amount of the severance pay divided by the individual’s average weekly wage received from the employer that paid the severance pay, rounded down to the nearest whole number, beginning with the week the individual is separated from employment. Also effective August 1, 2011, an individual is disqualified for benefits for any week in which the person is unavailable for work because he or she is incarcerated or imprisoned.

Hawaii

Financing. Monies in the state employment and training fund may now be used for funding the payment of interest due on Title XII advances. Also, the law was amended to provide that every employer, except reimbursing employers, shall be subject to an employment and training fund assessment at a rate of 0.01 percent of taxable wages. (Previously, employers that were assigned a minimum rate of 0.0 percent or the maximum rate of 5.4 percent were not required to pay this assessment.) If interest is due on a Title XII advance, the employment and training fund assessment shall be increased to pay the interest due. The director of the state Department of Labor and Industrial Relations shall have the discretion to determine the rate of increase for the calendar year 2011. The increase in the rate shall be in increments of 0.01 percent. Notwithstanding any provisions to the contrary, if interest payments on a Title XII advance are subsequently waived by federal law, then the aggregate amount of interest payments collected shall constitute the total employment and training assessments payable by employers for the calendar year 2012 only, no employment and training assessment shall be collected from any employer in that year, and no refund shall be paid retroactively to any employer on the basis of the federal waiver of interest payments. (These amendments concerning Title XII advances shall be repealed on January 1, 2012, and reenacted then in the form in which they appeared on December 31, 2010.)

Nonmonetary eligibility. An individual who has established an unemployment compensation claim based on full-time employment is permitted to be found to have good cause for voluntarily separating from subsequent part-time employment on the basis of any of the following conditions:

- Loss of full-time work made it economically unfeasible to continue part-time work;

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- Part-time work was outside the individual's customary occupation and would not be considered suitable work at the time it was accepted;
- The employer failed to provide sufficient advance notice of a change in the work schedule;
- There was a real, substantial, or compelling reason, or a reason causing an employee who wanted to remain employed, to take similar action and to try alternatives before terminating the employment relationship;
- The terms and conditions of employment changed;
- Discrimination took place that violated federal or state laws;
- The employee's marital or domestic status changed;
- The employee accepted an offer of employment from another employer, but the offer was withdrawn and the former employer refused to rehire the employee;
- A collective bargaining agreement imposed mandatory retirement upon the employee;
- The employee had evidence of domestic or sexual violence; or
- Any other factor relevant to a determination of good cause was present.

Part time work is fewer than 20 hours of work per week or is on-call, casual, or intermittent work. Suitable work is work in the individual's usual occupation or work for which the individual is reasonably fitted.

The law now requires that partial claimants be exempt from work registration requirements and, if so exempt, be exempt as well from work search or modified work search requirements, even if no work is offered and no wages are earned, as long as there is evidence that they are attached to their regular employer. (Previously, the law allowed, but did not require, the exemptions.) In addition, the June 30, 2012, sunset date for the provisions related to partial unemployment was repealed.

Illinois

Administration. Specific requirements for the locations of State employment offices were eliminated.

A quarterly report to the state Employment Security Advisory Board is not required if the Master Bond Fund held a net balance of zero at the close of the preceding calendar quarter and there have been no deposits or expenditures in the immediately preceding four calendar quarters.

The governor's Office of Management

and Budget may now issue bonds on behalf of the state Department of Employment Security upon written request of the director. Bonds are permitted to be issued to prevent a reduction in the employer credit provided under the Federal Unemployment Tax Act. The maximum principal amount of bonds was raised from \$1,400,000,000 to \$2,400,000,000.

A Social Security Retirement Pay Task Force was created to assess the impact of eliminating the disqualifying income provision for individuals receiving primary Social Security old age and disability retirement benefits. A report on the findings is due no later than December 31, 2012.

Regulations are permitted to be drafted that require an employing unit (i.e., an employer) with 50 or more employees or an entity representing 5 or more employing units to file an allegation of ineligibility electronically.

An electronic notice to an individual regarding a disputed claim or to an employer regarding benefit charges and contribution payments may be completed electronically if agreed to by the individual and the employing unit entitled to the notice.

The director of the Department of Employment Security may request the secretary of the treasury to withhold funds for overpayments made to an individual. Individuals shall be liable for any fee assessed by the secretary.

Employers must report the first date of service by employees to the Directory of New Hires.

Upon request of the Risk Management Division of the state Department of Central Management Services, information may be released to the division for the purpose of determining the employment status of a recipient of disability benefits or workers' compensation.

Electronic communication is permitted to an individual or an entity if the individual's or entity's personal information is not included in the communication.

The director of the Department of Employment Security may request the secretary of the treasury to withhold funds from an employer that is in default of payment or contribution. Employing units shall be liable for any fee assessed by the secretary.

Administrative fees collected from individuals as a result of the recoupment of benefits and from employers that are in default on contribution payments must be utilized for unemployment insurance.

The Department of Employment Security is permitted to utilize the state Department of Revenue's process to assess a personal liability penalty for failure to file reports, for unpaid contributions, or for unpaid payments in lieu of contributions.

Financing. For calendar years 2013–2019, the wage base adjustment will be eliminated.

The maximum amount of remuneration considered to be wages is reduced from \$13,560 to \$12,900 for 2013 and to \$12,960 for calendar years 2014–2019. If employer payments do not equal or exceed the loss to the state's account in the Trust Fund by March 1, 2013, the maximum amount of remuneration considered to be wages will be \$13,560.

The adjusted state experience factor (above the calculated amount) increases

- 5 percent for calendar years 2013–2015;
- 6 percent for calendar year 2017;
- 19 percent for calendar years 2016 and 2018.

The minimum employer contribution rate changes from 0.2 percent to 0.0 percent for calendar years 2012–2019.

Effective calendar year 2012 and any year with outstanding bonds thereafter, a 0.55-percent (previously, 0.4- to 0.55-percent) fund building rate is added to the employer contribution rate. A year with outstanding bonds is determined on October 31. Also, effective the first quarter of calendar year 2013, payments attributable to the fund building rate shall be deposited in the Master Bond Fund.

For calendar years 2016 and 2018, a further surcharge of 0.3 percent shall be added to the employer contribution rate and deposited in the clearing account.

Monetary entitlement. Effective calendar year 2016, the maximum weekly benefit amount will decrease from 47.0 percent to 42.8 percent of the statewide average weekly wage. Effective calendar year 2018, the maximum weekly benefit amount will increase to 42.9 percent of the statewide average weekly wage.

Effective calendar year 2016, the maximum amount payable to an individual receiving a dependent allowance for a spouse will be reduced from 56.0 percent to 51.8 percent of the statewide average weekly wage. The maximum amount payable to an individual with dependent children will decrease from 47.0 percent to 42.8 percent of the sum of the statewide average weekly wage and the dependent child allowance rate.

Effective calendar year 2018, the maximum payable amount to an individual receiving a dependent allowance for a nonworking spouse will increase to 51.9 percent of the statewide average weekly wage. The maximum amount payable for an individual receiving a dependent allowance for children will increase to 42.9 percent of the sum of the statewide average weekly wage and the dependent child allowance rate.

For any benefit year beginning in calendar year 2016 or 2018, the maximum total benefit amount is reduced to 24 times the sum of the weekly benefit allowance and dependents' allowances (previously, 25 times the sum of the weekly benefit allowance and dependents' allowances).

Indiana

Administration. The language concerning the establishment of an unemployment claims compliance center not later than January 1, 2010, was removed.

Extensions and special programs. The expiration date of an eligibility period for purposes of any determination of eligibility for extended benefits under state law was extended from before January 1, 2010, to January 1, 2012. Up to an additional 7 weeks of extended benefits are payable when the state is in a high-unemployment period (a period in which the average total unemployment rate is at least 8 percent and is 110 percent of the average rate for any or all of the corresponding 3-month periods ending in the 3 preceding calendar years). The total unemployment rate provision is effective for weeks of unemployment beginning after March 1, 2011, and ending on the later of December 10, 2011, or the week ending 4 weeks before the last week for which the federal government pays 100 percent of sharable extended-benefit costs.

Financing. An employer's contribution rate is equal to the sum of the employer's contribution rate determined or estimated by the state Department of Workforce Development (previously, at least 12 percent), plus 2 percent, if required contribution and wage reports, as well as all contributions, penalties, and interest due and owing by the employer or the employer's predecessors, have not been paid in a timely manner. However, a 2.0-percent increase in the employer's contribution rate is assessed if the employer is thus delinquent. (Under this provision, an employer's rate may not exceed 12 percent.)

The contribution rate for new state or political subdivisions or for any instrumentality thereof increased from 1.0 percent to 1.6 percent for calendar year 2012. In determining and assigning each employer's contribution rate, the fund ratio table with Schedules A through I will be used for calendar year 2012. Rates range from 0.75 percent to 10.2 percent for Schedule A and from 0.0 percent to 5.4 percent for Schedule I. All references to 2016 assessments of training skills are removed.

Beginning January 1, 2011, except as otherwise provided, each employer shall pay contributions equal to the amount determined or estimated by the Department of Workforce Development (previously, 12 percent of wages). For a calendar year beginning January 1, 2011, an experience-rated employer who paid wages during the calendar year, whose contribution rate for the calendar year was determined, and who had a payroll in each of the three preceding 12-month periods must pay an unemployment insurance surcharge equal to 13 percent of the employer's contribution

for calendar year 2011 if, during the calendar year, the state is required to pay interest on Title XII advances made to the state from the federal unemployment account in the federal unemployment trust fund. For a calendar year beginning January 1, 2012, in which employers are required to pay the unemployment insurance surcharge, the Department of Workforce Development shall determine, not later than January 31, the surcharge percentage for that year on the basis of (1) the interest rate charged the state for the year as determined under federal law and (2) the state's outstanding loan balance to the federal unemployment account on January 1 of the year. The unemployment insurance surcharge must be paid quarterly at the same time that employer contributions are paid, and failure to make such payments is a delinquency.

The Department of Workforce Development is permitted to use amounts from the surcharge to pay interest on the Title XII advances. Also, the department requires that any amounts received and not used to pay interest on Title XII advances be deposited into the unemployment insurance benefit fund. Amounts paid and used to pay interest on Title XII advances do not affect, and may not be charged to, the experience account of any employer. Amounts paid and used for purposes other than to pay interest on Title XII advances must be credited to each employer's experience account in proportion to the amount the employer paid during the previous four calendar quarters.

The unemployment insurance solvency fund was created for the purpose of paying interest on Title XII advances and is to be administered by the Department of Workforce Development. Any money received from the unemployment insurance surcharge that the department elects to use to pay interest on Title XII advances shall be deposited into the fund for the purposes of the fund. The treasurer of state must invest any money in the fund that is not currently needed to meet the obligations of the fund in the same manner that other public money may be invested. Interest that accrues from these investments shall be deposited into the fund at least quarterly. Money that is in the fund at the end of the state's fiscal year does not revert to the state general fund.

The contribution rate for new employers decreased from 2.7 percent to 2.5 percent beginning January 1, 2011. The rate will remain at 2.5 percent for calendar year 2012. For calendar years 2011 through 2020, Schedule E applies in determining and assigning each employer's contribution rate.

To become experience rated, an employer must file all required contribution and wage reports properly. In addition, all contributions, penalties, and interest due and owing by the employer or the employer's predecessors must have been paid.

Monetary entitlement. Beginning July 1, 2012, the computation of the weekly benefit amount will change from 5 percent of the first \$2,000 of the individual's wage credits in the highest quarter of the base period and 4 percent of the individual's remaining wage credits in the highest quarter to 47 percent of the individual's prior average weekly wage, rounded to the next-lower dollar if not already a multiple of \$1. The maximum weekly benefit amount may not exceed \$390. The prior average weekly wage is defined and calculated as the individual's total wage credits during the base period, divided by 52. A person's wage credits may not exceed \$9,250 for calendar quarters beginning on and after July 1, 2005, and before July 1, 2012. For calendar quarters beginning on and after July 1, 2012, the \$9,250 wage credit cap will be removed.

Nonmonetary eligibility. A drug test must be performed at a laboratory certified by the U.S. Department of Health and Human Services, with specimens collected by a collector certified by the U.S. Department of Transportation and the cost of the drug test paid by the employer.

Effective July 1, 2011, an individual is considered to have refused an offer of suitable work if such offer is withdrawn by an employer after the individual

- tests positive for drugs in a drug test given on behalf of the prospective employer as a condition of the offer of employment or
- refuses, without good cause, to submit to a drug test required by the prospective employer as a condition of the offer of employment.

Effective July 1, 2011, an individual is not totally unemployed, part-totally unemployed, or partially unemployed for any week in which

- the individual is regularly and customarily employed on an on-call or as-needed basis and has either remuneration payable for personal services or work available from his or her on-call or as-needed employer.
- the state Department of Workforce Development finds that the individual is on vacation for the week and is receiving, or has received, remuneration from the employer for that week. (This provision does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, a report, information, or a claim in connection with an individual, group, or mass separation arising from the vacation period.)
- the Department of Workforce Development

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opment finds that the individual is on vacation for the week and has not received remuneration from the employer for that week because of a written contract between the employer and the employees or because of the employer's regular vacation policy and practice. (This provision applies only if the department finds that the individual has a reasonable assurance that he or she will have employment available with the employer after the vacation period ends. Also, the provision does not apply to an individual whose employer fails to comply with a department rule or policy regarding the filing of a notice, a report, information, or a claim in connection with an individual, group, or mass separation arising from the vacation period.)

Effective July 1, 2011, "deductible income" means

- for 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."
- except for 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, "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 if the week (a) occurs after an individual receives the payment and (b) is used under the terms of a written agreement to compute the payment."

(The preceding two bullet points apply to initial claims for unemployment filed for a week that begins after March 14, 2008, and before October 1, 2011, and, therefore, will be removed from the meaning of "deductible income" after September 30, 2011.)

For the purpose of deductible income only, and for initial claims for unemployment filed for a week that began after March 14, 2008, and before October 1, 2011, 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. (After September 30, 2011, remuneration for services will include such compensation.)

Effective July 1, 2011, for initial claims for

unemployment filed for a week that began March 15, 2008, and ended September 30, 2011, a person who elects to retire in connection with a layoff or plant closure and receive pension, retirement, or annuity payments is ineligible to receive benefits, except that a person who accepts a payment or other compensation offered by an employer to avert or lessen the effect of a layoff or plant closure and otherwise meets the eligibility requirements is entitled to receive benefits in the same amounts, under the same terms, and subject to the same conditions as any other unemployed person.

Effective July 1, 2011, notwithstanding other provisions of law, an individual shall not be disqualified for benefits for any week with respect to which the individual receives a distribution from a pension, retirement, or annuity plan of an employer when the individual uses the distribution to satisfy a severe financial hardship resulting from an unforeseeable emergency that is the result of events beyond the person's control.

Effective July 1, 2011, the between- and within-terms denial provisions were modified to provide that, for services to which 26 U.S.C. 3309(a)(1) applies, if the services are provided to or on behalf of an educational institution, compensation payable on the basis of the services may be denied as applicable.

Effective July 1, 2011, beginning January 1, 2012, individuals may elect to have state and local taxes deducted and withheld from their payment of unemployment compensation. If an election is made, the Department of Workforce Development shall withhold state and local taxes at the applicable rate prescribed in withholding instructions issued by the Department of State Revenue. The money withheld shall remain in the unemployment fund until transferred to the state for payment of income taxes. The commissioner of the Department of Workforce Development shall follow all procedures of the Department of State Revenue concerning the withholding of income taxes.

Kansas

Coverage. The definition of employment was modified to include service performed by an individual for wages or under a contract if the business for which the activities are performed retains the right to control the end result, as well as the manner and means of accomplishing the end result. (This provision rescinds the requirement that the service in this case be performed outside the usual course of business or outside all of the places of business.)

Civil penalties, calculated according to state tax law, continue for individuals who intentionally misclassify an employee, and further penalties for subsequent violations are added

as follows:

- For a second violation, the individual, upon conviction, will be guilty of a class C nonperson misdemeanor;
- For a third violation, the individual, upon conviction, will be guilty of a class A nonperson misdemeanor.

The penalties are cumulative. Civil penalties assessed must be deposited in the state treasury.

The state Department of Revenue must provide all relevant taxpayer information on persons suspected of misclassification of employees to the state secretary of labor for use in making employment determinations, including, but not limited to,

- withholding tax and payroll information;
- the identity of any person being audited or investigated; and
- the results of an audit or investigation.

All persons receiving tax information are subject to the confidentiality requirements imposed on the personnel of the Department of Revenue and to the civil and criminal penalties imposed for any violation of such confidentiality.

Kentucky

Monetary entitlement. To qualify for a second benefit year, workers must have, subsequent to the beginning of their immediately preceding benefit year, worked in insured work in which they earned wages equal to at least 5 times their weekly benefit amount established for the previous benefit year. (Previously, workers must have been paid wages, in the last two quarters of the base period, of at least 8 times their weekly benefit amount.)

Louisiana

Financing. No benefits will be charged against the experience rating records of either a claimant's base-period employer or reimbursable employers if both of the following conditions are met:

- Benefits are paid in a situation in which the unemployment is caused solely by an act or omission of any third party or parties, or solely by such act or omission in combination with an act of God or an act of war. The determination of the responsibility of any third party or parties shall be as specified in the Oil Pollution Act, 33 U.S.C. 2701, et seq.
- Reimbursement for such benefits shall have been paid by the responsible third party or parties into the federal Unemployment Trust Fund.

The amount owed by any responsible third party or parties shall equal the amount of regular and extended benefits paid to individuals as a result of the act or omission attributed to the responsible party or parties. At the end of each calendar quarter, or at the end of any other period as the administrator of the state Office of Employment Security may prescribe by regulation, the administrator shall charge the responsible party or parties accordingly. (These provisions concerning the noncharging of benefits as a result of the oil spill are remedial and shall be retroactive to January 1, 2010.)

Maine

Administration. Technical corrections made to the definition of employment for services performed by an individual require the commissioner of the state Department of Labor to convene a stakeholder group for the purpose of developing an employment test to be used in the administration of unemployment compensation law, workers' compensation, Bureau of Labor Standards programs, and other Department of Labor programs. A report must be submitted to the Joint Standing Committee on Labor, Commerce, Research and Economic Development by January 15, 2012.

Coverage. Services performed by a private investigator, as defined in state law, are now excluded from the definition of employment, as long as those services are not subject to federal unemployment tax and the following requirements are met:

- There is a written contract between the private investigator and the party requesting services;
- The private investigator offering the services operates independently of the party requesting services, except for the timeframe and quality of finished work as specified in the contract;
- Compensation for services is negotiated between the two parties and is paid for each service performed; and
- The party requesting services furnishes neither equipment nor the place of employment to the private investigator.

The definition of employment excludes services performed under a booth rental agreement or other rental agreement by a tattoo artist if the services performed by the tattoo artist are not subject to federal unemployment tax.

Extensions and special programs. The Unemployment Insurance Work-sharing Program was created, effective March 1, 2012, and is slated for repeal February 28, 2014. In accordance with the program, an approved work-sharing plan must reduce the normal

weekly hours of work for an employee in an affected unit by not less than 10 percent and not more than 50 percent. Notwithstanding any other provision, and after a waiting period of 1 week, a participating employee shall be paid compensation in an amount equal to the product of his or her weekly benefit amount, including dependents' allowances, and the reduction percentage, rounded down to the next-lower whole-dollar amount. "Eligible employer" is defined as an employer that is not delinquent in the payment of contributions or reimbursements or in the reporting of wages. The collective bargaining agent of the employee must approve, in writing, the work-sharing plan for any eligible employees represented by the agent. A statement must be submitted asserting that the work-sharing plan will not serve as a subsidy for seasonal employment during the off-season or for intermittent employment. The work-sharing plan must specify the manner in which fringe benefits of the eligible employees will be affected. The plan expires at the end of the 12th full calendar month after its effective date or on the date specified in the plan if that date is earlier. The payment of work-sharing benefits is limited to 52 weeks in any benefit year. Any individual who has received all of the unemployment compensation, or all of the combined unemployment compensation and work-sharing benefits, available in a benefit year is considered an "exhaustee" for purposes of receiving extended benefits and, if otherwise eligible, is eligible to receive extended benefits. Finally, a work-sharing plan may be revoked for good cause and may be modified.

Financing. Work-sharing compensation paid to participating employees is now charged to the participating employers. Reimbursing employers must reimburse the state Unemployment Compensation Fund for the full amount of work-sharing benefits paid.

Maryland

Appeals. Effective October 1, 2011, the decision of the hearing examiner with the lower appeals division is final after 10 days after notice of the decision has been mailed or otherwise delivered to the appellant, unless further review is initiated. Also effective October 1, 2011, a decision of the state Board of Appeals is final after 10 days after notice of the decision has been mailed or otherwise delivered to the appellant, subject to judicial review. Finally, the requirement that, on final decision in a judicial proceeding, the Board of Appeals shall pass an order in accordance with the decision was repealed.

Extensions and special programs. An amendment to existing law temporarily provides

for the optional extended-benefits "on" indicator, based on the seasonally adjusted total unemployment rate. Under the new provision, claimants are given up to 13 weeks of extended benefits if the average seasonally adjusted total unemployment rate for the most recent 3 months is at least 6.5 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the previous 2 calendar years. Also, claimants may receive up to an additional 7 weeks of extended benefits if the state is in a high-unemployment period—that is, a period in which the average seasonally adjusted total unemployment rate is at least 8 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the previous 2 years. The two provisions are effective for weeks of unemployment beginning after January 2, 2010, until the week ending 4 weeks prior to the last week for which the federal government pays 100 percent of most extended-benefit costs without regard to the phaseout of federal sharing for claims as provided in federal law.

An amendment temporarily modifies the extended-benefit program "on" and "off" indicators by using a 3-year look-back for the optional indicators based on the seasonally adjusted total unemployment rate for weeks of unemployment that began after January 1, 2011, and ended on December 31, 2011, or the expiration date provided in federal law, whichever is later.

Finally, the state Extended Benefits Fund was created, to be funded from general revenues and other non-unemployment-insurance sources. The purpose of the fund is to reimburse counties and municipal corporations for the net costs of extended-benefit claims.

Monetary entitlement. The restriction on the number of times during each benefit year an individual may change a previously elected federal or state income withholding status was eliminated, effective October 1, 2011. (Previous law allowed the change to occur once during each benefit year.)

Massachusetts

Financing. Contribution rate schedule E was assigned for calendar year 2011. According to schedule E, tax rates for employers with a negative balance range from 7.24 percent to 12.27 percent and rates for employers with a positive balance range from 1.26 percent to 6.14 percent.

Michigan

Financing. A separate, special fraud control fund was created in the state Department of Treasury contingent fund. The special fund shall consist of the following monies collected

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or received by the state unemployment insurance agency of the Department of Licensing and Regulatory Affairs:

- All interest and penalties collected under specific provisions of law.
- All gifts to, interest on, or profits earned by the special fraud control fund.
- Amounts credited under specific provisions of law.

The money in the special fraud control fund shall be continuously appropriated only to the unemployment insurance agency and may not be transferred or otherwise made available to any other state agency. All amounts in the fund are to be used first for the acquisition of packaged software that has a proven record of success in detecting and collecting unemployment benefit overpayments and then for administrative costs associated with preventing, discovering, and collecting such overpayments, as included in the biennial budget of the unemployment insurance agency and approved by the legislature.

The unemployment insurance agency must submit a report to the clerk of the state House of Representatives and the secretary of the state Senate at the close of the 2-year period beginning on March 29, 2011, to show how the money from the special fraud control fund was used and to document the results obtained from the special fund. The Department of Licensing and Regulatory Affairs was to have implemented the initial detection and collection software package by September 1, 2011. Interest owed the fund must be recovered in addition to any recovery of penalties.

The unemployment insurance agency is allowed to recover damages, in an amount equal to 4 times the amount obtained, for a second or subsequent violation consisting of knowingly making a false statement or representation or knowingly and willfully failing to disclose a material fact. The amounts recovered are to be credited as follows:

- Deductions from unemployment insurance benefits shall be applied solely to the amount of the benefits liable to be repaid.
- All other recoveries shall be applied first to administrative sanctions and damages, then to interest, and then to the amount liable to be repaid. The amounts applied to administrative sanctions, damages, and interest shall be credited to the special fraud control fund.

For benefit years from October 1, 2000, through December 31, 2013, if a contributing base-period employer notifies the unemployment insurance agency that the employer

paid gross wages in a week that were at least equal to its benefit charges for a week, the unemployment insurance agency shall issue a monetary redetermination that the employer's account will not be charged for that week and the remaining weeks of the benefit year for benefits paid that would otherwise be charged to the account. For benefit years beginning on or after January 1, 2014, benefits paid will be charged to the nonchargeable benefits account, and not charged to the employer's account, if

- the individual reports gross earnings in the week with a contributing base-period employer that are at least equal to the employer's benefit charges for the week; or
- a contributing base-period employer protests, in a timely manner, a determination charging benefits to its account for a week if the employer paid the individual gross wages that were at least equal to the benefit charges for the week.

The Obligation Trust Fund was created as a separate fund in the state treasury, not to be considered part of the General Fund; money in the Obligation Trust Fund would remain at the close of the fiscal year and would not lapse into the General Fund. The state treasurer may receive and deposit money or other assets from any source into the Obligation Trust Fund and shall direct the investment of money within the fund, crediting to the fund earnings from investments of money for the fund. All obligation assessments collected must be deposited into the Obligation Trust Fund. All interest, penalties, and damages derived from the assessments, along with portions of the proceeds from any obligations specified by the state Finance Authority, shall be deposited into the fund. The Department of Licensing and Regulatory Affairs must administer the Obligation Trust Fund for auditing purposes and expend money from the fund only

- to pay obligations, including administrative and associated expenses;
- to refund erroneously collected assessments; and
- for any other purpose for which the Finance Authority may issue obligations.

The director of the department is permitted to request the Finance Authority to issue obligations in order to repay federal Title XII advances, with any interest accrued; to fund unemployment benefits; and to fund capitalized interest, debt service reserve funds, and payment of costs of, and administrative expenses connected with, issuing obligations. The term

“obligation” means “a note, bond, financial instrument, or other evidences of indebtedness issued.”

In 2011 and in each year thereafter in which any obligation is outstanding, employers are subject to, shall be assessed, and shall pay an obligation assessment. The assessment shall be collected quarterly in addition to required contributions; is not subject to the limiting provisions for required contributions; is in addition to, and separate from, the solvency tax imposed; is due at the same time, collected in the same manner, and subject to the same penalties and interest as contributions assessed; and shall be deposited into the Obligation Trust Fund. The rate of the assessment shall be determined by the state treasurer, in consultation with the director of the Department of Licensing and Regulatory Affairs. The assessment rate shall be applied to all contributing employers on the taxable wage base limit and may take into account the employer's experience rating from the previous year. The assessment shall be sufficient to ensure the timely payment of

- the principal, interest, and redemption premiums on obligations;
- administrative expenses, credit enhancement and termination fees, and any other fees derived from issuing obligations;
- all other amounts required to be maintained and paid under the terms of a state Finance Authority resolution, indenture, or authorizing statute under which obligations are issued;
- any amounts necessary to maintain ratings assigned by nationally recognized rating services on obligations at a level determined by the state treasurer.

The yearly revenue generated by the assessment is irrevocably pledged to the payment of obligations and administrative expenses, and is subject to the pledge and lien described in the Finance Authority resolution, indenture, or authorizing statute under which the obligation is issued.

The Finance Authority was created to issue bonds to raise sufficient funds to

- reduce or avoid the state's need to borrow federal advances for the state's unemployment trust fund;
- repay principal and interest on outstanding federal advances for the state's unemployment trust fund;
- provide for a surplus in the state's unemployment trust fund without advances from the federal government before January 1, 2014;
- directly pay unemployment insurance

benefits before January 1, 2014;

- pay for financing costs associated with issuing, securing, and marketing bonds; and
- provide sufficient reserves under indenture or federal requirements to minimize the impact on unemployment insurance tax rates.

Bonds issued by the Finance Authority are limited to the principal amount necessary to satisfy the state's obligations with regard to federal advances to the Unemployment Trust Fund, including reserves, financing costs, and reimbursement to the state for payments of its federal advance obligations until December 31, 2013. The limitation does not apply to bonds issued to refinance or refund bonds issued before December 31, 2013.

Monetary entitlement. The number of weeks during which an individual will be paid benefits in a benefit year was decreased from not more than 26 or less than 14 to not more than 20 or less than 14, effective on or after January 15, 2012. The new 20-week limitation on total benefits does not apply to claimants declared eligible for training benefits in accordance with the state unemployment insurance law.

Overpayments. In addition to allowing the state unemployment agency to recover benefits paid to a person who is not entitled to them, the agency may also recover interest due. Such recoveries may be deducted from wages payable to the individual. The deduction from wages payable to an individual is limited to not more than 20 percent of each benefit payment due the claimant.

Minnesota

Coverage. In a modification of the business owners' provision of the unemployment compensation law, effective retroactively from July 1, 2010, wage credits from an employer may not be used for unemployment benefit purposes by any applicant who is the spouse, parent, or minor child (previously, child) of any individual who owns or directly or indirectly controls a 25-percent-or-more interest in the employer.

Students who are employed by a school, college, or university at which they are enrolled and whose primary relation to the school, college, or university is as a student are now excluded from unemployment insurance coverage. Individuals whose primary relation to the school, college, or university is as an employee who also takes courses, however, are covered. (Previously, the law said that students who are employed by a school, college, or university at which they are enrolled and are regularly attending classes are excluded from coverage.)

Corporate officers employed by a corporation in which they own, either directly or indirectly, including through a subsidiary or holding company, 25 percent or more of the corporation are now excluded from unemployment insurance coverage. (Previously, the law said, simply, that corporate officers who are employed by a corporation in which they own 25 percent or more of the corporation are excluded from coverage.) Similarly, members of a limited-liability company who, either directly or indirectly, including through a subsidiary or holding company, own 25 percent or more of the company are now excluded from unemployment insurance coverage. (Previously, the law said, simply, that members of a limited-liability company who own 25 percent or more of the company were excluded from coverage.)

Extensions and special programs. Effective May 29, 2011, an individual who is determined to be eligible for the Trade Adjustment Assistance Program is included in the definition of a dislocated worker.

Financing. The commissioner of the state Department of Employment and Economic Development is now permitted to assess up to 8 percent of the quarterly unemployment tax due in order to pay interest on a federal loan (The minimum assessment of 2 percent was eliminated.)

Monetary entitlement. Effective October 28, 2012, the wage requirement will change for establishing a benefit account. The new requirement is the higher of \$2,400 in a four-quarter base period or 5.3 percent of the state's average annual wage, rounded down to the next lower \$100. (Previously, the requirement was \$1,000 in the high quarter and \$250 outside the high quarter.) Effective May 25, 2011, wages used to establish a new benefit account following the expiration of a previous benefit account must meet the aforementioned new benefit account requirement. (Previously, wages were required to be 8 times the weekly benefit amount.) Finally, the earnings requirement following a period of disqualification for a voluntary quit or discharge will change to one-half the amount required to establish a benefit account. (This requirement applies to all requalifications that take effect after October 28, 2011; previously, the requirement was 8 times the weekly benefit amount.)

Nonmonetary eligibility. Effective July 1, 2011, the definition of "immediate family member" was expanded to include a grandparent.

Employment is no longer considered suitable if it is with a staffing service and less than 25 percent (previously, 45 percent) of the applicant's wage credits are from a job assignment with the client of the service. A job assignment

with a staffing agency is now considered suitable only if the individual received 25 percent (previously, 45 percent) or more of wage credits from job assignments with the agency.

Effective for determinations issued on or after August 7, 2011, an individual is no longer eligible for benefits for any week that payment received in the form of sick pay or "personal time off" pay is equal to, or in excess of, the weekly benefit amount.

Effective May 29, 2011, the requirement that a participant in a pilot program for dislocated workers be available for suitable work and the limitation that the participant work no more than 32 hours in a week are temporarily waived. (This provision is set to expire June 30, 2012.)

Mississippi

Administration. The state Department of Revenue is now listed as one of the state agencies that may owe a delinquent employer a refund that may be used to offset the employer's unemployment compensation debt. The Department of Revenue is also listed as one of the state agencies with which the state Department of Human Services may enter into a mutual agreement for the operation of the Directory of New Hires Program. (The provision is to be repealed July 1, 2014.)

Missouri

Extensions and special programs. The expiration date of an "on" indicator week based on the seasonally adjusted total unemployment rate for the federal-state Extended Benefits program is now the week on or before the week ending 4 weeks prior to the last week of unemployment for which 100-percent federal sharing becomes available under the American Recovery and Reinvestment Act or August 28, 2013 (previously, March 3, 2011), whichever occurs first.

Financing. Benefits paid to spouses who voluntarily quit work in order to accompany a member of the U.S. Armed Forces or a member of the National Guard who is subject to a mandatory and permanent military transfer will not be charged to a specific employer. Instead, the benefits will be charged to a "pool" and the costs spread among all employers.

Monetary entitlement. A claimant shall be ineligible for waiting-week credit or benefits, for any week such claimant has an outstanding penalty that was assessed on the basis of an overpayment of benefits. (The waiting week is the first week of a claim for which the claimant is eligible for unemployment insurance benefits but is not paid the benefits.)

Nonmonetary eligibility. A spouse who vol-

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untarily quit work in order to relocate with an active member of the U.S. Armed Forces or a member of the National Guard who is subject to a mandatory and permanent military transfer such that it is impractical for the spouse to commute from the new residence to work and the spouse remained employed as long as was reasonable prior to the move has good cause for leaving employment and shall not be disqualified from receiving waiting-week credit or benefits.

Montana

Appeals. The state Department of Labor and Industry and the state Board of Labor Appeals are now permitted to individually or jointly issue subpoenas and compel testimony and the production of evidence, including books, records, papers, documents, and other objects that may be necessary and proper in regard to any investigation or proceeding. If a subpoena issued and served is disobeyed, or if a witness refuses to testify to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to a district court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court.

If an overpayment is to be collected, the Department of Labor and Industry, through the state Lottery Commission, must provide the claimant with notice of the right to request a hearing on the offset action.

Coverage. Service performed by a volunteer participant in a program funded under the National and Community Service Act of 1990 or the Domestic Volunteer Service Act of 1973 is excluded from the definition of employment.

Financing. The meaning of "wages" includes (unless specifically exempted) the amount paid as a salary, draw, or profit distribution to a sole proprietor, a working member of a partnership, or a member of a limited-liability company that is treated as a partnership or sole proprietorship, or to a partner in a limited partnership that has filed with the secretary of state, when the salary, draw, or profit distribution is paid directly by the enterprise in which the payee has an ownership interest.

Benefits may not be charged against the account of an employer if the worker separates from employment as a result of domestic violence, a sexual assault, or stalking.

Monetary entitlement. An individual is now considered to be totally unemployed in any week during which the individual, because of lack of work, worked fewer than the number of hours typically worked in employment

and earned wages payable that are less than 2 times the individual's weekly benefit amount. (Previously, the law stated that an individual is considered to be totally unemployed in any week during which the individual, because of lack of work, worked fewer than the customary number of hours that are normal for the individual's particular occupation and earned wages payable that are less than 2 times the individual's weekly benefit amount.) An individual is not considered to be unemployed in any week in which the individual works at least 40 hours of paid employment.

Nonmonetary eligibility. The definition of misconduct includes, but is not limited to, the following:

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

The definition of misconduct excludes the following:

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

Overpayment. The offset of an unemployment benefit overpayment and any penalty attached thereto is now permitted by the interception of lottery winnings. A total of 100 percent of the specified amount of overpayment, unpaid taxes, penalties, and interest will be deducted from the lottery winnings.

Nebraska

Coverage. The definition of employment excludes services performed by a direct seller if such person is engaged in sales primarily in person and is engaged in the trade or business of delivering or distributing newspapers or shopping news, including any services directly related to such trade or business.

New Hampshire

Nonmonetary eligibility. In a modification of the definition of gross misconduct, an unem-

ployed individual who has been discharged for arson, sabotage, a felony, an assault that causes bodily injury, a criminal act of threatening, or a single theft or multiple thefts of an amount that, in the aggregate, is equal to or greater than \$250, where such conduct is connected with the individual's work, shall suffer the loss of all wage credits earned prior to the date of such dismissal. (The previous definition stated that an unemployed individual who was discharged for arson, sabotage, a felony, an assault that causes bodily injury, a criminal act of threatening, or the theft of an amount greater than \$500, where such conduct is connected with the individual's work, shall suffer the loss of all wage credits earned prior to the date of such dismissal.) Also, an individual is disqualified for benefits who has been discharged for a single theft or multiple thefts of an amount that, in the aggregate, is greater than \$100, but less than \$250, where such conduct is connected with the individual's work for a period of not less than 4 weeks or more than 26 weeks from the date of discharge, and until wages in employment have been earned in each of 5 weeks, where the wages are at least 20 percent more than the individual's weekly benefit amount subsequent to the date of such discharge.

New Jersey

Administration. The commissioner of the state Department of Labor and Workforce Development must now give written notification to claimants of the date of the final exhaustion of all unemployment compensation not less than 4 weeks (previously, not less than 3 weeks) prior to that date. Such notification also must include information on assistance regarding childcare, food, mental health, and addiction services, as well as health care coverage.

Financing. Notwithstanding any other provisions of law and notwithstanding the actual fund reserve ratio, column D of the Experience Rating Tax Table must be used to determine the contribution rate for contributing employers for fiscal year 2012, and column E of the table must be used to determine the contribution rate for contributing employers for fiscal year 2013. Column D specifies that rates range from 0.6 percent to 4.0 percent for positive-reserve employers and from 5.6 percent to 6.4 percent for deficit-reserve employers. Column E specifies that rates range from 1.2 percent to 4.3 percent for positive-reserve employers and from 6.1 percent to 7.0 percent for deficit-reserve employers. During fiscal year 2012, the tax rate for new employers shall be 3.1 percent; during fiscal year 2013, the tax rate for new employers shall be 3.4 percent. (Previously, the law required the use of column C for fiscal year 2011. Column C specified rates ranging from 0.5 percent to 3.6 per-

cent for positive-reserve employers and from 5.1 percent to 5.8 percent for deficit-reserve employers; the tax rate for new employers was 2.8 percent.)

For all experience rating years beginning on or after July 1, 2011, the unemployment trust fund reserve ratios, which set employers' unemployment insurance tax rates, will do so in such a manner that larger reserves are required in the unemployment insurance trust fund. Also for all experience rating years beginning on or after July 1, 2011, if the fund reserve ratio, based on the fund balance as of the previous March 31, is less than 1.0 percent (previously, less than 0.50 percent), then the contribution rate for each contributing employer shall be increased by a factor of 10 percent, computed to the nearest multiple of 1/10 percent if not already a multiple thereof.

North Dakota

Financing. Benefits paid to individuals who were separated from employment with the most recent employer for reasons directly attributable to domestic violence or sexual assault are not chargeable to the employer.

Nonmonetary eligibility. The unemployment compensation law provision that exempts service performed for a private for-profit person or entity by an individual as a landman from being counted as employment was modified by requiring that "substantially all remuneration" include payment on the basis of a daily rate.

Individuals separated from employment shall not be disqualified from receiving benefits if their separation is for a compelling family reason. "Compelling family reason" is defined as domestic violence or sexual assault, verified by documentation, which causes individuals to reasonably believe that continued employment would jeopardize their safety or that of any immediate family member. Documentation must be received by Job Service North Dakota within 14 calendar days from the date of filing an unemployment insurance claim after separating from employment for reasons directly attributable to domestic violence or sexual assault.

Oregon

Administration. The state Employment Department is now authorized to disclose employment-related information to the state Department of Human Services and the state Health Authority in order to assist in the collection of debts that the latter two departments are authorized by law to collect.

Appeals. After receiving a request to reopen a hearing from any party, the officiating administrative law judge may reopen the hearing if,

among other things, the party shows good cause for failing to appear.

Coverage. Effective on or after May 19, 2011, the definition of employment excludes officiating services performed by individuals in recreational, interscholastic, or intercollegiate sporting events or contests unless the services are performed for a nonprofit employing unit, for the state or a political subdivision thereof, or for an Indian tribe. The term "officiating services" is defined as services performed in overseeing the play of a sporting event or contest, judging whether the rules are being followed, and penalizing participants for infringing the rules. The term "sporting event or contest" is defined as any sporting competition in which the participants are not professional athletes or contestants or are not remunerated for their participation.

Extensions and special programs. The state Emergency Benefits Program was extended to end on July 2, 2011. (Previously, the program was set to expire on January 2, 2010.) Individuals continuing to meet eligibility requirements, but who have exhausted all regular and extended benefits, remain eligible. The maximum benefit is reduced from 50 percent of the claimant's most recent unemployment benefit claim to 23 percent. All payments will immediately stop when the total payments made would exceed \$30 million (previously, \$19 million). The program is to be repealed on January 2, 2014.

Financing. For the biennium beginning July 1, 2011, the state Employment Department is appropriated,

- out of the General Fund, the amount of \$3,670,948. The department may expend up to 54 percent of this appropriated amount during the period beginning July 1, 2011, and ending June 30, 2012.
- Reed Act funds made available to the state on March 13, 2002, under federal law, as amended, in the amount of \$23,300,000, to be used under the direction of the state Employment Department for the purposes of administering unemployment compensation law and public employment offices.
- out of the Employment Department Special Administrative Fund, the amount of \$9,500,000, to be used under the direction of the department for the purposes of administering unemployment compensation law and public employment offices.

Notwithstanding any other law limiting expenditures, the amount of \$274,249,072 is established, for the biennium beginning July

1, 2011, as the maximum limit for payment of expenses from federal funds, other than Reed Act funds, collected or received by the Employment Department.

For the biennium beginning July 1, 2011, expenditures by the Employment Department for

- unemployment insurance claims from the state Unemployment Compensation Trust Fund or
- purposes of carrying out the federal Trade Act and for unemployment insurance claims from federal funds

are not limited.

Oregon emergency benefits paid to individuals are not charged against an employer's account.

Overpayments. The director of the state Employment Department may waive recovery of benefits paid erroneously that are not the fault of the claimant if it is found that the recovery would be against equity and good conscience.

Pennsylvania

Extensions and special programs. The Shared-Work Unemployment Compensation Program was created, effective June 20, 2011, and expires June 20, 2016. An approved shared-work plan must reduce the normal weekly hours of work for an employee in an affected unit by not less than 20 percent and not more than 40 percent, unless the plan is modified. Notwithstanding any other provision, participating employees shall be paid compensation in an amount equal to the product of their weekly benefit rate and the reduction percentage, rounded to the next lower whole-dollar amount. Employers must have paid wages for the 12 consecutive calendar quarters preceding the date of the employer's application to participate in the shared-work plan. Participating employers must have filed all quarterly reports and other reports required and must have paid all contributions, reimbursement, interest, and penalties due through the date of the employer's application; in addition, the contributing employers' reserve account balance as of the most recently computed date preceding the date of the employer's application must be a positive number. The collective bargaining representative must give written approval of the shared-work plan if any participating employee is covered by a collective bargaining agreement. The plan must not affect the fringe benefits of any participating employee not covered by a collective bargaining agreement. The effective period of the shared-work plan is not more than 52 consecutive weeks; moreover, the effective period of the shared-work plan, combined with effective periods of the participating employer's

previous shared-work plans, does not equal more than 104 weeks out of a 156-week period. Finally, a shared-work plan may be terminated for good cause and may be modified.

Financing. Effective June 20, 2011, and expiring June 20, 2016, compensation paid to participating work-sharing employees is charged to the participating employer.

Rules have been revised that relate to employers transferring experience records and reserve account balances for an organization, trade, or business; to employer responsibilities; to the removal of obsolete sections; and to the consolidation or updating of other sections in order to come into conformity with changes in the state law. Among the revised rules are the following:

- The state Department of Labor and Industry now states that an employer's experience record will not transfer to a successor if common ownership, control, or management commenced immediately before the transfer or immediately before a series of transactions culminating in the transfer.
- The Department of Labor and Industry will combine the experience record of the predecessor and the experience record of the successor in determining the contribution rate of the successor. The department will specify the conditions for determining the earliest calendar year that the combination of the predecessor's and successor's experience records will apply. No rates shall apply prior to the transfer of the experience record.
- The Department of Labor and Industry is not permitted to consider facts or legal reasons not asserted by the employer in its application for review and redetermination.
- The Department of Labor and Industry will not consider a redetermination of a contribution rate when an inaccuracy in the reserve account balance on the department's notice to the employer was due to an error that occurred more than 4 years prior to the date for the computation of the contribution rate in question or when an employer defaults on a deferred-payment plan.
- The Department of Labor and Industry now specifies the acceptable filing methods for employers to use when filing documents and appeals with the Unemployment Compensation Tax Service.
- An employer may be relieved of benefit charges when a claimant is ineligible because the claimant separated under specified disqualifying conditions,

such as willful misconduct, voluntarily separating from employment, failing to submit to or pass a drug test, the occurrence of a natural disaster, continuing to work part time without material change, and the cessation of a business of 18 months or less caused by a disaster. An employer may also be granted relief of benefit charges under conditions that would not be disqualifying, such as the claimant's leaving voluntarily because of a disability or because of an application of labor standard provisions.

- The Department of Labor and Industry now specifies the time limits for employers to request relief from benefit charges, as well as specifying under what circumstances relief will be granted.
- The Department of Labor and Industry now specifies reporting requirements for employers. Also, effective after a department notice is issued, employers must file their reports electronically.
- The Department of Labor and Industry now specifies those records which are required to be kept by employers. Records must contain information on workers considered to be independent contractors, workers considered "not employees," and workers covered by a professional employer organization arrangement.
- The Department of Labor and Industry now specifies requirements for non-profit organizations and contributing employers electing to make payments in lieu of contributions, as well as specifying requirements for reimbursable employers converting to contributing employers.

Monetary entitlement. The definition of a credit week was changed from any calendar week in an individual's base year with respect to which he or she was remunerated not less than \$50 for employment to any calendar week in an individual's base year with respect to which he or she was remunerated for employment in the amount of not less than

- \$100 (effective January 1, 2013, and expiring December 31, 2014); or
- 16 times the minimum hourly wage (effective January 1, 2015).

Under both the old and new provisions, only 1 credit week can be established with respect to any 1 calendar week. The foregoing credit week provisions are effective January 1, 2013.

Effective January 1, 2013, notwithstanding any other provision of law, if an employee's weekly benefit amount, as calculated, is less than \$70, the employee shall be ineligible to

receive any amount of compensation. If the employee's weekly benefit amount is not a multiple of \$1, it shall be rounded to the next-lower multiple of \$1. Otherwise, eligible employees are entitled to up to a maximum of 26 weeks of benefits, provided that they had 18 or more credit weeks during their base year. Language stating that employees are entitled to 16 or 26 weeks provided that they had 16 or 17 credit weeks during the base year was removed. Notwithstanding any other provision of law, effective January 1, 2015, employees with less than 18 credit weeks (previously, less than 16 credit weeks) during their base year shall be ineligible to receive any amount of compensation.

By regulation, the table specified for the determination of rates and amounts of benefits shall be automatically extended or contracted annually to a point where the maximum weekly benefit amount shall equal $66\frac{2}{3}$ percent of the average weekly wage for the 36-month (previously, 12-month) period ending June 30 and preceding each calendar year. If the maximum weekly benefit amount is not a multiple of \$1, it shall be rounded to the next-lower multiple of \$1 (previously, increased by \$1 and then rounded to the next-lower multiple of \$1).

For the purpose of determining the maximum weekly benefit amount, the Pennsylvania average weekly wage in covered employment shall be computed on the basis of the average annual total wages reported (irrespective of the limit on the amount of wages subject to contributions) for the 36-month (previously, 12-month) period ending June 30.

Notwithstanding any other provisions, for calendar year 2012 the maximum weekly benefit amount shall be frozen at the amount calculated for calendar year 2011 (\$573). Thereafter, the maximum weekly benefit amount established for calendar year

- 2013 shall be no greater than a 1-percent increase above the amount for calendar year 2012.
- 2014 shall be no greater than a 1.1-percent increase above the amount for calendar year 2013.
- 2015 shall be no greater than a 1.2-percent increase above the amount for calendar year 2014.
- 2016 shall be no greater than a 1.3-percent increase above the amount for calendar year 2015.
- 2017 shall be no greater than a 1.4-percent increase above the amount for calendar year 2016.
- 2018 shall be no greater increase than a 1.5-percent increase above the amount for calendar year 2017.

The limitations instituted for calendar years 2013 through 2018 shall expire on the earlier of December 31, 2018, or the last day of the calendar year in which the unemployment compensation trust fund does not have an outstanding solvency-based debt owed to the U.S. government. Finally, if the change implemented by the freeze in calendar year 2012 is determined to result in the loss of funds under the American Recovery and Reinvestment Act of 2009, both the preceding schedule and the expiration of the limitations shall occur 1 year later.

Nonmonetary eligibility. As a condition for qualifying for unemployment benefits, any unemployed worker must make an active search for suitable employment. The requirements for a claimant to conduct an active search shall be established by the state Department of Labor and Industry and shall include, at a minimum, all of the following:

- registering for employment search services offered by the Pennsylvania CareerLink system or its successor agency within 30 days after initially applying for benefits.
- posting a resume on the system's database, unless the claimant is seeking work in an employment sector in which resumes are not commonly used.
- applying for positions that (1) offer employment and wages similar to those the claimant had prior to becoming unemployed and (2) are within a 45-minute commuting distance from the claimant's residence.

The Department of Labor and Industry may determine that a claimant has made an active search for suitable work if the claimant's efforts include actions comparable to those traditional actions in his or her trade or occupation by which jobs have been found by others in the community and labor market in which the claimant is seeking employment. The requirements for an active work search do not apply to any week in which the claimant is in training approved under the Trade Act of 1974 or any week in which the claimant is required to participate in reemployment services. Furthermore, the requirements for an active work search shall not apply to a claimant who is laid off for lack of work and who is advised by the employer of the date on which the claimant will return to work. The requirements may be waived or altered when it is found that compliance would be oppressive or inconsistent with the purposes of the state Unemployment Compensation Law. Finally, the requirement that claimants continue to report to an employment office after registering for work is removed, as is the waiver of any of the require-

ments in certain situations.

All of the preceding active work search provisions are effective January 1, 2012.

Notwithstanding any other provisions, the weekly benefit amount is reduced by the amount of severance pay that is attributed to the week. Effective January 1, 2012, the amount of severance pay attributed shall be an amount, not less than zero, determined by subtracting 40 percent of the average annual wage calculated as of June 30 immediately preceding the calendar year in which the claimant's benefit year begins from the total amount of severance pay paid or payable to the claimant by the employer.

South Dakota

Financing. Interest paid on negative balances in employers' experience rating accounts must now be credited to those accounts. (Previously, no payments were credited.) The period designated for computing an employer's contribution rate was changed from "at the beginning of any calendar year" to "June 30 of the preceding year," beginning in calendar year 2012 and each year thereafter.

The employer's reserve ratio for calendar years 2010 and 2011 shall be the result obtained by dividing the balance of credits existing in the employer's experience rating account by the total taxable payroll of the employer for the preceding 3 calendar years. For calendar year 2012 and thereafter, the employer's reserve ratio is the result obtained by dividing the balance of credits existing in the employer's experience rating account as of June 30 preceding the year for which the rate is to be computed by the employer's total taxable payroll for the preceding 3 fiscal years. The employer's experience rating account balance for 2012 and thereafter is the balance on July 31 of the year preceding the year for which rates are computed and is the difference of the contributions paid through July 31 and the benefits paid through the preceding June 30.

Tennessee

Appeals. Effective July 1, 2011, the state Board of Review is terminated and the words "Board of Review" are deleted from the law wherever necessary.

In the matter of appeal procedures, proof of misconduct may include personnel records and other business records that are in the possession of a claimant's employer and that are relevant to a claim. Also, such records shall be admissible and may constitute evidence of misconduct, regardless of whether that evidence is hearsay or is corroborated by direct witness testimony, if said evidence is accompanied by an affidavit or its custodian or other qualified person certifying the evidence as a business record.

Coverage. Substitute teachers employed by third parties through an agreement with the local education agency will be subject to the same eligibility conditions as substitute teachers employed by the local education agency.

Extensions and special programs. The federal-state extended-benefits program provisions concerning the extended-benefits "on" and "off" indicators were modified temporarily by requiring the use of a 3-year look-back for the optional indicators on the basis of the seasonally adjusted total unemployment rate for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011, or until the week ending 4 weeks prior to the last week for which 100 percent federal sharing is authorized by federal law.

Nonmonetary eligibility. Benefits to individuals for services performed for or on behalf of an educational institution shall not be payable on the basis of services performed as a professional or in any other capacity during the week between successive academic years or terms, during vacation periods, or on holiday recess when there is a reasonable assurance that the individual will perform any such services in the second of such academic years or terms or immediately following such vacation period or holiday recess.

Temporary and disability insurance. For the purpose of establishing a base period in cases involving persons receiving workers' compensation benefits for temporary total disability, the state Department of Labor and Workforce Development shall exclude periods of such disability from the base period and shall determine the base period from the last four completed quarters of work before the disability occurred.

Texas

Administration. It is now reasonable for an employer to rely on a court ruling or a determination by the state Workforce Commission that service performed by an individual, including service in interstate commerce, is not employment if

- the ruling is a judicial decision or precedent, including a published opinion, from a court in the state or the determination is a Workforce Commission decision involving the employer as a party or subject; and
- the ruling or determination has not been reversed or otherwise invalidated.

The Workforce Commission shall relieve an employer that reasonably relies on a ruling

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or determination as just described from any penalties, interest, or sanctions which result from a subsequent ruling or determination that the service in question is employment. An employer receiving relief is not indebted to the state for the penalties, interest, or sanctions from which the employer is relieved and may not be considered delinquent on the payment of taxes, to the extent of the amount from which the employer is relieved.

An employer may reasonably rely on a ruling or determination until the earlier of

- the effective date of the subsequent ruling or determination invalidating the ruling or determination on which the employer reasonably relied; or
- the third anniversary of the due date of a contribution based on the service in question.

The preceding court ruling provisions apply only if the Workforce Commission determines that the nature of the business and the service in question are substantially unchanged from the time the initial ruling was issued or the initial determination was made.

Financing. Benefits may not be charged against the account of an employer if the employee's last separation from the employer occurred before the employee's benefit year and was caused by the employer's reinstatement of a qualified uniformed service member with reemployment rights and benefits and other employment benefits in accordance with the Uniformed Service Employment and Reemployment Rights Act of 1994. (This provision is applicable only to a claim for unemployment compensation benefits filed with the state on or after September 1, 2011.)

If all or part of the experience of a predecessor employer is transferred to a successor, any surplus credit applicable to the predecessor employer is also transferred to the successor and the predecessor employer is not entitled to receive any portion of the surplus credit that is based on the transfer. Moreover, the transfer of the surplus credit is prohibited if it was accomplished solely or primarily for the purpose of obtaining a lower contribution rate.

Nonmonetary eligibility. With respect to initial claims, "person for whom the claimant last worked" refers to

- the last person for whom the claimant actually worked if the claimant worked for that person for at least 30 hours during a week; or
- the employer, as defined by the state unemployment law or by the unemployment law of any other state, for whom the claimant last worked. (This provision is applicable only to a claim for unemployment compensation ben-

efits filed with the state on or after September 1, 2011.)

For claims filed on or after September 1, 2011, the claimant is disqualified from receiving benefits for a benefit period during which severance pay is received.

Vermont

Administration. Employment and unemployment information is confidential and may not be disclosed to support or facilitate an investigation by a public agency of the state of Vermont or of any other state or the federal government, except as otherwise provided. Subject to regulation restrictions, information from unemployment records may be disclosed to any public officer or public agency of the state of Vermont or of any other state or the federal government in order to investigate the misclassification or miscoding of workers.

Financing. A base-period employer's experience rating account will not be charged for benefits paid to an individual who was paid \$1,000 or less in wages by the individual's base-period employer. (This provision is to be repealed on July 1, 2012.)

Virginia

Extensions and special programs. The effective ending date for the optional extended benefits "on" indicator based on the seasonally adjusted total unemployment rate was amended by providing that there be an "on" indicator for weeks of unemployment beginning on or after February 1, 2009, and thereafter until the week ending 3 weeks prior to the last week for which federal sharing is authorized by federal law or by an extension thereof or amendment thereto. The amendment also is applicable to weeks beginning in a high-unemployment period.

Monetary entitlement. For claims effective on or after July 6, 2008, but before July 1, 2012 (previously, before July 3, 2011), the minimum weekly benefit amount remains at \$54 and the maximum weekly benefit amount remains at \$378; a total of \$2,700 in the two high quarters of the base period remains the amount needed to be eligible for unemployment benefits, and a minimum of \$18,900.01 remains the amount required for receiving the maximum weekly benefit.

Beginning July 1, 2012 (previously, July 3, 2011), for claims effective on or after July 1, 2012 (previously, on or after July 3, 2011), the minimum weekly benefit amount increases from \$54 to \$60 and the maximum weekly benefit amount remains at \$378; a total of \$3,000 (previously \$2,700) in the two high quarters of the base period is needed to be eligible for unemployment benefits, and a minimum of

\$18,900.01 remains the amount required for receiving the maximum weekly benefit.

Nonmonetary eligibility. The weekly benefit amount must not be reduced by any amount payable out of retirement benefits from the Social Security Act or Railroad Retirement Act if the individual has contributed to those retirement plans. (Previously, by law, the weekly benefit amount would be reduced by 50 percent of federal Social Security pensions only if the fund balance factor was below 50 percent, effective the first Sunday in January following such determination; the weekly benefit amount would not be reduced by federal Social Security pensions if the fund balance factor met or exceeded 50 percent.)

Washington

Extensions and special programs. In an amendment to the law, an eligibility period is defined to be the period consisting of the week ending February 28, 2009, for an individual who is eligible for emergency unemployment compensation during the extended-benefit period beginning February 15, 2009. The definition applies as provided under federal law as that law existed on December 17, 2010, or such subsequent date as the state Employment Security Department may rule. (Previously, the eligibility period for the said individual was the week ending February 28, 2009, through the week ending May 29, 2010.)

Training benefits are not payable for weeks that are more than 2 years beyond the end of the benefit year of the regular claim; however, they are not payable for weeks that are more than 3 years beyond the end of the benefit year of the regular claim when individuals are eligible for benefits because the extended-benefits "on" and "off" indicators for the insured unemployment rate and the total unemployment rate are based on the 3-year look-back.

Financing. The payment of training benefits was extended from 2 years beyond the end of the benefit year of the regular claim to 3 years beyond the end when individuals are eligible for benefits because the state used the temporary 3-year look-back to amend its extended-benefit provisions.

For contributions assessed for rate year 2011, the sum of an employer's array calculation factor rate and the graduated social cost factor rate may not exceed 5.4 percent for those employers whose NAICS code is within "111," "112," "1141," "115," "3114," "3117," "42448," or "49312." For all other employers, the sum may not exceed 6.0 percent. The graduated social cost factor rate adjustment, as an add-on amount to the final tax rate, has been increased and, for 2011, ranges from 40 percent for rate class 1 to 120 percent for rate

classes 21–40. (Previously, the graduated social cost factor rate adjustment ranged from 78 percent for rate class 1 to 120 percent for rate classes 12–40.)

West Virginia

Financing. By executive order, the governor is now authorized, after first notifying appropriate officials in writing, to borrow funds from the state Revenue Center Construction Fund for deposit into the state Unemployment Compensation Fund (UCF), to be expended in accordance with state unemployment compensation law. The amount of funds borrowed and remaining outstanding may not

exceed either \$20 million at any one time or the amount the governor determines is necessary to sustain the balance in the UCF at a minimum of \$20 million, whichever is less. The governor is restricted from borrowing funds from the Revenue Center Construction Fund, unless the executive director of Workforce West Virginia has projected that the balance in the UCF will be less than \$20 million at any time during the next 30 days. Any funds borrowed shall be repaid from funds on deposit in the federal Unemployment Trust Fund in excess of \$20 million or from other funds legally available for such purpose, without interest, and shall be redeposited to the credit of the Revenue Center Construction

Fund within 180 days of their withdrawal. No amounts may be borrowed after September 1, 2011.

Overpayments. The executive director of Workforce West Virginia is prohibited from billing reimbursable employers for overpayments paid to claimants. The employer must be reimbursed from the Unemployment Compensation Trust Fund, if allowed by federal law and if payment is not from the Administrative Fund, for any amount billed and paid that was determined to be an overpayment. An employer shall not be entitled to payment unless the employer has filed all requested separation information in a timely manner. □