

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. 3
December 2003

INDIANA

SB 486
(P.L 273)

ENACTED May 8, 2003
EFFECTIVE July 1, 2003

Appeals

Decreases from 20 to 10 days after mailing of notice that an individual has to file an appeal before an administrative law judge from a monetary determination notice and that an employer has to file an appeal from the employer's benefit liability notice.

Decreases from 20 to 10 days after mailing of notice to a claimant and employer that they have to file an appeal before an administrative law judge in cases where the claimant's benefit eligibility or disqualification is disputed; from 25 to 15 days for parties located in Alaska, Hawaii, or Puerto Rico.

Financing

Requires the annual deposit of the first \$450,000 or less of skills 2016 training assessments in the special employment and training services fund for training and counseling assistance then requires the remainder of the assessments to be deposited in the skills 2016 training fund, effective July 1, 2003.

Requires the commissioner to allocate up to \$450,000 annually for training and counseling assistance provided by educational institutions or counseling provided by the department of workforce development for individuals who:

- remain unemployed for at least 4 weeks;
- are not otherwise eligible for training and counseling assistance under any other program; and
- are not participating in programs that duplicate industrial and building trade apprenticeship programs.

Provides that training or counseling does not excuse the claimant from complying with able to work and available for work requirements.

Provides that eligibility for training and counseling will not be determined until after the 4th week of eligibility for unemployment training compensation benefits.

Requires these funded training and counseling assistance programs to be approved by

the U.S. Department of Labor's Bureau of Apprenticeship Training.

Increases from 40 percent to 50 percent the allocation used to provide training to participants in both joint labor and management building trades and industrial apprenticeship programs of the money that has been allocated to the state educational institution from the skills 2016 training fund.

Deletes certain provisions allocating money in the skills 2016 fund to other programs.

Repeals the skills 2016 training effective date from January 1, 2003, to December 31, 2005.

Requires the department to prepare an annual report by April 30 each year of unobligated money in the skills 2016 fund, and provides that the incumbent workers training board may reallocate the unobligated money shown in the annual report.

Deletes the requirement that funds assessed for or deposited in the skills 2016 training fund be directed or transferred to the unemployment insurance benefit fund which was conditioned on the fund ratio or solvency of the unemployment insurance benefit fund.

Establishes contribution rates for contributing employers as follows:

	Most Favorable	Least Favorable
Positive Balance Employer	0.1% to 2.3%	1.1% to 4.1%
Negative Balance Employer	4.1% to 5.4%	4.4% to 5.6%

Monetary Entitlement

Defines wage credits as remuneration paid for employment by an employer to an individual and remuneration received as tips or gratuities.

Provides that the wage credits not to exceed \$7,900 for calendar quarters beginning on and after July 1, 2002, will be effective until June 30, 2003.

Limits the wage credits to \$8,216 for calendar quarters beginning on and after July 1, 2003, to June 30, 2004.

Limits the wage credits to \$8,733 for calendar quarters beginning on and after July 1, 2004, to June 30, 2005.

Limits the wage credits to \$9,250 for calendar quarters beginning on and after July 1, 2005.

Nonmonetary Eligibility

Decreases from 20 to 10 days after mailing of notice that an initial or additional claim for benefits was filed that an employing unit, including an employer, has to notify the department of any facts which may affect eligibility or right to waiting period credits or benefits.

KANSASHB 2332
(CH 96)ENACTED April 18, 2003
EFFECTIVE July 1, 2003Coverage

Excludes from the definition of "employment" service performed by agricultural workers who are aliens admitted to the United States to perform labor under the Immigration and Nationality Act (commonly called H-2A workers).

Extensions and Special Programs

Provides for 2 weeks of shared work additional benefits to claimants who exhaust regular unemployment insurance or any other extended benefits during the period from July 1, 2003, through June 30, 2004.

Provides that employers will not be charged for additional benefits paid during the period from July 1, 2003, through June 30, 2004.

Nonmonetary Eligibility

Provides that Social Security payments and Railroad Retirement benefits will not be deducted from unemployment benefits.

LOUISIANAHB 1554
(Act 669)

ENACTED and EFFECTIVE June 27, 2003

Financing

Eliminates restriction that supplemental funds for unemployment insurance administration be used only for personnel costs associated with certain functions; these funds can now be used for any costs associated with the functions.

Provides that if the legislature fails to renew the Incumbent Worker Training Program prior to calendar year 2008, amounts collected as a social charge from employers after 2007, that would have been used to fund the Incumbent Worker Training Program, shall be deposited and applied to each individual employer's experience-rating record as a contribution.

MASSACHUSETTSSB 2150
(CH 142)ENACTED November 29, 2003
EFFECTIVE January 1, 2004Appeals

Establishes the criteria that the state advisory council will follow when nominating persons who will be appointed or reappointed to the board of review; requires the nominees to the board of review to be selected from a list submitted to the governor by the state advisory council; requires the member designated as chairman to be an attorney.

Financing

Assesses a surtax--a uniform secondary adjustment payment--to be added to every employer's contribution rate in an amount sufficient to ensure that the Federal loans can be repaid in full before September 30, payable when the Commissioner determines

the Unemployment Compensation Fund (UCF) is insufficient to continue benefit payments or repay Federal loans; requires the deposit of the secondary adjustment payments into the UCF or the Federal Loan Interest Fund; allows deduction of all administrative costs incurred for assessing this surtax prior to deposit; requires the crediting of secondary adjustment payments to each employer's account for experience rating purposes; requires a notice within 10 days of determining that a secondary adjustment payment is due to the joint committee on commerce and labor of the amount necessary to collect.

Provides that the secondary adjustment payment for positive balance employers ranges from 0.3 percent to 0.6 percent and from 0.7 percent to 0.9 percent for negative balance employers.

Increases the taxable wage base from \$10,800 to \$14,000, effective January 1, 2004.

Provides a revised experience rate tax table with 7 schedules. The range of rates for the most and least favorable schedules is as follows:

Negative Percentage Employers
Most favorable 4.60 percent to 7.80 percent
Least favorable 9.08 percent to 15.40 percent
Positive Percentage Employers
Most favorable 0.80 percent to 3.90 percent
Least favorable 1.58 percent to 7.70 percent

Assigns, for calendar years 2004 through 2007, tax rates for negative balance employers ranging from 6.46 percent to 10.96 percent and from 1.12 percent to 5.48 percent for positive balance employers.

Changes the due dates for filing an updated fund balance report from the 15th day of the months of January, April and August to the 15th day of every month.

Specifies that if an employer or an officer or agent of an employer knowingly fails or refuses to pay any contribution, payment in lieu of contribution or interest charge or attempts to evade or defeat such payments or who makes a false statement or misrepresents the employment status of an individual under his employ to avoid or reduce any contribution he will be punished by a fine equal to the total amount of contributions owed, plus interest, in addition to a penalty equal to the total amount that the individual fraudulently collected during the period such individual was under his employ.

Allows withdrawals from the contingent fund to pay individuals who voluntarily provide information leading to establishment of an overpayment or to a determination of an employer filing false or fraudulent contribution reports an amount not to exceed 10 percent of the total penalty assessed and collected; provides for employers not to take adverse action against an informant, and an employer that does must be liable in a civil action for contempt or other proceeding to such employee for wages and employment benefits lost as a result of such action, litigation costs and attorney fees; allows the employee to bring action in the district or superior court; requires the department to provide a toll-free number for reporting fraudulent acts and promote and advertise the number to the public.

Monetary Entitlement

Provides that the total entitlement to benefit weeks will decrease from 30 to 26 times the benefit rate when the state's unemployment rate for the last 12 months is equal to or below 5.1 percent in each of the 10 metropolitan statistical areas of the state.

Nonmonetary Eligibility

Specifies that a temporary employee of a temporary help firm voluntarily quits and may be denied benefits for failure to contact the temporary help firm for reassignment before filing for benefits.

Overpayments

Specifies that individuals who fraudulently collect benefits while not in total or partial unemployment may be disqualified for each week of erroneous payment; requires the amount in question to be reduced by any earnings disregarded; provides that erroneous payments may be deducted first from future benefit payments; requires each weekly deduction not to exceed 25 percent of the individual's weekly benefit rate; requires notification to the individual of the requirement to report earnings; requires the notification to meet certain requirements; provides individuals subject to a deduction with the right to an appeal and review.

Specifies that the department may recover erroneously paid benefits provided that:

there is no pending hearing or appeal from a decision determining that an individual knowingly and willfully failed to furnish information;
no hearing or appeal from a decision on ineligibility for benefits is pending;
no request for waiver is pending;
no request for a redetermination is pending; and
from a determination of overpayment, an opportunity for an interview and all appeal rights have been exhausted or not taken within the time allowed by law.

MINNESOTA

S 18a ENACTED May 30, 2003
(CH 3) EFFECTIVE May 31, 2003 or as indicated

Administration

Gives the commissioner of economic security authority to prescribe the manner and format in which each employer must file quarterly wage detail reports.

Requires each employer with 50 or more employees in a quarter to file its quarterly wage detail report electronically.

Provides for the charging of 1-1/2 percent interest per month for late payment of fees, assessments, surcharges, or certain penalties by employers.

Provides for the issuance of a personal identification number (PIN) to each applicant for unemployment benefits and establishes presumptions that the applicant is the individual using a PIN and that the applicant has received any unemployment benefit payment issued. Provides that the presumption may be rebutted by a preponderance of

evidence to the contrary.

Provides for biweekly filing of continued requests for unemployment benefits.

Coverage

Provides that services of a member of a limited liability company, who has less than a 25 percent ownership share and is considered an employee under the common law, is "employment" (previously any member of a limited liability company considered an employee under the common law would be considered to be performing "employment").

Financing

Provides that the base tax rate for a calendar year and any additional assessment will be determined based upon the amount in the trust fund on March 31 of the prior year as a percentage of total wages paid in covered employment and shall range from 0.1 percent (if the fund is equal to or more than 0.75 percent of total wages) to 0.4 percent (if the trust fund is less than 0.55 percent).

Effective January 1, 2005, provides for a "falling fund adjustment" of 0.1 percent if the amount in the trust fund on March 31 of the prior year is less than 0.75 percent of total wages paid in covered employment and is either 10 percent or more below the amount in the trust fund on March 31 of the second prior year or is greater than the amount in the trust fund on June 30 of the prior year.

Provides for an additional assessment of 5 to 14 percent if the amount in the trust fund on March 31 of the prior year is less than 0.55 percent of total wages paid in covered employment.

Reduces from 60 to 48 months the period of time for which paid benefits and taxable payroll will be used in determining an employer's experience rate.

Provides that any assessment, fee, or surcharge imposed under the state's unemployment insurance law will be treated the same as, and considered as, a tax. Such assessments, fees, or surcharges will be subject to the same collection procedures that apply to past due taxes.

Monetary Entitlement

Lowers the limit on the weekly benefit amount to the higher of:

50 percent of an applicant's average weekly wage during the base period, to a maximum of 66-2/3 percent of the state's average weekly wage, or
50 percent of an applicant's average weekly wage during the high quarter, to a maximum of 45 percent (previously 50 percent) of the state's average weekly wage.

Provides that the maximum weekly unemployment benefit amount based upon the high quarter calculation shall not be less than \$350. Provision expires September 1, 2006.

Provides that the state's annual maximum weekly benefit amount shall apply to benefit accounts established on or after the first Sunday in August and that such benefit

accounts shall be unaffected by any subsequent August change to the maximum weekly benefit amount.

Nonmonetary Eligibility

Effective for benefit accounts established August 3, 2003, and thereafter, specifies that provision making an individual ineligible to receive unemployment benefits because of receipt of severance pay, bonus pay, vacation pay, sick pay or other disqualifying income that is considered wages at the time of payment, applies to all weeks of payment (rather than only the first 4 weeks of payment and one-half the number of any additional weeks of payment).

Provides that an individual who quits employment because the applicant's serious illness or injury made it medically necessary may be eligible for benefits if the individual informed the employer of the condition but no reasonable accommodation was made available (previously required the applicant to make "reasonable efforts" to remain in employment).

Specifies that an individual who fails without good cause to affirmatively request an additional job assignment within 5 days (previously no time period specified) of completing a suitable temporary job assignment from a temporary staffing service employer, or who refuses without good cause an additional suitable job assignment offered, shall be considered to have quit employment.

Amends the definition of misconduct to include intentional, negligent or indifferent conduct that "evinces a serious violation of the standards of behavior the employer has the right to reasonably expect of the employee." Specifies that a single incident that does not have a significant adverse impact on the employer, conduct an average reasonable employee would have engaged in under the circumstances, or good faith errors in judgment if judgment was required are not misconduct.

Further specifies that conduct that was the result of the applicant, or the applicant's minor child, being a victim of domestic abuse, is not employment misconduct.

Specifies that evidence of domestic abuse may be provided through a statement by an attorney who assisted an individual in dealing with the domestic abuse.

Limits the disqualification from receiving benefits due to refusal of an offer of suitable employment to offers made during the claimant's benefit year.

NEVADA	S 423 (CH 348)	ENACTED June 9, 2003 EFFECTIVE July 1, 2003
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Overpayments

Extends the period for recovery of overpayments from 3 to 5 years.

NEW HAMPSHIRE	SB 197 (CH 239)	ENACTED July 8, 2003 EFFECTIVE July 8, 2003, except as indicated
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benefits, additional benefits and readjustment allowances

Establishes, beginning July 1, 2003, a high unemployment period for additional weeks of extended benefits when the average seasonal adjusted TUR for all states for the most recent 3- month period equals or exceeds 8.0 percent and the average TUR of the state for the same period equals or exceeds 110 percent of the TURs for either or both of the corresponding 3-month periods in the 2 preceding years. Provides that for weeks beginning in a high unemployment period the total extended benefit amount payable will be the least of the following 3 amounts:

80 percent of regular benefits;
20 times the individual's average weekly benefit amount; or
46 times the individual's average weekly benefit amount reduced by regular benefits, additional benefits and readjustment allowances

Noncharges the contributing employers' account for the share of extended benefits paid based on the TUR trigger; charges to the reimbursing employer's and government entity's account, the share of extended benefits paid based on the TUR trigger.

Financing

Provides for noncharging contributing employer's account with benefits paid for dependent's allowance, separation due to domestic abuse, or individual's enrolled in approved training or attending school on a full-time basis.

Changes the reduced rate for the payment of contributions for new employers with less than 3 years of experience rating from 2.7 percent to 2 percent, effective January 1, 2004.

Allows an employer that is in business in another state(s), is not currently doing business in New Mexico, and establishes an account in New Mexico, to elect to receive a beginning contribution rate of 2 percent or a contribution rate based on the current contribution rate schedule, whichever is lower, if certain other conditions are met; provides that rates for subsequent years will be determined by the condition of the account for the computation date.

Adds a new tax rate schedule for use if the fund equals at least 3.7 percent of the total payrolls with rates ranging from 0.03 percent to 5.40 percent. This is the most favorable schedule.

Appropriates \$2,592,401 from Reed Act distribution funds made available to the State on March 13, 2002, to the unemployment compensation administration fund for expenditure in fiscal years 2004 through 2007 to implement the State's unemployment insurance law; reverts to the Reed Act distribution fund any unexpended or unencumbered balance remaining at the end of fiscal year 2007.

Monetary Entitlement

Changes the computation of the weekly benefit amount from one twenty-sixth of the high quarter wages to 52.5 percent of the average weekly wage in the highest base period quarter, effective July 1, 2003.

Provides for a weekly dependent's allowance of \$15 per dependent up to a maximum of

4 dependents, not to exceed 50 percent of the individual's weekly benefit rate, effective January 1, 2004.

Provides for an alternative base period consisting of the last 4 completed calendar quarters immediately preceding the first day of the individual's benefit year for claimants earning insufficient wages in the regular base period (first 4 of last 5 completed quarters) to be eligible for benefits, effective January 1, 2004.

Nonmonetary Eligibility

Provides that individuals able to work and available and actively seeking part-time work in accordance with the terms, and conditions, and hours common in the occupation or business in which the individual is seeking work are eligible to receive benefits under certain conditions, effective January 1, 2004.

Provides that no otherwise eligible individual is to be denied benefits for any week because the individual is attending school on a full-time basis with the approval of the job training division, effective January 1, 2004.

Provides that separation from employment due to domestic abuse evidenced by medical documentation, legal documentation or a sworn statement from the claimant is good cause for voluntary leaving, and individuals are eligible to receive benefits, effective July 1, 2003; includes the definition of domestic abuse in its unemployment law.

NEW YORK SB 2620 ENACTED and EFFECTIVE August 26, 2003
(CH 413)

Extensions and Special Programs

Reauthorizes the self-employment assistance (SEA) program which permits eligible individuals to receive an allowance in lieu of regular unemployment benefits to assist them in establishing a business and becoming self-employed, is payable in the same amount as regular unemployment benefits, and expires December 7, 2005.

For SEA participants, waives the requirements (through December 7, 2005) that:

benefits will be paid to claimants totally unemployed and unable to engage in their usual occupation or those for which trained or experienced; and no benefits will be payable to claimants who are incapable, not ready, willing and able to work in their usual occupation or those for which trained or experienced.

Financing

Requires that the subsidiary rate for employers who have not been liable for contributions during at least the 5 completed calendar quarters ending on the computation date will be the highest percentage for those employers with a positive employer's account percentage.

Limits negative balance employers eligible for a rate reduction to those with a minimum of 17 quarters of liability (previously there was no minimum liability period).

Monetary Entitlement

Provides that any claimant whose high calendar quarter remuneration during the base period is more than \$3,575 will have a weekly benefit rate no less than \$143.

NORTH CAROLINA

SB 439
(CH 220)

ENACTED and EFFECTIVE June 19, 2003

Financing

Clarifies that no employer granted or in reimbursement status will be allowed a refund of any previous balance used in a transfer to reimbursement status.

Nonmonetary Eligibility

Provides that an individual will not be disqualified from receiving benefits for leaving work due to the disability or health condition of a minor child or aged or disabled parent of an individual, or a disabled member of the individual's immediate family if the individual gave the employer notice of the condition (previously had to be a disability or health condition of the employee).

Provides that an individual will not be disqualified from eligibility for UI solely on the basis that the individual is only available for part-time work. The individual may be considered able and available for work if:

The claimant's monetary eligibility is based predominately on wages from part-time work.

The claimant is actively seeking and is willing to accept work under essentially the same conditions as existed while the claimant's reported wages were accrued.

The claimant imposes no other restriction and is in a labor market in which a reasonable demand exists for part-time services.

Provides that any claimant leaving work to accompany his or her spouse to a new place of residence because the spouse has been reassigned from one military assignment to another shall be deemed to have good cause for leaving work.

Reduces the disqualification from receiving benefits from 5 to 2 weeks for a claimant who leaves work to accompany his or her spouse to a new place of residence where the spouse has secured work in a location that is too far removed for the claimant reasonably to continue his or her work.

Expands the category of claimants covered by the exception providing good cause for leaving work if a claimant leaves work or is discharged as a result of domestic violence. Previously, the exception applied only to those claimants given a protective order concerning domestic violence. The expansion also covers situations where there is "evidence" of domestic violence, sexual offense, or stalking, or the claimant has qualified for the state's new address confidentiality program.

NORTH DAKOTA

HB 1096

ENACTED March 26, 2003

Administration

Provides that employers refusing to comply with recordkeeping requirements are subject to a civil penalty of \$500 for each offense. Requires the agency to collect the penalty by civil action and deposit any penalty collected to the credit of the federal advance interest repayment fund.

Financing

With respect to noncharging for voluntary quits and discharge for misconduct, clarifies that the quit or discharge must be during the base period and that the employer be the base period employer.

Provides for noncharging of an employer's account with benefits paid to an individual who is currently employed part time with that employer when the hiring agreement between the individual and the employer has not changed since the individual commenced work for that employer. Does not apply to an employee of a temporary help firm.

Eliminates the 1.5 percent additional tax for employers in highway and street construction, except elevated highways, when they fail to file reports in a timely manner, thus requiring them to pay the same penalty rate as all other employers.

Monetary Entitlement

Provides that the 10 times the weekly benefit amount limitation on base period wages used to establish a second benefit year and earned from employment by a partnership, corporation, or limited liability company, does not apply if at the time of filing a claim, the ownership interest has been ceded.

Nonmonetary Eligibility

Excludes from the definition of "wages" qualifying supplemental unemployment payments financed and paid by employers to former employees if the payments are paid under a plan meeting certain requirements.

OREGON SB 916 ENACTED September 22, 2003
EFFECTIVE June 27, 2003

Coverage

Expands the definition of members of the same family of corporate officers for whom the corporation may elect to exclude from "employment" services. Such exclusion does not apply to service performed for a nonprofit employing unit, political subdivision or for an Indian tribe.

Nonmonetary Eligibility

Disqualifies individuals from benefits until remuneration is received that equals or exceeds 4 times the individual's weekly benefit amount for:

Failure or refusal to take a drug or alcohol test as required by the employer's reasonable written policy;

Refusal to cooperate with or subverts or attempts to subvert a drug or alcohol testing process in any employment-related test required by the employer's reasonable written policy;
Being under the influence of intoxicants while performing services for the employer;
Possessing a drug unlawfully or in violation of the employer's reasonable written policy during work;
Testing positive for alcohol or an unlawful drug in connection with employment;
or
Refusal to enter into or violates the terms of a last chance agreement with the employer.

Provides that an individual is not disqualified if the individual, on the date of separation or within 10 days after the date of separation, is participating in a recognized drug or alcohol rehabilitation program and provides documentation of participation in the program to the department. This does not apply to an individual who has refused to enter into or has violated the terms of a last chance agreement with the employer.

Provides that it is no defense or excuse against disqualification that the individual's separation resulted from alcohol use, marijuana use, unlawful drug use, alcoholism, or drug addiction.

Disqualifies individuals from benefits until remuneration is received that equals or exceeds 4 times the individual's weekly benefit amount when the individual voluntarily leaves work, fails to apply for available suitable work when referred by the employment office or the director, or fails to accept suitable work when offered:

Because the employer has or introduces a reasonable written drug-free workplace policy that is consistent with state unemployment compensation law;
Because the employer requires the employee to consent to present or future drug or alcohol tests under a reasonable written policy that is consistent with state unemployment compensation law;
To avoid taking a drug or alcohol test under a reasonable written policy that is consistent with state unemployment compensation law; or
To avoid meeting the requirements of a last chance agreement.

OREGON SB 903 ENACTED and EFFECTIVE July 3, 2003
(CH 536)

Extensions and Special Programs

Changes the ending date of the state-financed emergency unemployment benefits program from December 27, 2003, to September 27, 2003.

Eliminates the provision allowing the Director of the Employment Department to stop payments of emergency benefits when total payments would exceed \$29 million.

Establishes a totally state-financed **temporary** additional benefits program.

Provides temporary additional benefits to exhaustees of regular benefits after

Further provides that if an employer knowingly misrepresents to the Employment Security Department the amount of his or her payroll, the employer shall be liable for up to 10 times the amount of the difference in contributions paid and the amount the employer should have paid and for the reasonable expenses of auditing his or her books and collecting such sums.

Also provides that if a delinquency is due to an intent to evade successorship provisions, the Commissioner shall assign to the employer, and to any business found to be promoting the evasion of such provisions, a special tax rate for 5 consecutive calendar quarters, beginning with the calendar quarter in which the intent to evade such provision is found.

Requires the Employment Security Department to:

In consultation with an advisory committee equally representing business and labor, identify the programs funded by special administrative contributions and report to the advisory committee the expenditures for these programs annually and cumulatively since enactment.

Conduct a review of the type, rate, and causes of employer turnover in the unemployment compensation system, using unified business identifier information or other relevant data bases and methods.

Conduct a study of the potential for year to year volatility, if any, in the rate classes to which employers in the array system are assigned.

Report its findings and recommendations to the legislature by December 1, 2003.

Clarifies that interest penalties on overpayments must be used, first, to fund either Social Security number cross-match audits or other more effective activities to ensure that individuals are entitled to all amounts of benefits that they are paid, and, second, to fund other detection and recovery of overpayment and collection activities.

Includes a savings clause providing that if any part of this Act is found to be in conflict with federal requirements, the conflicting part of the Act will be inoperative to the extent of the conflict.

Coverage

Excludes from the definition of "employment" service performed by a nonresident alien agricultural worker for the period he or she is temporarily present in the United States as a nonimmigrant under subparagraph (H)(ii) of the Federal Immigration and Naturalization Act (commonly called H-2A workers).

Financing

Effective January 1, 2004, excludes from the definition of "wages" income attributable to the transfer of shares of stock to the employee pursuant to the individual's exercise of a stock option granted for any reason connected with the individual's employment.

For rate years 2005 and beyond, revises the system for assigning employer contribution rates. Creates 40 rate classes. Provides that the contribution rate for each employer shall be the sum of an array calculation factor rate, a graduated social cost factor rate, and any solvency surcharge.

For contributions assessed for rate years 2005 and beyond, provides that a solvency surcharge will go into effect when the balance in the unemployment compensation fund is determined to provide fewer than 6 months of unemployment benefits. The charge will be at the lowest rate necessary, to ensure that a total of 8 months of benefits are available in the unemployment compensation fund, but the rate shall not be more than two-tenths of 1 percent for each employer.

Revises restrictions on voluntary contributions to account for the change in the number of rate classes.

For claims with effective dates on or after January 4, 2004, provides that benefits will be charged only to an individual's separating employer if the individual left work:

- For bona fide employment and became unemployed after having worked and earned wages in the bona fide employment;
- Because the individual's usual compensation was reduced by 25 percent or more;
- Because the individual's usual hours were reduced by 25 percent or more;
- Because the individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;
- Because the individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;
- Because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or
- Because the individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

Repeals definition of "person with marginal labor force attachment," the employers of whom were formerly noncharged for certain benefits.

Provides that for transfers of employer experience on or after January 1, 2005, if a successor is not an employer at the time of transfer, the successor must pay contributions at either:

- the contribution rate of the predecessor employer, for the remainder of the rate year, after which the rate will be determined based on the transferred experience of the acquired business and the successor's experience after the transfer, or
- a rate equal to the rate assigned to employers not qualified to be in the array, until the successor qualifies for a different rate in its own right.

If there is substantial continuity of ownership or management between the predecessor and successor, the successor shall pay at the rate of the predecessor as described above.

If a successor simultaneously acquires the business or a portion of the business of two or more employers with different contribution rates, the successor's rate, until it

qualifies in its own right for a new rate, will be the rate of the predecessor that had the largest taxable payroll in the completed calendar quarter immediately preceding the transfer, but not less than the rate assigned to employers not qualified to be in the array.

Clarifies that:

Amounts in the federal interest payment fund must be used solely for the payment of interest on Title XII, SSA, advances, and Funds set aside in an account in the administrative contingency fund for the financing of special programs to assist the unemployed and to finance the Employment Security Department's administrative costs must be expended solely for UI purposes.

Monetary Entitlement

With respect to claims that have an effective date on or after the first Sunday of the calendar month immediately following the month in which the Commissioner finds that the state unemployment rate is 6.8 percent or less, benefits will be payable to any eligible individual during the individual's benefit year in a maximum amount equal to the lesser of 26 times the weekly benefit amount or 1/3 of the individual's base year wages.

With respect to claims with an effective date on or after January 4, 2004, and before January 2, 2005, provides that an individual's weekly benefit amount will be an amount equal to 1/25 of the average quarterly wages of the individual's total wages during the 3 quarters (previously 2 quarters) of the individual's base year in which such total wages were highest.

With respect to claims with an effective date on or after January 2, 2005, provides that an individual's weekly benefit amount will be an amount equal to 1 percent of the total wages paid in the individual's base year.

For claims with an effective date on or after January 4, 2004, changes the maximum benefit amount from 70 percent of the average weekly wage to the greater of \$496 or 63 percent of the average weekly wage.

Nonmonetary Eligibility

(Provisions in this section apply to claims with effective dates on or after January 4, 2004, unless otherwise indicated.)

Provides that if, for a claimant actively seeking work, a labor agreement or dispatch rules apply, the customary trade practices that apply to the work search will be in accordance with the applicable agreement or rules.

Eliminates the:

Provision requiring the Commissioner to consider only work-connected factors in deciding whether an individual has left work voluntarily without good cause, and Special provision concerning individuals whose marital status or domestic

responsibilities caused them to leave employment.

Specifies that a claimant must have terminated his or her employment status and not be entitled to be reinstated to the same or comparable or similar provision in order for non-disqualification due to separation as a result of illness or disability to apply.

Limits the provision exempting those who leave work to follow a spouse from the voluntary quit disqualification to those whose spouse has been relocated due to a military transfer.

Provides that an individual is not disqualified from receiving benefits for voluntarily leaving work if:

- The individual's usual compensation was reduced by 25 percent or more;
- The individual's usual hours were reduced by 25 percent or more;
- The individual's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the individual's job classification and labor market;
- The individual's worksite safety deteriorated, the individual reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;
- The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time; or
- The individual's usual work was changed to work that violates the individual's religious convictions or sincere moral beliefs.

Defines "misconduct," as, but is not limited to:

- Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;
- Deliberate violations or disregard of standards of behavior which the employer has the right to expect of an employee;
- Carelessness or negligence that causes or would likely cause serious bodily harm to the employer or a fellow employee; or
- Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

Provides that the following acts are considered misconduct:

- Insubordination showing a deliberate, willful, or purposeful refusal to follow the reasonable directions or instructions of the employer;
- Repeated inexcusable tardiness following warnings by the employer;
- Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;
- Repeated and inexcusable absences, including absences for which the employee was able to give advance notice and failed to do so;
- Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or
Violations of law by the claimant while acting within the scope of employment that substantially affect the claimant's job performance or that substantially harm the employer's ability to do business.

Specifies that "misconduct" does not include:

Inefficiency, unsatisfactory conduct, or failure to perform well as the result of inability or incapacity;
Inadvertence or ordinary negligence in isolated instances; or
Good faith errors in judgment or discretion.

Defines "gross misconduct" as a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee.

Provides that an individual will be disqualified from receiving benefits if he or she has been discharged for misconduct for 10 (previously 7) calendar weeks and until he or she has obtained bona fide work in covered employment and has earned wages in that employment equal to 10 times (previously 7 times) his or her weekly benefit amount.

Provides that an individual who has been discharged from his or her work because of gross misconduct will have either all hourly wage credits based on that employment or 680 hours of wage credits, whichever is greater, canceled. (Law previously provided only that wage credits based on that employment would be canceled.)

Specifies that if evidence of seeking work consists of documented in-person activities at the local reemployment center, the activities must occur at least 3 times per week to satisfy the job search requirements for claims of 5 or more weeks.

Specifies that an individual who fails to comply fully with the requirements for actively seeking work will lose benefits for all weeks of noncompliance and will be liable for the repayment of such benefits.

With respect to claims that have an effective date on or after January 2, 2005, provides that an otherwise eligible individual may not be denied benefits for any week, due to the application of provisions relating to availability for work, active search for work, or failure to apply for or refusal to accept suitable work, because the individual is a part-time worker and is available for, seeks, applies for, or accepts only work of 17 or fewer hours per week.

Defines "part-time worker" as an individual who: earned wages in "employment" in at least 40 weeks in the individual's base year; and did not earn wages in "employment" in more than 17 hours per week in any weeks in the individual's base year.

Effective upon enactment, repeals section providing that employees separated from employment due to wage garnishment will not be disqualified.

WYOMING

SB 14
(CH 73)

ENACTED February 28, 2003
EFFECTIVE July 1, 2003

Monetary Entitlement

Specifies that the maximum weekly benefit amount be no more than the statewide average weekly wage times 55 percent (without the former limitation of \$300).

Extends for 1 additional year (to June 30, 2005) the period during which the waiting week for initial or additional claims for benefits does not apply.

Nonmonetary Eligibility

Provides that an otherwise eligible individual is eligible for benefits if not receiving wages or compensation while participating in training in an apprenticeship program approved by the department if the individual meets certain conditions.

With respect to disqualification for voluntary quit without good cause, failure to search for work, and refusal of suitable work:

Eliminates the 12-week rework requirement, and
Lowers the requalifying earnings from 12 to 8 times the weekly benefit amount.

With respect to disqualification for misconduct, eliminates the 12-week rework requirement.

Disqualifies an individual from benefit entitlement if receiving a retirement annuity, pension or other payments from a base period employer or a contributory base period employer and the individual made no contribution to the annuity, pension or other payment.

Provides that no deduction from benefits will be made when an individual receives a retirement annuity, pension, or other payment that the individual contributed to (previously a 50 percent deduction was required).

Changes the recoupment period for offsetting overpayments without civil action against future benefits from within 3 years of the effective date of an overpayment determination to within 5 years of the effective date of the claim resulting in the overpayment.

Requires that the department cancel the amount of overpayment or penalty due on any overpayment when:

The individual is deceased with no estate or the estate is closed and all assets are distributed; or
The individual is adjudicated insolvent by a court of competent jurisdiction with no remaining assets.

Permits the department to cancel the amount of overpayments or penalty due on any overpayment 5 years after the effective date of the claim resulting in an overpayment

when:

The individual cannot be located within the state of Wyoming;
The individual is totally unable to work; or
The department's records show the individual earned covered wages of less than one-half the average weekly wage within Wyoming in the most recent calendar year.

Exempts certain religious, charitable, educational or other nonprofit employers and employers of domestic service, or agricultural labor, who met the state's unemployment insurance tax liability requirements for the first time during the preceding calendar year, from the delinquent rate provisions for the subsequent year, provided the employer submits all reports and contributions by April 30 of the subsequent year.