

received via e-mail 4/12/10



State of Utah

GARY R. HERBERT
Governor

GREG BELL
Lieutenant Governor

Department of
Workforce Services

KRISTEN COX
Executive Director

GREGORY B. GARDNER
Deputy Director

JON S. PIERPONT
Deputy Director

April 5, 2010

Gay M. Gilbert, Administrator
Office of Unemployment Insurance
200 Constitution Avenue NW, Room S-4231
Washington, DC 20210

Subject: Utah's Application for Special Transfer Related to UC Modernization Incentive Payments

Dear Ms. Gilbert:

The Utah Department of Workforce Services submits the attached application for a special transfer of \$20,332,402 related to Unemployment Compensation (UC) modernization incentive payments on behalf of the State of Utah, in accordance with Unemployment Insurance Program Letter (UIPL) number 14-09.

On March 29, 2010 Utah Governor Gary R. Herbert signed into law House Bill (HB) 18, Unemployment Insurance Amendments of the 2010 Legislative General Session. An enrolled copy of the bill is attached. HB 18 provisions provide for a UI claimant, whose benefit year is effective on or after January 2, 2011 and who does not have sufficient wages in the first four of the last five completed calendar quarters (standard base period) to otherwise qualify for benefits – the base period is the last four completed calendar quarters (alternate base period).

I certify that this application is submitted in good faith with the intention of providing benefits to unemployed workers who meet the eligibility provisions of this application for any claimant whose benefit year is effective on or after January 2, 2011. I certify that this provision is permanent and is not subject to discontinuation under any circumstances other than repeal by the Utah Legislature. The State of Utah plans to use the incentive funds to pay future unemployment compensation benefits.

Sincerely,

Kristen Cox
Executive Director

30 As used in this chapter:

31 (1) (a) [~~"Base period"~~] Except as otherwise provided in Subsection (1)(b), "base
32 period" means the first four of the last five completed calendar quarters next preceding the first
33 day of the individual's benefit year with respect to any individual whose benefit year
34 commences on or after January 5, 1986.

35 (b) (i) For a claimant whose benefit year is effective on or after January 2, 2011, and
36 who does not have sufficient wages in the first four of the last five completed calendar quarters
37 to otherwise qualify for benefits under Subsection (1)(a), the base period is the last four
38 completed calendar quarters.

39 (ii) Wages used to establish eligibility regardless of how the base period is calculated
40 are not available for qualifying benefits in any subsequent benefit year.

41 (2) "Benefit year" means the 52 consecutive week period beginning with the first week
42 with respect to which an individual files for benefits and is found to have an insured status.

43 (3) "Benefits" means the money payments payable to an individual as provided in this
44 chapter with respect to the individual's unemployment.

45 (4) "Calendar quarter" means the period of three consecutive months ending on March
46 31, June 30, September 30, or December 31, or the equivalent, as the department may by rule
47 prescribe.

48 (5) "Contribution" means the money payments required by this chapter to be made
49 into the Unemployment Compensation Fund by any employing unit on account of having
50 individuals in its employ.

51 (6) "Division" means the Unemployment Insurance Division.

52 (7) "Employment office" means a free public employment office or branch operated by
53 this or any other state as a part of a state-controlled system of public employment offices or by
54 a federal agency charged with the administration of an unemployment compensation program
55 or free public employment offices.

56 (8) "Employment Security Administration Fund" means the fund established by
57 Section 35A-4-505, and from which administrative expenses under this chapter shall be paid.

58 (9) "Extended benefits" has the meaning specified in Subsection 35A-4-402(7)(f).

59 (10) "Fund" means the Unemployment Compensation Fund established by this
60 chapter.

61 (11) "Insured average annual wage" means on or before the 15th day of May of each
62 year, the total wages of insured workers for the preceding calendar year, divided by the
63 average monthly number of insured workers, determined by dividing by 12 the total insured
64 workers for the preceding calendar year as determined under the rules of the department
65 calculated to two decimal places, disregarding any fraction of one cent.

66 (12) "Insured average fiscal year wage" means on or before the 15th day of November
67 of each year, the total wages of insured workers for the preceding fiscal year, divided by the
68 average monthly number of insured workers, determined by dividing by 12 the total insured
69 workers for the preceding fiscal year as determined under the rules of the department
70 calculated to two decimal places, disregarding any fraction of one cent.

71 (13) "Insured average fiscal year weekly wage" means the insured average fiscal year
72 wage determined in Subsection (12), divided by 52, calculated to two decimal places,
73 disregarding any fraction of one cent.

74 (14) "Insured average weekly wage" means the insured average annual wage
75 determined in Subsection (11), divided by 52, calculated to two decimal places, disregarding
76 any fraction of one cent.

77 (15) "Insured status" means that an individual has, during the individual's base-period,
78 performed services and earned wages in employment sufficient to qualify for benefits under
79 Section 35A-4-403.

80 (16) "Insured work" means employment for an employer, as defined in Section
81 35A-4-203.

82 (17) "Monetary base period wage requirement" means 8% of the insured average fiscal
83 year wage for the preceding fiscal year, for example, fiscal year 1990 for individuals
84 establishing benefit years in 1991, rounded up to the next higher multiple of \$100.

85 (18) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the

86 District of Columbia.

87 (19) "Tribal unit" means a subdivision, subsidiary, or business enterprise wholly
88 owned by an American Indian tribe.

89 (20) "Week" means the period or periods of seven consecutive calendar days as the
90 department may prescribe by rule.

91 Section 2. Section **35A-4-403** is amended to read:

92 **35A-4-403. Eligibility of individual -- Conditions -- Furnishing reports -- Weeks**
93 **of employment -- Successive benefit years.**

94 (1) Except as provided in Subsection (2), an unemployed individual is eligible to
95 receive benefits for any week if the division finds:

96 (a) the individual has made a claim for benefits for that week in accordance with rules
97 the department may prescribe, except as provided in Subsection (3);

98 (b) the individual has registered for work with the department and acted in a good
99 faith effort to secure employment during each and every week for which the individual made a
100 claim for benefits under this chapter in accordance with rules the department may prescribe,
101 except as provided in Subsection (3);

102 (c) the individual is able to work and is available for work during each and every week
103 for which the individual made a claim for benefits under this chapter;

104 (d) the individual has been unemployed for a waiting period of one week for each
105 benefit year, but a week may not be counted as a week of unemployment for the purpose of
106 this Subsection (1)(d):

107 (i) unless it occurs within the benefit year that includes the week for which the
108 individual claims benefits;

109 (ii) if benefits have been paid for the claim; or

110 (iii) unless the individual was eligible for benefits for the week as provided in this
111 section and Sections 35A-4-401 and 35A-4-405, except for the requirement of this Subsection
112 (1)(d);

113 (e) (i) the individual has furnished the division separation and other information the

114 department may prescribe by rule, or proves to the satisfaction of the division that the
115 individual had good cause for failing to furnish the information;

116 (ii) if an employer fails to furnish reports concerning separation and employment as
117 required by this chapter and rules adopted under the chapter, the division shall, on the basis of
118 information it obtains, determine the eligibility and insured status of an individual affected by
119 that failure and the employer is not considered to be an interested party to the determination;

120 (f) (i) the individual's base period wages were at least 1-1/2 times the individual's
121 wages for insured work paid during that quarter of the individual's base period in which the
122 individual's wages were highest; or

123 (ii) for any claimant whose benefit year is effective on or before January 1, 2011, the
124 individual shows to the satisfaction of the division that the individual worked at least 20
125 weeks in insured work during the individual's base period and earned wages of at least 5% of
126 the monetary base period wage requirement each week, rounded to the nearest whole dollar,
127 provided that the individual's total base-period wages were not less than the monetary base
128 period wage requirement as defined in Section 35A-4-201; and

129 (g) (i) the individual applying for benefits in a successive benefit year has had
130 subsequent employment since the effective date of the preceding benefit year equal to at least
131 six times the individual's weekly benefit amount, in insured work; and

132 (ii) the individual's total wages and employment experience in the individual's base
133 period meet the requirements specified in Subsection (1)(f).

134 (2) (a) For purposes of this Subsection (2), "suitable employment" means:

135 (i) work of a substantially equal or higher skill level than the individual's past
136 adversely affected employment as defined for purposes of the Trade Act of 1974; and

137 (ii) wages for that work at not less than 80% of the individual's average weekly wage
138 as determined for purposes of the Trade Act of 1974.

139 (b) (i) An individual in training with the approval of the division is not ineligible to
140 receive benefits by reason of nonavailability for work, failure to search for work, refusal of
141 suitable work, failure to apply for or to accept suitable work, or not having been unemployed

142 for a waiting period of one week for any week the individual is in the approved training.

143 (ii) For purposes of Subsection (2)(b)(i), the division shall approve any mandatory
144 apprenticeship-related training.

145 (c) Notwithstanding any other provision of this chapter, the division may not deny an
146 otherwise eligible individual benefits for any week:

147 (i) because the individual is in training approved under Section 236 (a)(1) of the Trade
148 Act of 1974, 19 U.S.C. 2296(a);

149 (ii) for leaving work to enter training described in Subsection (2)(c)(i) if the work left
150 is not suitable employment; or

151 (iii) because of the application to any such week in training of provisions in this law or
152 any applicable federal unemployment compensation law relating to availability for work,
153 active search for work, or refusal to accept work.

154 (3) The department may, by rule, waive or alter either or both of the requirements of
155 Subsections (1)(a) and (b) as to:

156 (a) individuals attached to regular jobs;

157 (b) a disaster in Utah as declared by the President of the United States or by the state's
158 governor after giving due consideration to factors directly associated with the disaster,
159 including:

160 (i) the disaster's impact on employers and their ability to employ workers in the
161 affected area in Utah;

162 (ii) the disaster's impact on claimants and their ability to comply with filing
163 requirements in the affected area in Utah; and

164 (iii) the magnitude of the disaster and the anticipated time for recovery; and

165 (c) cases or situations when it finds that compliance with the requirements would be
166 oppressive, or would be inconsistent with the purposes of this chapter, as long as the rule does
167 not conflict with Subsection 35A-4-401(1).

168 (4) (a) The director of the division or the director's designee shall make an annual
169 report to the Workforce Employment Advisory Council and to the Legislature's Workforce

170 Services and Community and Economic Development Interim Committee no later than
171 November 30, 2011, and annually thereafter, concerning the impact on individuals applying
172 for unemployment compensation and the unemployment trust insurance fund as a result of
173 amendments made to Subsections (1)(f) and 35A-4-201(1) during the Legislature's 2010
174 General Session.

175 (b) The interim committee shall make recommendations to the Legislature from the
176 annual report it receives under Subsection (4)(a) that may include:

177 (i) further modifications to the amendments made to Subsections (1)(f) and
178 35A-4-201(1) during the 2010 General Session; or

179 (ii) the repeal of those amendments.