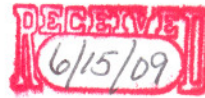




State of Arkansas
Department of
WORKFORCE SERVICES

www.dws.arkansas.gov

Post Office Box 2981 • Little Rock, AR 72203-2981



Jerry

Mike Beebe
Governor

Artee Williams
Director

June 9, 2009

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

Dear Ms. Atkinson:

Re: Applications for UI Modernization Incentive Payments

Attached please find subject applications. If you have questions about either application please contact Ron Calkins. Mr. Calkins may be reached by telephone at 501-682-3380 or by email at Ronald.Calkins@arkansas.gov

Sincerely,


Artee Williams

**APPLICATION FOR UI MODERNIZATION INCENTIVE PAYMENTS
ALTERNATE BASE PERIOD**

STATE: Arkansas

CITATION OF LAW: ACA § 11-10-201—see attached copy of Act 802 Section 1.

USE OF INCENTIVE PAYMENT: Arkansas is receiving Title XII trust fund advances. As a result of Arkansas' trust fund status the entire incentive payment must be used for the payment of state unemployment insurance benefits and for administrative costs associated with the payment of those benefits.

CERTIFICATION: By signing this application it is hereby certified that the alternate base period provision of Arkansas' law will become effective for claims filed on or after July 1, 2009, is permanent, and is not subject to discontinuation under any circumstances other than repeal by the legislature. It is further certified that this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based.



Artee Williams
Director, Arkansas Department of Workforce Services

6-9-2009
Date

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

As Engrossed: S3/17/09

A Bill

ACT 802 of 2009

SENATE BILL 429

5 By: Senator Steele
6 By: Representative Allen
7
8

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
10 DEPARTMENT OF WORKFORCE SERVICES LAW; AND FOR
11 OTHER PURPOSES.
12

Subtitle

13 TO AMEND VARIOUS PROVISIONS OF THE
14 DEPARTMENT OF WORKFORCE SERVICES LAW.
15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17
18

19 SECTION 1. Arkansas Code 11-10-201, concerning a claimant's base
20 period, is amended by adding an additional subsection to read as follows:

21 (c)(1) Beginning with initial claims filed on July 1, 2009, and
22 thereafter, if an individual lacks sufficient base period wages, an alternate
23 base period shall be substituted for the current base period.
24

25 (2) "Alternate base period" means the four (4) completed calendar
26 quarters immediately preceding the first day of that benefit year.
27

28 SECTION 2. Arkansas Code § 11-10-215(a)(1)(A), concerning
29 remunerations that are not included in the definition of wages, is amended to
30 read as follows:
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32 (1)(A) For the purposes of §§ 11-10-701--11-10-715:

33 (i) That part of remuneration paid to an individual
34 by an employer with respect to employment during any calendar year beginning
35 after December 31, 1994 ~~2003~~, and ending December 31, ~~2002~~ 2009, which
36 exceeds nine thousand dollars \$9,000) ten thousand dollars (\$10,000); and

President of the Senate
Nikki Williams

Author of the House
Cobbie Williams



1 (ii) For ~~the~~ any calendar year beginning after
2 December 31, 2002 2009, that part of remuneration which exceeds ~~nine thousand~~
3 ~~five hundred dollars (\$9,500)~~ twelve thousand dollars (\$12,000); and

4 ~~(iii) For any calendar year beginning after December~~
5 ~~31, 2003, that part of remuneration which exceeds ten thousand dollars~~
6 ~~(\$10,000).~~

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8 SECTION 3. Arkansas Code § 11-10-507(3)(A), concerning ability and
9 availability for work, is amended to read as follows:

10 (A) The worker is unemployed, is physically and mentally
11 able to perform suitable work, and is available for such work. Mere
12 registration and reporting at a local employment office shall not be
13 conclusive evidence of ability to work, availability for work, or willingness
14 to accept work unless the individual is doing those things which a reasonably
15 prudent individual would be expected to do to secure work. In determining
16 suitable work under this section and for refusing to apply for or accept
17 suitable work under § 11-10-515, part-time work shall be considered suitable
18 work unless the majority of weeks of work in the period used to determine
19 monetary eligibility is from full-time work.

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21 SECTION 4. Arkansas Code § 11-10-513(b), concerning disqualification
22 for voluntarily leaving work, is amended to read as follows:

23 (b) No individual shall be disqualified under this section if after
24 making reasonable efforts to preserve his or her job rights he or she left
25 his or her last work:

26 (1) Due to a personal emergency of such nature and compelling
27 urgency that it would be contrary to good conscience to impose a
28 disqualification;

29 (2)(A) Because of illness, injury, pregnancy, or disability, ~~or~~
30 of the individual or a member of the individual's immediate family.

31 (B) As used in subdivision (b)(2)(A) of this section,
32 "immediate family member" means a spouse, child, parent, brother, sister,
33 grandchild, or grandparent of the individual;

34 (3)(A) ~~To move with a military spouse to a new duty station~~ Due
35 to domestic violence that causes the individual reasonably to believe that
36 the individual's continued employment will jeopardize the safety of the

President of the Senate
William A. Hulse

Callie Williams
Member of the House

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11 (3)(A) Except as otherwise provided in this section, an individual's
12 disqualification for misconduct shall be for eight (8) weeks of unemployment
13 as defined in § 11-10-512.

14 (B) However, for a discharge that occurs during the period of
15 July 1, 2009, through June 30, 2011, the disqualification under subdivision
16 (a)(3)(A) of this section shall continue until, subsequent to filing a claim,
17 he or she has had at least thirty (30) days of employment covered by an
18 unemployment compensation law of this state, another state, or the United
19 States.

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21 SECTION 6. Arkansas Code § 11-10-524(b)(1), concerning the appeal of a
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23 to read as follows:

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25 removed to the board, the appeal tribunal, after affording the parties a
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President of the Senate

Speaker of the House

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4 (2) In like manner as provided at § 11-10-307(a) for the adopting,
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 12 misrepresentation, or omission that was knowingly made by a claimant, is
 13 amended to read as follows:

14 (2) ~~However, beginning on July 1, 2001, the person shall not be liable~~
 15 ~~to repay such amount to the fund, except through the deduction of future~~
 16 ~~benefits, after ten (10) years from the date the determination of the amount~~
 17 ~~of the overpayment becomes final within the meaning of § 11-10-527.~~ Once the
 18 overpayment becomes final pursuant to § 11-10-527, the amount owed shall
 19 accrue interest at the rate of ~~one and one-half percent (1.5%) per month~~ ten
 20 percent (10%) per annum beginning thirty (30) days after the date of the
 21 first billing statement.
 22

23 SECTION 10. Arkansas Code § 11-10-532(b), concerning the limitation of
 24 liability for repayment of a benefit that a claimant was not entitled to
 25 receive, is amended to read as follows:

26 (b)(1)~~(A)~~ If the director finds that ~~any~~ a person has received ~~any~~ an
 27 amount as benefits under this chapter to which he or she was not entitled by
 28 reasons other than fraud, willful misrepresentation, or willful nondisclosure
 29 of facts, the person shall be liable to repay the amount to the fund.

30 ~~(B)(2)~~ In lieu of requiring the repayment, the director, ~~on~~
 31 ~~and after July 1, 1999,~~ may recover the amount by deduction of any future
 32 benefits payable to the person under this chapter unless the director finds
 33 that the overpayment was received without fault on the part of the recipient
 34 and that its recovery would be against equity and good conscience.

35 ~~(2)~~ ~~Any person held liable to repay an amount to the fund or to~~
 36 ~~have the amount deducted from any future benefits payable to him or her shall~~

President of the Senate

Melvin A. Holt

Melvin Holt
Member of the House

1 ~~not be liable to repay the amount nor shall recovery be made from any future~~
2 ~~benefits after four (4) years from the date the determination of the amount~~
3 ~~of the overpayment becomes final within the meaning of the provisions of §~~
4 ~~11-10-527.~~

5
6 SECTION 11. Arkansas Code § 11-10-532, concerning the recovery of a
7 benefit obtained through misrepresentation, omission, or fraud, is amended to
8 add an additional subsection as follows:

9 (e) The federal income tax refund of a person held liable to repay an
10 amount to the fund as the result of a finding of fraud shall be subject to
11 interception pursuant to Public Law No. 110-328 and any rule or regulation
12 adopted to implement that law.

13
14 SECTION 12. Arkansas Code § 11-10-901 (a) and (b), concerning the
15 director's duties and the hiring and duties of the administrator, are amended
16 to read as follows:

17 11-10-901. Creation -- Administrator -- Authority.

18 (a)(1) The Director of ~~There is established within the Department of~~
19 ~~Workforce Services a division to be called the Division~~ is assigned
20 responsibility for the administration of the State New Hire Registry, ~~which~~
21 ~~shall be administered by a full-time salaried administrator who shall be~~
22 ~~appointed by and serve at the pleasure of the Director of the Department of~~
23 ~~Workforce Services.~~

24 (2) The director shall hire an administrator of the State New
25 Hire Registry who shall serve at the pleasure of the director.

26 (b)(1) ~~The division~~ administrator shall compile a state registry of
27 newly hired and returning employees as required by the Personal
28 Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No.
29 104-193.

30 (2) The director may enter into such professional services
31 contracts as may be necessary to assist in the development and operation of
32 the state new hire registry.

33
34 SECTION 13. Arkansas Code § 11-10-902 is amended to read as follows:

35 11-10-902. Reporting requirements -- Enforcement of child support
36 obligations -- Confidentiality.

President of the Senate
William A. Tate

Callie Webb
Speaker of the House

1 (a) As used in this section:

2 (1) "Administrator" means the administrator of the State New
3 Hire Registry;

4 ~~(1)~~(2) "Employee" means an individual who is an employee as
5 defined in Chapter 24 of the Internal Revenue Code of 1986 but does not
6 include an employee of a federal or state agency performing intelligence or
7 counterintelligence operations if the head of the agency has determined that
8 reporting pursuant to subsection (b) of this section could endanger the
9 safety of the employee or could compromise an ongoing operation or
10 investigation;

11 ~~(2)~~(3) "Employer" means an employer as that term is defined in §
12 3401(d) of the Internal Revenue Code of 1986 and includes any labor
13 organization and any governmental entity; and

14 ~~(3)~~(4) "Labor organization" means a labor organization as that
15 term is defined in § 2(5) of the National Labor Relations Act and includes
16 any entity, sometimes known as a "hiring hall", that is used by the labor
17 organization and an employer to carry out the requirements listed in §
18 8(f)(3) of the federal act of an agreement between the organization and the
19 employer.

20 ~~(b)(1) On and after October 1, 1997, the Division of the State New~~
21 ~~Hire Registry~~ The administrator shall compile an automated state registry of
22 newly hired and returning employees.

23 (2) An employer shall report electronically or in any manner
24 authorized by the ~~Arkansas Employment Security Department~~ Department of
25 Workforce Services for inclusion in the ~~state registry~~ State New Hire
26 Registry whenever an employee is newly hired or returns to work.

27 (3) An employer shall include in each report the name, address,
28 and social security number of the employee and the name, address, and federal
29 taxpayer identification number of the employer.

30 (4) An employer shall make the report by submitting a copy of
31 Internal Revenue Service Form W-4 for the employee or, ~~at the option of the~~
32 ~~employer,~~ an equivalent form. An employer may transmit the report by first
33 class mail, magnetically, or electronically. If an employer makes the report
34 by mail, the reporting date is that of the postmark. The report shall be
35 received not later than twenty (20) days after the date the employer hires
36 the employee or, in the case of an employer transmitting reports magnetically

William A. Hulse
Director of the Senate

Public Bill

1 or electronically, by two (2) monthly transmissions, if necessary, not less
2 than twelve (12) days nor more than sixteen (16) days apart.

3 (5) An employer that has employees employed in two (2) or more
4 states and transmits reports magnetically or electronically may comply with
5 the reporting requirements of this section by designating one (1) state in
6 which the employer has employees and to which the employer will transmit the
7 report required by this section. Any employer that transmits reports shall
8 notify the Secretary of the Department of Health and Human Services in
9 writing as to which state the employer designates for the purpose of sending
10 reports.

11 (c)(1) Information reported pursuant to this section shall be entered
12 into the ~~registry~~ State New Hire Registry data base maintained by the
13 ~~Arkansas Employment Security Department~~ Department of Workforce Services or
14 its designated contractor within five (5) business days of receipt from an
15 employer. As used herein, "business day" means a day on which state offices
16 are open for regular business.

17 (2) Within two (2) business days after the ~~data~~ date information
18 regarding a newly hired employee is entered into the ~~registry~~ State New Hire
19 Registry, the Office of Child Support Enforcement of the Revenue Division of
20 the Department of Finance and Administration shall transmit a notice to the
21 employer directing the employer to withhold from the income of the employee
22 an amount equal to the monthly or other periodic child support obligation,
23 including any past due child support obligation, of the employee.

24 (3) Within three (3) business days after the ~~date~~ information
25 regarding a newly hired employee is entered into the ~~registry~~ State New Hire
26 Registry, the ~~Arkansas Employment Security Department~~ Department of Workforce
27 Services or its designated contractor shall furnish the information to the
28 National Registry Directory of New Hires.

29 (4) On a quarterly basis, the ~~state registry~~ State New Hire
30 Registry shall furnish to the ~~national registry~~ National Directory of New
31 Hires extracts of reporting required to be made to the Secretary of Labor
32 concerning the wages and unemployment compensation paid to individuals by
33 such dates, in such format, and containing such information as the Secretary
34 of the Department of Health and Human Services shall specify in regulations.

35 (5)(A) The Department of Human Services shall have access to
36 information reported by employers pursuant to this section for the purpose of

President of the Senate
William A. Ro

Callie Williams
Vice President

1 verifying eligibility for programs pursuant to 42 U.S.C. § 1320B-7.

2 (B) ~~The Arkansas Employment Security Department~~ Department
3 of Workforce Services shall have access to information reported by employers
4 pursuant to this section for purposes of administering the ~~Arkansas~~
5 ~~Employment Security Department's~~ Department of Workforce Services's programs.

6 (C) The Workers' Compensation Commission shall have access
7 to information reported by employers pursuant to this section for purposes of
8 administering the workers' compensation programs.

9 (d)(1) ~~Not later than May 1, 1998, the Arkansas Employment Security~~
10 ~~Department~~ The Department of Workforce Services shall directly or by contract
11 conduct automated comparisons of the social security numbers reported by
12 employers and the social security numbers appearing within records of the
13 Office of Child Support Enforcement of the Revenue Division of the Department
14 of Finance and Administration for cases being enforced under the Title IV - D
15 State Plan.

16 (2) When an information comparison reveals a match with respect
17 to the social security number of an individual required to provide child
18 support under a support order, the ~~registry~~ State New Hire Registry shall
19 immediately provide the Office of Child Support Enforcement of the Revenue
20 Division of the Department of Finance and Administration with the name,
21 address, and social security number of the employee to whom the social
22 security number is assigned and the name, address, and federal employer
23 identification number of the employer.

24 (e) The Office of Child Support Enforcement of the Revenue Division of
25 the Department of Finance and Administration shall use information received
26 pursuant to subsection (d) of this section to locate individuals for purposes
27 of establishing paternity and establishing, modifying, and enforcing child
28 support obligations and may disclose that information to its agents under
29 contract for purposes connected to the administration of the Title IV-D Child
30 Support Program.

31 (f) All information gathered and maintained by the ~~registry~~ State New
32 Hire Registry:

33 (1) Shall ~~shall~~ be held confidential and be utilized solely for
34 the purposes authorized in this section; and

35 (2) ~~The information shall be considered~~ Is an exception to the
36 open public record requirements of the Freedom of Information Act of 1967, §

President of the Senate

William A. Hulse

Table will

1 25-19-101 et seq.

2 (g) To the maximum extent allowable, all expenses associated with the
3 development and operation of the ~~registry~~ State New Hire Registry shall be
4 reimbursed through available funding under the Title IV-D Child Support
5 Program.

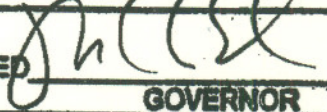
6
7 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that this act should go into effect
9 as soon as possible in order to assure the prompt determination of claims for
10 unemployment benefits and the continued provision of benefits and services to
11 eligible persons. Therefore, an emergency is declared to exist and this act
12 being immediately necessary for the preservation of the public peace, health,
13 and safety shall become effective on:

14 (1) The date of its approval by the Governor;

15 (2) If the bill is neither approved nor vetoed by the Governor,
16 the expiration of the period of time during which the Governor may veto the
17 bill; or

18 (3) If the bill is vetoed by the Governor and the veto is
19 overridden, the date the last house overrides the veto.

20
21 /s/ Steele
22
23

24
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29
30 
31 APPROVED _____
32 GOVERNOR
33

34 4-3-09
35
36

Colbie bills

*President of the Senate
Phillip A. Ross*

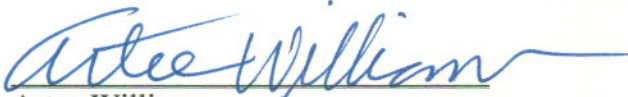
**APPLICATION FOR UI MODERNIZATION INCENTIVE PAYMENTS
PART-TIME WORKERS AND COMPELLING FAMILY REASONS**

STATE: Arkansas

CITATION OF LAW: ACA § 11-10-507—see attached copy of Act 802 Section 3
ACA § 11-10-513—see attached copy of Act 802 Section 4
ACA § 11-10-514(a)—attached
Oliver v. Director, ESD and Tyson Foods—attached
Implementing Instructions—attached

USE OF INCENTIVE PAYMENT: Arkansas is receiving Title XII trust fund advances. As a result of Arkansas' trust fund status the entire incentive payment must be used for the payment of state unemployment insurance benefits and for administrative costs associated with the payment of those benefits.

CERTIFICATION: By signing this application it is hereby certified that the part-time worker and separation for compelling family reasons provisions of Arkansas' law are currently in effect, are permanent, and are not subject to discontinuation under any circumstances other than repeal by the legislature. It is further certified that this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions on which the application is based.


Artee Williams
Director, Arkansas Department of Workforce Services

6-9-2009
Date

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
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As Engrossed: S3/17/09
A Bill
ACT 802 of 2009

SENATE BILL 429

5 By: Senator Steele
6 By: Representative Allen
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For An Act To Be Entitled

AN ACT TO AMEND VARIOUS PROVISIONS OF THE
DEPARTMENT OF WORKFORCE SERVICES LAW; AND FOR
OTHER PURPOSES.

Subtitle

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SECTION 1. Arkansas Code 11-10-201, concerning a claimant's base period, is amended by adding an additional subsection to read as follows:

(c)(1) Beginning with initial claims filed on July 1, 2009, and thereafter, if an individual lacks sufficient base period wages, an alternate base period shall be substituted for the current base period.

(2) "Alternate base period" means the four (4) completed calendar quarters immediately preceding the first day of that benefit year.

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President of the Senate
Steve Hironaka

Collier bills
Speaker of the House



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3 ~~five hundred dollars (\$9,500)~~ twelve thousand dollars (\$12,000) and

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President of the Senate
W. Mark A. Holt

Callie Williams
Member of the House

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President of the Senate
Bill
07/16

Robin Williams
Speaker of the House

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24 liability for repayment of a benefit that a claimant was not entitled to
25 receive, is amended to read as follows:

26 (b)(1)~~(A)~~ If the director finds that any a person has received any an
27 amount as benefits under this chapter to which he or she was not entitled by
28 reasons other than fraud, willful misrepresentation, or willful nondisclosure
29 of facts, the person shall be liable to repay the amount to the fund.

30 ~~(B)(2)~~ In lieu of requiring the repayment, the director, ~~on~~
31 ~~and after July 1, 1999,~~ may recover the amount by deduction of any future
32 benefits payable to the person under this chapter unless the director finds
33 that the overpayment was received without fault on the part of the recipient
34 and that its recovery would be against equity and good conscience.

35 ~~(2) Any person held liable to repay an amount to the fund or to~~
36 ~~have the amount deducted from any future benefits payable to him or her shall~~

President of the Senate

William A. Holt

N. J. Williams
Member of the House

1 ~~not be liable to repay the amount nor shall recovery be made from any future~~
2 ~~benefits after four (4) years from the date the determination of the amount~~
3 ~~of the overpayment becomes final within the meaning of the provisions of §~~
4 ~~11-10-527.~~

5
6 SECTION 11. Arkansas Code § 11-10-532, concerning the recovery of a
7 benefit obtained through misrepresentation, omission, or fraud, is amended to
8 add an additional subsection as follows:

9 (e) The federal income tax refund of a person held liable to repay an
10 amount to the fund as the result of a finding of fraud shall be subject to
11 interception pursuant to Public Law No. 110-328 and any rule or regulation
12 adopted to implement that law.

13
14 SECTION 12. Arkansas Code § 11-10-901 (a) and (b), concerning the
15 director's duties and the hiring and duties of the administrator, are amended
16 to read as follows:

17 11-10-901. Creation -- Administrator -- Authority.

18 (a)(1) The Director of There is established within the Department of
19 Workforce Services a division to be called the Division is assigned
20 responsibility for the administration of the State New Hire Registry, which
21 shall be administered by a full-time salaried administrator who shall be
22 appointed by and serve at the pleasure of the Director of the Department of
23 Workforce Services.

24 (2) The director shall hire an administrator of the State New
25 Hire Registry who shall serve at the pleasure of the director.

26 (b)(1) The division administrator shall compile a state registry of
27 newly hired and returning employees as required by the Personal
28 Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No.
29 104-193.

30 (2) The director may enter into such professional services
31 contracts as may be necessary to assist in the development and operation of
32 the state new hire registry.

33
34 SECTION 13. Arkansas Code § 11-10-902 is amended to read as follows:

35 11-10-902. Reporting requirements -- Enforcement of child support
36 obligations -- Confidentiality.

President of the Senate
William O. Roach

Callie White
Speaker of the House

1 (a) As used in this section:

2 (1) "Administrator" means the administrator of the State New
3 Hire Registry;

4 ~~(1)~~(2) "Employee" means an individual who is an employee as
5 defined in Chapter 24 of the Internal Revenue Code of 1986 but does not
6 include an employee of a federal or state agency performing intelligence or
7 counterintelligence operations if the head of the agency has determined that
8 reporting pursuant to subsection (b) of this section could endanger the
9 safety of the employee or could compromise an ongoing operation or
10 investigation;

11 ~~(2)~~(3) "Employer" means an employer as that term is defined in §
12 3401(d) of the Internal Revenue Code of 1986 and includes any labor
13 organization and any governmental entity; and

14 ~~(3)~~(4) "Labor organization" means a labor organization as that
15 term is defined in § 2(5) of the National Labor Relations Act and includes
16 any entity, sometimes known as a "hiring hall", that is used by the labor
17 organization and an employer to carry out the requirements listed in §
18 8(f)(3) of the federal act of an agreement between the organization and the
19 employer.

20 ~~(b)(1) On and after October 1, 1997, the Division of the State New~~
21 ~~Hire Registry~~ The administrator shall compile an automated state registry of
22 newly hired and returning employees.

23 (2) An employer shall report electronically or in any manner
24 authorized by the ~~Arkansas Employment Security Department~~ Department of
25 Workforce Services for inclusion in the ~~state registry~~ State New Hire
26 Registry whenever an employee is newly hired or returns to work.

27 (3) An employer shall include in each report the name, address,
28 and social security number of the employee and the name, address, and federal
29 taxpayer identification number of the employer.

30 (4) An employer shall make the report by submitting a copy of
31 Internal Revenue Service Form W-4 for the employee or, ~~at the option of the~~
32 ~~employer,~~ an equivalent form. An employer may transmit the report by first
33 class mail, magnetically, or electronically. If an employer makes the report
34 by mail, the reporting date is that of the postmark. The report shall be
35 received not later than twenty (20) days after the date the employer hires
36 the employee or, in the case of an employer transmitting reports magnetically

William A. Hulse
President of the Senate

William Hulse

1 or electronically, by two (2) monthly transmissions, if necessary, not less
2 than twelve (12) days nor more than sixteen (16) days apart.

3 (5) An employer that has employees employed in two (2) or more
4 states and transmits reports magnetically or electronically may comply with
5 the reporting requirements of this section by designating one (1) state in
6 which the employer has employees and to which the employer will transmit the
7 report required by this section. Any employer that transmits reports shall
8 notify the Secretary of the Department of Health and Human Services in
9 writing as to which state the employer designates for the purpose of sending
10 reports.

11 (c)(1) Information reported pursuant to this section shall be entered
12 into the ~~registry~~ State New Hire Registry data base maintained by the
13 ~~Arkansas Employment Security Department~~ Department of Workforce Services or
14 its designated contractor within five (5) business days of receipt from an
15 employer. As used herein, "business day" means a day on which state offices
16 are open for regular business.

17 (2) Within two (2) business days after the ~~data~~ date information
18 regarding a newly hired employee is entered into the ~~registry~~ State New Hire
19 Registry, the Office of Child Support Enforcement of the Revenue Division of
20 the Department of Finance and Administration shall transmit a notice to the
21 employer directing the employer to withhold from the income of the employee
22 an amount equal to the monthly or other periodic child support obligation,
23 including any past due child support obligation, of the employee.

24 (3) Within three (3) business days after the ~~date~~ information
25 regarding a newly hired employee is entered into the ~~registry~~ State New Hire
26 Registry, the ~~Arkansas Employment Security Department~~ Department of Workforce
27 Services or its designated contractor shall furnish the information to the
28 National Registry Directory of New Hires.

29 (4) On a quarterly basis, the ~~state registry~~ State New Hire
30 Registry shall furnish to the ~~national registry~~ National Directory of New
31 Hires extracts of reporting required to be made to the Secretary of Labor
32 concerning the wages and unemployment compensation paid to individuals by
33 such dates, in such format, and containing such information as the Secretary
34 of the Department of Health and Human Services shall specify in regulations.

35 (5)(A) The Department of Human Services shall have access to
36 information reported by employers pursuant to this section for the purpose of

President of the Senate
William A. Ro

State Senate
Sally Wills

1 verifying eligibility for programs pursuant to 42 U.S.C. § 1320B-7.

2 (B) ~~The Arkansas Employment Security Department~~ Department
3 of Workforce Services shall have access to information reported by employers
4 pursuant to this section for purposes of administering the Arkansas
5 ~~Employment Security Department's~~ Department of Workforce Services's programs.

6 (C) The Workers' Compensation Commission shall have access
7 to information reported by employers pursuant to this section for purposes of
8 administering the workers' compensation programs.

9 (d)(1) ~~Not later than May 1, 1998, the Arkansas Employment Security~~
10 ~~Department~~ The Department of Workforce Services shall directly or by contract
11 conduct automated comparisons of the social security numbers reported by
12 employers and the social security numbers appearing within records of the
13 Office of Child Support Enforcement of the Revenue Division of the Department
14 of Finance and Administration for cases being enforced under the Title IV - D
15 State Plan.

16 (2) When an information comparison reveals a match with respect
17 to the social security number of an individual required to provide child
18 support under a support order, the ~~registry~~ State New Hire Registry shall
19 immediately provide the Office of Child Support Enforcement of the Revenue
20 Division of the Department of Finance and Administration with the name,
21 address, and social security number of the employee to whom the social
22 security number is assigned and the name, address, and federal employer
23 identification number of the employer.

24 (e) The Office of Child Support Enforcement of the Revenue Division of
25 the Department of Finance and Administration shall use information received
26 pursuant to subsection (d) of this section to locate individuals for purposes
27 of establishing paternity and establishing, modifying, and enforcing child
28 support obligations and may disclose that information to its agents under
29 contract for purposes connected to the administration of the Title IV-D Child
30 Support Program.

31 (f) All information gathered and maintained by the ~~registry~~ State New
32 Hire Registry:

33 (1) Shall ~~shall~~ be held confidential and be utilized solely for
34 the purposes authorized in this section; and

35 (2) ~~The information shall be considered~~ Is an exception to the
36 open public record requirements of the Freedom of Information Act of 1967, §

President of the Senate
William A. Hester

Bill Miller

1 25-19-101 et seq.


2 (g) To the maximum extent allowable, all expenses associated with the
3 development and operation of the ~~registry~~ State New Hire Registry shall be
4 reimbursed through available funding under the Title IV-D Child Support
5 Program.

6
7 SECTION 14. EMERGENCY CLAUSE. It is found and determined by the
8 General Assembly of the State of Arkansas that this act should go into effect
9 as soon as possible in order to assure the prompt determination of claims for
10 unemployment benefits and the continued provision of benefits and services to
11 eligible persons. Therefore, an emergency is declared to exist and this act
12 being immediately necessary for the preservation of the public peace, health,
13 and safety shall become effective on:

- 14 (1) The date of its approval by the Governor;
- 15 (2) If the bill is neither approved nor vetoed by the Governor,
16 the expiration of the period of time during which the Governor may veto the
17 bill; or
- 18 (3) If the bill is vetoed by the Governor and the veto is
19 overridden, the date the last house overrides the veto.

20
21 /s/ Steele
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APPROVED  GOVERNOR

4-3-09

Collier bills

*President of the Senate
Phillip A. Hodges*

11-10-514 Disqualification — Discharge for misconduct.

(a)(1) If so found by the Director of the Department of Workforce Services, an individual shall be disqualified for benefits if he or she is discharged from his or her last work for misconduct in connection with the work.

(2) In all cases of discharge for absenteeism, the individual's attendance record for the twelve-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.

(3) Except as otherwise provided in this section, disqualification for misconduct shall be for eight (8) weeks of unemployment as defined in § 11-10-512.

(b)(1) If he or she 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 safety of fellow employees, persons, or company property, he or she shall be disqualified from the date of filing the claim until he or she shall have ten (10) weeks of employment in each of which he or she shall have earned wages equal to at least his or her weekly benefit amount.

(2)(A) If an individual is discharged for testing positive for an illegal drug pursuant to a United States Department of Transportation-qualified drug screen conducted in accordance with the employer's bona fide written drug policy, the individual is disqualified:

(i) From the date of filing the claim until he or she shall have ten (10) weeks of employment in each of which he or she shall have earned wages equal to at least his or her weekly benefit amount; and

(ii) Until he or she passes a United States Department of Transportation-qualified drug screen by testing negative for illegal drugs.

(B) If an individual is disqualified under subdivision (b)(2)(A) of this section, no benefit paid to the individual with respect to any week of unemployment after the discharge shall be charged to the account of the employer that discharged the individual if the benefit is based upon wages paid to the individual for employment before the discharge by the employer that discharged the individual.

(c)(1) If so found by the director, an individual shall be disqualified for benefits if he or she is suspended from his or her last work for misconduct in connection with the work.

(2) Except as otherwise provided, the disqualification shall be for the duration of the suspension or eight (8) weeks, whichever is the lesser.

Imogene I. OLIVER v. DIRECTOR, Employment Security Department
and Tyson Foods

E 02-085 ___ S.W.3d ___

Court of Appeals of Arkansas

Divisions III and IV

Opinion delivered December 23, 2002

1. Unemployment compensation -- standard of review -- substantial evidence defined. -- On appeal, the appellate court reviews the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Board of Review, and it will affirm the Board's decision if it is supported by substantial evidence; substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion; even when there is evidence upon which the Board of Review might have reached a different decision, the scope of appellate review is limited to a determination of whether the Board reasonably could have reached the decision it did based upon the evidence before it.

2. Unemployment compensation -- misconduct -- what constitutes. -- For purposes of unemployment compensation, misconduct is defined as (1) disregard of the employer's interest; (2) violation of the employer's rules; (3) disregard of the standards of behavior that the employer has the right to expect; and (4) disregard of the employee's duties and obligations to the employer; there is an element of intent associated with a determination of misconduct; therefore, for an individual's actions to constitute misconduct sufficient to disqualify him or her from benefits, the actions must be deliberate violations of the employer's rules, or acts of wanton or willful disregard of the standard of behavior that the employer has a right to expect of its employees.

3. Unemployment compensation -- discharge for absenteeism -- factors considered in determining whether absenteeism constitutes misconduct. -- When an individual is discharged for absenteeism, the individual's attendance record for the twelve-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 [Ark. Code Ann. § 11-10-514(a)(2) (Repl. 2002)].

4. Unemployment compensation -- appellant's absenteeism did not amount to misconduct -- payment of benefits ordered. -- Appellant's absenteeism did not amount to misconduct that warranted forfeiture of her rights to unemployment compensation where the majority of her

absences were due to sickness, which even the Board recognized was beyond appellant's control; there was no evidence that appellant's conduct amounted to a willful disregard for the employer's interest, an intentional disobedience of the workplace rules, or any similar actions manifesting misconduct; because there was no substantial evidence of misconduct, the Board of Review was reversed and payment of unemployment benefits was ordered.

Appeal from Arkansas Board of Review; reversed & remanded.

Appellant, pro se.

Phyllis A. Edwards, General Counsel , for appellees.

Wendell L. Griffen, Judge. Imogene Oliver appeals from the Arkansas Board of Review decision denying her claim for unemployment compensation benefits upon a finding that she was discharged from her job for misconduct in connection with her work. Appellant contends that the Board's decision was not supported by substantial evidence. We hold that substantial evidence does not support the Board's conclusion that appellant displayed disregard for her obligation to her employer. Accordingly, we reverse and remand for an order to be entered for payment of benefits.

Appellant began working at Tyson Foods in September 1998 and was employed in the production department. Under Tyson Foods's attendance policy, an employee with six occurrences would be terminated. An employee receives an occurrence when the employee is late to work, leaves early from work, or misses work for an unexcused reason. Between November 1, 2000, and December 1, 2002, appellant was absent from work for a total of approximately seventy-eight (78) days under the Family Medical Leave Act (FMLA), which were excused absences and for which no occurrences were received. Included within these days were two periods of approved extended medical leave: July 20, 2001, through August 6, 2001, and August 14, 2001 through September 13, 2001. However, appellant acquired occurrences for the following reasons and dates set out below:

1. November 27, 2000 - Late because of transportation problems - ½ occurrence
2. March 21, 2001 - Absent, non-qualified family FMLA - ½ occurrence
3. March 30, 2001 - Absent, personal reasons - 1 occurrence
4. June 15, 2001 - Absent, personal reasons - 1 occurrence
5. August 13, 2001 - Left early, non-qualified FMLA - 1 occurrence. Appellant either did not have documentation or was

over the 480 hours allowed for FMLA.

6. September 14, 2001 - Left early to go to the doctor, non-qualified FMLA - ½ occurrence. Appellant was over the 480 hours allowed for FMLA.

7. September 20, 2001 - Late because had a doctor's appointment, non-qualified

FMLA - ½ occurrence. Appellant did not have documentation.

8. November 19, 2001 - Absent, personal reasons, illness - 1 occurrence.

On November 20, 2001, appellant was terminated for excessive occurrences, having acquired six occurrences, the last due to illness. She filed a claim for unemployment benefits with the Employment Security Department, which was denied.

Appellant appealed to the Appeal Tribunal. At the hearing, appellant testified that she had a spastic colon and that she was absent from work so much because the medication she had been taking caused her to have problems with her digestive system and with excessive diarrhea. According to appellant, the error in her medication was not discovered and corrected until she began seeing another doctor, which occurred while she was on her second extended medical leave period between August 14, 2001, through September 13, 2001. In addition, appellant testified that on November 27, 2000, she was late to work because of transportation problems; that on March 21, 2001, she left work early because of a family situation; and that on August 13, 2001, she left work early after receiving a phone call that her daughter, who was bedridden because of pregnancy complications, needed assistance.

The Appeal Tribunal reversed the Department's determination and awarded benefits. However, the Board of Review reversed the decision of the Appeal Tribunal after finding that appellant's absences for personal reasons and her tardiness due to lack of transportation, which caused her to exceed the maximum number of occurrences, were within her control and thus, displayed disregard for her obligation to the employer. As such, the Board concluded that appellant had been discharged from work because of misconduct in connection with the work and denied appellant's claim for unemployment benefits.

On appeal, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Board's findings, and we will affirm the Board's decision if it is supported by substantial evidence. *Hiner v. Director, Ark. Empl. Sec. Dep't*, 61 Ark. App. 139, 965 S.W.2d 785 (1998). Substantial evidence is such

relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Perdrix-Wang v. Director, Employment. Sec. Dep't*, 42 Ark. App. 218, 856 S.W.2d 636 (1993). Even when there is evidence upon which the Board of Review might have reached a different decision, the scope of our review is limited to a determination of whether the Board reasonably could have reached the decision it did based upon the evidence before it. *Id.*

Arkansas Code Annotated section 11-10-514(a)(1) (Repl. 2002) provides in relevant part that an individual will be disqualified for benefits if discharged from work for misconduct in connection with that work. For the purposes of unemployment compensation, misconduct is defined as (1) disregard of the employer's interest; (2) violation of the employer's rules; (3) disregard of the standards of behavior which the employer has the right to expect; and (4) disregard of the employee's duties and obligations to the employer. *Rucker v. Price*, 52 Ark. App. 126, 915 S.W.2d 315 (1996). There is an element of intent associated with a determination of misconduct. *Fulgham v. Director, Employment Sec. Dep't*, 52 Ark. App. 197, 918 S.W.2d 186 (1996). Therefore, for an individual's actions to constitute misconduct sufficient to disqualify him or her from benefits, the actions must be deliberate violations of the employer's rules or acts of wanton or willful disregard of the standard of behavior that the employer has a right to expect of its employees. *Kimble v. Director, Ark. Empl. Sec. Dep't*, 60 Ark. App. 36, 959 S.W.2d 66 (1997). When an individual is discharged for absenteeism, "the individual's attendance record for the twelve-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." Ark. Code Ann. § 11-10-514(a)(2) (Repl. 2002).

The record in this case clearly reflects that appellant's absenteeism did not amount to misconduct which would warrant forfeiture of her rights to unemployment compensation. The majority of appellant's absences were due to sickness, which even the Board recognized was beyond her control. On each of the days that appellant was absent, she telephoned Tyson Foods to inform them that she would not be at work. The situations for which she received two-and-one-half (2 ½) of the occurrences were related to her illness or a family member's illness and were considered unexcused because of lack of documentation or because she had exhausted all of her FMLA hours. There is no evidence that appellant's conduct amounted to a willful disregard for the employer's interest, an intentional disobedience of the workplace rules, or any similar actions manifesting misconduct. Therefore, we hold that there was no substantial evidence of misconduct. We reverse the Board of Review and order payment of unemployment benefits.

Reversed and remanded.

Stroud, C.J., Robbins, Bird, Neal, and Baker, JJ., agree.

Pittman, Hart, and Roaf, JJ., dissent.

Andree Layton Roaf, Judge, dissenting. I would reverse and remand this case to the Board of Review for further findings consistent with this decision. While I agree with the majority that substantial evidence does not support the Board's conclusion that Imogene Oliver's absenteeism rose to the level of misconduct, this is because the Board concluded that Oliver exceeded the maximum number of "occurrences" during her tenure with Tyson, a conclusion that the Appeal Tribunal did not reach in its decision to award Oliver benefits. It appears from the Board's opinion that it accepted the employer's testimony on this point, and there is no indication that the Board reviewed Tyson's somewhat complex attendance policy, and recitation by the employer's witness of Oliver's absences, including excused and non-excused, to determine if the policy was in fact violated. It is not readily apparent from a review of the transcript in this case that it was. We do not conduct *de novo* review of employment cases, see *Barber v. Director*, 67 Ark. App. 20, 992 S.W.2d 159 (1999). Consequently, I would not conduct this review, but would remand to the Board for further consideration of this issue.

I further note that our case law indicates that misconduct for absenteeism has been found where the absences have not been reported or called on in advance, see *Victor Indus. Corp. v. Daniels, Dir.*, 1 Ark. App. 6, 611 S.W.2d 794 (1981), or excessive due to other personal activities, see *Jeffreys v. Everett, Dir.*, 6 Ark. App. 265, 640 S.W.2d 465 (1982). Here, the vast majority of Oliver's absences were due to medical problems, *bona fide* family leave, and all apparently were properly reported.

Pittman and Hart, JJ., join.

Immediate Changes to Arkansas Unemployment Insurance Law

On April 3, 2009 Governor Beebe signed SB 429 into law and it is now Act 802. There are several changes affecting UI contained in Act 802. A more comprehensive explanation of Act 802 will be provided later, but everyone needs to be aware of the following items because they became effective upon the Governor's signature. We are in the process of working to develop 525s and canned non-mons to address these immediate issues, but until that time please use the following procedures.

Part Time Work as Suitable Work

Our policy regarding whether a claimant may limit the type of work for which he/she is willing to look, apply, or accept to part time work depends upon the base period wages. Under current policy, suitable work can be limited to part time work if the claimant earned 51% or more of the base period wages from part time work. Act 802 incorporates this policy into law with a slight modification. With the law change, rather than using the *wage amounts* we must use the *number of weeks worked* in part time work. If **50%** or more of the *weeks worked* in the base period were part time work then the claimant may limit work search to part time work and refuse to apply for or accept full time work if offered. ***This change is effective with availability, referral, and offer of work fact situations that occur on or after April 3, 2009.*** These issues will go to AAS as always—the only difference is in the method of calculation. The 5073A canned non-mons have been updated with the law change.

Separations due to Illness, Injury, Pregnancy, or Disability

Under current law an individual may escape disqualification if, after making a reasonable effort to preserve job rights, the individual quit last work due to illness, injury, pregnancy, or other disability (I.I.P.D.). With the law change we still recognize the I.I.P.D exception for claimants, but it has been expanded to include the illness, injury, pregnancy, or disability of an ***immediate family member***. Immediate family members include spouse, child, parent, brother, sister, grandchild, or grandparent of the claimant. ***This change is effective with separations that occur on or after April 3, 2009.***

The I.I.P.D issues that involve the claimant will hit AAS as always, but the ones involving the claimant's immediate family members will not be so obvious and will probably hit AAS as a quit for a personal compelling emergency or general quit. AAS should review all forms carefully to see if the reason for separation might involve an immediate member of the claimant's family. When I.I.P.D issues are discovered AAS will need to make the following analysis:

- a. ***Did the separation occur on or after April 3, 2009?*** If not then the law change regarding immediate family members does not apply; however, you may still adjudicate I.I.P.D issues involving the claimant as always. Comment on your work sheet that you considered the immediate family exception, but that it does not apply because the separation occurred before April 3, 2009. If the separation occurred on or after April 3, 2009, then proceed with the analysis.

- b. ***Is the individual that needs care an immediate member of the claimant's family?*** If the individual is not the spouse, child, parent, brother, sister, grandchild, or grandparent of the claimant then this new exception to disqualification does not apply and we would adjudicate as a quit without good cause. Comment on your work sheet that you considered the immediate family exception, but that it does not apply because the individual does not meet the definition of immediate family member. The appropriate canned non-mon law code is 513A1D54. If the individual is an immediate family member then proceed with the analysis.
- c. ***Does the immediate family member have a verified illness, injury, pregnancy, or disability that necessitates care by another individual?*** The most obvious form of verification will be a statement from a healthcare professional; however, we cannot require that the statement be from a healthcare professional and should accept other forms of verification that reasonably establish the condition and the need for care. *Please note that the term disability covers all types of disabilities: medical and physical; permanent and temporary; and partial and total. Also note that we should use these verification parameters for claimant I.I.P.Ds.* If verification cannot be made then this new exception to disqualification does not apply and we would adjudicate as a quit without good cause. Comment on your work sheet that you considered the immediate family exception, but that it does not apply due to lack of verification. The appropriate canned non-mon law code for this situation is 513A1D55. If the individual has verification then proceed with the analysis.
- d. ***Did the claimant ask the employer for the needed time off and if so did the employer deny the request?*** If the claimant did not ask for the needed time off then both the immediate family and the claimant exception to disqualification does not apply and we would adjudicate as a quit without good cause. Comment on your work sheet that you considered the exception, but that it does not apply because the claimant did not take steps to preserve job rights. The appropriate canned non-mon law code for this situation is 513A1D53. If the claimant asked for the needed time off and the employer granted or denied the request, the exception applies so you will need to adjudicate like you would when paying a claimant that quit due to injury, illness, pregnancy, or disability, but change the language in the finding of facts to show that it involved the claimant's immediate family member's illness, injury, pregnancy, or disability. Adjudicate claimant I.I.P.Ds as always.

513B0X02 is the appropriate eligible canned non-mon law code for separations on or after 4/3/09 due to illness, injury, pregnancy, or disability of the claimant or an immediate family member.

These I.I.P.Ds issues may also enter AAS in the form of a ***general discharge or discharge/absenteeism***. If you encounter a discharge that involves the illness, injury, pregnancy or disability of the claimant or an immediate family member, unless the discharge results from ***sporadic absences*** involving I.I.P.Ds, you should adjudicate the separation as a quit using the above analysis. If the discharge results from sporadic absences, you will need to adjudicate it as you would a normal absenteeism case—looking at the absenteeism record of the claimant for the last twelve months and considering the reasons for the absences. If the claimant can establish his own I.I.P.D or of an immediate family member that has a verifiable illness, injury, pregnancy, or disability that necessitated care by another individual and that the claimant asked to be absent for that reason, then that absence should not count against the claimant in deciding whether the claimant's absenteeism history constitutes misconduct. Please keep in mind that even if the claimant can establish his/her own I.I.P.D or that of an immediate family member, misconduct can

still be found if the claimant failed to follow work rules/policy involving reporting absences or requesting additional time off, etc.

Able and Available The I.I.P.D exception does not preclude the claimant from having to meet the A and A eligibility requirements. A and A must always be considered—whether it comes across as an issue or not.

Separations due to Domestic Violence

Under current law there is no specific exemption if an individual quits last work due to domestic violence—however, this situation could very well fall under the current personal compelling emergency clause. With the law change there is now a specific exception to disqualification when an individual quits last work due to domestic violence that causes the individual reasonably to believe that the individual's continued employment will jeopardize the safety of the individual or a member of the individual's immediate family. Again, immediate family members include spouse, child, parent, brother, sister, grandchild, or grandparent of the claimant. ***This change is effective with separations that occur on or after April 3, 2009.*** AAS should review all forms carefully to see if the reason for separation might include domestic violence. When such a quit issue is discovered AAS will need to make the following analysis:

- a. ***Did the separation occur on or after April 3, 2009?*** If not then the law change does not apply; however, you may still adjudicate under personal and compelling personal emergency exception. If yes then proceed with the analysis.
- b. ***Did the claimant quit due to a reasonable belief that continued employment would jeopardize the claimant's safety or the safety of the claimant's immediate family?*** In order to establish "reasonable belief" two things must be established. First, that the claimant believed that their safety or the safety of an immediate family member would be in jeopardy if he/she continued to work. Generally, the claimant's statement to that effect should suffice. Secondly, recent domestic violence must be verified. This verification can be established with a statement from a qualified professional from whom the individual has sought assistance such as a counselor, shelter worker, member of the clergy, attorney, or health worker. A recently issued protective order or police record documenting the domestic violence can also verify the recent domestic violence; however, we cannot ***require*** either of the protective order or police record in addition to or in lieu of a statement from a qualified professional. If reasonable belief cannot be established then this new exception to disqualification does not apply and we would adjudicate as a quit without good cause. Comment on your work sheet that you considered the domestic violence exception, but that it does not apply because the individual does not have reasonable belief. The appropriate canned non-mon law code for this situation is 513A1D58. If reasonable belief is established then proceed with the analysis.
- c. ***Did the domestic violence involve an immediate family member?*** If reasonable belief is established and the claimant's safety is not the issue you must ask whether the safety of the individual in question is that of the spouse, child, parent, brother, sister, grandchild, or grandparent of the claimant. If not, then this new exception to disqualification does not apply and we would adjudicate as a quit without good cause. Comment on your work sheet

that you considered the immediate family exception, but that it does not apply because the individual does not meet the definition of immediate family member. The appropriate canned non-mon law code for this situation is 513A1D57. If the individual is an immediate family member then proceed with the analysis.

- d. ***Did the claimant make a reasonable attempt to preserve job rights?*** As with any case what is reasonable depends upon the facts of the case. With domestic violence cases there may not be time for the claimant to contact the employer prior to actually leaving work. So, in domestic violence cases as long as the claimant contacts the employer within a reasonable time after leaving to request a leave of absence or other time off we should always find that the reasonable attempt to preserve job rights was made. Also keep in mind that sometimes victims of domestic violence do not have access to a telephone and if this is the case then we should not deny benefits based on failure to make a reasonable effort to preserve job rights. If a reasonable attempt to preserve job rights cannot be established then this new exception to disqualification does not apply and we would adjudicate as a quit without good cause. Comment on your work sheet that you considered the domestic violence exception, but that it does not apply because the individual did not take steps to preserve job rights. The appropriate canned non-mon law code for this situation is 513A1D56. If a reasonable attempt to preserve job rights is established then the exception applies so you will need to adjudicate like you would when paying a claimant under the personal compelling emergency proviso, but change the language in the finding of facts to show that it involved domestic violence.

513B1X03 is the appropriate eligible canned non-mon law code for separations on or after 4/3/09 due to domestic violence that caused the claimant to reasonably believe that continued employment would jeopardize the claimant's safety or the safety of an immediate family member.

The domestic violence issue may also enter AAS in the form of a ***general discharge or discharge/absenteeism***. If you encounter a discharge that involves domestic violence you should adjudicate the separation as a quit using the above analysis.

Able and Available The domestic violence exception does not preclude the claimant from having to meet the A and A eligibility requirements. A and A must always be considered—whether it comes across as an issue or not.

Separations due to Moving with Spouse

Under current law an individual may escape disqualification if he/she quits to move with a military spouse to a new duty station. With the law change, the quit to move with military spouse provision has been replaced with an exception to disqualification when an individual quits last work to move with the individual's spouse because the spouse has obtained employment in a new location and it would be impractical for the individual to commute to their old job. ***This change is effective with separations that occur on or after April 3, 2009.*** AAS should review all forms carefully to see if the reason for separation might include quit to move with spouse. When such a quit issue is discovered AAS will need to make the following analysis:

- a. ***Did the separation occur on or after April 3, 2009?*** If not then the law change does not apply; however, you may still adjudicate under the military spouse quit to move. Comment on your work sheet that you considered the quit to move with spouse exception, but that it does not apply because the separation occurred before April 3, 2009. If yes then proceed with the analysis.
- b. ***Did the claimant quit to move with his/her spouse?*** If not then exception does not apply—adjudicate as a quit without good cause. Comment on your work sheet that you considered the quit to move with spouse exception, but that it does not apply because the individual involved was not the claimant’s spouse. The appropriate canned non-mon law code for this situation is 513A1D59. If yes then proceed with analysis.
- c. ***Was the spouse required to move due to obtaining new employment?*** If not then exception does not apply—adjudicate as a quit without good cause. Comment on your work sheet that you considered the quit to move with spouse exception, but that it does not apply because the spouse was not required to move as a result of obtaining new employment. The appropriate canned non-mon law code for this situation is 513A1D60. If yes then proceed with analysis.
- d. ***Was it impractical for the claimant to commute to work?*** This will be the same analysis that we use in determining if distance to the work place makes work unsuitable and will vary depending upon where and how far the claimant moves from the work place. If it is not impractical to commute then exception does not apply—adjudicate as a quit without good cause. Comment on your work sheet that you considered the quit to move with spouse exception, but that it does not apply because it was not impractical to commute. The appropriate canned non-mon law code for this situation is 513A1D61. If it is impractical then continue with the analysis.
- e. ***Did the claimant make a reasonable attempt to preserve job rights?*** While reasonable attempt to preserve job rights is a part of the law, the law does not require futile efforts and in the quit to move cases we should always find that the reasonable attempt to preserve job rights was made. Since the reasonable attempt to preserve job rights is established the exception applies so you will need to (until we can get some canned non mons) adjudicate like you would when paying a claimant under the quit to move with military spouse, but change the language in the finding of facts to remove the military spouse designation.

513B1X04 is the appropriate eligible canned non-mon law code for separations on or after 4/3/09 to move with their spouse due to a change in the location of the spouse’s employment that made it impractical to commute.

Able and Available The quit to move with spouse exception does not preclude the claimant from having to meet the A and A eligibility requirements. A and A must always be considered—whether it comes across as an issue or not.