

## **400. ELIGIBILITY FOR BENEFITS AND DISQUALIFICATION FROM BENEFITS**

The Federal law contains few requirements concerning eligibility and disqualification provisions. (See section 440 and 450.) Each State establishes its requirements which an unemployed worker must meet to receive unemployment insurance. All State laws provide that, to receive benefits, a claimant must be able to work and must be available for work; i.e., he must be in the labor force, and his unemployment must be caused by lack of work. Also he must be free from disqualification for such acts as voluntary leaving without good cause, discharge for misconduct connected with the work, and refusal of suitable work. These eligibility and disqualification provisions delineate the risk which the laws cover: the able-and-available tests as positive conditions for the receipt of benefits week by week, and the disqualifications as a negative expression of conditions under which benefits are denied. The purpose of these provisions is to limit payments to workers unemployed primarily as a result of economic causes. The eligibility and disqualification provisions apply only to claimants who meet the qualifying wage and employment requirements discussed in section 310.

The Federal law was amended by P.L. 103-152 to require, as an eligibility requirement, that an individual participate in reemployment services such as job search assistance if the individual is determined through a profiling system as likely to exhaust regular benefits, unless the individual has completed the services or has good cause for failure to participate in such services.

In all States, claimants who are held ineligible for benefits because of inability to work, unavailability for work, or disqualification are entitled to a notice of determination and an appeal from the determination.

### **405 ABILITY TO WORK**

Only minor variations exist in State laws setting forth the requirements concerning ability to work. A few States do specify that a claimant must be physically able or mentally and physically able to work. One evidence of ability to work is the filing of claims and registration for work at a public employment office, required under all State laws. Missouri goes one step further requiring, by law, every individual receiving benefits to report to the nearest office in person at least once every 4 weeks.

Several States (Table 400) have added a proviso that no claimant who has filed a claim and has registered for work shall be considered ineligible during an uninterrupted period of unemployment because of illness or disability, so long as no work, which is suitable but for the disability, is offered and refused. In Massachusetts the period during which benefits will be paid is limited to 3 weeks and in Alaska 6 consecutive weeks. These provisions are not to be confused with the special programs in six States for temporary disability benefits (Ch. 600).

In Vermont if an individual is separated because of an accident or injury which resulted in a temporary total disability and for which the individual received a workers' compensation, he or she will be entitled to unemployment benefits if not monetarily eligible for benefits and if a claim is filed within 6 months after the period of temporary total disability.

### **410 AVAILABILITY FOR WORK**

Availability for work is often translated to mean being ready, willing, and able to work. Meeting the requirement of registration for work at a public employment office is considered as some evidence of availability. Nonavailability may be evidence by substantial restrictions upon the kind or conditions of otherwise suitable work that a claimant can or will

accept, or by his refusal of a referral to suitable work made by the employment service or of an offer of suitable work made by an employer. A determination that a claimant is unable to work or is unavailable for work applies to the time at which he is giving notice of unemployment or for the period for which he is claiming benefits.

The availability-for-work provisions have become more varied than the ability-to-work provisions. Some States provide that a claimant must be available for suitable work; others incorporate the concept of suitability for the individual claimant in terms of work in his usual occupation or for which he is reasonably fitted by training and experience (Table 400). Delaware requires an involuntarily retired worker to be available only for work which is suitable for an individual of his age or physical condition. Alabama, Alaska, Arkansas, California, Colorado, Florida, Maine, Maryland, Minnesota, Missouri, New Jersey, New Mexico, New York and South Carolina specify that an individual who is otherwise eligible for benefits will not be deemed unavailable solely because he is serving on a jury. In Alaska and New Jersey an individual will not be unavailable for work or ineligible for benefits if he/she is attending the funeral of a family member for a period of 2 days (N.J.) or 7 days (Alaska).

Georgia and West Virginia specify the conditions under which individuals on vacations are deemed unavailable or unemployed, and Georgia limits to 2 weeks in any calendar year the period of unavailability of individuals who are not paid while on a vacation provided in an employment contract or by employer-established custom or policy. Mississippi considers an individual unavailable for work during a holiday or vacation period. North Carolina considers as unavailable a claimant whose unemployment is found to be caused by a vacation for a period of 2 weeks or less in a calendar year.

In Nebraska and New Jersey no claimant is deemed unavailable for work solely because he is on vacation without pay if the vacation is not the result of his own action as distinguished from any collective bargaining or other action beyond his individual control. Under New York law an agreement by an individual or his union or representative to a shutdown for vacation purposes is not of itself considered a withdrawal from the labor market or unavailability during the time of such vacation shutdown. Other provisions relating to eligibility during vacation periods--although not specifically stated in terms of availability--are made in Virginia, where an individual is eligible for benefits only if he is found not to be on a bona fide vacation, and in Washington, where it is specifically provided that a cessation of operations by an employer for the purpose of granting vacations shall not be construed to be a voluntary quit or voluntary unemployment. Tennessee does not deny benefits during unemployment caused by a plant shutdown for vacation, providing the individual does not receive vacation pay. However, an individual who receives regular wages for a vacation under terms of a labor-management agreement will have his weekly benefit amount reduced by the amount of the wages received, but only if work will be available for the individual with the employer at the end of the vacation period.

Nebraska, provides that an individual is considered employed when wages are received for a specific time in which the vacation is actually taken during a time of temporary layoff or plant shutdown. Provides that vacation pay be prorated in an amount reasonably attributable to each week claimed and considered payable with respect to that week.

Alabama, Michigan, Ohio and South Carolina require that a claimant be available for work in a locality where his base-period wages were earned or in a locality where similar work is available or where suitable work is normally performed. Illinois considers an individual to be unavailable if, after separation from his most recent work, he moves to and remains in a locality where opportunities for work are substantially less favorable than those in the locality he left. Arizona requires that an individual be, at the time he files a claim, a resident of Arizona or of another State or foreign country that has entered into reciprocal arrangements with the State. Oregon and Virginia consider an individual unavailable for work if he leaves his normal labor market area for the major portion of a week unless the claimant can establish that he conducted a bona fide search for work in the labor market area where he spent the major part of the week.

Michigan, New Hampshire and West Virginia require that a claimant be available for full-time work. In

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Wisconsin--where a claimant may be required at any time to seek work and to supply evidence of such search--the inability and unavailability provisions are in terms of weeks for which he is called upon by his current employer to return to work that is actually suitable and in terms of weeks of inability to work or unavailability for work, if his separation was caused by his inability to do his work or his unavailability for work. In New Hampshire, for disqualifying purposes, if an individual is permanently physically and/or mentally disabled, full-time work for the the

individual will be deemed to be the hours and shifts the individual is physically able to work as certified by a licensed physician provided there is a market for the services the individual offers during such hours and shifts. In New Hampshire, for disqualifying purposes, if an individual is permanently physically disabled, Pennsylvania considers a claimant ineligible for benefits for any week in which his unemployment is due to failure to accept an offer of suitable full-time work in order to pursue seasonal or part-time work.

#### **415 ACTIVELY SEEKING WORK**

In addition to registration for work at a local employment office, most State laws require that a claimant be actively seeking work or making a reasonable effort to obtain work. Tennessee requires that an individual to make a reasonable effort to secure work and defines reasonable effort.

The Oregon requirement is in terms of "actively seeking and unable to obtain suitable work." In Oklahoma, Vermont, Washington and Wisconsin, the provision is not mandatory; the agency may require that the claimant, in addition to registering for work, make other efforts to obtain suitable work and give evidence of such efforts. In Wisconsin, however, an active search is required if the claimant is self-employed or if the claim is based on employment for a corporation substantially controlled by the claimant or his family. Michigan permits the Commission to waive the requirement that an individual must seek work, except in circumstances specified in the law, where it finds that suitable work is unavailable both in the locality where the individual resides and in those localities in which he has earned base-period credit weeks. The Maryland, New Jersey and Virginia laws permit the director to modify the active search-for-work requirement when, in his judgment, such modification is warranted by economic conditions. Delaware law permits the director to waive the able to work, available for work and actively seeking work requirements when those requirements would be oppressive or inconsistent with the purpose of the law.

#### **420 AVAILABILITY DURING TRAINING**

Special provisions relating to the availability of trainees and to the unavailability of students are included in many State laws. The student provisions are discussed in section 450.02.

The FUTA requires, as a condition for employers in a State to receive normal tax credit, that all State laws provide that compensation shall not be denied to an otherwise eligible individual for any week during which he is attending a training course with the approval of the State agency. Also, all State laws must provide that trade allowances not be denied to an otherwise eligible individual for any week during which he is in training approved under the Trade Act of 1974, because of leaving unsuitable employment to enter such training. In addition, the State law must provide that individuals in training not be held ineligible or disqualified for being unavailable for work, for failing to make an active search for work, or for failing to accept an offer of, or for refusal of, suitable work.

Prior to the enactment of the Federal law, more than half the States had provisions in their laws for the payment of benefits to individuals taking training or retraining courses. The requirement of the Federal law does not extend to the criteria that States must use in approving training. Although some State laws have set forth the standards to be used, many do not specify the types of training that are approvable. Generally, approved training is limited to vocational or basic education training, thereby excluded regularly enrolled students from collecting benefits under the approved training provision.

Massachusetts and Michigan, in addition to providing regular benefits while the claimant attends an industrial retraining or other vocational training course, provide extended benefits equal to 18 times the trainee's weekly benefit

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rate. Oregon provides supplemental benefits (after exhausting regular benefits and not eligible for Federal-State EB) to dislocated workers while attending approved professional technical training from 1 to 39 times the individual's weekly benefit amount (13 weeks). Maine provides up to 26 weeks of additional benefits to dislocated workers after exhausting regular benefits and who are not eligible for Federal-State EB. California pays benefits under the State extended benefits program to claimants during periods of retraining (sec. 335.07).

In New York claimants in approved training can receive additional benefits for up to 104 effective days. The duration of additional benefits may not exceed the number of effective days to which the claimant is entitled at the time he/she begins training.

While in almost all States the participation of claimants in approved training courses is voluntary, in the District of Columbia, Idaho, Missouri and Washington an individual may be required to accept such training. The department in Indiana is directed to provide job counseling or training to an individual who remains unemployed for at least 4 weeks. Also in Indiana the board determines manner and duration.

#### **425 DISQUALIFICATION FROM BENEFITS**

The major causes for disqualification from benefits are voluntary separation from work, discharge for misconduct, refusal of suitable work and unemployment resulting from a labor dispute. The disqualifications imposed for these causes vary considerably among the States. They may include one or a combination of the following: a postponement of benefits for some prescribed period, ordinarily in addition to the waiting period required of all claimants; a cancellation of benefit rights; or a reduction of benefits otherwise payable. Unlike the status of unavailability for work or inability to work, which is terminated as soon as the condition changes, disqualification means that benefits are denied for a definite period specified in the law, or set by the administrative agency within time limits specified in the law, or for the duration of the period of unemployment.

The disqualification period is usually for the week of the disqualifying act and a specified number of consecutive calendar weeks following. Exceptions in which the weeks must be weeks following registration for work or meeting some other requirement are noted in Table 401, 402, 403 and 404. The theory of a specified period of disqualification is that, after a time, the reason for a worker's continued unemployment is more the general conditions of the labor market than his disqualifying act. The time for which the disqualifying act is considered the reason for a worker's unemployment varies among the States and among the causes of disqualification. It varies from 5 weeks, in addition to the week of occurrence, in Alaska, to 7-10 weeks, in addition to the week of occurrence, in Nebraska.

A number of States have a different theory for the period of disqualification. They disqualify for the duration of the unemployment or longer by requiring a specified amount of work or wages to requalify or, in the case of misconduct connected with the work, by canceling a disqualified worker's wage credits. The provisions will be discussed in consideration of the disqualifications for each cause.

In less than half the States the disqualification imposed for all three major causes--voluntary leaving, discharge for misconduct, and refusal of suitable work--are the same. This is partially because the 1970 amendments to the Federal law prohibited the denial of benefits by reason of cancellation of wage credits except for misconduct in connection with the work, fraud in connection with a claim, or receipt of disqualifying income. As may be expected, therefore, discharge for misconduct is most often the cause with the heaviest penalty.

The provisions for postponement of benefits and cancellation of benefits must be considered together to understand the full effect of disqualification. Disqualification for the duration of the unemployment may be a slight or a severe penalty for an individual claimant, depending upon the duration of his unemployment which, in turn, depends largely upon the general condition of the labor market. When cancellation of the benefit rights based on the work left is added, the severity of the disqualification depends mainly upon the duration of the work left and the presence or absence of other wage credits. Disqualification for the duration of the unemployment and cancellation

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of all prior wage credits tend to put the claimant out of the system. If the wage credits canceled extend beyond the base period for the current benefit year, cancellation extends into a second benefit year immediately following.

In Colorado and Michigan, where cancellation of wage credits may deny all benefits for the remainder of the benefit year, the claimant may become eligible again for benefits without waiting for his benefit year to expire. See Table 300, footnote 5, for provisions for cancellation of the current benefit year. Although this provision permits a claimant to establish a new benefit year and draw benefits sooner than he otherwise could, he would be eligible in the new benefit year generally for a lower weekly benefit amount or shorter duration, or both, because

part of the earnings in the period covered by the new base period would already have been canceled or used for computing benefits in the canceled benefit year.

#### **430 DISQUALIFICATION FOR VOLUNTARY LEAVING WORK**

In a system of benefits designed to compensate wage loss due to lack of work, voluntarily leaving work without good cause is an obvious reason for disqualification from benefits. All States have such a disqualification provision.

In most States disqualification is based on the circumstances of separation from the most recent employment. Laws of these States condition the disqualification in such terms as "has left his most recent work voluntarily without good cause" or provide that the individual will be disqualified for the week in which he has left work voluntarily without good cause, if so found by the commission, and for the specified number of weeks which immediately follow such week. Most States with the latter provision interpret it so that any bona fide employment in the period specified terminates the disqualification, but some States interpret the provision to continue the disqualification until the end of the period specified, regardless of intervening employment.

In a few States the agency looks to the causes of all separations within a specified period (Table 401, footnote 4). Michigan computes benefits separately for each employer to be charged and considers the reason for separation from each employer when his account becomes chargeable.

**430.01 GOOD CAUSE FOR VOLUNTARY LEAVING.**--In all States a worker who leaves his work voluntarily must have good cause (in Connecticut, sufficient cause; in Ohio, just cause; in Maryland, Pennsylvania and Texas, cause of a necessitous and compelling nature) if he is not to be disqualified.

In some States good cause for leaving work appears in the law as a general term, not explicitly restricted to good cause related to the employment, thus permitting interpretation to include good personal cause. However, in a few of these States, it has been interpreted in the restrictive sense.

Several States also specify various circumstances relating to work separations that, by statute, require a determination that the worker left with good cause. Arizona and Connecticut do not disqualify an individual for voluntary leaving because of transportation difficulties. California, Indiana, and Kansas do not disqualify an individual for voluntary leaving if he left work to accompany his spouse to a place from which it is impractical to commute. California, Maine and New Hampshire do not disqualify an individual for leaving work to protect him/her from domestic abuse and the individual made all reasonable efforts to preserve the employment. Provided certain conditions are met, Colorado permits an individual to be awarded benefits if individual left employment because of domestic abuse. Also, Colorado does not disqualify an individual to receive benefits if the individual is not absent from work due to an authorized and approved voluntary leave of absence. In Connecticut, an individual who leaves work in order to protect themselves, or children residing with them from domestic violence and has made a reasonable effort to keep their employment will be eligible to receive UI benefits and in New York, individuals who leaves their last job due to domestic violence may be deemed to have voluntarily quit for good cause. North Carolina does not disqualify an individual for leaving work due to a unilateral and permanent reduction in full time work hours of more than 20% or reduction in pay of more than 15% and does not deny benefits to an individual based on

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separation from work resulting from undue family hardship when an individual is unable to accept a particular job because the individual is unable to obtain adequate childcare or elder care.

California specifies that a worker left his job with good cause if his employer deprived him of equal employment opportunities not based on bona fide occupational qualifications. Kansas does not disqualify an individual for voluntary leaving if the individual was instructed or requested to perform a service or commit an act in the course of duties which is in violation of an ordinance or statute. Also, Kansas does not disqualify an individual for voluntary leaving due to hazardous working conditions.

Kentucky does not disqualify an individual for voluntary leaving if he is separated due to a labor management contract or agreement or an established employer plan, program or policy that permits the employer

to close the plant or facility for vacation or maintenance. Also, Kentucky does not disqualify an individual for voluntarily leaving his or her next most recent work which was concurrent with the most recent work, or for leaving work that was 100 miles (one-way) from home to accept work less than 100 miles away, or if left part-time work to accept the most recent suitable work.

Delaware and New York do not disqualify an individual for voluntary leaving if under a collective bargaining agreement or written employer plan he exercises his option to be separated, with the employer's consent for a temporary period when there is a temporary layoff because of lack of work. Minnesota, Oklahoma, Pennsylvania and Tennessee specify that an individual shall not be denied benefits for voluntarily leaving if he exercises his option of accepting a layoff pursuant to a union contract, or an established employer plan, program or policy. In Tennessee, however, an individual will be disqualified if the employer provides a monetary incentive (excluding wages in lieu of notice, separation allowance, or similar payment) for the separation which is greater than the maximum amount of benefits an individual would receive. Also in Minnesota an individual will not be disqualified if separated due to collective bargaining agreement by which an individual has vested discretionary authority in another to act on behalf of the individual. Also, in Georgia and Tennessee if the separation was due to an agreement that permits the employee to accept a separation from employment the disqualification will not apply. However, in Tennessee the exclusion mentioned above also applies in this instance. Oregon does not disqualify an individual for voluntary leaving if he ceases to work or fails to accept work when a collective bargaining agreement between his bargaining unit and his employer is in effect and the employer unilaterally modifies the amount of wages payable under the agreement, in breach of the agreement.

In Wisconsin the voluntary leaving disqualification will not apply to an individual who terminates work with a labor organization which causes the employee to lose seniority rights granted under a union agreement, and if the termination results in a loss of the employee's employment with the employer which is a party to that union agreement.

Missouri does not disqualify an individual for voluntary leaving due to pregnancy under specified conditions. See Missouri law for details.

Illinois does not deny an individual benefits for giving false statements or for failure to disclose information if the previous benefits are being recouped or recovered.

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Louisiana does not apply the voluntary leaving disqualification if an individual left part-time or interim employment in order to protect full-time or regular employment. In Wisconsin the disqualification will not be applied to a claimant who leaves part-time work because of the loss of a full-time job that makes it economically unfeasible to continue the part-time work. Colorado does not disqualify an individual who quits a job outside his/her regular apprenticeable trade to return to work in the regular apprenticeable trade.

Minnesota does not apply the voluntary quit disqualification if the claimant left employment because of its temporary nature or inability to pass a test or to meet work performance requirements. New York provides that voluntary leaving is not in itself disqualifying if circumstances developed in the course of employment that would have justified the claimant in refusing such employment in the first place.

Michigan and Missouri do not disqualify an individual for voluntary leaving if he left unsuitable work within 28-60 days after beginning the work; Missouri allows 28 days and Michigan 60 days. Minnesota does not disqualify an individual for voluntary leaving if the accepted employment represented a departure from the individual's customary occupation and experience and the individual left the work within 30 days under specified conditions. See Minnesota law for details. New Hampshire allows benefits if an individual, not under disqualification, accepts work that would not have been suitable and terminates such employment within 4 weeks. North Dakota does not apply the voluntary leaving disqualification if an individual accepted work which could have been refused with good cause and terminated the employment with the same good cause within the first 10 weeks after starting work. Wisconsin does not apply the voluntary leaving disqualification if the individual accepted work which could have been refused because of the labor standard provisions and terminated the work within 10 weeks of starting the work.

Wisconsin will not apply the voluntary quit disqualification if an individual left to accept a job and earned wages of 4 times the weekly benefit amount, and the work offered average weekly wages at least equal to the wages earned in the most recent computed quarter in the terminated employment, or if the hours of work are the same or greater, or was offered the opportunity for longer term employment, or if the position duties were closer to the individual's home than the terminated employment. Also, in Wisconsin a disqualification will not apply if an individual claiming partial benefits left to accept work offering an average weekly wage greater than the average weekly wage in the work terminated.

California and Iowa do not disqualify an individual who elected to be laid off in place of an employee with less seniority. Illinois does not apply the voluntary quit disqualification if the individual left in lieu of accepting a transfer that would cause another employee to be bumped, or if the individual accepted work after separation from other work and the work he left voluntarily would be deemed unsuitable. See Table 401.1 for the most common exceptions to the disqualification for voluntary leaving.

Oregon does not disqualify an individual from receiving benefits for voluntarily leaving work without good cause and shall be deemed laid off if the individual works under a collective bargaining agreement; elects to be laid off when the employer has decided to lay off employees; and is placed on the referral list under the collective bargaining agreement.

North Dakota requires a temporary services employer to provide the employee with notice that he/she must notify the temporary service upon the completion of an assignment and that failure to do so may result in benefit denial. If the employee receives the notice and fails to be available for future assignments with the employer upon the completion of an assignment, it shall be deemed that the employee voluntarily left employment without good cause connected with the work.

In many States (Table 401.1) good cause is specifically restricted to good cause connected with the work or attributable to the employer, or, in West Virginia, involving fault on the part of the employer. Louisiana disqualifies persons who left work and does not specify voluntary leaving. Most of these States modify, in one or more respects, the requirement that the claimant be disqualified if the separation was without good cause attributable to the

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employer or to the employment.

**430.02 PERIOD OF DISQUALIFICATION.**--In two States the disqualification for voluntary leaving is a fixed number of weeks; the longest period in any one of these States is 10 weeks (Table 401). Other States have a variable disqualification; the maximum period under these provisions is 10 weeks in Maryland and Nebraska. In the remaining States the disqualification is for the duration of the individual's unemployment--in most of these States, until the claimant is again employed and earns a specified amount of wages.

**430.03 REDUCTION OF BENEFIT RIGHTS.**--In some States, in addition to the postponement of benefits, benefit rights are reduced, usually equal in extent to the weeks of benefit postponement imposed. (See Table 401.)

**430.04 RELATION TO AVAILABILITY PROVISIONS.**--A claimant who is not disqualified for leaving work voluntarily with good cause is not necessarily eligible to receive benefits. If the claimant left because of illness or to

take care of illness in the family, such claimant may not be able to work or be available for work. In most States the ineligibility for benefits would extend only until the individual was able to work or was available for work, rather than for the fixed period of disqualification for voluntary leaving.

#### **435 DISCHARGE FOR MISCONDUCT CONNECTED WITH THE WORK**

The provisions for disqualification for discharge for misconduct follow a pattern similar but not identical to that for voluntary leaving. There is more tendency to provide disqualification for a variable number of weeks "according to the seriousness of the misconduct." In addition, many States provide for heavier disqualification in the case of discharge for a dishonest or a criminal act, or other acts of aggravated misconduct.

Some of the State laws define misconduct in the law in such terms as "willful misconduct" (Pennsylvania); "deliberate misconduct in willful disregard of the employing unit's interest" (Connecticut, Massachusetts, Minnesota, Rhode Island, South Dakota and Washington); "failure to obey orders, rules or instructions or the failure to discharge the duties for which he was employed" (Georgia); and a violation of duty "reasonably owed the employer as a condition of employment" (Kansas). Kentucky provides that "legitimate activity in connection with labor organizations or failure to join a company union shall not be construed as misconduct." Connecticut, on the other hand, includes as misconduct participation in an illegal strike as determined under State or Federal laws. Texas defines misconduct to include any action that places others in danger or an intentional violation of employer policy or law, but does not include an act that responds to an unconscionable act of the employer. Maine defines misconduct to mean "a culpable breach of the employee's duties or obligations to the employer or a pattern of irresponsible behavior, which in either case manifests a disregard for a material interest of the employer." Detailed interpretations of what constitutes misconduct have been developed in each State's benefit decisions.

Disqualification for discharge for misconduct, as that for voluntary leaving, is usually based on the circumstances of separation from the most recent employment. However, as indicated in Table 402, footnote 3, in a few States the statute requires consideration of the reasons for separation from employment other than the most recent. The disqualification is applicable to any separation within the base period for a felony or dishonesty in connection with the work in Ohio, and for a felony in connection with the work in New York.

**435.01 PERIOD OF DISQUALIFICATION.**--Seven States have a variable disqualification for discharge for misconduct (Table 402). In some the range is small, e.g., the week of occurrence plus 3 to 7 weeks in Alabama; in other States the range is large, e.g., 5 to 26 weeks in South Carolina. Some States provide a fixed disqualification, and others disqualify for the duration of the unemployment or longer. Florida provides two periods of disqualification. Some States reduce or cancel all of the claimant's benefit rights.

Some States provide for disqualification for disciplinary suspensions as well as for discharge for misconduct.

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A few States provide the same disqualification for both causes (Table 402, footnote 1). In other States the disqualification differs as indicated in Table 402, footnote 7.

**435.02 DISQUALIFICATION FOR GROSS MISCONDUCT.**--Some States provide heavier disqualification for what may be called gross misconduct. These disqualifications are shown in Table 403. In a few of the States, the disqualification runs for 1 year; in other States, for the duration of the individual's unemployment; and in most of the States, wage credits are canceled in whole or in part, on a mandatory or optional basis.

The conditions specified for imposing the disqualification for discharge for gross misconduct are in such terms as: discharge for dishonesty or an act constituting a crime or a felony in connection with the claimant's work, if such claimant is convicted or signs a statement admitting the act (Florida, Illinois, Indiana, Nevada, New York, Oregon, Utah and Washington); conviction of a felony or misdemeanor in connection with the work (Maine and Utah); discharge for a dishonest or criminal act in connection with the work (Alabama); gross or aggravated misconduct connected with the work (Maryland, Missouri and South Carolina); deliberate and willful disregard of standards of behavior showing gross indifference to the employer's interests (Maryland); discharge for dishonesty, intoxication including a controlled substance, or willful violation of safety rules (Arkansas); gross, flagrant, willful or unlawful misconduct (Nebraska); assault, theft or sabotage (Michigan); misconduct that has impaired the rights, property or reputation of a base-period employer (Louisiana); assault, battery, destruction of property, theft or arson, sabotage or embezzlement, or abuse of a patient or resident of a health care facility (Minnesota); assault,

bodily injury, property loss or damage amounting to \$2,000, theft, sabotage, embezzlement or falsification of employer's records (Georgia); conduct evincing extreme, willful or wanton misconduct (Kansas); a deliberate act or negligence or carelessness of such a degree as to manifest culpability, wrongful intent or evil design (Colorado); and discharge for arson, sabotage, felony or dishonesty connected with the work (New Hampshire). An additional disqualification is provided in New Hampshire (Table 403, footnote 3). Only Maryland includes a disciplinary suspension in the definition of gross misconduct.

#### **440 DISQUALIFICATION FOR A REFUSAL OF SUITABLE WORK**

Disqualification for a refusal of work is provided in all State laws, with diverse provisions concerning the extent of the disqualification imposed, smaller difference in the factors to be considered in determining whether work is suitable or the worker has good cause for refusing it; and practically identical statements concerning the conditions under which new work may be refused without disqualification. To protect labor standards, the Federal Unemployment Tax Act provides that no State law will be approved, so that employers may credit their States contributions against the Federal tax, unless the State law provides that--

Compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute; (B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

**440.01 CRITERIA FOR SUITABLE WORK.**--In addition to the mandatory minimum standards, most State laws list certain criteria by which the suitability of a work offer is to be tested. The usual criteria are the degree of risk to a claimant's health, safety, and morals; the physical fitness and prior training, experience and earnings; the length of unemployment and prospects for securing local work in a customary occupation; and the distance of the available work from the claimant's residence.

These criteria are modified in some States to include other stipulations, for example: in Alabama and West Virginia, that no work is unsuitable because of distance if it is in substantially the same locality as the last regular

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employment which the claimant left voluntarily without good cause connected with the employment; in Indiana, that work under substantially the same terms and conditions under which the claimant was employed by a base-period employer, which is within the prior training and experience and physical capacity to perform, is suitable work unless a bona fide change in residence makes such work unsuitable because of the distance involved.

Maine does not disqualify an individual for refusal of suitable work if he refuses a position on a shift, the greater part of which falls between midnight and 5 a.m., and he is prevented from accepting the job because of family obligations. Also, Maine excludes from suitable work a job the claimant previously vacated if the reasons for leaving have not been removed or changed. Massachusetts deems work between the hours of 12 midnight and 6 a.m. not suitable for women. New Hampshire does not disqualify a claimant for being unable for or unable to accept work during the hours of the third shift if the claimant is the only adult available to care for children under age 15 during said hours or for the care of an ill or infirm dependent elderly person who is dependent for the claimant's support.

Connecticut does not deem work suitable if as a condition of being employed, the claimant would be required to agree not to leave the position if recalled by his previous employer. In Louisiana a claimant may refuse work if the remuneration from the employer is below 60 percent of the individual's highest rate of pay in the base period. In Wisconsin a claimant has a good cause during the first six weeks of unemployment for refusing work at a lower grade of skill or significantly lower rate of pay than one or more recent jobs.

Delaware and New York make no reference to the suitability of work offered but provide for disqualification for refusals of work for which a claimant is reasonably fitted. Delaware, New York and Ohio provide, in addition to the labor standards required by the Federal law, that no refusal to accept employment shall be disqualifying if it is at

an unreasonable distance from the claimant's residence or the expense of travel to and from work is substantially greater than that in the former employment, unless provision is made for such expense. Also, Ohio and New York do not consider suitable any work a claimant is not required to accept pursuant to a labor-management agreement. South Carolina specifies that whether work is suitable must be based on a standard of reasonableness as it relates to the particular claimant involved.

In Illinois an individual will not be disqualified if the position offered by an employing unit is a transfer to other work and the acceptance would separate an individual currently performing the work. Iowa does not disqualify an individual for failure to apply for or accept suitable work if the individual left work in lieu of exercising a right to bump or oust an employee with less seniority. In Oregon an individual will not be disqualified for refusal of suitable work if the employer unilaterally modified the amount of wages agreed upon by the individual's collective bargaining unit and the employer. In Pennsylvania a claimant will not be disqualified for refusal of suitable work when the work is offered by his employer, and the claimant is not required to accept the offer pursuant to terms of a union contract or agreement or an established employer plan, program or policy.

North Carolina does not deny benefits to an individual for refusing a job resulting from undue family hardship when the individual cannot accept a particular job because the individual is unable to obtain adequate childcare or elder care.

A few States provide for changing the definition of suitable work as the duration of the individual's unemployment grows. The suitability of the offered wage is the factor States have chosen to alter. For example, Florida requires the agency, in developing rules to determine the suitability of work, to consider the duration of the individual's unemployment and the wage rates available. In addition, Florida law specifies that, after an individual has received 25 weeks of benefits in a single year, suitable work will be a job that pays the minimum wage and is 120 percent or more of the individual's weekly benefit amount.

Idaho law merely requires claimants to be willing to expand their job search beyond their normal trade or occupation and to accept work at a lower rate of pay in order to remain eligible for benefits as the length of their unemployment grows. Louisiana will not disqualify an individual for refusing suitable work if the offered work pays less than 60 percent of the individual's highest rate of pay in the base period. Utah considers all earnings in the base

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year, not just earnings from the most recent employer, in the determination of suitable work and specifies that the agency will be more prone to consider work suitable the longer the claimant is unemployed and less likely that the claimant will secure local work in his or her customary occupation. Wyoming will apply the refusal-of-suitable work disqualification if, after 4 weeks of unemployment, the individual failed to apply for and accept suitable work other than his customary occupation offering at least 50 percent of the compensation earned in his or her previous occupation.

Georgia specifies that, after an individual has received 10 weeks of benefits, no work will be considered unsuitable if it pays wages equal to at least 66 percent of the individual's highest quarter earnings in the base period and is at least equal to the Federal or State minimum wage.

Iowa law specifies that work is suitable if it meets the other criteria in the law and the gross weekly wage of the offered work bears the following relationship to the individual's high-quarter average weekly wage: (1) 100 percent during the first 5 weeks of unemployment; (2) 75 percent from the 6th through the 12th week of unemployment; (3) 70 percent from the 13th through the 18th week of unemployment; and (4) 65 percent after the 18th week of unemployment. No individual, however, is required to accept a job paying below the Federal minimum wage.

After 12 weeks of unemployment, Maine no longer considers the individual's prior wage in determining whether work is suitable. After 8 weeks of unemployment, Mississippi law specifies that work is suitable if the offered employment pays the minimum wage or higher and the wage is that prevailing for the individual's customary occupation or similar work in the locality. Montana after 13 weeks of unemployment, specifies that a suitable work offer need only include wages equal to 75 percent of the individual's earnings in his previous customary insured work but not less than the Federal minimum wage. North Dakota law specifies that after an individual has received 18 weeks of benefits, suitable work will be any work that pays wages equal to the maximum weekly benefit amount; providing that consideration is given to the degree of risk involved to the individual's health, safety, morals, his physical fitness and the distance of the work from his residence.

In Michigan the individual's experience and prior earnings will be limited. After 12 weeks an individual will be disqualified for refusing an offer of work if the wages for that week are at least 80 percent of pre-employment earnings, after 13-20 weeks and 21 weeks and above if the wages are at least 15 percent and 70 percent respectively of the pre-employment earnings.

In New York a claimant not subject to recall or who did not obtain employment through a union hall and is still unemployed after receiving 13 weeks of benefits is required to accept employment that the claimant is capable of doing, provided the employment would result in a quarterly wage not less than 80 percent of the high quarter in the base period or the wages prevailing for similar work in the locality, whichever is less.

**440.02 PERIOD OF DISQUALIFICATION.**--Some States disqualify for a specified number of weeks (3 to 20) any claimants who refuse suitable work; others postpone benefits for a variable number of weeks, with the maximum ranging from 1 to 12. More than half the States disqualify, for the duration of the unemployment or longer, claimants who refuse suitable work. Most of these specify an amount that the claimant must earn, or a period of time the claimant must work to remove the disqualification.

Of the States that reduce potential benefits for refusal of suitable work, the majority provide for reduction by an amount equal to the number of weeks of benefits postponed.

The relationship between availability for work and refusal of suitable work was pointed out in the discussion of availability (sec. 410). The Wisconsin provisions for suitable work recognize this relationship by stating: "If the commission determines that .... a failure to accept suitable work has occurred with good cause, but that the employee is unable to work or unavailable for work, he shall be ineligible for the week in which such failure occurred

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and while such inability or unavailability continues."

#### 445 LABOR DISPUTES

Unlike the disqualifications for voluntary leaving, discharge for misconduct, and refusal of suitable work, the disqualifications for unemployment caused by a labor dispute do not involve a question of whether the unemployment is incurred through fault on the part of the individual worker. Instead, they mark out an area that is excluded from coverage. This exclusion rests in part on an effort to maintain a neutral position in regard to the dispute and, in part, to avoid potentially costly drains on the unemployment funds.

The principle of "neutrality" is reflected in the type of disqualification imposed in all of the State laws. The disqualification imposed is always a postponement of benefits and in no instance involves reduction or cancellation of benefit rights. Inherently, in almost all States, the period is indefinite and geared to the continuation of the dispute-induced stoppage or to the progress of the dispute.

**445.01 DEFINITION OF LABOR DISPUTE.**--Except for Alabama, Arizona, Colorado, and Minnesota, no State defines labor dispute. The laws use different terms; for example, labor dispute, trade dispute, strike, strike and lockout, or strike or other bona fide labor dispute. Some States exclude lockouts, presumably to avoid penalizing workers for the employer's action; several States exclude disputes resulting from the employer's failure to conform to the provisions of a labor contract; and a few States, those caused by the employer's failure to conform to any law of the United States or the State on such matters as wages, hours, working conditions, or collective bargaining, or disputes where the employees are protesting substandard working conditions (Table 405).

**445.02 LOCATION OF THE DISPUTE.**--Usually a worker is not disqualified unless the labor dispute is in the establishment in which the worker was last employed. Idaho omits this provision; North Carolina, Oregon, Texas and Virginia include a dispute at any other premises which the employer operates if the dispute makes it impossible for the employer to conduct work normally in the establishment in which there is no labor dispute. Michigan includes a dispute at any establishment within the United States functionally integrated with the striking establishment or owned by the same employing unit. Ohio includes disputes at any factory, establishment, or other premises located in the United States and owned or operated by the employer.

**445.03 PERIOD OF DISQUALIFICATION.**--In most States the period of disqualification ends whenever the "stoppage of work because of a labor dispute" comes to an end or the stoppage ceases to be caused by the labor dispute. In other States, disqualifications last while the labor dispute is in "active progress," and in Arizona, Connecticut, Idaho, Montana, New Mexico, North Dakota, Ohio, Rhode Island, South Dakota and Washington, while the workers' unemployment is a result of a labor dispute (Table 405).

A few State laws allow individuals to terminate a disqualification by showing that the labor dispute (or the stoppage of work) is no longer the cause of their unemployment. The Missouri law specifies that bona fide employment of the claimant for at least the major part of each of 2 weeks will terminate the disqualification; the Michigan law provides that if a claimant works in at least 2 consecutive calendar weeks, and earns wages in each week of at least the weekly benefit amount based on employment with the employer involved in the labor dispute, the disqualification will terminate; and the New Hampshire law specifies that the disqualification will terminate 2 weeks after the dispute is ended even though the stoppage of work continues. In contrast, the Arkansas, Colorado, North Carolina and Tennessee laws extend the disqualification for a reasonable period of time necessary for the establishment to resume normal operations; and Michigan and Virginia extend the period to shutdown and start up operations. Under the Maine, Massachusetts, New Hampshire and Utah laws, a claimant may receive benefits if, during a stoppage of work resulting from a labor dispute, the claimant obtains employment with another employer and earns a specified amount of wages (Table 405). However, base-period wages earned with the employer involved in the dispute cannot be used for benefit payments while the stoppage of work continues.

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Only one State provides for a definite period of disqualification. In New York a worker, unemployed because of a strike, lockout or concerted actively not authorized or sanctioned by the collective bargaining unit in the establishment where such individual was employed, can accumulate effective days after 7 weeks and the waiting period, or earlier if the controversy is terminated earlier. In addition to the usual labor dispute provision, Michigan, in a few specified cases, disqualifies for 6 weeks in each of which the claimant must either earn remuneration in excess of \$25 or meet the regular eligibility requirements, plus an equal reduction of benefits based on wages earned with the employer involved.

In Indiana termination of employment with the employer involved in the dispute is sufficient showing that the unemployment is not caused by the dispute.

**445.04 EXCLUSION OF INDIVIDUAL WORKERS.**--Alabama, California, Delaware, Kentucky, New York, North Carolina, Ohio, Utah and Wisconsin do not exempt from disqualification those workers who are not taking part in the labor dispute and who have nothing to gain by it. In Minnesota an individual is disqualified for 1 week if the individual is not participating in or directly interested in the labor dispute. In Texas the unemployment must be caused by the claimant's stoppage of work. Utah applies a disqualification only in case of a strike involving a claimant's grade, class, or group of workers if one of the workers in the grade, class, or group fomented or was a party to the strike; if the employer or employer's agent and any of the workers or their agents conspired to foment the strike, no disqualification is applied. Massachusetts provides specifically that benefits will be paid to an otherwise eligible individual from the period of unemployment to the date a strike or lockout commenced, if such individual becomes involuntarily unemployed during negotiations of a collective-bargaining contract. New Hampshire provides that an individual will not be disqualified if the stoppage of work was due to a lockout or a failure of the employer to live up to the provisions of any agreement or contract entered into between the employer and his employee. Minnesota provides that an individual is not disqualified if he is dismissed during negotiations prior to a strike or if unemployment is caused by an employer's willful failure to comply with either Federal and State occupational safety and health laws or safety and health provisions in a union agreement. Ohio provides that the labor dispute disqualification will not apply if the claimant is laid off for an indefinite period and not recalled to work prior to the dispute or was separated prior to the dispute for reasons other than the labor dispute, or if he obtains a bona fide job with another employer while the dispute is still in progress. Oregon provides that the labor dispute disqualification will not apply if the claimant was laid off prior to the dispute and did not work more than 7 days during the 21 calendar days immediately prior to the dispute or if during the dispute the individual's job or position was filled by a permanent replacement, and the individual unilaterally abandons the dispute and seeks reemployment with the employer. Tennessee provides that the labor dispute disqualification will not apply if the claimant was indefinitely separated prior to the dispute and otherwise eligible. Connecticut provides that an apprentice, unemployed because of a dispute between his employer and journeymen, shall not be held ineligible for benefits if he is available for work. Indiana excludes from disqualification individuals not recalled after the labor

dispute has been terminated and sufficient time to resume normal activities has elapsed. The other States provide that individual workers are excluded if they and others of the same grade or class are not participating in the dispute, financing it, or directly interested in it, as indicated in Table 405.

#### **450 DISQUALIFICATION OF SPECIAL GROUPS**

Under all State laws, students who are not available for work while attending school and individuals who quit their jobs because of marital obligations which make them unavailable for work would not qualify for benefits under the regular provisions concerning ability to work and availability for work. Also, under those laws that restrict good cause for voluntary leaving to that attributable to the employer or to the employment, workers who leave work to return to school or who become unemployed because circumstances related to their family obligations are subject to disqualification under the voluntary-quit provision (Table 401). However, most States supplement their general able-and-available and disqualification provisions by the addition of one or more special provisions applicable to students or individuals separated from work because of family or marital obligations. Most of these special provisions restrict benefits more than the usual disqualification provisions (sec. 430).

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In addition to these special State provisions, the Federal law was amended by Public Law 94-566 to require denial of benefits to certain categories of claimants--professional athletes, some aliens and school personnel--and to prohibit States from denying benefits solely on the basis of pregnancy or the termination of pregnancy.

**450.01 INDIVIDUALS WITH MARITAL OBLIGATIONS.**--The States with special provisions for unemployment because of marital obligations all provide for disqualification rather than a determination of unavailability. Generally, the disqualification is applicable only if the individual left work voluntarily (Table 406).

The situations to which these provisions apply are stated in the law in terms of one or more of the following causes of separation: leaving to marry; to move with spouse or family; because of marital, parental, filial, or domestic obligations; and to perform duties of housewife. The disqualification or determination of unavailability usually applies to the duration of the individual's unemployment or longer. However, exceptions are provided in Nevada.

**450.02 STUDENTS.**--Most States exclude from coverage service performed by students for educational institutions (Table 103); New York also excludes part-time work by a day student in elementary or secondary school. In addition, many States have special provisions limiting the benefit rights of students who have had covered employment (Table 407). In some of these States the disqualification is for the duration of the unemployment; in others, during attendance at school or during the school term. Colorado provides for a disqualification of from 6 to 12 weeks plus an equal reduction in benefits. In Iowa a student is considered to be engaged in "customary self-employment" and as such is not eligible for benefits; Idaho does not consider a student unemployed while attending school during the customary working hours of the occupation, except for students in approved training.

A few States disqualify claimants during school attendance and some States extend the disqualification to vacation periods. In Utah the disqualification is not applicable if the major portion of the individual's base-period wages were earned while attending school, and, in New Jersey, if the individual earned wages sufficient to qualify for benefits while attending school the disqualification does not apply. In other States students are deemed unavailable for work while attending school and during vacation periods. California, Connecticut, Indiana and Louisiana make an exception for students regularly employed and available for suitable work. In Ohio a student is eligible for benefits providing the base-period wages were earned while in school and the student is available for work with any base-period employer or for any other suitable employment. In Oklahoma an individual in school, and otherwise eligible for benefits, is not disqualified if the individual offers to quit school, adjust class hours or change shifts in order to secure employment.

**450.03 SCHOOL PERSONNEL.**--Federal law requires States to deny benefits to instructional, research or principal administrative employees of educational institutions between successive academic years or terms, or, when an agreement so provides, between two regular but not successive terms, if the individual performed one of the three types of services in the first year or term and has a contract or a reasonable assurance of performing one of the three types of services in the second year or term. The denial also applies to vacation or holiday periods within school years or terms.

The Federal law was amended to permit a State, at its option, to deny benefits between successive academic years or terms to other employees of a school or by an educational service agency who perform services to or on behalf of an educational institution if the individual performed services (other than the three types described above) in the one year or term and has a reasonable assurance or a contract to perform services in the second year or term. The option for denial of benefits also applies to vacation or holiday periods within school years or terms. Further, Federal law requires States to pay benefits retroactively to school personnel, other than those performing services in an instructional, research or principal administrative capacity, if they were given a reasonable assurance of reemployment but were not, in fact, rehired when the new school term or year began. Kansas and Wisconsin also apply a between and within-terms denial to school bus drivers not employed by governmental entities or nonprofit organizations. Arizona has a similar disqualification which applies to school bus contractors.

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Alaska provides State interim benefits, if money is appropriated from the general fund, to nonprofessional employees of educational institutions who are noncertificated and provide compensated services to a school district for teaching indigenous languages if the individual's benefits are reduced or denied under the between terms or during vacation period provisions of the law.

**450.04 PROFESSIONAL ATHLETES.**--Public law 94-566 amended the Federal law to require States to deny benefits to an individual between two successive sport seasons if substantially all of his services in the first season consist of participating in or preparing to participate in sports or athletic events and he has a reasonable assurance of performing similar services in the second season.

**450.05 ALIENS.**--Public Law 94-566 also amended Federal law to require denial of benefits to certain aliens. Benefits may not be paid based on service performed by an alien unless the alien is one who (1) was lawfully admitted for permanent residence at the time the services were performed and for which the wages paid are used as wage credits; (2) was lawfully present in the United States to perform the services for which the wages paid are used as wages credits; or (3) was permanently residing in the United States "under color of law," including one lawfully present in the United States under provisions of the Immigration and Nationality Act.

To avoid discriminating against certain groups in the administration of this provision, Federal law requires that the information designed to identify illegal nonresident aliens must be requested of all claimants. Whether or not the individual is a permanent resident is to be decided by a preponderance of the evidence.

### 455 DISQUALIFICATION FOR FRAUDULENT MISREPRESENTATION TO OBTAIN BENEFITS

All States have special disqualifications covering fraudulent misrepresentation to obtain or increase benefits (Table 409). These disqualifications from benefits are administrative penalties. In addition, the State laws contain provisions for (a) the repayment of benefits paid as the result of fraudulent claims or their deduction from potential future benefits, and (b) fines and imprisonment for willfully or intentionally misrepresenting or concealing facts which are material to a determination concerning the individual's entitlement to benefits.

**455.01 RECOVERY PROVISIONS.**--All State laws make provision for the agencies to recover benefits paid to individuals who later are found not to be entitled to them. A few States provide that, if the overpayment is without fault on the individual's part, the individual is not liable to repay the amount, but it may, at the discretion of the agency, be deducted from future benefits. Louisiana provides alternative remedies for collection of overpayments by means of assessment and executory procedure. Louisiana, Massachusetts, Michigan and South Carolina permit collection of benefit overpayments from State tax refunds otherwise due the individual. Maine permits, under certain terms and conditions, collection of benefit overpayments from lottery winnings otherwise due the individual. Virginia permits a claimant to use a credit card to pay overpayments. Some States limit the period within which recovery may be required--90 days in Tennessee; 1 year in Nevada and New Mexico; 2 years in Alaska, Florida, Minnesota, North Dakota and Washington; 3 years in Indiana, Louisiana, Maryland, Michigan, Nebraska, Ohio, Utah, and Wyoming; 4 years in Arkansas and New Jersey; 5 years in Colorado, Delaware (however overpayments may be written off within 3 years), Idaho, Illinois, Kentucky, Mississippi, and Vermont; 6 years in Alabama and Massachusetts; and 8 years in Connecticut and Idaho. In Oregon recovery is limited to the existing benefit year and the 52 weeks immediately following. In Oklahoma recovery continues into the next

subsequent benefit year that begins within 1 year of the expiration of the current benefit year. **Twelve States**<sup>1</sup> provide that, in the absence of fraud, misrepresentation, or nondisclosure, the individual shall not be liable for the amount of overpayment received without fault on the individual's part where the recovery thereof would defeat the purpose of the act and be against equity and good conscience. Thirteen other States<sup>2</sup> provide that recovery may be waived under such conditions. In Minnesota benefits paid through error or fraud may be waived if determined uncollectible due to death or bankruptcy or overpayments may be waived as a result of administrative failure to determine that an individual's wage credits were not earned in covered employment. In Virginia benefit overpayments of \$5 or less may be suspended from recovery.

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In many States the recovery of benefits paid as the result of fraud on the part of the recipient is made under the general recovery provision. More than half the States<sup>3</sup> have a provision that applies specifically to benefit payments received as the result of fraudulent misrepresentation. All but a few States provide alternative methods for recovery of benefits fraudulently received; the recipient may be required to repay the amounts in cash or to have them offset against future benefits payable. New York provides that a claimant shall refund all moneys received because of misrepresentation; and Alabama, for withholding future benefits until the amount due is offset. In Massachusetts, Minnesota, Oregon, Texas, Vermont and Wisconsin the commission may, by civil action, recover any benefits obtained through misrepresentation. Delaware, Georgia, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Montana, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, and Washington charge interest on fraudulently obtained benefits. Also, in Arizona through regulation. In Colorado, Georgia and Wyoming a penalty is assessed and also in Louisiana if legal collection efforts are pursued. In Kansas, Maryland, and Oklahoma the accrued interest may not be offset against future benefits.

**455.02 CRIMINAL PENALTIES.**--Nine State laws (Alaska, Georgia, Hawaii, Maryland, Minnesota, North Carolina, North Dakota, Tennessee and Virginia) provide that any fraudulent misrepresentation or nondisclosure to obtain, increase, reduce, or defeat benefit payments is a misdemeanor, punishable according to the State criminal law. Under the Kansas law, anyone making a false statement or failing to disclose a material fact in order to obtain or increase benefits is guilty of theft and punishable under the general criminal statutes. These States (excluding Alaska) have no specific penalties in their unemployment laws with respect to fraud in connection with a claim. In Alaska a penalty of 50 percent of fraudulently received benefits; however this penalty may be waived. They therefore rely on the general provisions of the State criminal code for the penalty to be assessed in the case of fraud. Fraudulent misrepresentation or nondisclosure to obtain or increase benefits is a felony under the Idaho and Florida laws, and larceny under the Puerto Rico law. The other States include in the law a provision for a fine (maximum \$20 to \$2,000) or imprisonment (maximum 30 days to 1 year), or both (Table 408). In a few States the penalty on the employer is greater, in some cases considerably greater, than that applicable to the claimant. Usually the same penalty applies if the employer knowingly makes a false statement or fails to disclose a material fact to avoid becoming or remaining subject to the act or to avoid or reduce contributions. New Jersey imposes a fine of \$250 to \$1,000 if an employer files a fraudulent contribution report, and imposes the same fine if an employer aids or abets an individual in obtaining more benefits than those to which the claimant is entitled. A few States provide no specific penalty for fraudulent misrepresentation or nondisclosure; in these States the general penalty is applicable (Table 408, footnote 4). The most frequent fine on the worker is \$20-\$50 and on the employer, \$20-\$200.

**455.03 DISQUALIFICATION FOR MISREPRESENTATION.**--The provisions for disqualification for fraudulent misrepresentation follow no general pattern. In nine States<sup>4</sup> there is a more severe disqualification when the fraudulent act results in payment of benefits; in California, New Hampshire, Oregon, Pennsylvania and Virginia, when the claimant is convicted.

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<sup>1</sup> Alaska, Arizona, Arkansas, California., Florida, Hawaii, Montana, Nebraska, Nevada, Rhode Island, Tennessee and Wyoming

<sup>2</sup> Alabama, Colorado, Illinois, Kansas, Louisiana, Maine, Massachusetts, Michigan, North Carolina, North Dakota, South Dakota, Utah and Washington

<sup>3</sup> Arizona, Arkansas, California., Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Indiana, Louisiana, Maine, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New York, Ohio, Oklahoma, Oregon, Puerto Rico, Utah, Vermont, Washington, Wisconsin and Wyoming

<sup>4</sup> Idaho, Kentucky, Louisiana, Maine, Maryland, Michigan, Ohio, Utah and Vermont

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In California any claimant convicted of misrepresentation under the penalty provisions is disqualified for 1 year. In Rhode Island and Wyoming there is no disqualification unless the claimant has been convicted of fraud by a court of competent jurisdiction. On the other hand, in Hawaii, Puerto Rico, Vermont and the Virgin Islands a claimant is not subject to the administrative disqualification if penal procedures have been undertaken; in Massachusetts, administrative disqualification precludes initiation of penal procedures.

Seventeen States include a statutory limitation on the period within which a disqualification for fraudulent misrepresentation may be imposed (Table 409, footnote 3). The length of the period is usually 2 years and, in six States, the period runs from the date of the offense to the filing of a claim for benefits. In these States the disqualification can be imposed only if the individual files a claim for benefits within 2 years after the date of the fraudulent act. In Connecticut the disqualification may be imposed if a claim is filed within 6 years after the benefit year in which the offense occurred. In four States the disqualification may be imposed only if the determination of fraud is made within 2 or 4 years after the date of the offense.

In many States the disqualification is, as would be expected, more severe than the ordinary disqualification provisions. In 17 States the disqualification is for at least a year; in others it may last longer. The provisions are difficult to compare because some disqualifications start with the date of the fraudulent act, while others begin with the discovery of the act, the determination of fraud, the date on which the individual is notified to repay the sum so received, or conviction by a court; some begin with the filing of a first claim, while others are for weeks that would otherwise be compensable. The disqualification provisions are, moreover, complicated by tie-in with recoupment provisions and by retroactive imposition.

As Table 409 shows, the cancellation of wage credits in many States means the denial of benefits for the current benefit year or longer. A disqualification for a year means that wage credits will have expired, in whole or in part, depending on the end of the benefit year and the amount of wage credits accumulated for another benefit year before the fraudulent act, so that future benefits are reduced as if there had been a provision for cancellation. In other States with discretionary provisions or shorter disqualification periods, the same result will occur for some claimants. Altogether, misrepresentation involves cancellation or reduction of benefit rights in 34 States and may involve reduction of benefit rights for individual claimants in 15 more States. The disqualification for fraudulent misrepresentation usually expires after a second benefit year, but in California it may be imposed within 3 years after the determination is mailed or served; in Ohio, within 4 years after a finding of fraud; and in Arkansas and Washington, within 2 years of such finding. In 10 States<sup>5</sup> the agency may deny benefits until the benefits obtained through fraud are repaid. In Virginia the denial is limited to 5 years. In Minnesota, if benefits fraudulently obtained are not repaid promptly, such amounts are deducted from future benefits in the current or any subsequent benefit year. In Colorado, benefits are denied if an individual's court trial for commission of a fraudulent act is prevented by the inability of the court to establish its jurisdiction over the individual. Such ineligibility begins with the discovery of the fraudulent act and continues until such time as the individual makes himself available to the court for trial. In Maryland the time limit for repayment is 5 years following the date of the offense, or 1 year after the year disqualification period, whichever occurs later. After this period an individual may qualify for benefits against which any part of the repayment due may be offset. In Louisiana repayment is limited to the 5-year period following a determination of fraud--a period which may be lengthened under specified circumstances.

## **460 DISQUALIFYING INCOME**

Practically all State laws include a provision that a claimant is disqualified from benefits for any week during which such claimant is receiving or is seeking benefits under any Federal or other State unemployment insurance law. A few States mention specifically benefits under the Federal Railroad Unemployment Insurance Act. Under most of the laws, no disqualification is imposed if it is finally determined that the claimant is ineligible under the other law. The intent is clear--to prevent duplicate payment of benefits for the same week. It should be noted that such disqualification applies only to the week in which or for which the other payment is received.

Forty-six States have statutory provisions that a claimant is disqualified for any week during which such claimant receives or has received certain other types of remuneration such as wages in lieu of notice, dismissal wages, worker's compensation for temporary partial disability, holiday and vacation pay, back pay, and benefits under a supplemental unemployment benefit plan. In many States if the payment concerned is less than the weekly benefit, the claimant receives the difference; in other States no benefits are payable for a week of such payments regardless of the amount of payment (Table 410A). A few States provide for rounding the resultant benefits, like payments for weeks of partial unemployment, to even 50-cent or dollar amounts.

**460.01 WAGES IN LIEU OF NOTICE AND DISMISSAL PAYMENTS.**--The most frequent provision for disqualification for receipt of other income is for weeks in which the claimant is receiving wages in lieu of notice (33 States). In 12 of these States the claimant is totally disqualified for such weeks; in 21, if the payment is less than the weekly benefit amount, the claimant receives the difference. Twenty-two States have the same provision for receipt of dismissal payments as for receipt of wages in lieu of notice. The State laws use a variety of terms such as dismissal allowance, dismissal payments, dismissal wages, separation allowances, termination allowances, severance payments, or some combination of these terms. In many States all dismissal payments are included as wages for contribution purposes after December 31, 1951, as they are under the FUTA. Other States continue to define wages in accordance with the FUTA prior to the 1950 amendments so as to exclude from wages

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dismissal payments which the employer is not legally required to make. To the extent that dismissal payments are included

in taxable wages for contribution purposes, claimants receiving such payments may be considered not unemployed, or not totally unemployed, for the weeks concerned. Some States have so ruled in general counsel

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<sup>5</sup> Idaho, Illinois, Kentucky, Louisiana, Michigan, New Hampshire, Oregon, Utah, Virginia and Vermont

opinions and benefit decisions. Indiana and Minnesota specifically provide for deduction of dismissal payments whether or not legally required. However, under rulings in some States, claimants who received dismissal payments have been held to be unemployed because the payments were not made for the period following their separation from work but, instead, with respect to their prior service.

**460.02 WORKER'S COMPENSATION PAYMENTS.**--Nearly half the State laws list worker's compensation under any State or Federal law as disqualifying income. Some disqualify for the week concerned; the others consider worker's compensation deductible income and reduce unemployment benefits payable by the amount of the worker's compensation payments. A few States reduce the unemployment benefit only if the worker's compensation payment is for temporary partial disability, the type of worker's compensation payment that a claimant most likely could receive while certifying ability to work. The Alabama, Colorado, Connecticut, Illinois and Iowa laws state merely temporary disability. The Georgia law specifies temporary partial or temporary total disability. The Kansas provision specifies temporary total disability or permanent total disability, while the Massachusetts provision is in terms of partial or total disability but specifically excludes weekly payments received for dismemberment. The Louisiana and Texas laws are in terms of temporary partial, temporary total, or total permanent disability. The Minnesota law specifies any compensation for loss of wages under a worker's compensation law; and Montana's provision is in terms of compensation for disability under the worker's compensation or occupational disease law of any State. California's, Nevada's, West Virginia's and Wisconsin's provisions specify temporary total disability.

**460.03 RETIREMENT PAYMENTS.**--The Federal law requires States to reduce the weekly benefit amount of any individual by the amount, allocated weekly, of any "...governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual..." This requirement applies only to payments made under a plan maintained or contributed to by a base-period or chargeable employer. In addition, States may disregard pension payments if the base-period employment did not affect eligibility for or increase the amount of the pension. However, Social Security and Railroad Retirement benefits are deductible regardless of whether remuneration or service for a base-period or chargeable employer affected eligibility or increased the amount of the pension. Also, States are permitted to reduce benefits on less than a dollar-for-dollar basis to take into account the contributions made by the worker to the plan from which payments are made. As can readily be seen the States have available a variety of options among which to choose in formulating a pension offset provision. (Table 410B).

**460.04 SUPPLEMENTAL UNEMPLOYMENT PAYMENTS.**--A supplemental unemployment payment plan is a system whereby, under a contract, payments are made from an employer-financed trust fund to his workers. The purpose is to provide the worker, while unemployed, with a combined unemployment insurance and supplemental unemployment benefit payment amounting to a specified proportion of his weekly earnings while employed.

There are two major types of such plans: (1) those (of the Ford-General Motors type) under which the worker has no vested interest and is eligible for payments only if he is laid off by the company; and (2) those under which the worker has a vested interest and may collect if he is out of work for other reasons, such as illness or permanent separation.

All States except New Mexico, Puerto Rico, South Carolina and South Dakota have taken action on the question of permitting supplementation in regard to plans of the Ford-General Motors type. Of the States that have taken action, all permit supplementation without affecting unemployment insurance payments.

In 48 States permitting supplementation, an interpretive ruling was made either by the attorney general (27 States) or by the employment security agency (10 States); in Maine, supplementation is permitted as a result of a Superior Court decision and, in the remaining 10 States<sup>6</sup> by amendment of the unemployment insurance statutes.

## ELIGIBILITY

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<sup>6</sup> Alaska, California., Colorado, Georgia, Hawaii, Indiana, Maryland, New Hampshire, Ohio and Virginia

Some supplemental unemployment benefit plans of the Ford-General Motor type provide for alternative payments or substitute private payments in a State in which a ruling not permitting supplementation is issued. These payments may be made in amounts equal to three or four times the regular weekly private benefit after two or three weekly payments of State unemployment insurance benefits without supplementation; in lump sums when the layoff ends or the State benefits are exhausted (whichever is earlier); or through alternative payment arrangements to be worked out, depending on the particular supplemental unemployment benefit plan.

**460.05 RELATIONSHIP WITH OTHER STATUTORY PROVISIONS.**--The eleven States<sup>2/</sup> which have no provision for any type of disqualifying income except pensions and the larger number which have only two or three types do not necessarily allow benefits to all claimants in receipt of the types of payments concerned. When they do not pay benefits to such claimants, they rely upon the general able-and-available provisions or the definition of unemployment. Many workers receiving worker's compensation, other than those receiving weekly allowances for dismemberment, are not able to work in terms of the unemployment insurance law. However, receipt of worker's compensation for injuries in employment does not automatically disqualify an unemployed worker for unemployment benefits. Many States consider that evidence of injury with loss of employment is relevant only as it serves notice that a condition of ineligibility may exist and that a claimant may not be able to work and may not be available for work.

Table 410A also includes vacation pay, holiday pay and back pay as disqualifying income. Many States consider workers receiving vacation pay as not eligible for benefits; several other States hold an individual eligible for benefits if he is on a vacation without pay through no fault of his own. In practically all States, as under the FUTA, vacation pay is considered wages for contribution purposes--in a few States, in the statutory definition of wages; in others, in official explanations, general counsel or attorney general opinions, interpretations, regulations, or other publications of the State agency. Thus a claimant receiving vacation pay equal to his weekly benefit amount would, by definition, not be unemployed and would not be eligible for benefits. Some of the explanations point out that vacation pay is considered wages because the employment relationship is not discontinued, and others emphasize that a claimant on vacation is not available for work. Vacation payments made at the time of severance of the employment relationship, rather than during a regular vacation shutdown, are considered disqualifying income in some States only if such payments are required under contract and are allocated to specified weeks; in other States such payments, made voluntarily or in accordance with a contract, are not considered disqualifying income.