

Amendments to State Unemployment Insurance Laws

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 4
August 2007

ARKANSAS

SB 773
(Act No. 490)

ENACTED and EFFECTIVE March 26, 2007

Administrative

Changes the Arkansas Employment Security Law to the Department of Workforce Services Law, the title of the Director from the Director of the Arkansas Employment Security Department to the Director of the Department of Workforce Services, and the Employment Security Special Fund to the Department of Workforce Services Special Fund.

Repeals the provisions for providing job finding assistance to food stamp applicants and recipients.

Provides for an Emergency Clause.

Appeals

Provides that in the event that an appeal involving an original nonmonetary determination is pending as of the date that a redetermination is issued, the appeal, unless withdrawn, must be treated as an appeal from such redetermination.

Provides that a decision by the Board of Review is final unless within 30 calendar days (formerly 20) after the mailing of notice to the parties' last known address or absent mailing, within 30 calendar days (formerly 20) after delivery of notice a judicial review is initiated.

Allows an employer to appeal from the determination of the director to the circuit court by filing a petition with the circuit court clerk in the county of the employer's residence or in Pulaski County within 30 days (formerly 20) of the mailing to the employer of notice of the determination.

Provides that a reimbursable employer's time for appealing a redetermination by filing a petition with the clerk of the circuit court in the county of the employer's residence, if the residence is in Arkansas, or the clerk of the circuit court of Pulaski County, Arkansas is changed from 20 days to 30 days after mailing or delivery of the redetermination; the redetermination is conclusive and binding for failing to appeal.

Financing

Modifies the contribution rate schedule to reflect that an employer with a reserve ratio balance of:

less than 1.35 percent with a positive reserve balance will be assigned a contribution rate of 5.0 percent;
less than 0.0 percent will be assigned a contribution rate of 6.0 percent.

(Previously, an employer's reserve ratio had to be less than 1.35 percent with 2 years or less negative balance for a 5.0 percent rate and more than 2 years negative balance for a 6.0 percent rate.)

Modifies the experience rate provisions to provide that:

notwithstanding any other provisions, for any calendar year beginning on and after January 1, 2008, an employer assigned a contribution rate of 6 percent who has had such a rate for the 2 preceding calendar years will be assigned an additional contribution assessment of 2 percent. (Previously, the 2 percent additional contribution was not assigned if such employer had a positive experience, i.e., contributions paid exceed benefit charges, for 1 of the 2 preceding computation years, i.e., the 12-month periods ending June 30.);
furthermore, after 2 consecutive years of being assessed an additional contribution of 2 percent, such assessment must increase to 4 percent. (Previously, the 4 percent assessment was not assessed if the employer had a positive experience in at least 2 of the last 3 preceding computation periods.)

Requires that each eligible employer is provided with an annual notice of voluntary payment amounts that may be submitted to reduce the employer's contribution rate.

Changes the due date for making voluntary payments to the Unemployment Compensation Trust Fund from within 90 days from the beginning of the rate year to no later than March 31, of the calendar year for which the new contribution rate is effective.

Requires, upon receipt of a timely voluntary payment, computation of a new contribution rate for the employer, and that notice is provided to the employer of the new contribution rate.

Requires regular benefits paid after a benefit year has been established against a base-period employer under qualifying conditions when the individual continues employment with the employer but who subsequently left the employment under conditions that would have been noncharged to be charged through the date on which the subsequent separation occurred to the separate account of the base-period employer. (Previously, benefits paid were not charged to the separate account of the base-period employer.) Excludes such employers from making an application for review and redetermination for charges that might be changed that appear on the employer's account as reflected on the quarterly statement of paid benefits.

Provides that benefits paid from the established benefit year after the date on which the subsequent separation occurred will not be charged to the separate account of the base-period employer.

Deletes the requirement that the Department of Workforce Services Special Fund consist of the proceeds of the one twentieth of one percent (.05 percent) stabilization tax.

Requires the Department of Workforce Services Special Fund to consist of interest and

penalty payments on overpayments collected from state income taxes intercepted and from the amount owed pursuant to a certificate of overpayment; provides for refunds of interest and penalties erroneously paid on such overpayments from this special fund.

Requires from and after the end of the rate year in which a transfer occurred, the successor employing unit's rate of contribution for each rate year following the transfer to be based on the successor employing unit's experience combined with the experience of the predecessor employer or employers as of the regular computation date for the rate year. However, if at the regular computation date the successor employing unit and the predecessor employer or employers have less than 3 years of benefit risk:

requires the contribution rate to be the new employer contribution rate; and requires the 3 years of benefit risk to be calculated using the established new employer calculation date of the successor employing unit or the calculation date of the predecessor employer or employers, whichever date is the earliest.

Nonmonetary Eligibility

Provides that no individual will be disqualified for voluntarily leaving work if after making reasonable efforts to preserve his or her job rights he or she left his or her last work to move with a military spouse to a new duty station.

Requires separation payments, holiday payments, vacation payments, bonus payments, and sick payments to be treated as earnings of which any amount exceeding 40 percent of the weekly benefit amount (WBA) will be deducted from the WBA, resulting in a reduced payment. With respect to the holiday payments, deductions are applicable for the week or weeks in which the holiday occurred, and employers are required to promptly report the week or weeks involved in the holiday pay period and the corresponding amount of holiday payments for that holiday pay period.

Deletes the provision requiring benefit payments with respect to the week in which the sick-pay period occurred in an amount equal to the weekly benefit amount (WBA) less the sick pay payable that has been paid or will be paid later with respect to a week that is in excess of 40 percent of the WBA rounded to the nearest lower full dollar amount.

Requires a written notice of a nonmonetary determination to be given to the claimant by delivery or mailing the notice to the last known address.

Overpayments

Provides that any interest or penalty payment recovered from an overpayment to a claimant must be deposited into the Department of Workforce Services Special Fund.

COLORADO

HB 1285
(CH 208)

ENACTED May 14, 2007
EFFECTIVE August 8, 2007

Appeals

Amends the law to provide that decisions regarding the ability, availability, and active search for work may be appealed by claimants and chargeable employers if the appeal is received within 20 calendar days after the date on the notice of any decision (previously within 15 calendar days).

Deletes the requirement of using the "post marked date, if mailed" when relating to the time period:

that information pertinent to the claim from interested parties must be received by the division;
when initial appeals must be received by the division;
when an appeal from a hearing officer's decision must be received by the division;
when employers appeal a determination of liability for taxes, a determination of coverage, or a seasonality determination;
when employers appeal an assessment of taxes, a notice of rate of taxes, a recomputation of tax rate, or any notice of correction of certain matters; and
when penalties are imposed.

Changes the appeal period from within 15 to within 20 calendar days for:

initial appeals of a deputy's decision by a hearing officer;
appeals from a hearing officer's decision;
petitions for review of a deputy's decision;
petitions for review from a deputy's decision;
employers' appeal of a determination of liability for taxes, a determination of coverage, or a seasonality determination;
employers' appeal of an assessment of taxes, a notice of rate of taxes, a recomputation of tax rate, or any notice of correction of certain matters; and
appeals for penalties imposed.

(All the above provisions are applicable to filings made on or after August 8, 2007.)

DELAWARE	HB 144 (CH 46)	ENACTED June 18, 2007 EFFECTIVE January 1, 2008
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Financing

Increases the taxable wage base from \$8,500 to \$10,500.

GEORGIA	HB 443 (Act No. 226)	ENACTED May 24, 2007 EFFECTIVE July 1, 2007
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Coverage

Changes the existing ABC test for determining when an individual is an independent contractor to an AC test. Additionally, provides that an individual will be defined as an independent contractor if so determined by an IRS SS-8 determination.

Financing

Extends from December 31, 2007, to December 31, 2009, the suspension period whereby an employer's contribution rate would otherwise be increased based upon the state-wide reserve ratio.

Monetary Entitlement

Increases the minimum weekly benefit amount (WBA) from \$42 to \$44 effective July 1,

2007, and increases the maximum WBA from \$320 to \$330 effective July 1, 2008.

HAWAII	HB 1379 (Act No. 70)	ENACTED May 16, 2007 EFFECTIVE July 1, 2007
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Coverage

Requires that certain services performed for Indian tribes be covered.

Requires unemployment benefits based on services performed for Indian tribes to be payable in the same amounts and under the same terms and conditions as benefits payable on the basis of other services covered under state law.

Includes in the definition of "employment" services performed for an Indian tribe resulting in unemployment insurance coverage of such services and the exclusion from coverage of certain services.

Requires financing of benefits based on services performed by Indian tribes to be applied in the same manner and under the same terms and condition as for nonprofit organizations except as provided.

An Indian tribe includes a tribal unit, a subdivision or subsidiary of an Indian tribe, and a business enterprise wholly owned by the Indian tribe.

Allows an Indian tribe to either pay contributions or to elect to make reimbursements.

Requires an Indian tribe that elects to make reimbursements to deposit money as security.

Under certain circumstances, terminates the reimbursement election when a tribe fails to make the required payment; provides for reinstatement when the failure is corrected.

Requires extended benefits not reimbursed by the federal government to be 100 percent financed by the Indian tribe.

Excludes from the definition of "employment" agricultural labor performed by an alien admitted to the U.S. to perform agricultural labor under certain provisions of the Immigration and Nationality Act.

HAWAII	HB 1500 (Act No. 110)	ENACTED May 30, 2007 EFFECTIVE January 1, 2008
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Monetary Entitlement

Raises the maximum weekly benefit amount (WBA) to 75 percent of the average weekly wage (AWW) for benefit years beginning January 1, 2008. For benefit years beginning before January 1, 2008, and after January 1, 2011, the maximum WBA will be 70 percent of the AWW.

Increases from \$50 to \$150 the amount of money a claimant can earn without having his/her unemployment benefit reduced.

Reduces the taxable wage base from \$35,300 to \$13,000 in calendar years 2008, 2009, and 2010 provided the balance in the trust fund does not fall below the adequate reserve

fund level as specified in statute.

KANSAS SB 83 ENACTED March 19, 2007
 (CH 16) EFFECTIVE Retroactive to January 1, 2007

Coverage

Amends definition of employer to include employing units that elect to have an unemployment tax account established at the time of initial registration.

Monetary Entitlement

Eliminates the waiting week requirement for claimants who become unemployed due to employer terminating business operations within the state, declaring bankruptcy, or initiating a workforce reduction pursuant to the Federal Worker Adjustment and Retraining Notification (WARN) Act. Makes the waiting week compensable upon completion of 3 weeks of unemployment consecutive to such waiting week.

Financing

Provides that the new employer rate is 4 percent of wages paid during the calendar year. (Previously, 1.0 percent plus the greater of the average industry rate or the average rate for all employers in prior year; no less than 2 percent.) Provides that the new employer rate for the construction industry is 6 percent.

Reduces contribution rates for positive balance employers (rate groups 1-5 reduced to 0 percent; rate groups 6-28 reduced by 50 percent; rate groups 29-51 reduced by 40 percent). Requires employers to file all reports and pay all contributions within 30 days of notice to receive the reduced rate in 2007. Requires employers to file reports and pay contributions by January 31 of the applicable year to be eligible for reduced rates in 2008 and subsequent rate years. Provides that reduced rates will not apply if the average high cost multiple of the trust fund falls below 1.2 as of the computation date.

KENTUCKY Rule 17446 ADOPTED May 4, 2007
 (CH 12)

Overpayments

Imposes a disqualification period, in addition to the current up to 52 week disqualification period, for fraudulently failing to report wages earned during a week of unemployment for which benefits were claimed as follows:

- The additional period will be the greater of:
 - 12 weeks, or
 - 6 weeks for each week the unreported earnings are less than 1¼ times the weekly benefit amount and 12 weeks for each week the unreported earnings are equal to or more than 1¼ times the weekly benefit amount.

Imposes a disqualification period for fraudulent misrepresentation or nondisclosure of fact, other than unreported wages, for attempting to establish a right to or the amount of benefits. In addition to the disqualification imposed for that week, an additional 26-week period of disqualification from the date of discovery of misrepresentation or nondisclosure is imposed.

KENTUCKYRule 17449
(CH 12)

ADOPTED May 4, 2007

Coverage

Requires the following employees to be included under "presumed covered employment":

an officer of a corporation if, under the corporation's charter, bylaws, or minutes, the officer is required to perform some service, whether or not the service is actually performed; and
any stockholder, director, or officer who received remuneration in the form of a salary or wages whether or not the service is actually performed if the salary or wages are carried on the corporation payroll records or provided for in its bylaws or minutes.

Excludes from "covered employment" any director of a corporation who performs no other service for the corporation other than to attend a directors' meeting.

Provides that there will not be coverage in a partnership if there is an exempt relationship as defined in the state law between the worker and each partner.

Provides that a stepchild under 21 years old employed by his stepparent will bear the same family exempt relationship as that of a natural or adopted child, if the stepparent claims the stepchild as a exemption on federal and state income tax returns.

LOUISIANAHB 779
(Act No. 113)ENACTED June 22, 2007
EFFECTIVE August 15, 2007Administration

Changes the name of the Office of Regulatory Services to the Office of Unemployment Insurance Administration.

Transfers certain functions from the Office of Unemployment Insurance Administration (formerly Office of Regulatory Services) to the Office of Workforce Development. These functions include minimum wage standards, welfare of workers and labor disputes, regulations and certification of private employment agencies, minor labor laws, the formulation of policy relative to labor apprenticeship, and worker protection programs.

MONTANAHB 782
(CH 205)

ENACTED and EFFECTIVE April 17, 2007

Monetary Entitlement

Provides for an exception from deducting or withholding unemployment benefits in cases involving an overissuance of food stamps when the overissuance is attributable to departmental error if the recipient notifies the department of the potential error, and the department informs the recipient that no error occurred or fails to respond to the notification within 30 days.

Applied retroactively to any cases pending before a Montana court on April 17, 2007.

NEW HAMPSHIRE

SB 59

ENACTED and EFFECTIVE June 28, 2007

(CH 258)

Administration

Establishes a committee to study the effect on the unemployment compensation trust fund of employers with negative balance separate accounts.

Provides that the members of the committee shall include: three members of the senate, appointed by the president of the senate; and three members of the house of representatives, appointed by the speaker of the house of representatives.

Provides a deadline of November 1, 2007, for the committee to report its findings and any recommendations for proposed legislation to the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library.

NEW HAMPSHIRE

SB 195
(CH 123)

ENACTED June 11, 2007
EFFECTIVE January 1, 2008

Nonmonetary Eligibility

Amends the law to provide that individuals who are the only available adult to care for an ill, infirm, or physically or mentally disabled family member whom a licensed physician has certified is in need of care for the activities of daily living are not required to be ready, willing and able to accept and perform suitable work on all shifts, or be available for and seeking permanent, full-time work for which they are qualified in order to be eligible for benefits.

Amends the law to provide that notwithstanding any other provision, no work will be deemed suitable and benefits will not be denied for refusing to accept new work if the individual is unable to apply for or accept work during the hours of a particular shift because he or she is the only adult available for the care of an ill, infirm, or physically or mentally disabled family member whom a licensed physician has certified is in need of care for the activities of daily living.

NEW MEXICO

HB 247
(CH 137)

ENACTED April 2, 2007
EFFECTIVE July 1, 2007

Financing

Provides that a contributing base-period employer's account will not be charged with any portion of benefits paid to an individual for dependent allowances or because the individual to whom benefits are paid voluntarily left work to relocate because of a spouse who is in the military service of the United States or the New Mexico national guard, and received permanent change of station orders, activation orders, or unit deployment orders.

Creates the state unemployment trust fund in the state treasury. Requires this fund to consist of money from contributions pursuant to contribution Schedule B (as indicated below) and requires the unemployment compensation fund (UCF) not to consist of money from such contributions. Provides that earnings from the investment of the fund, subject to appropriation by the legislature, are solely for the purpose of administering the unemployment insurance and employment security programs. Provides that if the average high cost multiple (AHCM) of the UCF is less than 0.2 percent, funds sufficient to maintain the AHCM above 0.2 percent must be transferred from the state unemployment trust fund.

Provides new contribution rate schedules for the following periods:

From July 1, 2007, through December 31, 2008
Contribution schedule A ranges from 0.015%-5.4%
Contribution schedule B ranges from 0.0%-2.5%

From January 1, 2009, through December 31, 2009
Contribution schedule A ranges from 0.018%-5.4%
Contribution schedule B ranges from 0.0%-2.0%

From January 1, 2010, through December 31, 2010
Contribution schedule A ranges from 0.0195%-5.4%
Contribution schedule B ranges from 0.0%-1.75%

Requires employers to pay both contributions.

Requires that contributions under Schedule A be deposited in the unemployment compensation fund and contributions under Schedule B be deposited in the state unemployment trust fund.

Modifies the criteria for existing contribution rate schedules for each calendar year after 2010, except as otherwise provided, as of the computation date for that year for employers whose accounts have been chargeable with benefits throughout the preceding 36 months. The contribution rate for such employer must be determined as follows:

Schedule 0 – If fund equals at least 2.3% total payroll (3.7% previously);
Schedule 1 – If fund equals less than 2.3% but not less than 1.7% of the total payrolls (3.7% and 3.4% previously);
Schedule 2 – If fund equals less than 1.7% but not less than 1.3% of the total payrolls (3.4% and 2.7% previously);
Schedule 3 – If fund equals less than 1.3% but not less than 1.0% of the total payrolls (2.7% and 2.0% previously);
Schedule 4 – If fund equals less than 1.0% but not less than 0.7% of the total payrolls (1.0% and 1.5% previously);
Schedule 5 - If fund equals less than 0.7% but not less than 0.3% of the total payrolls (1.5% and 1.0% previously); or
Schedule 6 - If fund equals less than 0.3% of the total payrolls (equals 1% previously).

Amends the definition of "fund," for the purpose of paying contributions, so that it may also include the state unemployment trust fund and contributions paid to that fund pursuant to contribution Schedule B.

Repeals Sections 6-11 and 13 of Chapter 3 (2005 Laws); HB 09, effective February 8, 2005.

OREGONSB 197
(CH 89)

ENACTED and EFFECTIVE May 7, 2007

Administrative

Clarifies provisions relating to confidentiality of information; except as provided otherwise, all information in the records of the Employment Department (ED) pertaining to the administration of the unemployment insurance (UI), employment service (ES), and labor market information (LMI) programs is confidential and for the exclusive use and information of the Director in administering the UI, ES, and LMI programs in Oregon, and is exempt from disclosure in public records.

Provides for disclosure of information to the U.S. Secretary of Labor, the U.S. Attorney's Office, and as required by the Social Security Act and the Federal Unemployment Tax Act. Specifies that the information disclosed is confidential and may not be used for any other purpose; provides who is responsible for the costs of disclosing the information.

Provides for additional disclosure of information secured from employing units and who is responsible for the costs of disclosing the information.

Provides for disclosure of information to public employees in the performance of their duties including duties under state or Federal laws relating to the payment of UI benefits, and the provisions of ES and LMI; provides who is responsible for the costs of disclosing the information.

Disqualifies appointees or employees of the ED from holding an appointment or employment with the ED for disclosing confidential information without proper authority.

RHODE ISLANDHB 5296 SB 161
(CH 89) (CH 77)

ENACTED and EFFECTIVE June 22, 2007

Nonmonetary Eligibility

Provides that Social Security benefits received by an individual will not be included or considered as disqualifying income.

SOUTH CAROLINASB 334
(Act No. 67)

ENACTED and EFFECTIVE June 7, 2007

Nonmonetary Eligibility

Provides that individuals are eligible for unemployment compensation if it is found that they have voluntarily left work due to the relocation of their spouse from one military assignment to another, provided the separation from employment occurs within 15 days of the scheduled relocation date.

Financing

Provides for noncharging an employer's experience rating account for benefits paid to individuals who voluntarily left work due to the relocation of their spouse from one military assignment to another, provided the separation from employment occurs within 15 days of the scheduled relocation date.

TENNESSEE

SB 801

ENACTED May 30, 2007

(CH 264)

EFFECTIVE July 1, 2007

Appeals

Requires that written notification of the board's final determination be sent to the interested party by certified mail; requires the notification to explain that further appeals must be conducted within 30 days of the board's final decision by filing a petition against the Commissioner of Labor and Workforce Development for judicial review in the Chancery court.

TENNESSEE

SB 1775
(CH 513)

ENACTED June 25, 2007
EFFECTIVE July 1, 2007

Overpayments

Provides that an individual who is collecting unemployment benefits while subsequently collecting temporary disability benefits under a workers' compensation law with respect to the same period will be required to repay the unemployment benefits as long as those benefits do not exceed the amount of temporary disability benefits.

WASHINGTON

HB 1278
(CH 51)

ENACTED and EFFECTIVE April 17, 2007

Financing (Applicable to rate years beginning on or after January 1, 2008)

Provides a new method for computing tax rates for non-qualified new or inactive employers as follows:

For rate years 2005, 2006, and 2007, the array calculation factor rate (experience rate) remains the same: 115 percent of the average industry array calculation factor rate for that employer's industry, but not less than 1.0 percent or more than the array calculation factor rate in the highest rate class (rate class 40) which is 5.40 percent. The social cost factor rate is 115 percent of the average industry rate for that employer's industry, but not more than the social cost factor rate assigned to in the highest rate class (rate class 40) which is 120 percent. Beginning with contributions assessed for rate year 2008, the array calculation factor rate will use a history factor: 90 percent, 100 percent or 115 percent of the average industry array calculation factor rate for that employer's industry, but not less than 1.0 percent or more than the array calculation factor in the highest rate class (rate class 40) which is 5.40 percent.

Requires the commissioner to compute the rates and history factor based on the following formula:

Use 3 fiscal years of benefits charged and contributions paid by new or inactive employers who were first subject to contributions in the calendar year ending 3 years prior to the July 1 computation date.

Compute a history ratio by dividing the total amount of benefits charged to these employers by the total amount of contributions paid in this 3 fiscal year period. The ratio shall be carried to the second decimal place with the remaining fraction rounded.

If the history ratio is less than 0.95, then the history factor is 90 percent; if the history ratio is at least 0.95 but less than 1.05, the history factor is 100 percent;

and if the history ratio is at least 1.05, the history factor is 115 percent.

Provides that beginning with contributions assessed for rate year 2008, the social cost factor rate will be a rate equal to the average industry social cost factor rate determined by the commissioner, multiplied by the history factor, but not more than the social cost factor rate assigned to the highest rate class (rate class 40) which is 120 percent.

Note: These rates do not apply to employers deemed non-qualified due to delinquencies.

WASHINGTON

SB 5534
(CH 366)

ENACTED May 8, 2007
EFFECTIVE October 6, 2007

Coverage

Grants an exemption from the definition of covered employment for services provided to certain small performing arts employers, provided that the individuals receive no remuneration other than a normal stipend paid periodically to defray expenses.