

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. 6
December 2007

ARIZONA	HB 2244 (Act No. 551)	ENACTED March 28, 2007 EFFECTIVE July 1, 2007
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Financing

Creates the Training Trust Fund to be used for worker training and the Unemployment Insurance Administration Fund to be used for operating expenses of the UI program necessary for proper administration of the UI law; provides that each Fund will consist of proceeds of the stabilization tax in the amount of .025 percent of taxable wages collected from July 1, 2007, through June 30, 2011, any accruing interest, and any other funds made available by the General Assembly; provides that the total amount deposited in each Fund in one fiscal year must not exceed \$2,500,000.

CALIFORNIA	SB 116 (CH 289)	ENACTED and EFFECTIVE October 5, 2007
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Extensions and Special Programs

Provides that notwithstanding other provisions of law, an individual is also "unemployed", if all of the following conditions are satisfied:

- (1) The individual has been laid off from his or her most recent work, or is unable to commence work at his or her regular or seasonal workplace, as a direct result of freezing weather conditions that occurred in this state beginning January 11, 2007, and continuing.
- (2) The individual worked or was scheduled to commence work in a county specifically designated by the Governor as being in a state of emergency as a result of the freezing conditions beginning January 11, 2007, and continuing.
- (3) The individual's continuing unemployment is a direct result of the freezing weather.
- (4) The wages payable to the individual for any week of less than full-time work, when reduced by \$200, do not equal or exceed the individual's weekly benefit amount.
- (5) The individual is otherwise eligible to receive benefits.

Requires such unemployed individual to be paid with respect to that week benefits equal to his or her weekly benefit amount less wages in excess of \$200 payable for work performed during that week.

Inoperative and repealed on November 4, 2007.

CONNECTICUT HB 8006a ENACTED and EFFECTIVE October 6, 2007
(Act No. 5)

Financing

Provides for noncharging an employer's account for benefits paid with respect to voluntary leaving suitable employment during the period beginning on July 1, 2007, and ending on June 30, 2008, to accompany a spouse who is on active duty with the armed forces of the U.S. and is required to relocate by the armed forces.

Nonmonetary Eligibility

Provides that an individual will not be ineligible for benefits for voluntary leaving suitable employment during the period beginning on July 1, 2007, and ending on June 30, 2008, to accompany a spouse who is on active duty with the armed forces of the U.S. and is required to relocate by the armed forces.

HAWAII HB 833 ENACTED and EFFECTIVE July 6, 2007
(CH 259)

Coverage

Defines "recipient of social service payments" to include:

- a person who is an eligible recipient of social services such as attendant care and day care services; and
- a corporation or private agency that contracts directly with the Department of Human Services to provide attendant care and day care authorized under the Social Security Act, as amended.

Provides that employment will not include domestic in-home and community-based services for persons with developmental disabilities and mental retardation under the Medicaid home and community-based services program, and identified as chore, personal assistance and habilitation, residential habilitation, supported employment, respite, and skilled nursing services performed by an individual whose services are contracted by a recipient of social services payments and who voluntarily agrees in writing to be an independent contractor of the recipient of social services payments unless the individual is an employee and not an independent contractor of the recipient of social service payments under the Federal Unemployment Tax Act (FUTA). (This exclusion does not apply to any service with respect to which FUTA taxes are required to be paid or services required to be covered.)

LOUISIANA HB 963 ENACTED July 10, 2007
(CH 421) EFFECTIVE July 1, 2010

Administration

Provides that evidence of domestic violence may not be disclosed without the individual's consent or sufficient evidence of the employer's legitimate need.

Requires the Department of Labor to submit an annual report to the Governor's Office on

Women's Policy and the House and Senate committees on labor and industrial relations.

Provides that the Department of Labor shall conduct a follow-up study and report its findings to the House and Senate committees on labor and industrial relations by January 1, 2010.

Financing

Creates a Domestic Violence Victims Account in the Employment Security Administration Fund dedicated solely for payment of lost wage benefits for victims of domestic violence. The account will consist of all monies appropriated by the state, and all monies received from the USA or any other agency thereof, including the U.S. Department of Labor, or from any other source, for such purpose.

Provides that amounts paid out as benefits and administrative costs will not exceed the amount appropriated plus any federal funds or other monies received for this purpose. Amounts paid out in any subsequent year will not exceed \$300,000 plus any other monies received for the purpose of paying benefits. If the costs for benefits and administration exceed the monies available in any fiscal year, the administrator will cease to grant benefits for the remainder of that fiscal year.

Provides that lost wage benefits will not be charged to the experience-rating account of the employer.

Nonmonetary Eligibility

Provides that the individual is eligible to receive lost wage benefits once per calendar year if the employee separated from employment as a result of domestic abuse for the following reasons:

- individual's reasonable fear of future domestic abuse at or traveling to or from the individual's place of employment;
- the individual's need to relocate to another geographic area in order to avoid future domestic abuse;
- the individual's need to address the physical, emotional, psychological, or legal impacts of domestic abuse; and
- the individual's reasonable belief that separation from employment is necessary for the present or future safety of the individual or the individual's family because of domestic abuse.

Provides that the individual will demonstrate eligibility by providing one of the following:

- a protective order, injunction, temporary restraining order or any other court order issued by a court of competent jurisdiction against the perpetrator;
- a law enforcement record documenting the domestic abuse of the individual or a member of the individual's family;
- documentation that the abuser has been convicted of a criminal offense perpetrated against the individual or a member of the individual's family;
- medical documentation of the domestic abuse by a licensed physician, nurse, or nurse practitioner who has examined the individual or a member of the individual's family who has been abused; or

an affidavit from one of the certain persons currently providing treatment or services for the abuse.

MINNESOTA

SB 167
(CH 128)

ENACTED May 24, 2007
EFFECTIVE as indicated

Appeals

Changes the period for filing an appeal from within 30 calendar days to within 20 calendar days after sending:

determinations of coverage; applies to determinations issued on or after September 30, 2007.

notices of an employer's tax rate, effective September 30, 2007.

determinations of status as an employer for nonprofit organizations, effective September 30, 2007.

notices to employers denied credit adjustments or refund, effective for all denials issued on or after September 30, 2007.

determinations as to a personal liability, effective for determinations issued on or after September 30, 2007.

determinations of overpayments by fraud by applicant, effective September 30, 2007.

notices of action regarding licensee disputes, effective January 1, 2008.

determinations of liability, effective September 30, 2007.

determinations or amended determination of a benefit account, effective September 30, 2007.

requests for reconsideration by applicant, employer, or commissioner, effective September 30, 2007.

determinations of eligibility or determinations of ineligibility, effective September 30, 2007.

notices to employers regarding administrative penalties, effective for notices of penalties sent on or after September 30, 2007.

Provides that the unemployment law judge has the discretion to dismiss an appeal by summary order if the appealing party fails to participate in the evidentiary hearing; provides that by failing to participate, the appealing party is considered to have failed to exhaust available administrative remedies unless the appealing party files a request for reconsideration and establishes good cause for failing to participate; provides that submission of a written statement does not constitute participation; provides that the applicant must participate personally and appearance solely by a representative does not constitute participation. (Applies to evidentiary hearings conducted on or after 30 days following the date of final enactment.)

Amends the law from providing that only employees of the department who are attorneys may serve as unemployment law judges to providing that only employees of the department who are attorneys licensed to practice law in Minnesota may serve as unemployment law judges. (Applies to evidentiary hearings conducted on or after 30 days following the date of final enactment.)

Coverage

Excludes from the definition of "employment," service as a juror, effective September 30,

2007.

Provides that in the trucking industry, an owner-operator of a vehicle that is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, and not considered an employee, while performing services in the operation of the truck only if the individual meets certain specific factors, effective September 30, 2007.

Extensions and Special Programs

Provides that 13 weeks of extra benefits are available to applicants laid off due to lack of work after April 1, 2006, from the Ainsworth Lumber Company plants in Bemidji, Cook, and Grand Rapids and who established a benefit account prior to March 1, 2007. (Effective May 27, 2007, and expiring December 31, 2007.)

Requires, notwithstanding other specific provisions of law, the commissioner to accept continued requests for and pay unemployment benefits to applicants who:

were employed as technicians or inspectors for Northwest Airlines, Inc., prior to August 20, 2005;
stopped working on or about August 20, 2005, due to a labor dispute between the Aircraft Mechanics Fraternal Association and Northwest Airlines, Inc.;
did not file continued requests within the time periods required; and
meets all other eligibility requirements.

(Effective July 1, 2007.)

Financing

Provides, effective September 30, 2007, that the base tax rate and any additional assessments are assessed on all taxpaying employers to cover a portion of the costs to the trust fund for unemployment benefits paid that do not affect any single employer's future experience rating because the:

employer's experience rating is limited by the maximum rate;
employer has ceased doing business; or
unemployment benefits paid have been determined not to be used in computing the employer's experience rating.

Provides that in computing the taxpaying employer's experience rating, 125 percent of the total unemployment benefits paid will be used instead of 100 percent in order for the trust fund to recover a portion of the costs of unemployment benefits paid that do not affect any individual employer's future experience rating due to the reasons mentioned in the paragraph above, effective September 30, 2007.

Amends the definition of "experience rating history" to mean the amount of unemployment benefits paid and the taxable wages that are being used and would be used in computing the current and any future experience rating, effective May 25, 2007.

Extends the definition of wages to include awards, prizes, and the cash value of housing, utilities, meals, exchanges of services, and any other goods and services provided to compensate for an employee's services, effective September 30, 2007.

Provides for certain other payments made for services, payments made by a subchapter "S" corporation and advances or draws against future earnings to be included as wages, effective September 30, 2007.

Provides for certain other exclusions from the definition of wages, effective September 30, 2007.

Requires that each employer notify the commissioner by electronic transmission within 30 calendar days of a change in legal entity, of the transfer, sale, or acquisition of a business conducted in Minnesota, in whole or in part, if the transaction results in the creation of a new or different employer or affects the establishment of employer accounts, the assignment of tax rates, or the transfer of experience rating history, effective September 30, 2007.

Requires employers that have been assigned a tax account to notify the commissioner of the termination of a business within 30 calendars days, effective September 30, 2007.

Provides that an employer who has terminated business regains its previous tax account with the experience rating history of that account, if the employer again commences business and if certain other conditions are met, effective September 30, 2007.

Deletes the provision providing that money spent from the contingent account for administration of the unemployment insurance program will be reimbursed from the administration account, effective September 30, 2007.

Repeals the section allowing certain employers to file annual tax reports and annually pay taxes and assessments, effective January 1, 2008.

Repeals the sections providing eligibility requirements for recreational or tourist industry employment and allowing protests by phone and electronic transmission, effective September 30, 2007.

Monetary Entitlement

Modifies the law to distinguish an extended base period from an alternate base period; changes the conditions for which an applicant may request an extended base period; provides that an alternate base period can be used only 30 calendar days or more after the end of the last completed quarter when a wage detail report has been, or should have been, filed for that quarter. (Previously, the alternate base period could be used only once during any 5 calendar year period.) (Applies to applications for unemployment benefits filed effective on or after September 30, 2007.)

Modifies the formula for computing the weekly benefit amount (WBA) as the higher of (1) 50 percent of the applicant's average weekly wage (AWW) during the base period, to a maximum of 66-2/3 percent of the state's AWW; or (2) 50 percent of the applicant's AWW during the high quarter, to a maximum of 43 percent (formerly 45 percent) of the state's AWW. (Effective December 1, 2007.)

Provides that the maximum WBA based on the high quarter calculation remains at \$351, effective September 30, 2007.

Changes the period when the state's maximum WBA applies to a benefit account

established from effective on or after the first Sunday in August to effective on or after the last Sunday in October; modifies the law to provide that once established, an applicant's WBA is not affected by the last Sunday in October (previously first Sunday in August) change in the state's maximum WBA. (Effective December 1, 2007.)

Specifies that a benefit account is effective the date the application for unemployment benefits was effective, effective September 30, 2007.

Specifies that the waiting week is nonpayable, effective September 30, 2007.

Amends the law for certain business owners under certain circumstances to provide that wage credits cannot be used by any applicant who is temporarily, seasonally, or indefinitely unemployed and not permanently separated from the employment, effective September 30, 2007.

Nonmonetary Eligibility

Provides for no deduction from an applicant's WBA for any Social Security disability benefits if the Social Security Administration approved the collecting of primary Social Security disability benefits each month the applicant was employed during the base period. (Effective for unemployment benefit accounts filed effective on or after September 30, 2007.)

Provides that if an applicant provides a statement from an appropriate health care professional who is aware of the applicant's Social Security disability claim and the basis for that claim, certifying that the applicant is able to work and available for suitable employment, then there must be deducted from the WBA 50 percent of the weekly equivalent of the primary Social Security disability benefits the applicant is receiving, has received or has filed for, with respect to that week. (Effective for unemployment benefit accounts filed effective on or after September 30, 2007.)

Provides that the commissioner must determine if an able to work issue is raised when an applicant is eligible who quits because a serious illness or injury made it medically necessary to quit, provided the employer was informed of the serious illness or injury and accommodations were requested and none were available. (Effective and applies to all determinations and decisions issued on or after September 30, 2007.)

Provides that the commissioner must determine if an availability for suitable work issue is raised when an applicant is eligible who quits because loss of child care for the applicant's minor child caused the applicant to quit, provided the applicant made reasonable efforts to obtain other child care and requested time off or other accommodation from the employer and no reasonable accommodation was available. (Effective and applies to all determinations and decisions issued on or after September 30, 2007.)

Amends the law to change holiday pay from being a payment that delays unemployment benefits to being deductible earnings, and if an applicant has holiday pay for any week equal to or in excess of the WBA, the applicant is ineligible for unemployment benefits for that week. (Effective for all unemployment benefits paid on or after September 30, 2007, regardless of when the continued request was filed or the week for which the unemployment benefits are paid.)

Amends the law, effective September 30, 2007, to provide that if an applicant has earnings

for any week less than the WBA, 55 percent of the earnings are deducted from the WBA. (Previously, the higher of 25 percent of earnings or \$50 was deducted from the WBA.)

Amends the law, effective May 27, 2007, to provide that if an applicant has earnings from service in the National Guard or a U.S. military reserve unit for any week less than the WBA, no deduction is made. (Previously, \$200 for earnings from service in the National Guard or a U.S. military reserve unit was deducted from the WBA.)

Overpayments

Provides that an applicant is ineligible for unemployment benefits for any week that the applicant, at the beginning of the week, has an outstanding fraud overpayment balance, including any penalties and interest due to receiving benefits by intentionally misrepresenting, misstating, or failing to disclose any material fact. (Effective and applies to all outstanding fraud overpayment balances, including penalty and interest as of September 30, 2007.)

Changes the penalty assessed on fraudulent claims to 40 percent of the amount fraudulently obtained. (Previously, required the commissioner to assess a penalty equal to 25 percent of the amount fraudulently obtained, and if the applicant had a prior overpayment due to fraud on the present overpayment, to assess a penalty equal to 50 percent of the amount fraudulently obtained.) (Effective for all determinations of overpayment by fraud issued on or after September 30, 2007.)

Eliminates the provision providing for offsetting from future unemployment benefits payable within 10 years, the total amount due if an applicant fails to repay the unemployment benefits, penalty, and interest assessed. (Effective for all determinations of overpayment by fraud issued on or after September 30, 2007.)

Increases the time period for cancelling the overpayment balance and any penalties and interest due if not repaid from within 10 years to within 15 years after determination of overpayment by fraud. (Effective for all determinations of overpayment by fraud issued on or after September 30, 2007.)

Requires crediting to the contingent account 62.5 percent of the payments made toward the penalty and to the administration account 37.5 percent for deterring, detecting, or collecting overpayments. (Effective for all determinations of overpayment by fraud issued on or after September 30, 2007.)

Requires that determinations or amended determinations and law judge's decisions or orders issued resulting in overpayments state the amount of the overpayment and that the overpaid unemployment benefits must be repaid, effective September 30, 2007.

Penalizes employers for knowingly making a false statement or representation, for making a false statement or representation without a good faith belief as to correctness, or for knowingly failing to disclose a material fact, but only if the employer's action caused an overpayment of unemployment benefits to an applicant; the penalty is the greater of \$500 or 50 percent of the overpaid unemployment benefits. (Effective for notices of penalties sent on or after September 30, 2007.)

NEW JERSEY

AB 4009
(CH 114)

ENACTED and EFFECTIVE July 13, 2007

Financing

Changes the penalties for failure to pay taxes or contributions due to employer misclassification of workers as follows:

disorderly person offense-fine of not less than \$100 nor more than \$1,000 or imprisonment for not less than 10 days nor more than 90 days. Each week in which an employee is misclassified and each employee so misclassified constitute a separate offense;
crime of the second degree for a contract amount of \$75,000 or above;
crime of the third degree for a contract amount more than \$2,500 but less than \$75,000; and
crime of the fourth degree for a contract amount of \$2,500 or less.

Provides, in addition, that the violator will be deemed to have caused loss to the employees underpaid in connection with the misclassification and subject to the provisions of fines and restitution to victims under New Jersey statutes.

Authorizes the Commissioner of Labor and Workforce Development to assess and collect administrative penalties as an alternative or in addition to other sanctions in accordance with regulations to be promulgated by the commissioner:

first violation: up to a maximum of \$2,500; and
each subsequent violation: up to a maximum of \$5,000 each.

The commissioner will consider the employer history of previous violations, seriousness of the violation, good faith, and size of the employer's business when determining the amount of the penalty.

No penalty may be levied unless the commissioner provides the alleged violator with notification of the penalty by certified mail and an opportunity to request a hearing within 15 days of receipt of the notice. If a hearing is requested, the commissioner will issue a final order and finding upon the hearing. The notice will become a final order if no hearing is requested. Penalty payment is due when the notice becomes a final order.

Provides that sums collected as a penalty will be applied toward enforcement and administration costs of the Division of Workplace Standards.

Provides that the commissioner may refer violations to the Attorney General to investigate and prosecute and provides that complaints may be brought in Superior Court.

Provides that an employer who has knowingly failed to properly classify an individual or who has been convicted of a crime of the second, third or fourth degree will be prohibited from contracting, directly or indirectly, with any public body and the commissioner may bring action in Superior Court to invalidate any contract award made in violation.

Provides that the commissioner may order the immediate suspension of a contractor's registration if it is in the public interest, provided the contractor is afforded an opportunity to contest the suspension in the following manner:

1. Commissioner will notify contractor of the suspension and his/her rights in writing.

Nonmonetary Eligibility

Amends the pension offset provision to provide that the weekly benefit amount will not be reduced by the amount of social security payments if the claimant contributed to social security.

OHIO Regulation 13666

ADOPTED September 17, 2007
EFFECTIVE October 1, 2007

Coverage

Provides that participants in the food stamp employment and training work experience program will not be considered employees and must not be covered by unemployment compensation.

TENNESSEE

SB 2256
(CH 183)

ENACTED and EFFECTIVE May 16, 2007

(Revised)

Appeals

Amends the law to permit a reconsideration of a decision by the agency within 1 year from making a monetary or nonmonetary determination even if an interested party has appealed the determination but the Appeals Tribunal has not accepted jurisdiction. (Applicable to claimants filing initial claims on or after July 2, 2007.)

Allows the appeals tribunal and the board of review to hold all or part of the hearing by phone conference provided there is good cause; requires the tribunal and board to consider the wishes of the parties and such factors as the physical security risk to the participants or department's staff, travel distance to the hearing location, relative hardship or convenience, complexity of issues and any other factor relevant to having a fair hearing in determining good cause. (Applicable to claimants filing initial claims on or after July 2, 2007.)

Nonmonetary Eligibility

Deletes the provision providing that a claimant will be disqualified for benefits for any week with respect to which the claimant is receiving, or has received, remuneration in the form of wages in lieu of notice and the provision defining the term "wages in lieu of notice" deletes language that references the phrase "wages in lieu of notice". (Applicable to claimants filing initial claims on or after July 2, 2007.)

Amends the law to provide for denial of benefits for a separation due to claimant's acceptance of an employer's program providing incentives to employees for voluntarily terminating their employment. (Previously, benefits were denied for accepting "monetary incentives" provided the monetary incentive was greater than the maximum amount of benefits and provided further that the term "monetary incentive" did not include wages in lieu of notice, separation allowance, severance pay, or similar payment.) (Applicable to claimants filing initial claims on or after July 2, 2007.)

Amends the law to provide that any employer who is a party to a back pay award settlement due to loss of wages is no longer required to report whether the amount of the award settlement was arrived at by subtracting the amount of unemployment benefits

received. Deletes language concerning whether the reduction or nonreduction of the back pay awards by the amount of unemployment benefits received constitutes an overpayment that must be paid to the unemployment compensation fund and instead provides that no overpayment of benefits will be established as a result of a back pay award. (Applicable to claimants awarded back pay awards on or after July 2, 2006.)