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Recent Amendments to the West Virginia Unemployment Compensation Law

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RECENT AMENDMENTS TO THE WEST VIRGINIA UNEMPLOYMENT COMPENSATION LAW

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AT the regular session 1943 of the forty-sixth Legislature of West Virginia recently concluded a number of amendments were made to the West Virginia Unemployment Compensation Law, Chapter 21-A added to the Code of 1931; as has been done at each other regular session, 1937, 1939, and 1941, since this law was orginally enacted at the second extraordinary session 1936.

The 1943 amendments include not only numerous changes in administrative and legal procedure, but as well, and of larger importance, organic revisions affecting experience rating, fund stabilization, benefit payments, eligibility requirements, and disqualification penalties.

These amendments were the subject of House Bill No. 278, which was introduced February 22, passed by the House, after consideration by it in committee of the whole, with only a single minor amendment, on February 24, and advanced to final passage by the Senate, after consideration by it, also in committee of the whole, on March 1, 1943, effective April 1, 1943, and approved by the Governor on March 8, 1943.

The bill as introduced and passed represents a composite accord of chosen key representatives of leading industrial, manufacturing and labor groups, and the Advisory Council of the department of unemployment compensation, attained after many weeks of study and discussion, in extended conferences, of suggested amendments and revisions emanating from various sources. Its unopposed and expeditious passage was made possible for that reason. From that aspect it was a successful experiment in what might be termed cooperative social legislation affecting many diversified interests.

The following article is intended to be nothing more than an explanatory resume of the nature and purpose of these amendments, and is to a large extent an adaptation of an explanation of the amendments as proposed, prepared by counsel in the department of unemployment compensation and printed along with House Bill No. 278 as introduced. The explanations are here given in

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the serial order of the several articles and sections as amended, repealed, or added, as the case may be.

Article 1, section 3, entitled "Definitions", has been amended at each session of the Legislature since the law was orginally enacted. The 1943 amendments to this section include definitions of "base period employer" and "base period wages", not heretofore included, defining those terms as used elsewhere in the law.[1] The definitions of "benefit unit" and "employer" have been clarified by amendments.

Article 2, section 6-a, giving the director of unemployment compensation authority to enter into certain reciprocal agreements with appropriate agencies of other states or the Federal Government, was added to the law by amendment in 1937. By the 1943 amendment it is revised and enlarged to confer larger discretion upon the director to enter into reciprocal agreements with other states or the Federal Government. One of the larger purposes in view is, on the one hand, to permit combination of wage credits so that an otherwise eligible individual who may have sufficient wage credits in the aggregate in several states but not sufficient in any one state, may thereby become eligible for unemployment compensation benefits; and, on the other hand, to preclude an individual having sufficient wage credits in more than one state from receiving unemployment compensation benefits from more than one of those states in the same benefit year. The amendment thus serves the dual purpose of enlarging benefits in certain cases and conserving the unemployment compensation trust fund in other cases.[2] It is further provided in this amendment that to the extent permissible under the laws and Constitution of the United States, the director is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this chapter and facilities and services provided under the unemployment compensation law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.[3]

[1] Art. 5, § 7; art. 6, § § 10 and 11; and art. 7, § § 8, 9 and 17.

[2] As, obviously, such an agreement with another state agency does not tend to increase the political power of the state to the derogation of the supremacy of the United States, in so far as the amendment authorizes the director to enter into such an agreement it is rested for constitutional sanction on Virginia v. Tennessee, 148 U. S. 503, 37 L. Ed. 537 (1893).

[3] It may be of interest to note in this connection that an agreement to authorize such arrangements between the several states and Canada has been

Article 2, section 23, relating to publication, is enlarged to require the director to print for public distribution to employers and organizations and associations representative of employer and employee interests, quarterly statements of the condition of the unemployment compensation trust fund and any other information relating to the administration thereof which the director may deem to be pertinent and proper.

Article 5, section 2, relating to duration of employer coverage has been amended to include a provision whereby the director may for good cause extend the time for filing application for termination of coverage; experience having shown that some employers, especially in smaller business, who have ceased to have the requisite number of employees to keep them under compulsory coverage, frequently overlook to file application for termination of coverage within the time required by this section of the law, and as a result are under necessity of continuing to pay contributions when otherwise they might have been relieved from coverage. Several verbal changes are also made in this section for purposes of clarification.

The provision for joint accounts that was contained in article 5, section 7, paragraph (2), has been deleted, the establishment of joint accounts having been considered undesirable from any standpoint, and this section having been a dead letter provision in the law.

Article 5, section 9, formerly read:

> "An employer's payment-rate shall be reduced only as of January one of a calendar year and shall not be reduced below two and seven-tenths per cent:
>
> "(1) Prior to January one, one thousand nine hundred forty-one.
>
> "(2) Thereafter, unless the total assets of the fund, excluding payments payable at the beginning of the year exceed the total benefits paid from the fund within the last preceding year.
>
> "No employer's rate shall be less than one and eight-tenths per cent, unless the assets of the entire fund are at such time at least twice the total benefits paid from the fund within the last preceding year."

effected by the government of the United States and the government of the Dominion of Canada by exchange of notes signed March 6 and 12, effective April 12, 1942. Department of State Publication—1793, reprinted as Executive Agreement Series 244, United States Government Printing Office (1942).

The last paragraph of this section has been deleted and superseded by new section 10-a, to be presently explained.

Article 5, section 10, has been modified and enlarged to provide a further graduated scale of ratings, extending from 2.7%, the maximum rate now provided, down through 2.4% and 2.1% to 1.8%, the intermediate rate now provided; then down through 1.4% to 0.9%, the minimum rate now provided. This change affords a wider range to employers within which to qualify for decreased rates between the present 2.7% and 1.8% rates on the one hand and the present 1.8% and 0.9% rates on the other hand.

Section 10-a entitled "Suspension of Decreased Rates", has been added to article 5. This new section supersedes the present last paragraph of section 9, in order to afford more adequate safeguards for the solvency of the unemployment compensation trust fund against cycles of acute or extended unemployment. Under the terms of this provision it is mandatory upon the director to suspend decreased rates if and whenever the fund, exclusive of the amount required to pay the benefit liability then accrued and unpaid, falls to $25,000,000.00, and to supersede such suspension whenever the fund, exclusive of the amount required to pay the benefit liability then accrued and unpaid, reaches $30,000,000. New rates would thereupon be computed as provided in the law.

No provision had been made in the law prior to the 1943 amendments for the transfer as between predecessor and successor of what is variously referred to, more or less loosely, either as the experience balance, employer account, reserve account, or experience rating account, of the predecessor. Such transfers have heretofore been permitted merely by interpretation[4] and only within narrow limits, the approved policy of the department having been to definitely exclude all such transfers as between stranger legal entities and to permit them only in cases involving internal changes of a formal nature within a legal entity. By the addition to article 5 of section 10-a, statutory provision is now made to combine, for ultimate purposes of experience rating, the contribution and benefit experience records of transferring and acquiring employers.

[4] An abridgment of an opinion of counsel for the department on which this interpretation has been rested was published in the Unemployment Compensation Interpretation Service, Benefit Series, prepared in the Bureau of Employment Security, Washington, D. C., and published by the Federal Security Agency, Social Security Board, Vol. 5, No. 1, page 123 *et seq.*

Article 5, section 12, providing for auxiliary rates should have been deleted when the law was revised in 1941. It has been deleted by the 1943 amendments.

New section 17-a has been added to article 5. This new section gives the director authority to make summary assessments where an employer fails to file reports for the purpose of determining his contribution liability in accordance with the regulations of the director or files manifestly incorrect or insufficient reports, and where the director determines that the collection of any contribution or interest may be jeopardized by delay. Provision is also made for affording a hearing to an employer on such an assessment.

The several sections of article 6 relating to employee eligibility qualifications, disqualifications for benefits, and benefit rates for total and partial unemployment, have been amended at each session of the legislature since the law was originally enacted in 1936.

Article 6, section 1, relating to eligibility qualifications, provided that an unemployed individual shall be eligible to receive benefits, only if the director finds, among others, that "(3) He is able to work and is available for work." This subsection has been amended to require that in order to be eligible for benefits such individual shall not only be able to and available for work but that he must be available for full-time work for which he is fitted by former training and experience; the purpose of this amendment being to insure that the claimant is actually available in the labor market.

One of the most important amendments made to the law concerns subsection (5) of section 1 of article 6, which required that an unemployed individual shall be eligible to receive benefits only if the director finds, among others, that "(5) He has within his base period earned wages for employment equal to not less than one hundred fifty dollars, of which amount he had earned as much as seventy-five dollars in each of two quarters or fifty dollars in each of three quarters." Experience has shown that in many cases this provision worked injustice; for example, where an otherwise eligible individual has lacked only a few dollars of the requisite amount in one of two or in one of three quarters, as the case may be, in order to make him eligible. Under the amendment he would be eligible if he has earned as much as two hundred fifty dollars within his entire base period.

The disqualifications contained in article 6, section 4, subsections (1), (2), and (3), have been drastically amended to stiffen the disqualification penalties for voluntarily quitting without good cause, discharge for misconduct, and failure to apply for available suitable work or accept suitable work when offered. The purpose of these amendments is to protect the unemployment compensation trust fund more adequately against claims of unemployed individuals for whose unemployment the employer is not at fault. The full import of these changes can be made clear only by actual comparison of these three subsections as they formerly stood in the law and as they stand in the law as amended. They are set out following in parallel columns.

Article 6, section 4, subsections (1), (2), and (3).

Sec. 4. Disqualification for Benefits. Upon the determination of the facts by the director, an individual shall be disqualified for benefits:

Before Amended	As Amended
(1) For the six weeks immediately following the date on which he left work voluntarily without good cause. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate. If he returns to work prior to the expiration of the disqualification period, he will be credited with such part of the unexpired portion as his employment continues and an equivalent portion of his maximum benefit reduction will be reinstated.	(1) For the week in which he left work voluntarily without good cause involving fault on the part of the employer and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate.

(2) For the three weeks immediately following the date on which he was discharged for proved misconduct. Such disqualification shall carry a reduction in the maximum benefit amount equal to three times the individual's weekly benefit rate. If he returns to work prior to the expiration of the disqualification period, he will be credited with such part of the unexpired portion as his employment continues and an equivalent portion of his maximum benefit reduction will be reinstated.	(2) For the week in which he was discharged for misconduct and the six weeks immediately following such week. Such disqualification shall carry a reduction in the maximum benefit amount equal to six times the individual's weekly benefit rate.
(3) For the week in which he failed without good cause, to apply for available, suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the director and for three weeks which immediately follow.	(3) For the week in which he failed, without good cause, to apply for available suitable work, accept suitable work when offered, or return to his customary self-employment when directed to do so by the director, and for the four weeks which immediately follow and for such additional period as any offer of suitable work shall continue open for his acceptance, and his maximum benefit amount shall be reduced by an amount equal to his weekly benefit rate times the number of weeks of disqualification.

Two new disqualification provisions have been added, as subsections (6) and (7), to section 4 of article 6, which, to be read in coordination with the basic opening sentence of section 4, are as follows:

> "(6) For the week in which an individual is not employed because of pregnancy, or has voluntarily quit employment to marry or to perform any marital, parental, or family duty, or to attend to his or her personal business or affairs, and until the individual returns to covered employment and has been employed in covered employment at least thirty working days."
>
> "(7) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school

college, university, or other educational institution, he is attending such school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof."

Heretofore disqualifications for any of the reasons stated in subsections (6) and (7) have been imposed under interpretation of subsection (1) of section 4 as it formerly stood..

Article 6, section 5, relating to suitable work, provided that in determining whether work is suitable for an individual, the director shall consider, among others, "(6) The distance of the available work from his residence." To preclude drains upon the unemployment compensation trust fund which have resulted from this provision and the interpretation which it has received. subsection (6) has been amended to provide that "the distance from his new residence shall not be considered in determining suitable work if such distance from available work was created as the result of the individual voluntarily changing his residence to a locality other than that locality in which he resided at the time he voluntarily quit his last employment without good cause involving fault on the part of the employer."

Sub-paragraph (c) of subsection (5) of section 4 has been amended to conform with changes in Title II of the Social Security Act, as last amended.

Sections 10 and 11 of article 6, relating to benefit rates for total and partial unemployment, and tables A and B following them, respectively, have been amended to provide approximately 20% liberalization in benefits, increasing the minimum weekly rate from six to seven dollars, and the maximum weekly rate from fifteen to eighteen dollars, with corresponding intermediate weekly rates.

New section 21, entitled "Persons in Military Service," has been added to article 6. The purpose of this new section is to "freeze" wage credits of individuals in the armed forces of the United States so as to make such credits available to them after discharge from the armed forces, provided the individual files a claim for benefits prior to April 1, 1945. The limitation contemplates that contigencies which will necessarily arise in the meantime may be provided for when the legislature meets again in regular session in 1945. It is further provided that benefit rights under this section shall not be payable until after the benefit rights have

been utilized under any act of Congress providing a national system in regard to payments to unemployed veterans.

Article 7, sections 8 and 9, have been amended to reduce from twenty to fifteen calendar days the period within which appeals may be taken from the decision of a deputy and the decision of an appeal tribunal of the board of review. These two sections as well as section 17 of this article have been amended to also provide, by way of clarification, that the last employer or any base period employer of a claimant may appeal from a decision of a deputy, appeal tribunal, or the board of review.

Section 8 is further amended to provide that notice of the decision of a deputy if mailed must be sent by registered mail, and that the period within which an appeal from his decision may be taken shall be stated in the notice of his decision.

Section 9 has also been amended to provide that the director shall of necessity be deemed an interested party to an appeal from the decision of an appeal tribunal to the board of review, and section 22 has been amended to provide that the director shall be a necessary party to a proceeding for judicial review of a decision of the board of review by the Circuit Court of Kanawha county.

Section 11 provided that if the board of review affirms a decision of an appeal tribunal allowing benefits, the benefits shall be paid regardless of any further appeal. This section has been amended to provide that if benefits are allowed by the decision of the board on appeal from a decision of an appeal tribunal the benefits shall be paid whether or not such decision reverses or affirms the decision of the appeal tribunal and regardless of any further appeal. The provision of the law that in case the decision of the board is reversed an employer's account shall not be charged with the benefits so paid is retained.

Section 21, relating to findings of fact, provided that in a judicial proceeding to review a decision of the board of review the findings of fact, if supported by the evidence, and in the absence of fraud, shall be conclusive, and the jurisdiction of the court was confined to questions of law. The amendment provides that in such a proceeding the findings of fact of the board shall have like weight to that accorded to the findings of fact of a trial chancellor or judge in equity procedure.

Section 25 provides that service upon the board in a proceeding for judicial review by the circuit court shall include a copy

of the petition for review and as many additional copies as there are defendants, including the director.

The title of section 4 of article 10 is changed for clarification purposes and the section is amended to include provisions for preservation of certain records and, with the concurrence of the Advisory Council, for the destruction of other records.

Section 11 of article 10 has been amended to provide that no action for slander or libel, either criminal or civil, shall be predicated on information furnished by an employer or employee to the director in connection with the administration of any of the provisions of the law.

Unemployment compensation, as an integral part of the larger federal-state social security program, has functioned for so short a period, and so nearly if not entirely without actuarial precedents, that many revisions of the unemployment compensation law will undoubtedly be necessary from time to time to keep pace with changing economic and social conditions. During the thirty years that its companion, though inherently quite different, social legislation, workmen's compensation, has been on the statute books, it has been subjected to frequent amendments. The revisions of the unemployment compensation law made by the 1943 legislature, like those made at previous sessions, should remove some inequalities and correct some deficiencies already manifested out of experience. It may be confidently expected that out of further administrative and procedural experience and legislative flexibility the law will be progressively improved to better effectuate its beneficent purposes.