

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

REPORT ON STATE LEGISLATION

REPORT NO. 1

June 2013

ARIZONA HB 2279
(CH 18)

ENACTED and EFFECTIVE March 28, 2013

Coverage

Excludes from the definition of “employee” an individual to whom all of the following apply:

- a) performs officiating services in recreational, interscholastic, or intercollegiate sporting events or contests on a contest-by-contest basis.
- b) has the ability to accept or reject assignments to officiate a sporting event or contest.
- c) has the right to officiate contests for multiple organizations or entities.
- d) is not otherwise employed by the sponsoring school, association of schools, or the organization, this state, or a political subdivision of this state sponsoring the sporting event or contest.

Defines “officiating services” to mean overseeing the play of a sporting event or contest, judging whether the rules are being followed, and penalizing participants for infringing the rules.

ARKANSAS SB 780
(Act No. 1077)

ENACTED and EFFECTIVE April 11, 2013

Nonmonetary Eligibility

Provides that in all cases of discharge for absenteeism, the individual will be disqualified if the discharge was pursuant to the terms of a bona fide written attendance policy regardless of whether the policy is a fault or no-fault policy. Provides that misconduct includes: (i) violation of any behavioral policies of the employer as distinguished from deficiencies in meeting production standards or accomplishing job duties; and (ii) without limitation: (a) disregard of an established bona fide written rule known to the employee; or (b) a willful disregard of the employer’s interest.

Provides that if an individual is discharged from his or her last work for misconduct in connection with the work on account of dishonesty, drinking on the job, reporting for work while under the influence of intoxicants, including a controlled substance, or willful violation of bona fide written rules or customs of the employer including those pertaining to his or her safety or the safety of fellow employees, persons, or company property, harassment, unprofessional conduct, or insubordination, the individual shall be disqualified until, subsequent to the date of the

disqualification, the claimant has been paid wages in 2 quarters for insured work totaling not less than 35 times the individual's weekly benefit amount.

ARKANSAS SB 1036 ENACTED and EFFECTIVE April 12, 2013
(Act No. 1180)

Coverage

Excludes from the definition of employment services performed as personal care services for a licensed certified ElderChoices Provider, unless the provider is a state or local government entity or federally recognized Indian tribe, or a nonprofit organization. (Retroactive to January 1, 2010.)

COLORADO HB 1054 ENACTED and EFFECTIVE April 4, 2013
(CH 92)

Nonmonetary Eligibility

Provides that when an individual receives a lump-sum retirement payment that has been contributed to by a base period employer, under certain conditions, the individual's benefits shall be postponed for a number of calendar weeks equal to the gross amount of the lump-sum payment divided by the individual's full-time weekly wage. However, when an individual receives a lump-sum retirement payment but only reinvests a portion of that payment, or when an individual otherwise withdraws an amount that is less than the total lump sum of the account, then the Division of Employment and Training shall consider only the portion that is received but not reinvested in determining the number of calendar weeks that the individual's benefits are postponed. (Previously, when an individual receives a lump-sum retirement payment that has been contributed to by a base period employer, under certain conditions, the individual shall be determined to have received, from the date the payment was received by the individual, the individual's full-time weekly wage for a number of consecutive weeks equal to the total amount of the lump-sum retirement payment, divided by the full-time weekly wage.) (Applicable to unemployment insurance claims on or after April 4, 2013.)

HAWAII HB 915 ENACTED and EFFECTIVE April 1, 2013
(Act No. 3)

Financing

Allows any employer in default of contributions, advance payment, or reimbursement to be subject to offset of federal tax refund payment of the amount owed, including penalties, interest, costs, and administrative fees. (Effective April 1, 2013.)

Permits the withdrawal of moneys from the State's account in the unemployment trust fund for payment of fees authorized under the Treasury Offset Program described in federal law.

Provides that if any employer fails to furnish claim information requested in the manner and timeframe specified, any redetermination issued on or after October 1, 2013, on the basis of

information furnished untimely by the employer or the employer's agent, shall be effective upon the date of the redetermination. The entire amount of benefits overpaid due to the employer's or employer's agent's failure to respond timely or adequately to the request for claim information required shall be charged against the account of the noncomplying employer.

Provides that the 15 percent penalty assessments collected shall be deposited in the State's unemployment compensation fund.

Overpayments

Provides that determinations or redeterminations dated on or after October 1, 2013, that an individual has been overpaid benefits under any state or federal unemployment compensation program and is disqualified due to fraud based on a false statement or representation shall include a penalty assessment amount equal to 15 percent of the overpaid amount.

Requires the liable individual to repay the overpaid amount and the penalty assessment amount or have the overpaid amount only deducted from any future benefits payable. The penalty assessment amount shall not be subject to recovery by deduction from future benefits payable.

Allows for the overpaid benefits amount and the 15 percent penalty assessment amount, costs, and administrative fees to be deducted from federal income tax refunds. (Effective April 1, 2013.)

IDAHO HB 91 ENACTED and EFFECTIVE April 3, 2013
(CH 261)

Coverage

Exempts from the definition of employment service performed as an election official or election worker including, but not limited to, a poll worker, an election judge, an election clerk, or any other member of an election board, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000.

MASSACHUSETTS HB 57 ENACTED February 15, 2013
(CH 3) EFFECTIVE January 1, 2013

Financing

Assigns for calendar year 2013 contribution rate schedule E with tax rates for negative balance employers ranging from 7.24 percent to 12.27 percent and from 1.26 percent to 6.14 percent for positive balance employers.

MONTANA HB 261 ENACTED and EFFECTIVE March 22, 2013
(CH 81)

Financing

Provides that an experience rating employer's account may not be charged for benefits paid to a claimant laid off as a direct result of a presidentially declared major natural disaster if the recipient of the benefits would have been eligible for federal disaster unemployment assistance with respect to that unemployment except for their receipt of state unemployment insurance benefits. (Applies retroactively to any claims filed on or after January 1, 2011.)

NEW MEXICO HB 329
(CH 132)

ENACTED April 3, 2013
EFFECTIVE July 1, 2013

Financing

Provides that the additional 25 percent civil penalty due to fraud shall be collected in the manner that contributions and interest are collected from employers.

Requires the civil penalty due to fraud to be distributed as follows: 15 percent of the amount of overpaid benefits deposited into the State unemployment compensation fund and 10 percent of the amount of overpaid benefits deposited into the State employment security department fund.

Overpayments

Requires that in addition to the fine and imprisonment penalties imposed due to fraud, a person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment, either for that person or for any other person must pay a civil penalty of 25 percent of the amount of overpaid benefits.

NEW MEXICO HB 443
(CH 182)

ENACTED and EFFECTIVE April 4, 2013

Financing

Provides that civil actions to collect contributions or interest thereon from an employer shall be heard by the court to the same extent as civil actions and appeals of civil actions brought to collect unpaid or underpaid wages, interest, and any other amounts due.

SOUTH DAKOTA HB 1055
(CH 248)

ENACTED and EFFECTIVE February 8, 2013

Financing

Requires the deposit of any penalties due to fraud collected into the State unemployment trust fund.

Provides that the experience rating account of any employer may not be relieved of benefit charges if an erroneous payment has been made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request for information

relating to the payment of benefits. An erroneous payment is a payment that would not have been made but for the failure of the employer or the employer's agent to fully respond to the request for information.

Overpayments

Changes the duration of disqualification for fraudulent misrepresentation by denying benefits for weeks of otherwise compensable unemployment (previously, from not less than 1 week and not to exceed 52 weeks) from and after the date such misrepresentation or fraudulent act is discovered.

Provides that in addition to any penalty imposed for fraudulent misrepresentation, a 50 percent penalty is imposed on the amount of benefits obtained by willful or fraudulent misrepresentation for the first offense and a 100 percent penalty is imposed on the amount of benefits for each subsequent fraudulent offense.

UTAH SB 106 ENACTED and EFFECTIVE March 21, 2013
(CH 26)

Financing

Provides that for calendar year 2013, if the calculation of the social contribution rate is greater than 0.004, the social contribution rate for that calendar year is 0.004.

VIRGINIA HB 1372 ENACTED March 12, 2013
(CH 175) EFFECTIVE July 1, 2013

Nonmonetary Eligibility

Includes in the definition of misconduct an employee's loss of or failure to renew a license or certification that is a requirement of the position held by the employee, provided the employer is not at fault for the employee's loss of or failure to renew the license or certification. Allows the Virginia Employment Commission to consider evidence of mitigating circumstances in determining whether misconduct occurred.

VIRGINIA HB 1707 ENACTED April 3, 2013
(CH 740) EFFECTIVE July 1, 2013

Overpayments

Provides that each claimant shall be provided notices containing the consequences of making false or misleading statements to obtain unemployment benefits. The notices shall (i) identify the penalties and sanctions to which any person is liable as a result of providing false or misleading statements to obtain benefits; (ii) inform the claimant that making a false statement or representation knowing it to be false or knowingly failing to disclose a material fact, with intent to obtain or increase any benefit or other payment under this title, is punishable as a Class 1

misdemeanor; and (iii) provide a summary of all remedies to collect overpayments made to a claimant as a result of making false or misleading statements to obtain benefits. The notices shall be included with the written statement advising claimants of their benefit rights and responsibilities following the filing of the initial claim. In addition, the notice shall be provided to claimants at the time of the filing of initial and weekly claims by the same medium, including telephone or the Internet, that is used by the claimant to file a claim. The failure of the claimant to receive any of the notices shall not constitute a defense to any criminal prosecution for unemployment insurance fraud, to an administrative fraud disqualification, or to any overpayment of benefits that the claimant would be required to repay as a result of the fraudulent act or acts.

VIRGINIA SB 776
(CH 329)

ENACTED March 13, 2013
EFFECTIVE July 1, 2013

Administration

Requires each employing unit to report the employment of any newly hired employee and submit information required by federal law concerning each newly hired employee to the Virginia New Hire Reporting Center within 20 days of the employment.

Defines “newly hired employee” to mean an individual in employment who (i) has not previously been in the employment of the employer or (ii) was previously in the employment of the employer but has been separated from such prior employment for at least 60 consecutive days.

Provides that the Division of Child Support Enforcement shall use the information received on any newly hired employee to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations and may lawfully disclose such information to carry out such purposes.

VIRGINIA SB 1035
(CH 683)

ENACTED March 21, 2013
EFFECTIVE July 1, 2013

Overpayments

Adds that the term “benefits under this title” includes benefits under an unemployment benefit program of the United States or of any other State. Any person who has received any sum as benefits under an unemployment benefit program of the United States or of any other state to which he was not entitled shall be liable to repay such sum to the Commission. In the event the claimant does not refund the overpayment, the amount shall be deducted from any future benefits under this title. If an overpayment of benefits under the State’s law, but not under any other State’s law or Federal government program are due to administrative errors, the Virginia Employment Commission shall have authority to negotiate the terms of the repayment, including (i) deducting up to 50 percent of the payable amount for any future week of benefits claimed until the overpayment is satisfied; (ii) forgoing collection of the payable amount until the recipient has found employment, or (iii) determining and instituting an individualized repayment

plan. The Commission shall collect an overpayment of benefits under the State's law caused by administrative error only by offset against future benefits or a negotiated repayment plan; however, the Commission may institute any other method of collection if the individual fails to enter into or comply with the terms of the repayment plan. In addition, the overpayment may be collectable by civil action, and civil action collections may be subject to an interest charge from the date of judgment and may be subject to fees and costs. Collection activities for overpayments of \$5.00 or less may be suspended. Any benefit overpayment which remains unpaid after the expiration of 7 years from the date such overpayment was determined, or immediately upon the individual's death, or due to bankruptcy, may for good cause be determined as uncollectible and discharged from the record.

WYOMING

SB 73
(CH 133)

ENACTED March 13, 2013
EFFECTIVE July 1, 2013

Financing

Provides that one-fourth (5 percent) of the 20 percent penalty collected on the initial penalty and all of the additional penalties shall be paid into the employment security revenue account. Provides that three-fourths (15 percent) of the amounts collected on the initial penalty shall be paid into the State's unemployment trust fund account.

Provides that an employer's account shall not be relieved of charges relating to an erroneous payment from the unemployment compensation fund after July 1, 2013, if:

- i. The erroneous payment was made because the employer or its agent failed to respond within 15 days after a written notice was mailed or sent, or failed to respond adequately with benefit claim information which resulted in the erroneous payment; and
- ii. The employer or agent has established a pattern of failing to respond timely or adequately to the written notice.

Overpayments

Provides that any overpayment of benefits fraudulently received shall be assessed a penalty of 20 percent (previously 5 percent) of the amount of overpayment and an additional 5 percent penalty on the remaining unpaid balance at the end of every 6 months.

WYOMING

SB 153
(CH 152)

ENACTED and EFFECTIVE March 13, 2013

Coverage

Excludes from the definition of "employment" services performed by an individual under the age of 18, or as a direct seller or independent contractor, in the business of distributing or delivering newspapers or shopping news, excluding the delivery or distribution at any point for further delivery or distribution but including directly related services such as soliciting customers and collecting receipts, provided:

- A. All or substantially all of the individual's pay for the service, whether or not paid in cash, directly relates to sales or other output rather than to the number of hours worked; and
- B. The individual performs the service under a written contract with the newspaper or shopping news publisher which specifies that the individual will not be treated as an employee with respect to the services for federal tax purposes.