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## Changes in Federal and State Unemployment Insurance Legislation in 2012

### Abstract

Federal enactments extend federal funding for benefits provided by the Emergency Unemployment Compensation and Extended Benefits programs, require changes in the recovery of overpayments and work search requirements, permit drug testing under certain conditions, and modify the definition of the Short Time Compensation program.

### Keywords

unemployment insurance, legislation, federal benefits, drug testing

### Comments

#### Suggested Citation

Lancaster, L. (2013). Changes in federal and state unemployment insurance legislation in 2012. *Monthly Labor Review* 136(3), 44-67.

# Changes in federal and state unemployment insurance legislation in 2012

*Federal enactments extend federal funding for benefits provided by the Emergency Unemployment Compensation and Extended Benefits programs, require changes in the recovery of overpayments and work search requirements, permit drug testing under certain conditions, and modify the definition of the Short Time Compensation program*

Loryn Lancaster

**D**uring 2012, two federal legislative enactments affected the federal–state Unemployment Compensation Program. The federal enactments extend and modify benefits under the Emergency Unemployment Compensation program and the Extended Benefits program, as well as provide federal funding to the states to cover costs for these programs. The methodology used to calculate the “on” and “off” triggers for the Extended Benefits program by providing a “look-back” of 3 years was also extended. Individuals receiving emergency unemployment compensation are now required to conduct active work search, and states are now required to provide reemployment and reemployment eligibility assessment services to individuals receiving emergency unemployment compensation.

Permanent changes to unemployment compensation law were also enacted that include new work search requirements and mandatory recovery of overpayments, including interstate and federal compensation, Federal Additional Compensation, and emergency unemployment compensation. Federal law now provides authority for states to drug test unemployment compensation applicants in certain circumstances. The federal enactments addressed layoff prevention and reemployment of unemployment compensation claimants with the enactment of provisions that allow the U.S. Secretary of Labor to approve 10 temporary state demon-

stration projects, a new definition of Short Time Compensation (STC), by permitting states to allow individuals eligible for emergency unemployment compensation and extended benefits to participate in the Self-Assessment Program. Federal law provided additional funding to states to develop and implement the STC program and the Self-Employment Assistance (SEA) program.

### **Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. 112-96), enacted February 22, 2012**

*Emergency Unemployment Compensation program.* The ending date for the Emergency Unemployment Compensation program was extended for new entrants from March 6, 2012, to January 2, 2013, and the ending date for phaseout for current beneficiaries was eliminated; no emergency unemployment compensation shall be payable for any week subsequent to the last week ending December 29, 2012. The funding of emergency unemployment compensation benefits from the general revenue of the U.S. Department of Treasury and of administrative costs from the employment security administration account was authorized to continue.

The total unemployment rate triggers for emergency unemployment compensation Tiers 1, 2, 3, and 4 were modified. Emergency unemployment compensation Tier 1 had no changes. The maximum entitlement to emergency unemployment compensation Tiers 1, 2, 3, and 4 was modified.

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The eligibility provisions were amended to require that individuals must be able to work, available for work, and actively seeking work to qualify for emergency unemployment compensation. Actively seeking work includes registering with an employment service office, appropriately searching for work, maintaining a work search record, and providing such record to the state upon request.

States are now required to immediately begin providing notification to all emergency unemployment compensation claimants of the new emergency unemployment compensation work search requirements and to review or audit a minimum number of claimants' work search records that are selected randomly to ensure claimants are meeting the work search requirements.

States are required to provide specific reemployment services and in-person reemployment and eligibility assessments to individuals establishing a new emergency unemployment compensation Tier 1 or 2 claim on or after March 23, 2012. Individuals are required to participate for receipt of emergency unemployment compensation unless they can show good cause for failing to participate or complete the services. These activities will be funded from the U.S. Department of Treasury general fund in an amount equal to the estimated number of individuals who will be provided such services, multiplied by \$85.

Using the same procedures that are used to recover overpayments of regular compensation, states are required to recover emergency unemployment compensation overpayments by offset when an individual is eligible for emergency unemployment compensation. The offset capped at 50 percent of the weekly benefit amount has been eliminated. The overpayment recovery may not begin until an opportunity for a fair hearing has occurred and the determination is final. Recovery may be waived if the individual was not at fault and if the repayment would be contrary to equity and good conscience.

The nonreduction rule prohibits states from modifying the method of computation of regular compensation if it results in a lower average weekly benefit amount of regular compensation. However, the Middle Class Tax Relief and Job Creation Act provides that the nonreduction rule shall not apply with respect to a state that has enacted a law before March 1, 2012, that, on taking effect, would violate the nonreduction rule. Effective March 24, 2012, states must pay any emergency unemployment compensation entitlement before the payment of any extended-benefits entitlement.

*Extended Benefits program.* The ending dates for the 100-percent federal funding of extended benefits and for

the provision expanding extended-benefit eligibility were extended from March 7, 2012, to December 31, 2012, and the ending date for phaseout for current beneficiaries was extended from August 15, 2012, to June 29, 2013. The ending date of the provision for the federal funding of the first week of extended benefits in states with no waiting week was extended from August 15, 2012, to June 29, 2013. The ending date permitting states to temporarily modify the provisions concerning extended benefits "on" and "off" indicators by increasing the look-back period from 2 years to 3 years was extended from the period ending on or before February 29, 2012, to the period ending on or before December 29, 2012.

*Overpayments.* Overpayments of federal additional compensation may be recovered by offsetting benefit payments.

*State Reemployment Demonstration Projects.* Up to 10 states are permitted to conduct demonstration projects lasting 1 to 3 years to expedite reemployment or to improve state effectiveness in implementing state law on reemployment. States must complete projects by December 31, 2015. States are permitted to use unemployment compensation administrative grant funds to administer an approved demonstration. States may be granted approval to temporarily waive provisions of federal law regarding the withdrawal standard and the methods of administration requirement. Unemployment insurance administrative grant moneys may be used to fund demonstration projects.

*Data exchange standardization.* The U.S. Secretary of Labor is required, along with the Office of Management and Budget, to designate a data exchange standard for information, and data exchange standards must be established for required reporting. Federal law established parameters for both the data exchange standard and the reporting standard.

*Drug testing.* States are permitted to test unemployment insurance applicants for drugs and deny benefits to applicants who test positive if the applicant was discharged for unlawful use of drugs or is only available for suitable work in an occupation that regularly conducts drug testing.

*Short Time Compensation program.* The definition of "Short Time Compensation" or STC program is modified. States choosing to operate an STC program must operate it consistently with the modified definition. States are federally reimbursed 100 percent of certain STC ben-

efit costs for up to 3 years if operating a state STC program under the modified definition. States without STC programs meeting the modified definition are allowed to enter into an agreement with the U.S. Secretary of Labor to operate a federal STC program for up to 2 years, with the state receiving reimbursement for one-half of the amount of STC benefits paid under the agreement and the employer paying the other one-half. Grants are available to states either for implementing or improving the administration of or for promoting and enrolling in STC programs meeting the modified definition.

*Self-Employment Assistance program.* The SEA program has been expanded by providing states the permissive authority to establish SEA programs for individuals eligible for extended benefits and for individuals eligible for emergency unemployment compensation. States operating SEA programs for individuals eligible for extended benefits or emergency unemployment compensation must follow the definition of an SEA program, except for the modified language that includes, among other things, a 1-percent limitation on the aggregate number of individuals receiving an SEA allowance and the requirement that the program not result in any cost to the Unemployment Compensation Trust Fund does not apply.

### **American Taxpayer Relief Act of 2012 (Pub. L. 112-240), enacted January 2, 2013**

*Emergency Unemployment Compensation.* The ending date for the Emergency Unemployment Compensation program was extended for new entrants from January 2, 2013, to January 1, 2014; no emergency unemployment compensation shall be payable for any week subsequent to the last week ending December 28, 2013. The funding of emergency unemployment compensation benefits from the general revenue of the U.S. Department of Treasury and of administrative costs from the employment security administration account was authorized to continue.

The total unemployment rate triggers for emergency unemployment compensation Tiers 1, 2, 3, and 4 were not changed. Tiers 1 had no changes for the emergency unemployment compensation Tier. The maximum entitlement to emergency unemployment compensation Tiers 1, 2, 3, and 4 was not changed. The funding for reemployment services and reemployment and eligibility assessment activities was extended through fiscal year 2014.

*Extended Benefits program.* The ending dates for the 100-percent federal funding of extended benefits and the

provision expanding extended-benefit eligibility were extended from December 31, 2012, to December 31, 2013, and the ending date for phaseout for current beneficiaries was extended from June 29, 2013, to June 28, 2014. The ending date of the provision for the federal funding of the first week of extended benefits in states with no waiting week was extended from June 29, 2013, to June 28, 2014. The ending date permitting states to temporarily modify the provisions concerning extended benefits “on” and “off” indicators by increasing the look-back period from 2 years to 3 years was extended from the period ending on or before December 29, 2012, to the period ending on or before December 28, 2013.

### **State legislation**

The following are the modified or new provisions in state unemployment compensation laws, with the states that amended or included that particular provision:

- Individuals will not be denied benefits under provisions relating to their availability for work, active search for work, or refusal to accept work solely because they are seeking only part-time work (California and Vermont).
- Individuals will not be disqualified from receiving benefits because they were separated from employment if their separation is due to (1) a compelling family reason, such as domestic violence, illness, disability of the individual’s immediate family, or sexual assault, or (2) the individuals’ need to accompany their spouses to places from which commuting is impractical because of a change in location of the spouses’ employment (Washington).
- Individuals who have exhausted their rights to regular unemployment compensation and who are enrolled in an approved training program or in a job training program authorized under the Workforce Investment Act of 1998 will be entitled to an additional amount of benefits equal to 26 times their average weekly benefit amount for the most recent benefit year. Such training programs will prepare individuals who have been separated from a declining occupation or who have been involuntarily separated from employment due to a permanent reduction in operations at their place of employment for entry into a high-demand occupation (Vermont).

The effective date of each provision varies with the state adopting it.



## Alabama

*Financing.* Benefits paid to an individual who leaves employment to relocate with a spouse serving in the U.S. Armed Forces will not be charged to the employer's experience-rating account.

*Nonmonetary eligibility.* Unemployment benefits are allowed for individuals who leave employment to permanently relocate because of their active-duty spouse's permanent change of station orders, activation orders, or unit deployment orders. This requirement applies to separations occurring on or after August 1, 2012.

The 1-week waiting period for benefit years effective on or after August 1, 2012 is restored.

*Overpayments.* Whoever willfully makes a false statement or representation or willfully fails to disclose a material fact to obtain or increase any benefit payment under the state's or any other state's or government's unemployment insurance law, either for him- or herself or for any other person, whether such benefit or payment is actually received or not, shall be guilty of an offense and each such false statement or representation shall constitute a separate and distinct offense as follows:

- An aggregate amount involved in the offense that exceeds \$2,500 in value shall constitute a class B felony.
- An aggregate amount involved in the offense that exceeds \$500 but does not exceed \$2,500 shall constitute a class C felony.
- An aggregate amount involved in the offense that does not exceed \$500 shall constitute a class A misdemeanor.
- Sentencing of individuals, upon conviction, for these offenses shall follow the Criminal Code of Alabama.
- In lieu of fines, any person found guilty shall be required to pay restitution to the Alabama Department of Industrial Relations in at least the amount of benefits fraudulently obtained.

Under prior law, such person was guilty of a misdemeanor and, when convicted, was punished by a fine of not less than \$50 or more than \$500 or imprisonment for not longer than 12 months or both fine and imprisonment.

In addition to any penalty or prosecution or the deduction of benefits in an amount not less than 4 times his or her weekly benefit amount and not more than the maximum benefit amount payable in a benefit year, a claimant who made a fraudulent misrepresentation to obtain benefits to which he or

she is not entitled shall be disqualified for the 52-week period that immediately follows the final date of the fraud determination and until the fraudulent overpayment has been repaid in cash. For subsequent acts determined as fraudulent, a claimant shall be disqualified for the 104-week period that immediately follows the final date of the fraud determination and until the fraudulent overpayment has been repaid in cash. Federal and state income intercepts used to satisfy overpayments are to be considered cash payments.

All fraudulent overpayment balances shall accumulate interest at the rate of 2 percent per month on unpaid balances, shall be added to the debt balance, and shall be deposited in the fraud interest penalty account. A separate account designated as the fraud interest penalty account is established. All fraudulent overpayment balances shall have an additional minimum penalty of 15 percent that shall be deposited in the state's account of the Unemployment Insurance Trust Fund.

## Arizona

*Appeals.* The period for all interested parties to file an appeal concerning a disputed claim increases to 30 days (previously, 15 days) from the date of mailing or electronic submission. An employer has 30 days (previously, 15 days) to appeal to the board if a request to revise a final determination, redetermination, or decision of employee status is refused. Certain criteria must be included in any appeal determination or any redetermination related to an employee's status and any contribution rate redetermination or denial.

*Coverage.* The definition of "employee" is changed to include indicators of control by the employing unit as follows:

- The individual's hours or location of work
- The right to perform services for others
- Tools, equipment, materials, expenses, and use of other workers
- Other indicia of employment

A determination notice that an employing unit constitutes an employer, services performed constitute nonexempt employment, or remuneration for services constitutes wages will become final within 60 days (previously, 15 days) after written notice is served by certified mail, if the determination was made on the basis of establishing an employer-employee relationship, or by first-class mail if the determination was made by any other basis.

*Financing.* A discharged employee shall be paid wages due within 7 working days (previously, 3 days) or the end of the next regular pay period, whichever is sooner.

Until the amount of the annual federal unemployment insurance excise tax is reduced to a percentage less than 6 percent (previously, reduced to 6 percent or less), the 0.01 percent job training tax imposed on each contributory employer does not apply to employers

- with a positive reserve ratio of at least 13 percent,
- with a positive reserve ratio of at least 12 percent but less than 13 percent,
- assigned the contribution rate of 2.0 percent or 2.7 percent, and
- with a negative reserve ratio.

*Monetary entitlement.* This provision changes the wage qualification requirement for an individual's wages paid in one quarter from \$1,500 to an amount that is equal to at least 390 times the minimum wage that is in effect when the individual files a claim for benefits.

*Nonmonetary eligibility.* An unemployed individual shall be eligible to receive benefits only if the Department of Economic Security finds that such individual has both engaged in a systematic and sustained effort to obtain work during at least 4 days of the week and has made at least three work search contacts during the week. An individual shall be disqualified for benefits for failing without cause to actively engage in seeking work. An individual is considered to have refused an offer of suitable work if an employer withdraws an offer of work after an individual either

1. tests positive for drugs after a drug test given pursuant to state law or on behalf of a prospective employer as a condition of an offer of employment or

2. refuses, without good cause, to submit to a drug test that a prospective employer requires as a condition of an offer of employment.

Benefits are denied to an instructional, research, or principal administrative employee while in the employ of an entity that provides these professional services to or on behalf of an educational institution between 2 successive academic years, during a similar period between two successive or nonsuccessive regular terms, or during a period of paid sabbatical leave if the individual performed such professional services in the first of such academic years or terms and if there is a contract

or a reasonable assurance that the individual will perform professional services for any educational institution entity that provides these services to or on behalf of an educational institution in the second of such academic years or terms. This between-terms denial to professionals also applies to vacation or holiday periods within academic years or terms.

Benefits are denied to an employee in any other capacities while in the employ of an entity that provides these services to or on behalf of an educational institution between 2 successive academic years or terms if the individual performed such services in the first of such academic years or terms and if there is a reasonable assurance that the individual will perform these services to or on behalf of an educational institution in the second of such academic years or terms. However, if benefits are denied and the individual was not offered an opportunity to perform nonprofessional services on behalf of an educational institution entity that provides these services to or on behalf of an educational institution, the individual is entitled to a retroactive payment of benefits for each week a timely claim was filed. This between-terms denial to nonprofessionals also applies to vacation or holiday periods within academic years or terms.

“Contract educational provider” means a private for-profit entity that is approved by the Department of Education to provide, and does provide, special education services to pupils from schools that offer instruction in kindergarten programs and grades 1 to 12.

Notwithstanding any other provisions of law, benefits are denied to an individual between 2 successive academic years or terms on the basis of services performed under a contract with an educational provider if the following conditions are met:

- The individual performs the services in the first of the successive academic years or terms.
- A reasonable assurance exists that the individual will perform the same services in the second of the academic years or terms.

If an individual is denied benefits based on services performed under contract with an educational provider and the individual was not offered a contract for the second successive academic year or term, the individual is entitled to retroactive payments of benefits, provided a timely claim was filed. Unemployment benefits are denied to an individual on the basis of services performed under a contract with an educational provider for any week that begins during an established and customary vacation period or holiday recess if there is reasonable assurance that the individual will perform the same services after the period or recess and that he or she

was performing the same services in the period immediately before the period or recess.

The provisions regarding services for a charter school are as follows:

1. Notwithstanding any other law, benefits that are based on services for a charter school shall not be paid to an individual for any week of unemployment that begins during a period between 2 successive academic years or terms if the individual performs these services in the first of the successive academic years or terms and there is a reasonable assurance that the individual will perform the same services in the second of the academic years or terms. However, if benefits are denied to any individual under this subsection and that individual was not offered an opportunity to perform these services for the employer for the second successive academic year or term, the individual is entitled to a retroactive payment of benefits for each week the individual filed a timely claim for benefits and the benefits were denied solely by reason of this subsection.

2. Benefits that are based on services for a charter school, as described in section 15-181, shall not be paid to an individual for any week of unemployment that begins during an established and customary vacation period or holiday recess if the individual performs these services in the period immediately before the vacation period or holiday recess and if there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

### California

*Extensions and special programs.* The operational date of the California Training Benefits Program was extended from January 1, 2015, to January 1, 2019. A determination of automatic eligibility for these training benefits must be issued to a permanent or probationary public school teacher who is a participant in a credential preparation program or training program approved or accredited by the Commission on Teacher Credentialing for additional certification in math, science, or special education, for kindergarten and grades 1 to 12, inclusive, and was laid off, effective January 1, 2014.

*Financing.* The Employment Development Department is authorized to provide new hire information to the Joint Enforcement Strike Force on the Underground Economy, the Contractors’ State License Board, and the State Compensation Insurance Fund. These agencies must execute on or before July 1, 2013, a

memorandum of understanding regarding the administration and enforcement of reporting and payroll duties relating to contractors.

An employer’s reserve account is not relieved of charges relating to a benefit overpayment established on or after October 22, 2013, if the Employment Development Department determines that the payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to requests from the department for information relating to the individual claim for unemployment compensation benefits, as provided.

The cost of benefits charged to an employer electing to pay the cost of benefits into the Unemployment Fund in lieu of paying contributions includes credits of benefit overpayments actually collected by the department, unless the department determines that the payment was made because the entity, or an agent of the entity, was at fault for failing to respond timely or adequately to requests from the department for information relating to the individual claim for unemployment compensation benefits, as provided. This provision would apply to benefit overpayments established on or after October 22, 2013.

Employers must report the hiring of any employee who previously worked for the employer but had separated from such prior employment for at least 60 consecutive days.

For penalty assessments established on and after October 22, 2013, the fraudulent overpayment assessment of 30 percent of the amount of overpaid benefits must be deposited as follows: 50 percent into the Unemployment Fund and 50 percent into the Benefit Audit Fund. Under previous law, the entire amount of the overpayment assessment was required to be deposited into the Benefit Audit Fund.

### Colorado

*Extensions and special programs.* The payment of enhanced unemployment compensation benefits was extended through June 30, 2014. (The benefits were scheduled to expire on June 30, 2012.) Eligibility for these benefits has been expanded to claimants receiving extended benefits and military or federal unemployment compensation. The requirement for training in a high-demand occupation is deleted.

The Division of Employment Insurance may seek, accept, and expend gifts, grants, and donations from private or public sources to pay for administration of the program, subject to annual appropriation by the General Assembly. The division is required to notify the Legislative Council when it has received adequate funding from such

gifts, grants, and donations. (The enhanced unemployment compensation benefits program is to be repealed July 1, 2015.) A payment of \$8 million for enhanced benefits is authorized for fiscal years 2013 and 2014. Another \$47 thousand is appropriated for implementation of the program.

The definition of “approved training program” has been expanded to include employer-based entrepreneurial training and entrepreneurial training that is part of the SEA program; an employer or any other entity that provides apprenticeship or entrepreneurial training is added to the definition of “training program provider.”

*Financing.* The Division of Unemployment Insurance may issue revenue bonds when the monthly balance in the Unemployment Compensation Fund is equal to or less than 0.9 of 1.0 percent of the total wages reported by ratable employers for the calendar year or for the most recent four consecutive quarters prior to the last computation date. The Governor, the state Treasurer, and the Executive Director of the Colorado Department of Labor and Employment are required to certify

- that the issuance of bonds is the most cost-effective means compared with other funding alternatives considered,
- the amount of money required to maintain adequate balances in the fund or to repay advances, and
- the amount of bonds to be issued.

The state Department of Labor and Employment must certify bond issuance would not result in decertification of Colorado’s unemployment insurance program, affect any CAP application, affect the receipt of emergency unemployment compensation funds, or result in the loss of federal funds, penalties, and sanctions.

An unemployment bond repayment account is created for all non-principal-related bond costs and provides that funds for non-principal-related costs be deposited in the bond repayment account.

The surcharge tax is repealed December 31 of the calendar year that the trust fund balance on June 30 is equal to or greater than zero and all advances have been repaid.

The rate increases for unrated employers, ranging from 0.0296 to 0.0465 depending on the reserve ratio, are eliminated from the premium rate schedule used when the unemployment insurance fund is solvent and sets the rate at 0.0170, regardless of the reserve ratio. The new provision specifies that new employers pay the same premiums as unrated employers, or at the computed rate, whichever is higher, unless 12

consecutive calendar months have passed immediately preceding the computation date during which an employer’s account has been chargeable with benefit payments.

## Connecticut

*Financing.* The method used to calculate the amount of money the state Unemployment Compensation Fund should contain changed. The administrator will establish a fund balance tax rate sufficient to maintain a balance in the Unemployment Compensation Trust Fund that results in an average high-cost multiple

- equal to 0.5 for each calendar year, commencing with calendar year 2013;
- that is increased by 0.1 from the preceding calendar year, commencing with calendar year 2014 and ending with calendar year 2018; and
- equal to 1.0, commencing with calendar year 2019.

If the established fund balance tax rate results in a fund balance in excess of the amount prescribed as of December 30 of any year, in the next year following, a fund balance rate sufficient to eliminate the excess fund balance amount shall be established. (Previous law provided that before calendar year 2013, a fund balance tax rate had to be established that was sufficient to maintain a trust fund balance equal to 0.8 percent of the total wages that contributing employers paid to covered workers during the year ending the last preceding June 30.)

The law changed by providing that the assessment levied by the administrator at any time during a calendar year commencing on or after January 1, 2013, will not exceed 1.4 percent and will not be calculated to result in a fund balance greater than the amounts prescribed. (Prior law provided that from January 1, 1999, to December 31, 2012, the assessment will not exceed 1.4 percent and will not be calculated to result in a fund balance greater than 0.8 percent of such total wages.)

The average high-cost multiple will be computed as follows: The numerator will be the result of the balance of the Unemployment Compensation Trust Fund on December 30 immediately preceding the new rate year divided by the total wages that contributing employers paid to covered workers for the 12 months ending on the December 30 immediately preceding the new rate year, and the denominator will be the average of the three highest calendar benefit cost rates in (1) the last 20 years or (2) a period including the last three recessions, whichever is longer. Benefit cost rates are computed as benefits paid,

including the state’s share of extended benefits but excluding reimbursable benefits as a percent of total wages in covered employment. The results rounded to the next lower one decimal place will be the average high-cost multiples.

## District of Columbia

*Administration.* All correspondence, notices, determinations, or decisions may be transmitted to claimants, employers, or necessary parties by electronic mail or other means of communication; the claimant, employer, or necessary party may select from the alternative methods.

All correspondence, notices, determinations, or decisions that the Director of Department of Employment Services issues may be signed by an electronic signature that complies with the requirements of District of Columbia Official Code, Section 28-4917, and Mayor’s Order 2009-118, issued June 25, 2009.

*Extensions and special programs.* The temporary total unemployment rate trigger and 3-year look-back provisions based on the Extended Benefits program were extended to the week ending 4 weeks prior to the last week of unemployment for which 100 percent of most federal sharing is available. (The provision expires October 13, 2012.)

The ending effective date for the temporary federal-state Extended Benefits program provisions concerning the optional seasonally adjusted total unemployment rate trigger and the 3-year look-back were extended to the week ending 4 weeks prior to the last week for which the federal government pays 100 percent of most extended-benefits costs. (This provision is applicable as of March 3, 2012, is temporary, and is subject to congressional review.) The District’s additional benefits program is repealed.

*Financing.* The 0.6-percent contribution rate assessment on employers to finance the additional benefits program was repealed.

## Florida

*Administration.* The Agency for Workforce Innovation is renamed the Department of Economic Opportunity. The state Unemployment Compensation Program is renamed “Re-employment Assistance Program.”

The department must establish a numeric score on the initial skills review that demonstrates a minimum proficiency in workforce skills. A claimant has the option to undergo workforce skills training if he or she scores below this standard. Workforce skills training will be provided at no cost to individuals to improve skills at their minimum proficiency level. The department must



develop best practices, evaluate the training, and report findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 1, 2013.

The confidentiality and disclosure provisions were modified by providing that information revealing an employing unit's or individual's identity is confidential and that the release of such information must conform to certain federal regulations.

*Extensions and special programs.* The meaning of "emergency benefits" was modified to benefits that are paid pursuant to Public Law 110-252 and any subsequent federal law that provides for the payment of emergency unemployment compensation.

The federally funded temporary Extended Benefits program based on the total unemployment rate and the high-unemployment period was extended through March 11, 2012.

*Financing.* An employee leasing company is allowed to make a one-time irrevocable election to report and pay state unemployment compensation taxes under the respective unemployment account of each client. The election to use the client option would apply to all current and future clients of the employee leasing company and would apply to any unemployment compensation reports and taxes owed beginning in calendar year 2013. An existing employee leasing company is required to notify the state Department of Revenue of its election by July 1, 2012. However, a new employee leasing company is required to inform the Department of Revenue of its election within 30 days of formation. If any employee leasing company fails to timely inform the Department of Revenue of its election to use the client option, such entity would be required to report leased employees under the employee leasing company's tax identification number and contribution rate.

The Department of Economic Opportunity is authorized to not charge the accounts of employers that are forced to lay off workers because of an oil spill, terrorist attack, or other similar disaster of national significance that is not a declared natural disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

*Monetary entitlement.* The denial of benefits to employees of an educational institution is also applicable to employees of a private employer holding a contractual relationship with an educational institution, but only if the base-period wages attributable to such services are identified in the quarterly wage report, effective July 1, 2013.

*Nonmonetary eligibility.* Individuals who are union members are authorized to satisfy work

search requirements by reporting daily to their union hall. Additionally, the work search requirements do not apply to individuals who are laid off temporarily or participating in STC plans.

The number of weekly employer contacts was reduced from five to three for individuals who reside in a small county and are engaging in systematic and sustained efforts to find work.

*Overpayments.* A disqualification for making a fraudulent claim begins with the week the fraudulent claim is made and continues up to 1 year after the date the department discovers the fraudulent claim and until any fraudulent overpayments are repaid in full.

The statute of limitations related to the collection of reemployment assistance fraudulent overpayments was amended by providing that the commencement of collections must be initiated within 7 years after the redetermination or decision (previously, the commencement had to be initiated within 5 years) and the collection of reemployment assistance nonfraudulent overpayments within 7 years (previously, within 3 years).

## Georgia

*Financing.* The provisions relating to the statewide reserve ratio were amended by providing that for the period of January 1 through December 31, 2013, and each calendar year thereafter, the overall increase in the required rate shall be suspended, except if the statewide reserve ratio, as calculated, is less than 1.25 percent on the computation date for rates applicable to calendar year 2013 or any calendar year thereafter. Then for each such year, the commissioner of the Georgia Department of Labor shall have the option of imposing an increase in the overall rate of up to 50 percent, as of the computation date, for each employer whose rate is computed under a rate table in the law, provided, however, that if any Title XII funds that the commissioner borrowed are unpaid or if the state Unemployment Compensation Fund balance is less than \$1 billion, the commissioner shall impose an increase in the overall rate of 50 percent, as of the computation date, for each employer whose rate is computed under a rate table in the law.

The taxable wage base increased from \$8,500 to \$9,500 beginning January 1, 2013, and each year thereafter.

*Monetary entitlement.* The formula for computing the maximum benefits payable to an individual changed from 26 times the weekly amount or one-fourth of the base-period wages to 14 times the weekly benefit amount, if the state's average unemployment rate is at or below 6.5 percent, with an additional weekly

amount added for each 0.5-percent increment in the state's average unemployment rate above 6.5 percent up to a maximum of 20 times the weekly benefit amount if the state's average unemployment rate equals or exceeds 9 percent or one-fourth of the base-period wages. This provision also applies to job training program benefits, effective July 1, 2012.

The term "state's average unemployment rate" means the average of the adjusted statewide unemployment rates as published by the Georgia Department of Labor for the periods of April 1 through April 30 and October 1 through October 31. The average of the adjusted statewide unemployment rates for the period of April 1 through April 30 shall be effective on and after July 1 of each year and shall be effective through December 31. The average of the adjusted statewide unemployment rates for the period of October 1 through October 31 shall be effective on and after January 1 of each year and shall be effective through June 30, effective July 1, 2012.

## Hawaii

*Financing.* Notwithstanding the ratio of the current reserve fund to the adequate reserve fund, contribution rate schedule F shall apply for calendar year 2012. For schedule F, the minimum rate is 1.2 percent and the maximum rate is 5.4 percent.

The moneys in the employment and training fund may be used for funding the payment of interest due on Title XII advances made to the state Unemployment Compensation Fund.

The employment and training fund assessment rate of 0.01 percent of taxable wages shall be used to pay interest on Title XII advances, if interest is due. The Director of the Hawaii Department of Labor and Industrial Relations shall have the discretion to determine the amount of the assessment rate for calendar year 2012 in increments of 0.01 percent. Notwithstanding any provisions of law to the contrary, any amount collected but not applied to interest payments due in 2012 shall not be returned retroactively to any employer and shall be retained in the employment and training fund. (The provisions in this paragraph and the preceding paragraph relating to Title XII advances shall be repealed on January 1, 2013, and the statutes shall be reenacted in the form in which they read on December 31, 2010.)

*Monetary entitlement.* The maximum weekly benefit amount shall be calculated at 70 percent of the average weekly wage from January 1, 2012, to March 31, 2012, and at 75 percent of the average weekly wage from April 1, 2012, to December 31, 2012. Beginning on January 1, 2013, the maximum weekly benefit amount

shall be calculated at 70 percent of the average weekly wage. The maximum weekly benefit amount is \$523 from January 1, 2012, to March 31, 2012, and increases to \$560 from April 1, 2012, to December 31, 2012.

## Illinois

*Coverage.* The term “newly hired employee” means an employee who either has not previously been employed by the employer or was previously employed by the employer but has been separated from that prior employment for at least 60 consecutive days.

*Financing.* Employers must be charged for benefits improperly paid when the employer, or agent of the employer, was at fault for failing to respond timely or adequately to a request for information relating to the claim and when the employer or agent has a pattern of failing to respond timely or adequately to such requests.

Employers submitting wage reports electronically must submit wage reports on or before the last day of the month following the calendar month in which the wages were paid. All other employers must submit wage reports on or before the last day of the month following the calendar quarter in which the wages were paid.

For group accounts, penalties assessed for employers failing to file a timely and sufficient report of wages and that are not paid by the group when due on the calendar month or quarter, as the case may be, shall be in an amount that bears the same ratio to the total penalties due on such month or quarter as the total wages for insured work paid by such member during such month or quarter bear to the total wages for insured work paid during the month or quarter by all members of the group.

To conform to the monthly reporting requirements of the Save Medicaid Access and Resources Together or SMART Act, technical changes were made to include in its rules language providing for certain employers to file monthly wage reports. Obsolete language relating to employee leasing companies satisfying reporting requirements for either or both of the third and fourth calendar quarters was deleted.

Penalties are waived for failure to file monthly wage reports for January, February, April, May, July, August, October, and November 2013 and January, February, April, and May 2014 for employers with 25 or more employees but fewer than 50; for January, February, April, May, July, August, October, and November 2013 for employers with 50 or more employees but fewer than 100; and January, February, April, and May of 2013 for employers with 100 or more employees but

fewer than 250.

*Monetary entitlement.* The statewide average weekly wage is \$856.55 (previously, \$406.00) for calendar year 2012 and each year thereafter.

For calendar year 2012, the child dependent rate will not be less than 17.0 percent or greater than 17.9 percent. (Previously, the rate was not less than 17.1 percent or greater than 18.0 percent.)

*Overpayments.* A 15-percent additional penalty must be assessed when an individual knowingly makes a false statement or fails to disclose a material fact and receives benefits for which he or she is not eligible. Penalties shall be deposited in the state Unemployment Fund.

## Louisiana

*Coverage.* The definition of “employment” excludes services performed by individuals who meet the statutory definition of an owner-operator. “Owner-operators,” as defined in Revised Statute 23:1021(10), are independent contractors that provide trucking transportation services under written contract to a common carrier, contract carrier, or exempt haulers, to include the lease of equipment or a driver to the common carrier, contract carrier, or exempt hauler. The definition of owner-operator does not include an individual driver who purchases his or her equipment from the carrier or hauler and then directly leases the equipment back to the carrier or hauler with the purchasing driver.

State agency procedures for handling the misclassification of employees as independent contractors are outlined to include written warning, administrative penalties, and civil penalties. Employers must post information about the responsibilities of independent contractors to pay taxes, the rights of employees to worker’s compensation and unemployment benefits, protections against retaliation, and penalties for employer misclassification of employees.

*Nonmonetary eligibility.* A temporary employee of a staffing firm will be disqualified for benefits if, upon conclusion of his or her latest assignment, he or she fails without good cause to contact the staffing firm for reassignment. Disqualification does not apply if the temporary employee is not advised at the time of hire that he or she must report for reassignment upon the conclusion of each assignment and that unemployment compensation benefits may be denied for failure to do so.

*Overpayments.* A recreational hunting or fishing license will be suspended or denied for failing to pay an unemployment compensation

overpayment obligation.

The words “license” and “obligor” are defined. The Louisiana Workforce Commission may notify an obligor by certified mail of an overpayment delinquency and the intention of the commission to submit the obligor’s name to the licensing agency for a suspension of license. The procedure for the license suspension and the periods for the suspension and reinstatement of a license have been established. The certification of noncompliance and the compliance release certificate may be issued electronically.

When any delinquencies are paid, the commission must issue a compliance release certificate indicating that the obligor is eligible to have his or her license reissued and that the licensing authority will issue, reissue, renew, or otherwise extend the obligor’s license upon receipt of the compliance release certificate. All interest, fines, and penalties collected from claimants must be paid into the employment security administration fund, except as otherwise provided.

The Executive Director of the Louisiana Workforce Commission is allowed to require employers to electronically file all registrations and status reports due after January 31, 2014.

Benefits charged after a requalification of a claimant will not be charged against the experience-rating account of an employer when all the following occur:

1. The employer timely filed a separation notice alleging disqualification.
2. Either a response to a notice of claim filed or a response to a notice to the base-period employer has been filed.
3. The separation of the employee from the employer was determined to be under disqualifying conditions.

Each employer must file with the administrator a separation notice, containing specific information, for each employee who leaves its employ for any potentially disqualifying cause and deliver the notice to the administrator and the separated employee.

Current law provides that an individual shall be disqualified for benefits for the 52 weeks immediately following the week in which he or she was determined to have committed a fraudulent act relating to obtaining or increasing benefits. Current law was amended to apply the disqualification to the remainder of the benefit year after the commission of the fraudulent act and then continuing for the 52 weeks following the determination of the fraudulent act.

If an administrator obtains information

indicating that a claimant has earned any unreported wages for weeks claimed before the administrator renders a determination on the issue, the claimant will be notified by mail or other delivery method. The claimant will have 7 days from the date of mailing to respond, or if notice is not by mail, the claimant will then have 7 days from the delivery date of such notice to respond.

The period for which a fraudulent claim for repayment can be recovered was increased from 5 years to 10 years from the date the administrator determines that repayment is due.

If benefits were not gained through fraud and if the overpayment was not the fault of the claimant and the recovery would be against equity and good conscience, a waiver may be issued. Any fraudulent acts determined will preclude the granting of a waiver and contain factsheets to be considered in determining whether the recovery will be against equity and good cause. The period for recovery of a claim for repayment of nonfraud benefits increased from 3 years to 5 years.

If overpayment of benefits is determined to be due to the employee committing fraud, a civil penalty will be assessed for \$20 or 25 percent, whichever is greater, of the total of overpayment debt. Additionally, 15 percent of any such overpayment amounts collected must be deposited with the U.S. Secretary of the Treasury to credit the account of the state Unemployment Trust Fund, and 10 percent of such overpayment must be deposited in the penalty and interest account to offset collection expenses.

A penalty will be assessed if the claimant does not voluntarily repay overpaid benefits within 30 days after the claimant's appeal rights have been exhausted and the determination becomes final, unless the claimant entered into a voluntary repayment plan and has timely made all refunded payments.

The withholding of penalties from amounts recovered by an offset from unemployment compensation benefits is prohibited. Any employer against which an assessment has been levied and that has exhausted appeal rights is prohibited from submitting a bid or proposal for any public contracts until full payment of the amount due under the assessment is made.

## Maine

*Financing.* The amount of time that an employer may employ a worker without being charged for unemployment benefits increases from 5 weeks to 6 weeks. The experience rating record of the most recent employer may not be charged with benefits paid to a claimant whose work record with that employer totaled 6 consecutive weeks or less of total or partial employment. This provision is repealed March 14, 2014. The number of weeks that an employer may employ a worker without being charged

for unemployment benefits will decrease to 5, effective March 14, 2014.

Certain out-of-state businesses are permitted to conduct operations in Maine during times of declared state disaster or emergency without having to register, file, and remit unemployment compensation contributions in Maine.

*Nonmonetary eligibility.* The weekly benefit amount will be reduced by the full prorated weekly amount of the pension received if the individual did not contribute to the plan. The benefit amount may not be reduced below zero.

An individual must actively seek work, unless participating in approved training or the work search requirement is waived, and must provide evidence of the work search efforts in the manner prescribed. Failure to provide required documentation will result in a denial of benefits for the week or weeks of documentation not provided unless good cause is found.

Failure to participate in reemployment assessment services when referred by the Maine Department of Labor will result in denial of benefits until the individual participates in the services, unless there is good cause for failure to participate. For purposes of work registration, ability and availability for work, and reemployment eligibility assessment and services, "good cause" is defined as follows:

- The individual is ill.
- The individual's presence is required because of the illness of the individual's spouse, children, parents, stepparents, brothers or sisters, or relatives acting in the capacity of a parent (of either the unemployed individual or spouse).
- The individual is attending the funeral of one of the persons listed above.
- The individual is observing a religious holiday required by religious conviction.
- The individual is performing military or civil duty as required by law.
- The cause is of a necessitous and compelling nature, including childcare or transportation emergencies.

"Good cause" does not include incarceration as a result of a conviction for a felony or misdemeanor.

An individual discharged or suspended for misconduct will be disqualified until the individual has earned 8 times the weekly benefit amount (previously, the amount was 4). An individual who refuses suitable work will be disqualified until the individual earns 10 times the weekly benefit amount (previously, the amount was 8). Earnings may not be considered when

determining suitable work for an individual after the first 10 consecutive weeks (previously, 12 weeks) of unemployment.

An individual will be disqualified for any week that the individual receives vacation pay in an amount exceeding the equivalent of 4 weeks wages; however, if the vacation pay is less than the benefits due, the weekly benefit amount shall be reduced by the amount of the remuneration. Vacation pay paid to the individual prior to notification of the employer's intent to terminate is not considered remuneration for this purpose.

*Overpayments.* An individual guilty of unemployment fraud is guilty of theft by deception under Title 17-A, Section 354, of the Maine criminal code (previously, a class D crime; now determined by the amount of fraud, ranging from class B to class E).

An individual must be disqualified for a third occurrence of a false statement or misrepresentation in the application for benefits for a period to be determined by the commissioner of the Maine Department of Labor (previously, 6–12 months).

## Maryland

*Administration.* The following confidentiality provisions are established:

1. Except as provided in the following or otherwise required by law, information provided to the secretary of the state Department of Labor, Licensing and Regulation, for determining whether a claimant left employment because of domestic violence shall be confidential and not subject to disclosure to any party:

- The secretary may notify the employing unit in general terms that a claimant has left employment because of domestic violence.
- The secretary may not disclose information provided to the secretary to the employing unit unless the employing unit can establish that (1) the employing unit has a legitimate need to question the veracity of the information, (2) the employing unit's need for the information outweighs the claimant's personal privacy interest, and (3) the employing unit is unable to obtain the information from any other source.
- Before disclosing information, the secretary shall notify the claimant and redact unnecessary identifying information.
- An employing unit that receives information from the secretary may not disseminate the information further.



2. Information related to the status of a claimant or claimant's spouse, minor child, or parent as a victim of domestic violence is not public information subject to disclosure as part of the appeals process.

3. The secretary may adopt regulations to further protect the privacy of the claimant.

The domestic violence provisions are changed by replacing "immediate family member" with "spouse, minor child, or parent."

*Coverage.* Specified employers are exempt from the presumption under the Workplace Fraud Act that an employer-employee relationship exists between the employer and an individual doing work for the employer if the employer presents specified documentation. For enforcing the Workplace Fraud Act, the presumption that an employer-employee relationship exists does not apply if an employer produces the following for inspection:

- A written contract between the employer and a business entity that describes the nature of the work and the remuneration to be paid and includes the business entity's acknowledgment of its responsibilities
- A signed affidavit indicating that the business entity is an independent contractor that performs work for other business entities
- A certificate of status of the business entity issued by the state Department of Assessments and Taxation indicating that the entity is in good standing
- Proof that the business entity holds all required occupational licenses for the work to be performed
- Established procedures and timetables for enforcement activities and resolution of disputes

In addition, the employer must provide each individual classified as an independent contractor with the required notice of classification as an independent contractor and the implications of the classifications.

The commissioner of Labor and Industry is allowed to require each employer to identify and produce for copying or inspection all records relevant to the classification of each individual. An employer must comply with the request within 30 business days or as agreed by both parties. Within 90 days of receiving all requested records, the commissioner must either issue a citation or close the investigation.

The employer has 15 days to request a hearing on the citation; the hearing must

be held within 90 days of the request, unless the employer waives that right. If no hearing is requested within 15 days, the citation becomes final.

The commissioner must notify a public body that has a contract with the employer only if the commissioner issues a citation for a known violation.

*Financing.* Benefits paid to a claimant are not charged against the earned rating record of an employing unit if the claimant left employment for good cause directly attributable to the claimant or the claimant's spouse, minor child, or parent being a victim of domestic violence.

The domestic violence provisions just mentioned shall apply to individuals who file new benefit claims with an effective date on or after October 1, 2012.

*Nonmonetary eligibility.* An individual who leaves voluntarily has good cause when the cause is directly attributable to the individual or the individual's spouse, minor child, or parent being a victim of domestic violence and the individual

1. reasonably believes that the individual's continued employment would jeopardize the individual's safety or the safety of the individual's spouse, minor child, or parent and

2. provides one of the following types of documentation to the secretary substantiating domestic violence:

- An active or a recently issued temporary protective order, a protective order, or any other court order documenting the domestic violence
- A police record documenting recent domestic violence

## Michigan

*Extensions and special programs.* A shared-work program in which employers may participate is established, and definitions related to the program are provided. To participate in the shared-work program, employers must have

- filed all required reports and paid all obligated assessments, contributions, reimbursements in lieu of contributions, interest, and penalties;
- a positive reserve account balance if a contributing employer; and
- paid wages for 12 consecutive calendar quarters prior to application.

The shared-work application must include

- the employer's assurances that required reports and any other relevant information required will be submitted;
- the employer's assurances that no new employees will be hired or transferred to the affected unit during the period of the plan and that no employees will be laid off or hours reduced by more than the percentage defined in the plan, except for holidays, designated vacation periods, equipment maintenance, or similar circumstances (an employer must provide a list of anticipated week or weeks);
- the employer's certification that any applicable bargaining unit has approved the plan and all affected employees not in the bargaining unit have been notified of the plan;
- the employer's certification that the implementation of the plan is in lieu of temporary layoffs that would affect at least 15 percent of the employees in the affected unit and would equally reduce the hours of work;
- the employer's certification that participation in the plan is consistent with employer's obligations under federal and state laws and that the employer will abide by all terms and conditions established in law; and
- any other relevant information required by the agency.

An employer may apply for more than one plan. Shared-work plans may not be approved after January 1, 2018. Approval of a shared-work plan requires that a plan

- applies to one affected unit and that all employees in the affected unit are participating, except an employee who has been employed less than 3 months before the date of the application or an employee whose hours after reduction are more than 40 hours per week;
- includes at least two employees (not including corporate officers);
- provides the names, Social Security numbers, and number of planned work hours (after the reduction) for participating employees;
- stipulates that the number of work hours a participating employee will work during the period of the plan is the number of hours of the employee's normal weekly hours reduced by the reduction percentage;
- includes an estimate for the number of



employees who would have been laid off without implementation of the plan;

- describes how affected employees will be given advance notice, if feasible;
- reduces the number of hours with a corresponding decrease in wages for participating employees;
- does not affect fringe benefits for participating employees;
- is effective for a period of 52 weeks or less and that benefits payable will not exceed 20 times the weekly benefit amount; and
- includes a percentage reduction between 15 percent and 45 percent that is the same for all participating employees (any change in the reduction percentage requires approval).

The state agency must issue a written decision on the application within 15 days of receipt of the plan. The shared-work plan will be effective the first calendar week following the date of approval for the number of weeks indicated on the plan, unless the agency approves a lesser number of weeks or the plan is terminated.

Employees participating in a shared-work plan must

- receive compensation in an amount equal to the weekly benefit rate times the reduction percentage, rounded to the next lower dollar;
- receive compensation under the plan that is applied to the maximum amount of benefits payable but not to the individual's maximum duration of weeks;
- not be denied compensation for reasons related to active work search or refusal to apply for or accept work other than work offered by the participating employer;
- be available for work during the employee's normal work week; and
- be allowed to participate in a training plan approved by the unemployment agency.

The employer will file claims on behalf of the participating employees on a 2-week schedule established by the agency (the agency may include 1-week periods as necessary and revise the schedule).

The agency may terminate a shared-work plan for good cause, and the employer may terminate the plan by providing written notice. Approval of a shared-work plan or any modification to the plan is at agency discretion and not subject to appeal. An annual re-

port must be sent to the governor and certain members of the legislature to assess the impact of the shared-work program.

Employers are permitted to certify that the implementation of a shared-work plan is in lieu of layoffs (previous law specified temporary layoffs) that would affect at least 15 percent of the employees in the affected unit and would result in an equivalent reduction in work hours. The 5-year sunset date for employers to apply for a shared-work plan is eliminated.

**Financing.** Employers participating in a shared-work plan

- will not be charged for the cost of benefits if full federal funding is provided;
- if partial federal funding is available, employers will pay an amount equal to one-half of the benefits paid, which will be deposited into the state Unemployment Compensation Fund;
- will be charged for all benefits paid to employees if no federal funding is available and for employees who are seasonal, temporary, or hired intermittently; and
- will not have charges included in the calculation of the employer's experience account.

Beginning January 1, 2014, a client employer of a professional employer organization for less than 12 calendar quarters (previously, 8 quarters) will have its unemployment tax rate based on its prior account and experience, and a contributing employer that becomes a client employer of a professional employer organization will retain its existing unemployment tax rate or establish a new rate, as provided by law.

The order in which obligation assessment payments and contribution payments are credited by the unemployment agency is as follows: An obligation assessment payment made or a contribution payment made will be credited first to interest on the obligation assessment and then to the obligation assessment, with those payments applied to amounts unpaid and owing in the oldest calendar quarter and progressing each quarter to the most recent quarter. Any remainder will be credited first to penalties on contributions, then to interest on contributions, and then to contribution principal, with those payments applied to amounts unpaid and owing in the oldest calendar quarter and progressing each quarter to the most recent quarter. (The previous order provided that contributions and payments in lieu of contributions will be credited first to penalty, then to interest, and then to principal, unpaid and owing in the oldest calendar quarter and progressing each quarter

to the most recent quarter.)

**Nonmonetary eligibility.** Income of volunteer firefighters is exempt from deductible income provisions. The weekly benefit amount will not be reduced for remuneration that an individual received for performing on-call or training services as a volunteer firefighter, if the individual receives less than \$10,000 in remuneration in a calendar year for services as a volunteer firefighter.

**Overpayments.** Sentencing guidelines are established for the crime of unemployment compensation fraud consisting of knowingly making a false representation or false statement, failing to disclose a material fact, or committing fraud conspiracy or fraud embezzlement.

## Minnesota

**Administration.** An employer is prohibited from making an agreement that, in exchange for the employer agreeing not to contest the payment of unemployment benefits, including agreeing not to provide information to the department, will cause an employee to (1) quit the employment, (2) take a leave of absence, (3) leave the employment temporarily or permanently, or (4) withdraw a grievance or appeal of a termination. An agreement that violates this provision has no effect.

The definition of "electronic transmission" is modified to mean a communication that is sent online, by telephone, or by facsimile transmission, effective July 2, 2012.

**Coverage.** The definition of "employment" excludes employment in Minnesota in an unclassified position, effective July 2, 2012. The definition of "employment" excludes employment of an individual who provides direct care to an immediate family member, funded through the personal care assistance program, effective July 2, 2012. (Previously, employment for a personal care assistance provider agency by an immediate family member of a recipient who receives services through the personal care assistance program was excluded from the definition of employment.)

The following three rules in determining worker status as an employee or an independent contractor are repealed:

1. Additional factors to be considered
2. Determination of control
3. Procedures for determining control, effective July 2, 2012, which apply retroactively to all pending cases

**Financing.** Effective for determinations is-

sued on or after July 1, 2013, the exception to the law that unemployment benefits paid will not be used in computing the future tax rate of a taxpaying base-period employer or charged to the reimbursable account of a base-period nonprofit or government employer that has elected to be liable for reimbursements when the benefits were determined overpaid does not apply if the overpaid benefits resulted because the employer or any employee, officer, or agent of the employer

1. failed to respond timely or adequately to a request for information and

2. has established a pattern of failing to respond timely or adequately to requests for information. The employer must pay the state trust fund the amount of the overpaid unemployment benefits used in computing the future tax or charged to the reimbursable account. A "pattern" is a prior failure to respond to the greater of two requests for information or 2 percent of all requests for information in the most recent 6 months.

The penalty (effective for penalties imposed on or after July 1, 2013) is the greater of \$500 or 50 percent of the following amounts resulting from the employer's action:

- Any overpaid unemployment benefits to an applicant
- Unemployment benefits not paid to an applicant that would otherwise have been paid
- Any payment required from the employer that was not paid

This penalty is in addition to any other penalties and subject to the same collection procedures that apply to past-due taxes. Penalties must be paid within 30 calendar days of issuance of the determination of penalty and credited to the state trust fund.

A rate of 37.5 percent of the payments made toward the 40-percent penalty (which equals 15 percent) assessed on any applicant who fraudulently receives an overpayment of unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact or who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation is credited to the state trust fund, effective for any money credited on or after July 1, 2013. (Previously, the 37.5 percent was credited to the administration account.) The determination that the applicant fraudulently obtained unemployment benefits is effective the Sunday of the week that it was issued.

Regardless of the provision that a determination is final unless an appeal is filed within

30 calendar days, unemployment benefits paid for weeks that are more than 4 years before the date of a determination issued for an applicant fraudulent overpayment are not considered overpaid unemployment benefits.

The commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer (1) knowingly made a false statement or representation, (2) made a false statement or representation without a good faith belief as to the correctness of the statement or representation, (3) knowingly failed to disclose a material fact, or (4) offered employment to an applicant when, in fact, the employer had no employment available. The penalty is the greater of \$500 or 50 percent of the following amounts resulting from the employer's action:

- Any overpaid unemployment benefits to an applicant
- Unemployment benefits not paid to an applicant that would otherwise have been paid
- Any payment required from the employer that was not paid

Previously, the penalty applied only if the employer's action (1) was taken to prevent or reduce the payment of unemployment benefits to any applicant, (2) was taken to reduce or avoid any payment required from an employer, or (3) caused an overpayment of unemployment benefits to the applicant. This penalty is in addition to any other penalties and subject to the same collection procedures that apply to past-due taxes. Penalties must be paid within 30 calendar days that the determination of penalty is issued and must be credited to the state trust fund.

All penalties assessed because of fraud committed by any person, taxing employer, or reimbursable employer are credited to the state trust fund, effective July 1, 2013. (Previously, penalty payments were credited to the administration account to be used to ensure integrity in the unemployment insurance program.)

The language providing when the experience rating history of the predecessor employer is transferred to the successor employer and when a portion of the experience rating history of the predecessor employer is transferred to the successor employer is clarified.

Penalty payments received from a successor employer for failing to notify the commissioner of an acquisition within 30 calendar days of the acquisition are credited to the state trust fund, effective July 1, 2013. (Previously, penalty payments were credited to the administration account to be used to ensure integrity in the unemployment insurance program.)

Regardless of any law to the contrary, a new taxpaying employer and new employers in a high-experience-rating industry that do not

qualify for an experience rating must be assigned, for a calendar year, a tax rate the higher of either 1 percent or the computed tax rate, if the employer either registers for a tax account and for each of the five calendar quarters after registering files a "no wages paid" report on wage detail or has filed 14 consecutive quarterly "no wages paid" reports on wage detail.

Interest payments received from interest assessed on unemployment benefits fraudulently obtained and received from interest assessed on the penalties on benefits fraudulently obtained are to be credited to the state trust fund, effective July 1, 2013. (Previously, interest payments were credited to the administration account.)

The state trust fund consists of money credited to the account under Chapter no. 201, effective July 2, 2012. The state trust fund does not consist of money recovered on losses sustained by the trust fund or money received from the contingent account, effective July 2, 2012.

*Monetary entitlement.* The second benefit year requirements are modified by providing that an applicant must have performed services in covered employment and have been paid wages in one or more completed calendar quarters that started after the effective date of the prior benefit account. A benefit account may not be established effective earlier than the Sunday following the end of the most recent completed calendar quarter in which the monetary requirements were met in the prior benefit account, effective July 2, 2012.

*Nonmonetary eligibility.* If the applicant has earnings, for any week, that are less than the applicant's weekly unemployment benefit amount, from employment, covered employment, non-covered employment, self-employment, or volunteer work, 50 percent (previously, 55 percent) of the earnings are deducted from the weekly unemployment benefit amount, effective for deductions occurring on or after July 1, 2013.

The meaning of "available for suitable employment" is modified to mean an applicant who is "ready, willing, and able to accept suitable employment," effective July 2, 2012. (Originally, "available for suitable employment" was defined as an applicant who is "ready and willing to accept suitable employment.")

The provision prohibiting the use of wage credits from seasonal employment as athletes and coaches applies to a coach whom an educational institution employs and whose only employment with the educational institution is as a coach. However, the provision prohibiting the use of wage credits from employment as school employees applies to a coach who has other employment with an educational institution, in addition to coaching at the educational institution. Employment with mul-

multiple educational institutions or employment coaching multiple sports must be aggregated for applying the provision regarding athletes and coaches, effective July 2, 2012.

*Overpayments.* If an overpayment of unemployment benefits because of claimant fraud, including penalties and interest, is not repaid within 10 years (previously, 15 years) after the determination of overpayment by fraud, the commissioner must cancel the overpayment balance, penalties, and interest due, and no administrative or legal proceeding may be used to enforce collection of those amounts. (This provision applies retroactively to all existing overpayments.)

### Mississippi

*Coverage.* Coverage does not include service performed by an individual in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution, except those employed by political subdivisions, state and local governments, nonprofit organizations and Indian tribes, or any other entities for which coverage is required by federal statute and regulation. (Amendment removed “under the age of 18” for newspaper distribution and added that exclusion does not apply to required coverage for which section 3309, federal Unemployment Tax Act, applies.)

Coverage does not include service performed by a direct seller if

1. such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis that the department prescribes by regulations for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment; or such person is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment;
2. substantially all the remuneration (whether or not paid in cash) for the performance of the services described in item (1) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and
3. the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for such services for federal tax purposes.

### New Hampshire

*Financing.* The “most recent employer” means the last nonreimbursing employer, whether primary or alternate, of an individual with 12 weeks (previously, 4 weeks) of employment in the base period. An employer will not be charged for benefits paid to an individual who had left employment to accept better employment.

*Nonmonetary eligibility.* Additional requirements for benefit eligibility were added by requiring an individual to be available for and to seek temporary, full-time, or part-time work for which he or she is qualified if

- permanent work for which the individual is qualified is not immediately available within the individual’s labor market area;
- the individual is reasonably expected to be recalled in 4 to 26 weeks and equivalent or better work for which the individual qualifies is not immediately available in the individual’s labor market area; and
- the wages, hours, or other conditions of the temporary work offered are not substantially less favorable to the individual compared with those of prevailing similar temporary or permanent work in the locality.

An individual not under disqualification shall not be disqualified for accepting work that would not be deemed suitable and terminates such employment within 12 weeks (previously, 4 weeks), with or without good cause.

The elements used to determine suitable work for an individual are clarified and expanded. If no work is available in the individual’s labor market area at the customary pay rate for work to be suitable, it must be determined that the

- work pays the minimum wage or an hourly rate when multiplied times 40 is equal to or greater than 150 percent of the individual’s weekly benefit and
- wages, hours, or other conditions of the temporary work offered are not substantially less favorable to the individual compared with those of prevailing similar temporary or permanent work in the locality.

Notwithstanding any other provisions of law, an individual shall not be denied benefits for refusing to accept new, suitable, or temporary work offered without the expectation of such work becoming permanent for any week that follows the earlier of

- the last week that includes 1 or more days within the maximum expected duration of the temporary work or
- the fifth week following the date the individual refused such temporary work in which the individual meets the earnings requalification requirements.

The requirement to earn requalifying wages if an individual becomes unemployed after leaving work for better employment was eliminated.

### New Mexico

*Financing.* Contribution Schedule 1 replaces Schedule 3 for assigning each employer’s contribution rate from January 1, 2012, through December 31, 2012. Schedule 1 rates range from 0.05 percent to 5.40 percent. Contribution Schedule 2 will be used for assigning each employer’s contribution rate from January 1, 2013, through December 31, 2013. Schedule 2 rates range from 0.1 percent to 5.4 percent.

One of the following Contribution Schedules 0 to 6 will be used for each calendar year after 2013, except as otherwise provided, to assign each employer’s rate:

- Contribution Schedule 0 if the fund equals at least 2.3 percent of the total payrolls (most favorable schedule with rates ranging from 0.03 percent to 5.40 percent)
- Contribution Schedule 1 if the fund equals less than 2.3 percent but not less than 1.7 percent of the total payrolls (rates range from 0.05 percent to 5.40 percent)
- Contribution Schedule 2 if the fund equals less than 1.7 percent but not less than 1.3 percent of the total payrolls (rates range from 0.01 percent to 5.40 percent)
- Contribution Schedule 3 if the fund equals less than 1.3 percent but not less than 1.0 percent of the total payrolls (rates range from 0.6 percent to 5.4 percent)
- Contribution Schedule 4 if the fund equals less than 1.0 percent but not less than 0.7 percent of the total payrolls (rates range from 0.9 percent to 5.4 percent)
- Contribution Schedule 5 if the fund equals less than 0.7 percent but not less than 0.3 percent of the total payrolls (rates range from 1.2 percent to 5.4 percent)
- Contribution Schedule 6 if the fund



equals less than 0.3 percent of the total payrolls (least favorable schedule with rates ranging from 2.7 percent to 5.4 percent)

## North Carolina

*Administration.* The Labor and Economic Analysis Division replaces the Division of Employment Security as the entity responsible for maintaining the common follow-up information management system. The division of Employment Security must provide all information requested to assist the division in accomplishing its purpose.

All disclosure and redisclosure of information must be consistent with the federal-state Unemployment Compensation Program, 20 C.F.R., Part 603, and any other guidance issued by the U.S. Department of Labor.

*Appeals.* All testimony at any hearing before an appeals referee must be recorded, unless waived by all interested parties, effective November 1, 2012.

Parties may enter into a stipulation of the facts. If the stipulation provides sufficient information to make a decision, the stipulation may be accepted; if not, it may be rejected. The decision to accept or reject the stipulation must occur in a recorded hearing, effective November 1, 2012.

The length of time for an employer to protest a claim is changed to 10 days (previously, 30 days) from the delivery of the notice (previously, the earlier of the mailing or delivery), effective November 1, 2012.

*Financing.* Employers must report the date that a newly hired employee first performed services for remuneration. The term “newly hired employee” means an employee not previously employed by the employer or an employee previously employed but who has been separated for at least 60 consecutive days, effective July 1, 2012.

*Extensions and special programs.* The ending date was extended for the temporary federal-state Extended Benefits program provisions concerning the extended benefits “on” and “off” indicators by using a 3-year look-back for both the insured unemployment rate and the seasonally adjusted total unemployment rate to December 31, 2012 (previously, applied to weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2011). (This provision expires January 1, 2013.)

The extension of unemployment insurance benefits is prohibited without a General Assembly enactment, retroactively effective to January 1, 2012.

*Nonmonetary eligibility.* Effective November 1, 2012, “misconduct” is defined as (1) willful or wanton disregard of an employer’s interests as is found in deliberate violations or disregard of standards of behavior that an employer has a right to expect of or has explained, orally or in writing, to an employee or (2) carelessness or negligence of such degree or recurrence as to show intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to the employer. The prima facie evidence for certain types of misconduct is clarified, which may be rebutted by the claimant, including requirements that

- a conviction of a drug offense must be related to or connected with an employee’s work or is in violation of a reasonable work rule or policy;
- termination after arrest or conviction for an offense involving violence, sex crimes, or illegal drugs must be related to or connected with an employee’s work or is in violation of a reasonable work rule or policy; and
- a refusal to perform reasonably assigned work tasks or failure to adequately perform employment duties, which is evidenced by no fewer than three written reprimands in the 12 months immediately preceding the termination.

A discharge for misconduct connected with work does not include the discharge of a severely disabled veteran, effective November 1, 2012.

*Overpayments.* For overpayments established on or after October 1, 2013, an employer must be charged for an overpayment when

- the overpayment occurred because the employer failed to respond timely (within 10 days) or adequately (fails to provide sufficient facts to make a correct determination) to a written request (may be electronic) for information relating to the claim and
- the employer exhibits a pattern of failure to respond timely or adequately by failing to respond on two or more occasions. If a third-party agent is used, the pattern is established on not only the agent’s behavior overall but also the agent’s behavior related to an employer.

The prohibition on noncharging will apply to benefits paid each week that an overpayment is made. The determination of noncharging for an employer that fails to respond timely or adequately will be made by the paying state for a combined-wage claim, and the employer

must be appropriately charged upon notification to the transferring state. The prohibition on noncharging may be waived for good cause, effective October 1, 2013.

A 15-percent penalty, payable to the state Unemployment Trust Fund, must be assessed on the amount of an erroneous overpayment of benefits received by an individual because of a false statement or misrepresentation. This penalty may not be recovered through an offset of future benefits, effective October 1, 2013.

Effective December 1, 2012, an individual who makes a false statement or fails to disclose a material fact to obtain or increase any benefit will be guilty of a

- class I felony if the overpayment is more than \$400 or
- class 1 misdemeanor if the overpayment is \$400 or less.

The limitations to recover both fraudulent (previously, 10 years) and nonfraudulent (previously, 3 years) overpayments are repealed, effective October 1, 2012.

Reports to the House Unemployment Fraud Task force on the implementation timeline, requirements, barriers, costs, and an estimate of the annual amount to be recovered through the U.S. Department of Treasury Offset Program are required.

## Oklahoma

*Administration.* Electronic notification to employers and claimants is allowed, if elected by such parties.

Upon a final determination, the commission must proceed by levy (previously, by garnishment) to collect any delinquent contribution, penalty, interest, or fees due or owing. The Assessment Board of the Oklahoma Employment Security Commission, instead of the court, may issue an order to continue or modify the levy.

Employment information must be disclosed to employees of any Metropolitan Planning Organization, the Office of Juvenile Affairs, for use in assessing results and outcomes of clients and effectiveness of juvenile and justice programs and be disclosed to vendors that contract with the state to provide a labor exchange system that supports operation of an employment service system to connect employers with job seekers and military veterans.

*Appeals.* Notice requirements for an employer’s contribution rate were modified by providing that an appeal to the rate notice must be filed within 20 days after mailing or transmitting electronically or the rate will become conclusive and binding.



*Financing.* Any contractor that intentionally misclassifies individuals as independent contractors rather than employees to affect procedures and payments relating to withholding and Social Security, unemployment tax, or worker's compensation premiums shall be fined by the Oklahoma Tax Commission an amount not to exceed 10 percent of the contractor's total bid, which shall be in addition to any other penalties allowed by law.

*Monetary entitlement.* An unemployed individual must register for work within 7 days of filing an initial claim for unemployment benefits. The Oklahoma Employment Security Commission was authorized to waive the requirement under certain conditions, including for individuals in areas not served by an Internet service.

The alternative base-period wage requirement for benefit entitlement was changed to require the individual be paid in the base period: (1) taxable wages of any amount and (2) total wages equal to or greater than the annual amount of taxable wages that applies to any calendar year in which the claim for unemployment benefits was filed. (Previously, an individual needed alternative base-period wages equal to or greater than the highest annual amount of taxable wages that applied to any calendar year in which the claim for unemployment benefits was filed.) The state taxable wage base increased from \$19,100 to \$20,100 in 2013.

If an individual lacks sufficient base-period wages in the regular qualifying formula or in its alternative qualifying formula as described in the previous paragraph, any wages paid in the last four completed calendar quarters shall be considered the individual's base-period wages.

*Nonmonetary eligibility.* In any challenge to a positive drug or alcohol test, the claimant has the burden to prove a breach in the chain of custody, and the employer must provide the chain of custody documentation at the request of a challenging claimant. When the claimant fails to request a confirmation test, the claimant will be ineligible for benefits. If challenged by the claimant, the written report of the drug or alcohol test results will be acceptable for presentation, as evidence with the chain of custody of the sample properly documented.

Employers are authorized to conduct drug and alcohol testing in accordance with the Standards for Workplace Drug and Alcohol Testing Act. Employers are authorized to release records of the tests as admissible evidence to specified persons or to comply with a judicial or administrative order.

*Overpayments.* Individuals committing fraud by making a false statement or representation

or failing to disclose a material fact are assessed a 25-percent penalty on the amount of the original fraudulent overpayment. Individuals are liable for the overpayment, and when collected, three-fifths of the penalty will be deposited into the state Unemployment Trust Fund and two-fifths into the state Revolving Fund.

### Oregon

*Coverage.* The definition of "employment" excludes service performed in the operation of a passenger motor vehicle that is operated as a taxicab or a passenger motor vehicle that is operated for nonemergency medical transportation by a person who has an ownership or leasehold interest in the passenger motor vehicle, for an entity that is operated by a board of owner-operators elected by the members of the entity.

### Pennsylvania

*Extensions and special programs.* The Keystone Works Program was established and is to be administered by the state Department of Labor and Industry. The training in the program is defined as a learning environment in which the employer derives no immediate advantage and also is designed to provide the skills and knowledge necessary to meet a business's specifications for an occupation or trade.

An individual receiving regular unemployment compensation may voluntarily enroll in the program and be qualified for training if the department determines the claimant is an appropriate match with a job opening at a participating business and the individual's unemployment compensation balance at the start of the training is equal to or greater than the weekly benefit amount times the number of weeks of training. The individual must certify in writing that he or she will

- not accept any form of compensation from the business,
- provide information and documentation as requested by the department, and
- cooperate with the department's evaluation of the program.

To be eligible to provide training under the program, a business must

- have a job opening to which a claimant may be matched by the department;
- register with the Pennsylvania Career-Link® system;
- provide bona fide training to the individual;

- consider the individual for a job for which he or she was trained upon completion of the training;
- ensure that if a job is offered upon completion to the individual, the job provides service in employment (work will not be contract work or in a self-employment capacity);
- not pay any form of compensation during the training period;
- not provide training under the program during any work stoppage related to a labor dispute or while concurrently participating in a Work Share program;
- not violate a collective bargaining agreement or displace or adversely affect existing employees by training or hiring an individual under the program;
- cooperate with requests for information and documentation;
- satisfy any additional criteria established by the department to ensure an appropriate number of individuals receive offers of suitable long-term employment;
- be current in its tax liabilities, have filed a timely appeal, or be on an approved deferred payment plan; and
- not be under suspension or disbarment with any government entity.

A business must provide a maximum of 24 hours of unpaid training per week for a maximum of 8 weeks and consider the individual for a job. The business is not required to hire the individual but shall be disqualified from participation if a pattern of acting in bad faith regarding job offers is determined.

The department has authority to establish guidelines, applications, and policies and procedures for implementation. The department must purchase or arrange worker's compensation insurance for approved individuals participating in Keystone Works.

The individual participating in the training has the option to discontinue participation, and eligibility for unemployment compensation will not be affected by discontinuation in the program, termination from the program by a participating business, or completion of the program.

Funding from appropriated funds is authorized to provide an incentive of \$375 to a business that hires an individual who participated in Keystone Works if the individual remains employed for a period of 4 consecutive weeks at a minimum of 35 hours per week. A business may receive in-

centive payments for up to four consecutive periods for a maximum of \$1,500 total incentive payments. An amount of 15 percent of the funding must be reserved for businesses with fewer than 100 employees; if the reserved amount is not committed by April 30 of each year, funds will be available for businesses that have at least 100 employees.

The department must develop and implement an evaluation and performance improvement system that collects critical information on certain performance measures and defines the benefits of the program and its training to businesses, individuals, and the Unemployment Compensation Fund. On July 1 annually, the department must send a report with specified information to legislative committees. Authorization for the Keystone Works Program expires June 30, 2017.

The ending date for the federal-state Extended Benefits program provisions concerning the extended-benefits “on” and “off” indicators to temporarily use a 3-year look-back for both the mandatory indicator that is based on the insured unemployment rate and the optional indicators that are based on the seasonally adjusted total unemployment rate for weeks of unemployment beginning on or after December 17, 2010, was extended by changing the ending date to on or before April 30, 2012 (previously ending on or before December 31, 2011). (The provisions are retroactive to December 31, 2011.)

*Monetary entitlement.* The term “partial benefit credit” means that part of the remuneration paid or payable to an individual with respect to a week for which benefits are claimed is not in excess of 30 percent of the individual’s weekly benefit amount or \$6, whichever is the greater. (Previously, earnings disregarded were the greater of 40 percent of the weekly benefit amount or \$6.) (This provision applies to benefit years beginning after December 31, 2012, and effective January 1, 2013.)

An application to establish a second benefit year is not valid unless the individual has, subsequent to the beginning of the preceding benefit year, worked and earned wages in employment as defined in the law equal to or greater than 6 times the weekly benefit amount. (Prior law provided that an application to establish a second benefit year is not valid unless the individual has, subsequent to the beginning of the preceding benefit year, worked and earned wages, whether such work is in employment as defined in the law, equal to or greater than 6 times the weekly benefit amount.) (This requirement applies to benefit years beginning after December 31, 2012, and effective January 1, 2013.)

To requalify for benefits after a disqualifying separation, an individual must earn remuneration for services equal to or greater than 6 times the weekly benefit amount in employment (previously, 6 times the weekly benefit amount irrespective of whether such services were in employment).

An individual, in addition to the other requirements, must satisfy both of the following qualifying requirements: (1) within his or her base year, paid \$3,391 in wages and \$1,688 high-quarter wages (previously, \$1,320 and \$800, respectively) and (2) except as otherwise provided, paid not less than 49.5 percent (previously, 20 percent) of the employee’s total base-year wages in one or more quarters, other than the highest quarter in such employee’s base year. (This requirement applies to benefit years beginning after December 31, 2012, and effective January 1, 2013.)

The third step-down lower weekly benefit rate is eliminated and is replaced with a two-step down lower weekly benefit rate for redetermining the weekly benefit amount for an individual who does not meet the regular base-period qualifying requirements. (This requirement applies to benefit years beginning after December 31, 2012, and effective January 1, 2013.)

The Determination of Rate and Amount of Benefits Table is changed from parts A-E to parts A-C. The minimum weekly benefit amount is increased from \$35 to \$70. For the minimum weekly benefit amount, an individual needs in the base-period wages that range from \$1,688 to \$1,712 in the highest quarter, a total of \$3,391, at least 49.5 percent of the individual’s total base-year wages paid in one or more quarters outside the highest quarter, and 18 credit weeks (previously, \$800 to \$812, \$1,320, at least 20 percent, and 16 credit weeks, respectively). (These amounts apply to benefit years that begin after December 31, 2012, and effective January 1, 2013.)

The maximum weekly benefit amount remains at \$573. For the maximum weekly benefit amount, an individual needs in the base-period wages that range from \$14,263 or more in the high quarter, at least 49.5 percent of the individual’s total base-year wages paid in one or more quarters outside the highest quarter, and 18 credit weeks (previously, \$14,898 or more, \$22,480 or more, at least 20 percent, and 16 credit weeks, respectively). (These amounts apply to benefit years beginning after December 31, 2012, and effective January 1, 2013.)

The table shall be extended or contracted to a point where the maximum weekly benefit amount shall equal 66% of the average weekly wage for the 36-month

period ending June 30 and preceding each calendar year. If the maximum weekly benefit amount is not a multiple of \$1, it shall be rounded to the next lower multiple of \$1. Procedures have been established to use when necessary to extend or contract the table. (These provisions apply to benefit years beginning after December 31, 2012, and effective January 1, 2013.)

Notwithstanding the provisions relating to extending or contracting the table, if the maximum weekly benefit amount determined is greater than \$573, the maximum weekly benefit amount shall be subject to the following three limitations:

1. For calendar years 2013 through 2019, the maximum weekly benefit amount shall be \$573.

2. For each calendar year 2020 through 2023, the maximum weekly benefit amount may increase from year to year by an amount that is no more than 8 percent of the maximum weekly benefit amount for the preceding year.

3. If the maximum weekly benefit amount determined is not an even multiple of \$1, it shall be rounded to the next lower multiple of \$1.

The total amount of benefits that claimants are eligible to receive is their weekly benefit amount multiplied by their number of qualifying credit weeks (which must be at least 18) up to a maximum of 26 weeks. Any claimant with less than 18 credit weeks during his or her base year shall be ineligible to receive any amount of compensation. (This provision applies to benefit years beginning after December 31, 2012, and effective January 1, 2013.)

*Financing.* The taxable wage base increases over 6 years from \$8,000 to \$8,500 for year 2013, to \$8,750 for year 2014, to \$9,000 for year 2015, to \$9,500 for year 2016, to \$9,750 for year 2017, and to \$10,000 for year 2018 and each year thereafter, effective January 1, 2013.

Except as provided in the next paragraph, the state adjustment factor for a calendar year must be computed as of the computation date for such year to a 10th of 1 percent, rounding all fractions to the nearest 10th of 1 percent, but in no event less than zero according to the formula provided in law (prior to calendar year 2013, the state adjustment factor was capped at 1.5 percent), effective January 1, 2013.

The maximum state adjustment factor must be 1.0 percent for calendar years 2013 through 2016, 0.85 percent for calendar year 2017, and 0.75 percent for calendar

year 2018 and each year thereafter, effective January 1, 2013. If the computed state adjustment factor for any year exceeds the maximum rate allowed, such excess over the maximum rate must be added to the computed state adjustment factor for the following year or years, effective January 1, 2013.

A restricted account is established in the state treasury to be known as the Reemployment Fund. It shall consist of employee unemployment insurance contributions allocated by the state Department of Labor and Industry. Moneys in this fund are appropriated for programs and services to assist individuals become employed or improve their employment, job search, placement services, educational enhancement, job training and job readiness, and workplace skills training; for research and studies to improve employment services, the work force, and labor market; for improvements to the information technology infrastructure; and for costs of administering activities and collecting the contributions. Moneys in the fund must be continuously available for expenditure of these activities and shall not lapse at any time or be transferred to any other fund, except if any amount of contributions remain at the end of the calendar year and are not expended or obligated for expenditure by the next June 30, that amount must be transferred to the state Unemployment Compensation Fund.

Employee unemployment insurance contributions on wages paid must be allocated between the Unemployment Compensation Fund and the Reemployment Fund as follows: (1) 95 percent paid from January 1, 2013, through September 30, 2017, shall be deposited into the Unemployment Compensation Fund and 5 percent into the Reemployment Fund to the extent the contributions are paid on or before December 31, 2017; (2) 100 percent paid from January 1, 2013, through September 30, 2017, shall be deposited into the Unemployment Compensation Fund to the extent the contributions are paid on or after January 1, 2018; and (3) 100 percent paid on or after October 1, 2017, shall be deposited into the Unemployment Compensation Fund, applicable to contributions on wages paid on or after January 1, 2013, and effective January 1, 2013.

The Debt Service Fund is established as a separate account in the state treasury. The taxes from the rate of contributions increased by the rate of the Interest Factor assessed to pay interest must be paid into such fund. (Previously, such interest contributions were deposited in the Interest Fund, which has been eliminated.) Moneys in this fund must be used in the following priority order, and such funds received are appropriated for all the following purposes: (1) to pay bond obligations and bond adminis-

trative expenses, to replenish bond reserves, to maintain debt service reserves in the amount necessary to maintain an adequate debt service coverage ratio, and to refund early optional or mandatory or other bonds or redeem or purchase outstanding bonds; (2) to pay annual interest obligations assessed under Title XII of the Social Security Act; (3) to repay outstanding interest-bearing advances received under Title XII of the Social Security Act; and (4) to transfer to the Unemployment Compensation Fund for payment of compensation to individuals. Any amount of moneys remaining in the Debt Service Fund at the end of a calendar year shall be transferred to the Unemployment Compensation Fund and credited to the Employers' Contribution Account if the following requirements are met: (1) the balance of interest-bearing Title XII advances is zero at the end of that year, (2) no interest on advances shall be due in the following year, and (3) there are no outstanding bond obligations and bond administration expenses and no such obligations and expenses will be due in the following year.

The Interest Factor provisions are revised. The Interest Factor rate is changed from a variable rate not to exceed 1.0 percent to a variable rate not to exceed the maximum rate allowed that is 1.1 percent for calendar year 2013 through the year determined to have no unpaid Title XII advances or interest and no outstanding bond obligations and administrative expenses and also not to exceed 1.0 percent for calendar year 2014 through the year determined to have no unpaid Title XII advances or interest and no outstanding bond obligations and administrative expenses. The Interest Factor must be determined annually. The rate of the Interest Factor for a calendar year must be the rate necessary to (1) pay the bond obligations and bond administrative expenses due in that year; (2) replenish amounts drawn from bond reserves; (3) maintain an adequate debt service coverage ratio; (4) fund early, optional, mandatory, or other refundings, redemptions, or purchases of outstanding bonds that will occur in that year; (5) pay the interest due that year on interest-bearing Title XII advances; and (6) repay outstanding Title XII advances. (The change in the calculation of the Interest Factor applies to calendar year 2013 and each year thereafter.)

Contributions paid by or on behalf of an employer, other than employee contributions, must be allocated first to the employer's liability under the requirements of the Interest Factor provisions. The Interest Factor rate must apply to contributions for any calendar quarter that ends at a time when bonds are outstanding (applies to the calculation of the Interest Factor for calendar year 2013 and each year thereafter).

Any amount of additional contributions collected for a calendar year in excess of the amount necessary for the purposes enumerated

in (1) through (6) in the previous paragraph for that year also may be used for the purposes enumerated in (1) through (6) for the following year and to the extent available, to reduce the amount of additional contributions that would be required for the following year (applies to the calculation of the Interest Factor for calendar year 2013 and each year thereafter).

No Interest Factor rate will be required for any year for which funding is not required for any of the purposes enumerated in (1) through (6) in the previous paragraph (applies to the calculation of the Interest Factor for calendar year 2013 and each year thereafter).

The trigger determination provision that provides for calculating the trigger percentage to be used in setting surcharge and contribution rates for the contributions required and in setting the benefit reduction required for the following calendar year requires the secretary of the Pennsylvania Department of Labor and Industry to (1) add the principal amount of outstanding bonds and the amount of outstanding Title XII advances and subtract that sum from the balance in the state Unemployment Compensation Fund, (2) determine the average of the benefit costs for the 3 immediately preceding fiscal years, and (3) calculate the percentage that the amount determined under paragraph 1 (below) represents of the average of the benefit costs. (This provision applies to the calculation of the trigger percentage in 2012 and subsequent calendar years for purposes of contribution rates and benefit reductions for calendar year 2013 and each year thereafter, respectively.)

The trigger rate redeterminations provision to increase the reserve in the state trust fund is revised as follows:

1. For calendar years 2013 through the year determined under paragraph 4 that follows, if the trigger percentage as of July 1 of the preceding calendar year is less than 250 percent, the rates determined under paragraph 2 (next paragraph) shall apply. For calendar years following the year determined under paragraph 4, if the trigger percentage as of July 1 of the preceding calendar year is less than 250 percent, the rates determined under paragraph 3 shall apply.

2. The secretary must redetermine the rates such that the surcharge assessed must yield \$100 million, the additional contribution must yield \$225 million, the employee tax must yield \$166.6 million, and the benefit reduction must yield \$52 million.

3. The secretary must redetermine the rates such that the surcharge assessed must yield \$138 million, the additional contribution shall yield the sum of \$310 million plus the amount determined under para-



graph 5, the employee tax must yield \$230 million, and the benefit reduction must yield \$72 million.

4. The calendar year determined under this paragraph must be the earliest calendar year subsequent to December 31, 2012, to which all the following apply: no unpaid balance of Title XII federal advances or interest thereon, no outstanding bond obligations and administrative expenses, and no such obligations and expenses will be due in the following year.

5. The amount determined under this paragraph shall be the sum of

- 20 percent of the amount paid from the Unemployment Compensation Fund during the 60 consecutive calendar months ending on June 30 of the year in which the redetermination occurs plus
- 20 percent of that portion of the amount paid from the Unemployment Compensation Fund during the immediately preceding 60 consecutive calendar months that is not recovered by additional contributions paid for calendar years through the calendar year in which the redetermination occurs. (This provision applies to the redetermination of contribution rates and the benefit reduction to occur in 2012 and each fifth year thereafter for purposes of contribution rates and the benefit reduction for calendar year 2013 and each year thereafter, respectively.)

The department will mail or electronically transmit the notice of an assessment to employers within 15 days after making the assessment. (Previously, such notices were required to be sent by registered mail.) (This provision applies to notices of assessment issued on or after June 12, 2012.)

Liens imposed for contributions, interest, and penalties must continue and must retain their priority without the necessity of refiling or revival. (Under prior law, liens continued for 5 years from the date of entry and were allowed to be revived and continued in the manner provided for the renewal of judgments or as provided in The Fiscal Code, as amended.) (This provision applies to all liens filed or revived within the 5-year period immediately preceding June 12, 2012, and all liens filed or revived on or after June 12, 2012.)

In addition to the methods of collection authorized in state law, the department may collect contributions, interest, penalties, and other liabilities due as provided under the U.S. Department of Treasury Offset Program (re-

lating to authority to make credits or refunds) of the U.S. Department of Treasury, including and by any other means available under federal or state law.

Unemployment compensation solvency bonds are allowed. This provision allows bonds to be issued if the department reasonably expects that the issuance of bonds to obtain funds to pay compensation or to repay Title XII federal advances, including interest, would result in a savings to employers, as an alternative to borrowing by means of Title XII federal advances or repayment of the Title XII federal advances and interest by other means. The bond proceeds must be used to repay the principal and interest of Title XII federal advances, and any balance must be deposited into an unemployment compensation program fund to repay the principal and interest of previous Title XII federal advances, pay unemployment compensation benefits, pay bond administrative expenses, redeem or purchase outstanding bonds, and pay bond obligations. The maximum term of the bonds shall not exceed 20 years. The total principal amount of bonds outstanding for all bond issues may not exceed \$4.5 billion. The authority to issue bonds expires December 31, 2016.

The following definition was added to the term “compensation”: “to the extent permitted by law, that part of the principal owed on bonds that is attributable to repayment of the principal of advances under Title XII of the Social Security Act (58 Stat. 790, 42 U.S.C. Section 1321 et seq.), exclusive of any interest or administrative costs associated with the bonds.”

An Unemployment Compensation Amnesty Program is established. The amnesty period is 3 consecutive calendar months designated by the department that commences on June 14, 2013. The department must establish guidelines to implement the program and publish them at least 90 days before the amnesty period begins and notify all employers and claimants who are known to have liabilities to which the program applies.

The program applies to both employer and claimant liabilities; however, certain liabilities were excluded. Applicable employer liabilities include (1) unpaid contributions due for calendar quarters through the first quarter of 2012 for which employee information was reported or acquired through an audit; (2) unpaid contributions due for calendar quarters through the first quarter of 2012 for which employee information was not reported or not acquired through an audit; (3) unpaid reimbursements due on or before April 30, 2012; (4) unpaid interest due on contributions paid late for calendar quarters through the first

quarter of 2012 or on reimbursement that was due on or before April 30, 2012, and was paid late; and (5) unpaid penalties due for reports filed late for calendar quarters through the first quarter of 2012.

Applicable claimant liabilities include (1) a fault overpayment of compensation from a notice of determination of overpayment issued on or before June 30, 2012, to the extent repayment has not occurred; (2) a nonfault overpayment of compensation from a notice of determination of overpayment issued on or before June 30, 2012, to the extent repayment has not occurred; (3) compensation paid for calendar weeks through the week ending June 30, 2012, for which a notice of determination of overpayment has not been issued, but the claimant acknowledges that the compensation was overpaid; and (4) unpaid interest due on an overpayment of compensation that was repaid on or before June 30, 2012.

Procedures for participation, the payment amounts required, and the terms and conditions of amnesty are established.

*Overpayments.* No administrative or legal proceedings for the recovery and recoupment of an overpayment of compensation because of fault, including interest, will be instituted after the expiration of 10 years (previously, 6 years) following the end of the benefit year with respect to which such the sum was paid (applies to benefit years beginning on or after June 12, 2012).

## Rhode Island

*Extensions and special programs.* The provisions relating to the Entrepreneurial Training Assistance program were amended as follows:

- The definition of “employment assistance allowance” includes an allowance payable in lieu of emergency unemployment compensation benefits.
- “Emergency unemployment compensation” is defined as benefits, including dependents’ allowances, payable to an individual as authorized by the Unemployment Compensation Extension Act of 2008 and in accordance with regulations established by the U.S. Secretary of Labor.
- For participants in the Entrepreneurial Training Assistance program collecting regular benefits, the sum of the allowance paid and regular benefits paid, with respect to any benefit year, will not exceed the maximum potential regular benefits, including dependents’ allowances.



- For participants in the Entrepreneurial Training Assistance program collecting emergency unemployment compensation, the allowance paid with respect to any benefit year will not exceed the amount equal to 26 times the regular weekly benefit amount, including dependents' allowances. Any participant who terminated or completed participation in the program and continues to meet the emergency unemployment compensation eligibility requirements will be permitted to receive emergency unemployment compensation benefits with respect to subsequent weeks of unemployment.
- The aggregate number of individuals receiving employment assistance allowances and regular benefits for any week will not exceed 5.0 percent of the total number of individuals receiving regular benefits; the aggregate number of individuals receiving employment assistance allowances and emergency unemployment compensation benefits for any week will not exceed 1 percent of the total number of individuals receiving emergency unemployment compensation benefits.

*Financing.* Allowances paid under the Unemployment Compensation Extension Act of 2008 will be charged to the appropriate federal account.

The definition of "rehire" was changed to mean the first day for which an employee is owed compensation by the employer following a termination of employment lasting a minimum of 60 days (previously, 12 consecutive weeks).

*Temporary disability insurance.* The 7-day waiting period for temporary disability insurance was eliminated. For benefit years beginning on or after July 1, 2012, an individual's benefit year will begin on the Sunday of the calendar week in which he or she first became unemployed because of sickness and for which he or she has filed a valid claim for benefits. Beginning on or after July 1, 2012, as a condition of eligibility, an individual must have been unemployed because of sickness for at least 7 consecutive days.

### South Carolina

*Financing.* Benefits paid to an individual discharged for misconduct shall not be charged to the account of an employer with which the individual has less than 8 weeks employment.

A contributing employer's account must

be credited for an overpayment because of fraud regardless of the outcome of recoupment or recovery.

*Nonmonetary eligibility.* An individual is disqualified for 20 weeks if discharged from employment for misconduct (previously, 5–26 weeks).

Misconduct means willful and wanton disregard of an employer's interests; carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design; or intentional and substantial disregard of the employer's interests or of the employee's duties and obligations. Misconduct shall not be determined for a discharge resulting from an extreme hardship, emergency, sickness, or other extraordinary circumstance.

Partial ineligibility of 5 to 19 weeks (plus the waiting week) is imposed if an individual is discharged for cause other than misconduct with the most recent employment. The ineligibility period must be determined in each case according to the seriousness of the cause for discharge.

Discharges for substandard performance because of inefficiency, inability, or incapacity are not a basis for disqualification.

### South Dakota

*Financing.* Benefits paid to individuals who leave employment to accompany a spouse serving in the U.S. Armed Forces who has been reassigned from one military assignment to another may not be charged to the employer's experience-rating account.

*Nonmonetary eligibility.* Unemployment benefits are allowed for individuals who leave employment to accompany a spouse serving in the U.S. Armed Forces who has been reassigned from one military assignment to another.

### Tennessee

*Administration.* By July 1, 2012, the Tennessee Department of Labor and Workforce Development is required to implement an Internet based system that allows employers to receive separation notices from the department electronically and to submit separation information electronically to the department. The system shall also have the capability to allow an employer to initiate an appeal electronically.

By January 1, 2013, the department is required, at the request of the employer, to begin including with an employer's annual premium rate notice the statement of benefits charged to the employer's experience

rating account that affected that annual premium rate. The rate notice shall include how an employer may opt in to having that additional information included with the notice.

The commissioner of the department is authorized to develop a program to check county jails for inmates who may be receiving unemployment benefits in violation of the law. The commissioner is required to confer with local sheriffs to determine which system would work best for the department and the local sheriffs. The commissioner also is required to report to the Commerce, Labor, and Agriculture Committee of the Senate and the Consumer and Employee Affairs Committee of the House of Representatives by July 1, 2012, regarding the status of such program.

*Coverage.* A professional employer organization shall be deemed an employer of its covered employees.

*Extensions and special programs.* The Tennessee Works Pilot program is established under the Tennessee Works Act of 2012 to provide job training designed to attract new businesses to the state and to assist in the expansion or retention of existing businesses in Tennessee. The purposes of the pilot program are to

- enhance the state's economic growth and vitality by offering assistance to privately owned businesses and industries in training a new workforce and by creating new jobs and retaining and upgrading existing jobs,
- provide technical education and training as a component of the state's economic development efforts,
- be flexible and responsive to the training needs of business and industry in the state, and
- offer on-the-job training (OJT) programs to support existing employees and dislocated workers.

Tennessee Works Pilot program training grants will be awarded to eligible businesses seeking to hire new employees during or after the screening for potential employment grants. Such grants will be used for the eligible training expenses of a dislocated worker

- who is a first-time unemployment insurance claimant and who shall continue to receive unemployment insurance benefits during the screening period,
- whose job is lost because of workforce offshoring by the worker's former employers and who is currently under a

valid trade petition approved by the U.S. Department of Labor, or

- whose trade adjustment assistance funds shall only be awarded through the Tennessee Works Pilot program and be used in limited cases as an option to expedite employment in which these conditions in the immediate above point are met.

A Tennessee Works Pilot program screening period shall last for up to, but no more than, 8 weeks. At any time during the screening period or after the screening period, the employer may elect to employ a dislocated worker full time.

If an employer elects to employ the dislocated worker and to provide additional OJT to the dislocated worker, then the employer will be eligible to receive a wage offset in return for providing additional OJT to the dislocated worker. The employment and training of a dislocated worker shall be in accordance with the Tennessee Department of Labor and Workforce Development's existing OJT program and the department's rules and policies regarding the existing OJT program.

A dislocated worker shall no longer be eligible to receive unemployment benefits or trade adjustment compensation if the dislocated worker is employed and receiving OJT. If the employer does not retain the dislocated worker following the OJT period and the dislocated worker is otherwise eligible to receive unemployment insurance benefits, then the dislocated worker can, upon filing a claim, resume receipt of unemployment insurance benefits.

The Tennessee Works Pilot program shall be funded solely with funds received by the state from the U.S. Department of Labor and shall be subject to the availability of such funds and all laws governing the use of the funds.

An employer shall no longer be eligible for grants through the Tennessee Works Pilot program if the employer does not demonstrate a pattern of continued employment of dislocated workers following the end of the OJT period.

*Financing.* Benefits paid to individuals who leave employment to accompany a spouse serving in the U.S. Armed Forces will not be charged to the employer's experience-rating account.

Professional employer organizations must pay state unemployment insurance premiums as required by Tennessee law.

Professional employer organizations having one or more covered employees must apply for a separate account number

for each client having one or more covered employees. Professional employer organizations must keep separate records and submit separate state unemployment insurance wage and premium reports with payments to report the covered employees of each client by using the client's state employer account number and using the premium rate based on the aggregate reserve ratio of the professional employer organization.

Professional employer organizations will use one of the two methods provided for calculating the aggregate reserve ratio.

Professional employer organizations are prohibited from being considered a successor employer to any client and from acquiring the experience history of any client with whom no common ownership, management, or control exists. A client is prohibited from being considered a successor employer to any professional employer organization and from acquiring any portion of the experience history of the aggregate reserve account of the professional employer organization with which no common ownership, management, or control exists.

A client must be jointly and severally liable with a professional employer organization for state unemployment premiums for each of the client's covered employees, provided, however, that a client shall be relieved of joint and several liability for state unemployment premiums if the professional employer organization has posted a corporate surety bond in the amount of \$100,000 for so long as the bond remains in force.

*Nonmonetary eligibility.* A discharge is deemed a discharge for misconduct connected with work when it results after an individual entered into a written agreement with an employer to obtain a license or certification by a specified date as a condition of employment and willfully failed without good cause to obtain such license or certification by the specified date.

Seasonality provisions are established. Effective with claims filed on or after January 1, 2013, a seasonal employer is one that, because of seasonal conditions making it impracticable or impossible to do otherwise, customarily carries on production operations only within a regularly recurring active period or periods of less than an aggregate of 36 weeks in a calendar year. The Tennessee Department of Workforce Development must determine that the employer is seasonal. However, any successor to a seasonal employer shall be deemed a seasonal employer unless the successor requests cancellation of such status within 120 days after the acquisition. If the employer is determined or redetermined seasonal, the department shall determine the employer's active period(s) and send

the employer a notice of determination or redetermination to be a seasonal employer.

Benefits based on seasonal employment shall be payable to a seasonal worker in the employ of a seasonal employer for weeks of unemployment that occur during such employer's active period of seasonal pursuit. Seasonal worker means an individual in the employ of a seasonal employer only during the employer's active period of seasonal pursuit.

Seasonal wages means the wages earned by a seasonal worker as an employee of a seasonal employer within the active period(s) of such employer.

Benefits shall not be paid on services performed in seasonal employment for any week of unemployment beginning after July 1, 2016, that begins during the period between 2 successive normal active periods of seasonal pursuit to any seasonal worker if that seasonal worker performs the service in the first of the normal active periods and if there is a reasonable assurance that the seasonal worker will perform the service for a seasonal employer in the second of the active periods. Reasonable assurance means a written, oral, or implied agreement that the employee will perform services in the same or similar capacity during the ensuing active period of a seasonal pursuit.

If benefits are denied to a seasonal worker for any week solely because of this paragraph and the seasonal worker is not offered an opportunity to perform in the second normal active period for which reasonable assurance of employment had been given, the seasonal worker is entitled to a retroactive payment of benefits for each week that the seasonal worker previously filed a timely claim for benefits.

The benefits payable to any otherwise eligible seasonal worker shall be calculated according to the seasonality provisions for any benefit year that is established on or after the beginning date of a determination that an employer is a seasonal employer if such seasonal worker was employed by the seasonal employer during the base period applicable to such benefit year, as if such determination had been effective in such base period.

Misconduct was defined to include

1. conscious disregard of the rights or interests of the employer;
2. deliberate violations or disregard of reasonable standards of behavior that the employer expects of an employee;
3. carelessness or negligence of such a degree or recurrence to show an intentional or substantial disregard of the employer's interest or to manifest equal culpability, wrongful intent, or an intentional

and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer;

4. deliberate disregard of a written attendance policy and the discharge is in compliance with such policy;

5. a knowing violation of a regulation of this state by an employee of an employer licensed by this state, which the violation would cause the employer to be sanctioned or have the employer's license revoked or suspended by this state; or

6. a violation of an employer's rule, unless the claimant can demonstrate that

- the claimant did not know and could not reasonably know of the rule's requirements or
- the rule is unlawful or not reasonably related to the job environment and performance.

A claimant shall be ineligible for benefits if the claimant is incarcerated 4 or more days in any week.

A claimant must provide detailed information regarding contact with at least three employers per week or access services at a career center and requires random audits of 1,000 claimants weekly to determine compliance. If an audit determines false work search information was provided, a claimant is disqualified for 8 weeks, effective September 1, 2012.

An employer is allowed to provide information prior to agency request if the employer expects an issue to arise regarding an employee's separation, effective September 1, 2012.

An individual is disqualified for benefits

- for any week "wages in lieu of notice" are received,
- if a severance package from an employer is equal to the salary the employee would have received if the employee was working,
- if an individual discharged because of layoff refuses a job or a similar job with equivalent salary by the most recent employer—individual is disqualified until paid wages in covered employment equal 10 times the weekly benefit amount, or
- if the individual's offer of work is withdrawn because of a refusal to take a drug test or a positive result from a drug test—individual is disqualified

until paid wages in covered employment equal 10 times the weekly benefit amount.

The term "wages in lieu of notice" means wages paid to an individual separated without notice, irrespective of the length of service, that are equal to wages that would have been paid if the individual had continued to work.

The amount of wages required to be considered suitable work as equal or exceeding the average weekly wage in the individual's highest base-period quarter is defined according to the following criteria:

- 100 percent during the first 13 weeks of unemployment
- 75 percent during the 14th through the 25th week of unemployment
- 70 percent during the 26th through the 38th week of unemployment
- 65 percent after the 38th week of unemployment

Wages must equal federal minimum wage to be considered suitable work.

Unemployment benefits are allowed for individuals who voluntarily leave employment to accompany a spouse who is serving in the U.S. Armed Forces and has been transferred to another location. Applicants for federal, state, or local public benefits must attest, under penalty of perjury, to their status as a U.S. citizen or a qualified alien. Acceptable forms of identification that applicants may present to attest to their status as a U.S. citizen are listed in the law. Applicants claiming qualified alien status must present at least one form of documentation for verification through the Systematic Alien Verification for Entitlements or SAVE program. Penalties for knowingly and willfully making a false, fictitious, or fraudulent statement or representation as to citizenship or immigration status are outlined in the law.

*Overpayments.* The period that overpayments can be collected was extended from 3 years to 6 years.

The state Department of Revenue is allowed to offset any covered unemployment compensation debt due to the Department of Labor and Workforce Development against any federal income tax refund (1) due to the claimant, if the overpayment is the result of fraud or failure to report earnings or any assessed penalties or interest, and (2) due to the taxpayer, if the obligation is the result of past-due contributions that remain uncollected or any assessed penalties or interest.

Withdrawals from the Unemployment Trust Fund for the payment of fees autho-

rized under the U.S. Department of Treasury Offset Program are permitted. In the state treasury, a fund to be known as the "unemployment compensation special administrative fund" is established that will consist of fines, fees, penalties, and interest collected on delinquent payments.

Individuals who have received unemployment benefits by knowingly misrepresenting, misstating, or failing to disclose any material fact or by making a false statement or false representation without a good-faith belief as to the correctness of the statement or representation must repay the amount of benefits received. A penalty of 15 percent of the amount of overpaid benefits received because of fraud is assessed. Moneys collected by this penalty will be deposited into the state Unemployment Compensation Fund. An additional penalty of 7.5 percent of overpaid benefits received because of fraud is assessed. This additional penalty is to be used to defray the costs of deterring, detecting, or collecting overpayments. Interest at a rate of no more than 1.5 percent per month is assessed on the total amount due that remains unpaid for a period of 30 or more calendar days after the date on which the commissioner sends notice of the overpayment determination to the claimant's last known address. A pending appeal of the determination will not suspend the assessment of interest.

Moneys received by the department in repayment of unemployment benefits and payment of penalties and interest will be first applied to the unemployment benefits received and then to any interest due. The department will use these moneys to defray the costs of deterring, detecting, or collecting overpayments.

## Utah

*Financing.* If money in the restricted account (Special Administrative Expense Account) is used for a purpose unrelated to the administration of the state Unemployment Compensation Program as described in federal law, as amended, the Unemployment Insurance Division shall develop and follow a cost allocation plan in compliance with U.S. Department of Labor regulations, including the cost principles described in the relevant parts of the Code of Federal Regulations.

Benefits paid to individuals who leave employment to accompany or follow a spouse serving in the U.S. Armed Forces will not be charged to the employer's experience-rating account.

If the employer is a new employer, the basic contribution rate will be based on the average benefit cost rate experience by employers of the major industry, as defined by department rule, to which the new employer belongs.



For calendar year 2012 only, if the calculation of the social contribution rate is greater than 0.004, the social contribution rate for calendar year 2012 is 0.004.

If the actual reserve fund balance as of June 30 preceding the computation date is insolvent or negative or if a loan from the federal Unemployment Account or other lending institution is outstanding, the Utah Unemployment Insurance Division will set the reserve factor at 2.0000 until the division determines the actual reserve fund balance as of June 30 preceding the computation date to be solvent or positive and no loan is outstanding.

The maximum unemployment insurance contribution rate for an employer is reduced from 9 percent plus the social contribution rate to 7 percent plus the social contribution rate beginning in calendar year 2012.

If an employer makes a contribution payment based on the overall contribution rate in effect at the time the payment was made and it retroactively reduces the overall contribution rate for that payment, the division

- may not directly refund the difference between what the employer paid and what the employer would have paid under the new rate and
- shall allow the employer to adjust a future contribution payment to offset the difference between what the employer paid and what the employer would have paid under the new rate.

The division is allowed to accept an offer of compromise from an employer or claimant to reduce past-due debt under certain circumstances, and the division must make rules allowing for an offer of compromise.

*Nonmonetary eligibility.* Benefits are denied to individuals based on services in a professional or nonprofessional capacity to or on behalf of an educational institution and who worked for certain governmental entities, Indian tribes, or nonprofit organizations to which federal law applies. The denial applies between 2 successive academic years or regular terms whether successive or during a period of paid sabbatical leave or holiday periods within school years or terms.

Unemployment benefits are allowed for individuals who voluntarily leave employment to accompany or follow a spouse who is serving in the U.S. Armed Forces on active duty and has been relocated to a full-time assignment lasting at least 180 days. Benefits under this provision will be allowed if it is impractical for the individual to commute to the previous work from the new locality, if the individual left work no earlier than 15 days before the scheduled start date of the

spouse's active-duty assignment, and if the individual otherwise meets all eligibility and reporting requirements, including registering for work.

## Virginia

*Financing.* Annual payment of unemployment taxes and filing of affiliated reports for employers of individuals providing domestic service in a private home, regardless of the total payroll cost or number of persons providing the domestic service, are allowed.

Language stating that to qualify for this election, an employer will have a total payroll in each calendar quarter that does not exceed \$5,000, regardless of the number of persons providing such domestic service, is repealed.

*Monetary eligibility.* For claims effective on or after July 6, 2008, but before July 6, 2014 (previously, July 1, 2012), the minimum weekly benefit amount remains at \$54 and the maximum weekly benefit amount remains at \$378; a total of \$2,700 in the two high quarters of the base period remains the amount needed to monetarily qualify, and a minimum of \$18,900.01 remains as the amount required for the maximum weekly benefit amount.

Beginning July 6, 2014 (previously, July 1, 2012), for claims effective on or after July 6, 2014 (previously, July 1, 2012), the minimum weekly benefit amount increases from \$54 to \$60 and the maximum weekly benefit amount remains at \$378. A total of \$3,000.00 (previously, \$2,700.00) in the two high quarters of the base period is needed to monetarily qualify, and a minimum of \$18,900.01 remains as the amount required for the maximum weekly benefit amount.

## Washington

*Financing.* Penalties, rate computations, and sanctions will be applied if the Washington Employment Security Department finds that a significant purpose of the transfer of a business is to obtain a reduced-array calculation factor rate.

A predecessor-successor relationship does not exist for experience rating purposes if an employer transfers the business or its operating assets to move or expand an existing business. If both employers are under substantially common ownership, management, or control at the time of the transfer, the transferring employer's experience will transfer and be combined with the experience of the employer to which the business is transferred.

Any provisions in conflict with requirements to receive federal funds or unemployment tax credits will be inoperative.

*Extensions and special programs.* The state's special SEA (Self-Employment Assistance) program was amended. The Washington Employment Security Department is required to inform all individuals meeting the benefit eligibility conditions of the availability of SEA and entrepreneurial training programs and of the training provisions that would allow them to pursue commissioner-approved training. In addition, when individuals are identified as likely to exhaust benefits and are otherwise eligible for commissioner-approved training, the department must inform such individuals of the opportunity to enroll in commissioner-approved SEA programs. Among other requirements, an unemployed individual is eligible to participate in a self-employment assistance program if it has been determined that he or she is otherwise eligible for commissioner-approved training.

The following language has been removed from the SEA program provisions: An individual completing the program may not directly compete with his or her separating employer for a specific time and in a specific geographic area. The time may not, in any case, exceed 1 year. Both the time and the geographic area must be reasonable, considering the following factors: (1) whether restraining the individual from performing services is necessary for the protection of the employer or the employer's goodwill, (2) whether the agreement harms the individual more than is reasonably necessary to secure the employer's business or goodwill, and (3) whether the loss of the employee's services and skills injures the public to a degree warranting nonenforcement of the agreement.

The date for the department to report on the performance of the SEA program was extended from December 1, 2011, to December 1, 2015.

Individuals eligible for services under the federal Workforce Investment Act, Public Law 105-220, or its successor must be provided the opportunity to enroll in SEA or entrepreneurial training programs to prepare them for self-employment on the same basis as they are provided the opportunity to enroll in other training programs under such act. The department must work with local workforce development councils to ensure that the contracting process with training providers is efficient and that the number of entrepreneurial training providers on the state's eligible training provider list is sufficient to meet demand. Each local workforce development council must (1) notify all individuals eligible for services under the Workforce Investment Act of the availability of SEA and entrepreneurial training and (2) establish and implement a plan for expending Workforce Investment Act funds on SEA and entrepreneurial training at a rate that is commensurate with either the demand for such services or the

rate of self-employment within the council's workforce development area.

*Financing.* Penalties, rate computations, and sanctions will be applied if the Washington Employment Security Department finds that a significant purpose of the transfer of a business is to obtain a reduced array calculation factor rate.

A predecessor-successor relationship does not exist for experience rating purposes if an employer transfers the business or its operating assets to move or expand an existing business. If both employers are under substantially common ownership, management, or control at the time of the transfer, the transferring employer's experience will transfer and be combined with the experience of the employer to which the business is transferred.

Any provisions in conflict with requirements to receive federal funds or unemployment tax credits will be inoperative.

### West Virginia

*Financing.* Benefits paid to individuals who voluntarily leave employment to accompany a spouse serving in the U.S. Armed Forces who has been reassigned from one military assignment to another will not be charged to the employer's experience-rating account.

Effective July 1, 2012, contributory employer's account shall not be relieved of charges related to a payment from the state Unemployment Fund if it is determined that

- an erroneous payment was made because the employer, or an agent of the employer, was at fault for failing to respond timely or adequately to the request from an agency for information relating to the claim for compensation and
- the employer, or agent, has established a pattern of failing to respond timely or adequately to such requests.

The term "erroneous payment" means a payment that, but for the failure by the employer or the employer's agent with respect to the claim for unemployment compensation, would not have been made.

The term "pattern of failing" means repeated documented failure on the part of the employer, or the agent of the employer, to respond as requested, considering the number of instances of failure in relation to the total volume of requests by the agency to the employer or the employer's agent.

*Nonmonetary eligibility.* Unemployment benefits are allowed for individuals who voluntarily leave employment to accompany a spouse serving in the U.S. Armed Forces

who has been reassigned from one military assignment to another.

*Overpayments.* An individual who knowingly makes a false statement or representation or who knowingly fails to disclose a material fact to obtain unemployment benefits is guilty of a misdemeanor and shall be punished by a fine not less than \$100 or more than \$1,000 or by imprisonment for no longer than 30 days, or both, and by full repayment of all benefits obtained fraudulently. Each false statement or representation, or failure to disclose a material fact, is a separate offense.

After July 1, 2012, an additional penalty of 20 percent of the amount of the erroneous payment is assessed. The first 75 percent of the penalty shall be deposited in the state Unemployment Compensation Trust Fund, and the remaining 25 percent shall be deposited in a special administrative account to be used for increased integrity activities. Penalty amounts may not be used to offset future benefits payable to benefit recipients.

### Wisconsin

*Financing.* If more than one employing unit has a relationship with an employee, the Wisconsin Department of Workforce Development will determine which employing unit is the employer by considering specified factors in the employing unit's contract with the employee and which employing unit

- benefits directly or indirectly from the services performed by the employee,
- maintains a pool of workers who are available to perform the services in question, and
- is responsible for employee compliance with applicable regulatory laws and for enforcement of such compliance. (All factors are applicable to services performed after December 31, 2011.)

A provider of home healthcare and personal care services for medical assistance recipients is allowed to elect to be the employer of employees providing those services. The provider must, as a condition of eligibility for election, notify the recipient in writing of such services of its election for purposes of the unemployment insurance law and to be treated as the employer by the federal Internal Revenue Service for federal unemployment tax purposes, applicable to services performed after December 31, 2011.

A separate, nonlapsable unemployment interest payment fund was established that will be used to pay interest due on Title XII federal advances. The following moneys will be credited to this fund: the annual assess-

ment on employers that is used to pay interest on Title XII federal advances, any interest earned on the assessments, and any interest or penalties collected from delinquent employers. (Under prior law, the assessment was credited to the administration account.) The department is authorized to use any excess funds to pay interest owed in subsequent years on advances or if additional interest obligations are unlikely, excess funds will be transferred and credited to the balancing account of the unemployment reserve fund to pay benefits.

The department will redetermine the contribution rate of a successor employer immediately prior to the effective date of a transfer as of the applicable computation date effective for contributions payable beginning in the first calendar year following the date of the transfer (previously, the beginning of the first quarter after the transfer), applicable to transfers after December 31, 2011.

A separate, nonlapsable program integrity fund in the unemployment reserve account is established for deposit of overpayments collected because of fraud by acts of concealment by claimants; funds may be used to pay for integrity activities such as fraud detection and prevention, applicable October 21, 2013, and repealed effective January 1, 2014. (Previously, such overpayments were credited to the balancing account of the unemployment reserve account.)

The definition of "debt" is also defined as a delinquent assessment on Title XII federal advance funds.

*Nonmonetary eligibility.* Individuals, in addition to other requirements, must conduct a reasonable search for work unless waived by the department. An individual is ineligible for benefits for any week that he or she is determined to have failed to conduct a reasonable search for suitable work that has not been waived. If benefits have been paid for such week, the department may recover the overpayment, applicable April 29, 2012.

The individual is ineligible for benefits for any week if one or more of the following applies to the individual for 32 hours or more in a week:

- The individual performs work.
- The individual receives wages.
- The individual receives holiday pay, vacation pay, termination pay, or sick pay.

The individual is ineligible for benefits for any week in which the individual receives from one or more employers more than \$500 in wages for work performed or for sick pay, holiday pay, vacation pay, or termination pay

(by itself or in combination with wages), applicable October 21, 2012.

*Overpayments.* The law changes the penalties for overpayments because of fraud by acts of concealment by claimants. The individual is ineligible for benefits for each single act of concealment in an amount equivalent to

- 2 times the weekly benefit amount before the date of the first determination (previously, 1 time the weekly benefit amount);
- 4 times the weekly benefit rate after the date of the first determination (previously, 3 times the weekly benefit amount); or
- 8 times the weekly benefit rate after the date of the second or subsequent

determination (previously, 5 times the weekly benefit amount).

These penalties just listed will be applied to any weeks for which the individual would otherwise be eligible, and the individual will not receive credit for the waiting week. (Penalties applicable to weeks of unemployment beginning October 21, 2012.)

Overpayments from failure to report earnings

- will be deposited in the “balancing account” of the state’s unemployment reserve fund when recovered and
- may be recovered through offset against a federal tax refund.

Under the U.S. Department of Treasury Offset Program, the payment of fees and expenses for collection of overpayments because

of failure to report earnings is authorized to be withdrawn from the unemployment reserve fund, applicable October 21, 2012.

## Wyoming

*Overpayments.* Employers are required to include in their new hire reports the date that services for remuneration were first performed by a newly hired employee. Prior law required new hire reports to contain the name, address, and Social Security number of the employee and the name, address, and employer identification number of the employer.

The term “newly hired employee” means an individual who has not previously been employed by the employer or was previously employed by the employer but has been separated from employment with that employer for at least 60 days.