UNEMPLOYMENT INSURANCE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Richard M. Siddoway

This act modifies the Employment Security Act by amending provisions relating to the filing of reports, access to records, and the determination of benefit eligibility. The act requires that employers with over 250 employees file quarterly wage data on magnetic media or electronically. The act corrects a reference to language authorizing the assessment of penalties and interest. The act makes various changes to the provisions governing access to Department of Workforce Services records gathered from employers. The act clarifies that the determination of benefit eligibility is solely an agency function.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

35A-4-305, as last amended by Chapter 100, Laws of Utah 1999

35A-4-309, as last amended by Chapter 129 and renumbered and amended by Chapter 240, Laws of Utah 1996

35A-4-312, as last amended by Chapter 1, Laws of Utah 1998

35A-4-405, as last amended by Chapter 60, Laws of Utah 2000

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **35A-4-305** is amended to read:

35A-4-305. Collection of contributions -- Unpaid contributions to bear interest.

(1) (a) Contributions unpaid on the date on which they are due and payable, as prescribed by the division, shall bear interest at the rate of 1% per month from and after that date until payment plus accrued interest is received by the division.

(b) (i) Contribution reports not made and filed by the date on which they are due as prescribed by the division shall be subject to a penalty to be assessed and collected in the same manner as contributions due under this section equal to 5% of the contribution due if the failure to file on time was not more than 15 days, with an additional 5% for each additional 15 days or fraction thereof during which the failure continued, but not to exceed 25% in the aggregate and not

less than $25 with respect to each reporting period.

(ii) If a report is filed after such time and it is shown to the satisfaction of the division or its authorized representative that the failure to file was due to a reasonable cause and not to willful neglect, no addition shall be made to the contribution.

(c) (i) If contributions are unpaid after ten days from the date of the mailing or personal delivery by the division or its authorized representative, of a written demand for payment, there shall attach to the contribution, to be assessed and collected in the same manner as contributions due under this section, a penalty equal to 5% of the contribution due.

(ii) A penalty may not attach if within ten days after the mailing or personal delivery, arrangements for payment have been made with the division, or its authorized representative, and payment is made in accordance with those arrangements.

(d) The division shall assess as a penalty a service charge, in addition to any other penalties that may apply, in an amount not to exceed the service charge imposed by Section 7-15-1 for dishonored instruments if:

(i) any amount due the division for contributions, interest, other penalties or benefit overpayments is paid by check, draft, order, or other instrument; and

(ii) the instrument is dishonored or not paid by the institution against which it is drawn.

(e) Except for benefit overpayments under Subsection 35A-4-405(5), benefit overpayments, contributions, interest, penalties, and assessed costs, uncollected three years after they become due, may be charged as uncollectable and removed from the records of the division if:

(i) no assets belonging to the liable person and subject to attachment can be found; and

(ii) in the opinion of the division there is no likelihood of collection at a future date.

(f) Interest and penalties collected in accordance with this section shall be paid into the Special Administrative Expense Fund.

(g) Action required for the collection of sums due under this chapter is subject to the applicable limitations of actions under Title 78, Chapter 12, Limitation of Actions.

(2) (a) If an employer fails to file a report when prescribed by the division for the purpose of determining the amount of the employer's contribution due under this chapter, or if the report

when filed is incorrect or insufficient or is not satisfactory to the division, the division may determine the amount of wages paid for employment during the period or periods with respect to which the reports were or should have been made and the amount of contribution due from the employer on the basis of such information as it may be able to obtain.

(b) The division shall give written notice of the determination to the employer.

(c) The determination is considered correct unless:

(i) the employer, within ten days after mailing or personal delivery of notice of the determination, applies to the division for a review of the determination as provided in Section 35A-4-508; or

(ii) unless the division or its authorized representative of its own motion reviews the determination.

(d) The amount of contribution so determined shall be subject to penalties and interest as provided in Subsection (1).

(3) (a) If, after due notice, any employer defaults in any payment of contributions, interest, or penalties on the contributions, or any claimant defaults in any repayment of benefit overpayments and penalties on the overpayments, the amount due shall be collectible by civil action in the name of the division, and the employer adjudged in default shall pay the costs of the action.

(b) Civil actions brought under this section to collect contributions, interest or penalties from an employer, or benefit overpayments and penalties from a claimant shall be:

(i) heard by the court at the earliest possible date; and

(ii) entitled to preference upon the calendar of the court over all other civil actions except:

(A) petitions for judicial review under this chapter; and

(B) cases arising under the workers' compensation law of this state.

(c) (i) To collect contributions, interest or penalties, or benefit overpayments and penalties due from employers or claimants located outside Utah the division may employ private collectors providing debt collection services outside Utah. Accounts may be placed with private collectors only after the employer or claimant has been given a final notice that the division intends to place the account with a private collector for further collection action. The notice shall advise the employer

or claimant of the employer's or claimant's rights under this chapter and the rules applicable of the department.

(ii) A private collector may receive as compensation up to, but no more than, 25% of the lesser of the amount collected or the amount due, plus the costs and fees of any civil action or post-judgment remedy instituted by the private collector with the approval of the division. The employer or claimant shall be liable to pay the compensation of the collector, costs, and fees in addition to the original amount due.

(iii) A private collector is subject to the federal Fair Debt Collection Practices Act, 15 U.S.C. Sec. 1692 et seq.

(iv) A civil action may not be maintained by any private collector without specific prior written approval of the division. When division approval is given for civil action against an employer or claimant, the division may cooperate with the private collector to the extent necessary to effect the civil action.

(d) (i) Notwithstanding Section 35A-4-312, the division may disclose the contribution, interest, penalties or benefit overpayments and penalties, costs due, the name of the employer or claimant, and the employer's or claimant's address and telephone number when any collection matter is referred to a private collector under Subsection (3)(c).

(ii) A private collector is subject to the confidentiality requirements and penalty provisions provided in Section 35A-4-312 and Subsection 35A-4-104(4), except to the extent disclosure is necessary in any civil action to enforce collection of the amounts due.

(e) An action taken by the division under this section may not be construed to be an election to forego other collection procedures by the division.

(4) (a) In the event of any distribution of an employer's assets under an order of any court under the laws of Utah, including any receivership, assignment for benefits of creditors, adjudicated insolvency, composition, or similar proceedings, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $400 to each claimant, earned within five months of the commencement of the proceeding.

(b) If an employer commences a proceeding in the Federal Bankruptcy Court under any

chapter of the Bankruptcy Reform Act of 1978, 11 U.S.C. 101 et seq., as amended, contributions, interest, and penalties then or thereafter due shall be entitled to the priority provided for taxes, interest, and penalties in the Bankruptcy Reform Act of 1978.

(5) (a) In addition and as an alternative to any other remedy provided by this chapter and provided that no appeal or other proceeding for review provided by this chapter is then pending and the time for taking it has expired, the division may issue a warrant in duplicate, under its official seal, directed to the sheriff of any county of the state, commanding the sheriff to levy upon and sell the real and personal property of a delinquent employer or claimant found within the sheriff's county for the payment of the contributions due thereon, with the added penalties, interest, or benefit overpayment and penalties, and costs, and to return the warrant to the division and pay into the fund the money collected by virtue of the warrant by a time to be therein specified, not more than 60 days from the date of the warrant.

(b) Immediately upon receipt of the warrant in duplicate, the sheriff shall file the duplicate with the clerk of the district court in the sheriff's county. The clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the delinquent employer or claimant mentioned in the warrant, and in appropriate columns the amount of the contribution, penalties, interest, or benefit overpayment and penalties, and costs, for which the warrant is issued and the date when the duplicate is filed.

(c) The amount of the warrant so docketed shall:

(i) have the force and effect of an execution against all personal property of the delinquent employer; and

(ii) become a lien upon the real property of the delinquent employer or claimant in the same manner and to the same extent as a judgment duly rendered by any district court and docketed in the office of the clerk.

(d) After docketing, the sheriff shall:

(i) proceed in the same manner as is prescribed by law with respect to execution issued against property upon judgments of a court of record; and

(ii) be entitled to the same fees for the sheriff's services in executing the warrant, to be

collected in the same manner.

(6) (a) Contributions imposed by this chapter are a lien upon the property of any employer liable for the contribution required to be collected under this section who shall sell out the employer's business or stock of goods or shall quit business, if the employer fails to make a final report and payment on the date subsequent to the date of selling or quitting business on which they are due and payable as prescribed by rule.

(b) An employer's successor, successors, or assigns, if any, shall be required to withhold sufficient of the purchase money to cover the amount of the contributions and interest or penalties due and payable until such time as the former owner shall produce a receipt from the division showing that they have been paid or a certificate stating that no amount is due. If the purchaser of a business or stock of goods fails to withhold sufficient purchase money, the purchaser shall be personally liable for the payment of the amount of the contributions required to be paid by the former owner, interest and penalties accrued and unpaid by the former owner, owners, or assignors.

(7) (a) If any employer is delinquent in the payment of any contribution, the division may give notice of the amount of the delinquency by registered mail to all persons having in their possession or under their control, any credits or other personal property belonging to the employer, or owing any debts to the employer at the time of the receipt by them of the notice.

(b) Any persons notified under Subsection (7)(a) shall neither transfer nor make any other disposition of the credits, other personal property, or debts until:

(i) the division has consented to a transfer or disposition; or

(ii) 20 days after the receipt of the notice.

(c) All persons notified under Subsection (7)(a) shall, within five days after receipt of the notice, advise the division of credits, other personal property, or other debts in their possession, under their control or owing by them, as the case may be.

(8) (a) Each employer shall furnish the division necessary information for the proper administration of this chapter and shall include wage information for each employee, for each calendar quarter beginning October 1, 1984. The information shall be furnished at a time, in the form, and to those individuals as the department may by rule require.

(b) Each employer shall furnish each individual worker who is separated that information as the department may by rule require, and shall furnish within 48 hours of the receipt of a request from the division a report of the earnings of any individual during the individual's base-period. The report shall be on a form prescribed by the division and contain all information prescribed by the division.

(c) For each failure by an employer to conform to this Subsection (8) the division shall, unless good cause is shown to the satisfaction of the division for the failure, assess a $50 penalty to be collected in the same manner as contributions due under this chapter.

(d) The division shall prescribe rules providing standards for determining which contribution reports must be filed on magnetic media or in other machine-readable form. In prescribing these rules, the division:

(i) shall not require any employer to file contribution reports on magnetic media unless that employer is required to file wage data on at least 250 employees during any calender quarter;

(ii) shall take into account, among other relevant factors, the ability of the employer to comply at reasonable cost with the requirements of the rules; and

(iii) may require an employer to post a bond for failure to comply with the rules required by this Subsection (8)(d).

(9) If any person liable to pay any contribution or benefit overpayment imposed by this chapter neglects or refuses to pay the same after demand, the amount, including any interest, additional amount, addition to contributions, or assessable penalty, together with any additional accruable costs, shall be a lien in favor of the division upon all property and rights to property, whether real or personal belonging to the person.

(10) (a) The lien imposed by Subsection (9) arises at the time the assessment, as defined in the department rules, is made and continues until the liability for the amount so assessed, or a judgment against the taxpayer arising out of the liability, is satisfied.

(b) The lien imposed by Subsection (9) is not valid as against any purchaser, holder of a security interest, mechanics lien holder, or judgment lien creditor until a warrant which meets the requirements of Subsection (5) has been filed with the clerk of the district court. For the purposes

of Subsection (10)(b):

(i) "Judgment lien creditor" means a person who obtains a valid judgment of a court of record for recovery of specific property or a sum certain of money, and who in the case of a recovery of money, has a perfected lien under the judgment on the property involved. A judgment lien does not include inchoate liens such as attachment or garnishment liens until they ripen into a judgment. A judgment lien does not include the determination or assessment of a quasi-judicial authority, such as a state or federal taxing authority.

(ii) "Mechanics lien holder" means any person who has a lien on real property, or on the proceeds of a contract relating to real property, for services, labor, or materials furnished in connection with the construction or improvement of the property. A person has a lien on the earliest date the lien becomes valid against subsequent purchasers without actual notice, but not before the person begins to furnish the services, labor, or materials.

(iii) "Person" means:

(A) an individual;

(B) a trust;

(C) an estate;

(D) a partnership;

(E) an association;

(F) a company;

(G) a limited liability company;

(H) a limited liability partnership; or

(I) a corporation.

(iv) "Purchaser" means a person who, for adequate and full consideration in money or money's worth, acquires an interest, other than a lien or security interest, in property which is valid under state law against subsequent purchasers without actual notice.

(v) "Security interest" means any interest in property acquired by contract for the purpose of securing payment or performance of an obligation or indemnifying against loss or liability. A security interest exists at any time:

(A) the property is in existence and the interest has become protected under the law against a subsequent judgment lien arising out of an unsecured obligation; and

(B) to the extent that, at that time, the holder has parted with money or money's worth.

Section 2. Section **35A-4-309** is amended to read:

35A-4-309. Nonprofit organizations -- Contributions -- Payments in lieu of contributions.

(1) Notwithstanding any other provisions of this chapter for payments by employers, benefits paid to employees of nonprofit organizations, as described in Section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), that is exempt from income tax under Section 501(a), shall be financed in accordance with the following provisions:

(a) Any nonprofit organization which is, or becomes, subject to this chapter on or after January 1, 1972, shall pay contributions under the provisions of Section 35A-4-303, unless it elects in accordance with Subsection (1) to pay to the division for the unemployment fund an amount equal to the amount of regular benefits and of 1/2 of the extended benefits paid that is attributable to service in the employ of such nonprofit organization, to individuals for weeks of unemployment that begin during the effective period of this election.

(b) Any nonprofit organization that is or becomes subject to this chapter on or after January 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than one contribution year beginning with the date on which the organization becomes subject to this chapter. The nonprofit organization shall file a written notice of its election with the division not later than 30 days immediately following the date that the division gives notice to the organization that it is subject to this chapter.

(c) Any nonprofit organization that makes an election in accordance with Subsection (1)(b) shall continue to be liable for payments in lieu of contributions until it files with the division a written notice terminating its election, not later than 30 days prior to the beginning of the contribution year for which this termination shall first be effective.

(d) Any nonprofit organization that has been paying contributions under this chapter for a period subsequent to January 1, 1972, may change to a reimbursable basis by filing with the

division, no later than 30 days prior to the beginning of any contribution year, a written notice of election to become liable for payments in lieu of contributions. This election is not terminable by the organization for that year or the next year.

(e) The division may, for good cause, extend the period within which a notice of election or a notice of termination must be filed and may permit an election to be retroactive but not with respect

to benefits paid prior to January 1, 1970.

(f) The division, in accordance with department rules, shall notify each nonprofit organization of any determination that the division may make of the organization's status as an employer, of the effective date of any election that it makes, and of any termination of this election. These determinations shall be subject to reconsideration, appeal, and review in accordance with the provisions of Section 35A-4-508.

(2) Payments in lieu of contributions shall be made in accordance with the provisions of Subsection (2).

(a) At the end of each calendar month, or at the end of any other period as determined by the division, the division shall bill each nonprofit organization or group of such organizations that has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus 1/2 of the amount of extended benefits paid during this month or other prescribed period that is attributable to service in the employ of the organization.

(b) (i) Every nonprofit organization that has elected payments in lieu of contributions may request permission to make payments under one of the methods provided in Subsection (2)(b). The method selected becomes effective upon approval by the division. At the end of each calendar month, or at the end of such other period as determined by the division, the division shall bill each organization for an amount representing the organization's choice of the following:

(A) for 1972, 0.1% of its total payroll for 1971;

(B) for years after 1972, the percentage of its total payroll for the immediately preceding calendar year as determined by the division, based upon the average benefit costs attributable to service in the employ of nonprofit organizations during the preceding calendar year; or

(C) for any organization that did not pay wages throughout the four calendar quarters of the

preceding calendar year, the percentage of its payroll during the year as determined by the division.

(ii) At the end of each contribution year, the division may modify the monthly or other period's percentage of payroll thereafter payable by the nonprofit organization in order to minimize excess or insufficient payments.

(iii) At the end of each contribution year, the division shall determine whether the total of payments for the year made by a nonprofit organization is less than, or in excess of, the total amount of regular benefits plus 1/2 of the amount of extended benefits paid to individuals during the contribution year based on wages attributable to service in the employ of the organization. Each nonprofit organization whose total payments for the year are less than the amount so determined shall be liable for payment of the unpaid balance to the fund in accordance with Subsection (2)(c). If the total payments exceed the amount so determined for the contribution year, all or a part of the excess may, at the discretion of the division, be refunded from the fund or retained in the fund as part of the payments that may be required for the next contribution year.

(c) Payment of any bill rendered under Subsection (2)(a) or (2)(b) shall be made no later than 30 days after the bill was mailed to the last-known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review and redetermination in accordance with Subsection (2)(e).

(d) Payments made by any nonprofit organization under the provisions of Subsection (2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization.

(e) (i) The amount due specified in any bill from the division shall be conclusive on the organization unless, not later than 15 days after the bill was mailed to its last-known address or otherwise delivered to it, the organization files an application for redetermination by the division or an appeal to the Workforce Appeals Board, setting forth the grounds for the application or appeal.

(ii) The division shall promptly review and reconsider the amount due specified in the bill and shall thereafter issue a redetermination in any case in which the application for redetermination has been filed.

(iii) Any redetermination shall be conclusive on the organization unless, no later than 15

days after the redetermination was mailed to its last known address or otherwise delivered to it, the organization files an appeal to a Workforce Appeals Board in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings, setting forth the grounds for the appeal.

(iv) Proceedings on appeal to the Workforce Appeals Board from the amount of a bill rendered under Subsection (2) or a redetermination of the amount shall be in accordance with Section 35A-4-508.

(f) Past due payments of amounts in lieu of contributions shall be subject to the same interest and penalties that, under Subsection 35A-4-305(1)[~~(a)~~], attach to past due contributions.

(3) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under Subsection (2), the division may terminate the organization's election to make payment in lieu of contributions as of the beginning of the next contribution year, and this termination shall be effective for that and the next contribution year.

(4) In the discretion of the division, any nonprofit organization that elects to become liable for payments in lieu of contributions shall be required, within 30 days after the effective date of its election, to deposit money with the division. The amount of the deposit shall be determined in accordance with the provisions of Subsection (4).

(a) The amount of the deposit required by Subsection (4) shall be equal to 1% of the organization's total wages paid for employment as defined in Section 35A-4-204 for the four calendar quarters immediately preceding the effective date of the election, or the biennial anniversary of the effective date of election, whichever date shall be most recent and applicable. If the nonprofit organization did not pay wages in each of these four calendar quarters, the amount of the deposit shall be as determined by the division.

(b) (i) Any deposit of money in accordance with Subsection (4) shall be retained by the division in an escrow account until liability under the election is terminated, at which time it shall be returned to the organization, less any deductions as provided in Subsection (4).

(ii) The division may deduct from the money deposited under Subsection (4) by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in Subsection (2)(f).

(iii) The division shall require the organization within 30 days following any deduction from a money deposit under the provisions of Subsection (4) to deposit sufficient additional money to make whole the organization's deposit at the prior level.

(iv) The division may, at any time, review the adequacy of the deposit made by any organization. If, as a result of this review, the division determines that an adjustment is necessary, it shall require the organization to make additional deposit within 30 days of written notice of the division's determination or shall return to it any portion of the deposit the division no longer considers necessary, as [~~deemed~~] considered appropriate.

(c) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under Subsection (4), the division may terminate the organization's election to make payments in lieu of contributions.

(d) (i) Termination under Subsection (4)(c) shall continue for not less than the four-consecutive-calendar-quarter period beginning with the quarter in which the termination becomes effective.

(ii) The division may extend for good cause the applicable filing, deposit, or adjustment period by not more than 60 days.

(5) Each employer liable for payments in lieu of contributions shall pay to the division for the fund the amount of regular benefits plus the amount of 1/2 of extended benefits paid that are attributable to service in the employ of the employer. If benefits paid to an individual are based on wages paid by more than one employer and one or more of these employers are liable for payments in lieu of contributions, the amount payable to the fund by each employer liable for the payments shall be determined in accordance with the provisions of Subsection (5)(a) or (b).

(a) If benefits paid to an individual are based on wages paid by one or more employers who are liable for payments in lieu of contributions and on wages paid by one or more employers who are liable for contributions, the amount of benefits payable by each employer that is liable for payments in lieu of contributions shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by such employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(b) If benefits paid to an individual are based on wages paid by two or more employers who are liable for payments in lieu of contributions, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base-period wages paid to the individual by the employer bear to the total base-period wages paid to the individual by all of the individual's base-period employers.

(6) (a) Two or more employers who have become liable for payments in lieu of contributions, in accordance with the provisions of this section and Subsection 35A-4-204(2)(d), may file a joint application to the division for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of these employers. Each application shall identify and authorize a group representative to act as the group's agent for the purpose of this Subsection (6).

(b) Upon approval of the application, the division shall establish a group account for these employers effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. This account shall remain in effect for not less than two contribution years and thereafter until terminated at the discretion of the division or upon application by the group.

(c) Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group.

(d) The department shall prescribe rules, with respect to applications for establishment, maintenance, and termination of group accounts authorized by this Subsection (6), for addition of new members to, and withdrawal of active members from, these accounts, for the determination of the amounts that are payable under this Subsection (6) by members of the group, and the time and manner of these payments.

(7) (a) An employing unit that acquires a nonprofit organization or substantially all the assets

of a nonprofit organization that has elected reimbursable coverage as defined in Subsection (1), in accordance with rules made by the commission, shall be given the subject date of the transferring nonprofit organization, provided the transferring nonprofit organization ceases to operate as an employing unit at the point of acquisition.

(b) The acquiring entity shall reimburse the Unemployment Compensation Fund for the transferring nonprofit organization's share of any unreimbursed benefits paid to former employees of the transferring nonprofit organization.

Section 3. Section **35A-4-312** is amended to read:

35A-4-312. Records.

(1) Each employing unit shall keep true and accurate work records containing any information the department may prescribe by rule. The records shall be open to inspection and subject to being copied by the division or its authorized representatives at any reasonable time and as often as may be necessary. The employing unit shall make the records available in the state for three years after the calendar year in which the services were rendered.

(2) The division may require from any employing unit any sworn or unsworn reports with respect to persons employed by it that the division considers necessary for the effective administration of this chapter.

(3) [~~(a)~~] Except as provided in this section or in Sections 35A-4-103 and 35A-4-106, information obtained under this chapter or obtained from any individual may not be published or open to public inspection in any manner revealing the employing unit's or individual's identity.

[~~(b)~~] (4) (a) The information obtained by the division pursuant to this section may not be used in any court or admitted into evidence in an action or proceeding, except:

(i) in an action or proceeding arising out of this chapter;

(ii) in an action or proceeding by the Labor Commission to enforce the [~~workers' compensation coverage requirements~~] provisions of Title 34A, [~~Chapter 2 or 3~~] Utah Labor Code, or Chapters 21, 23, 28, and 40 of Title 34, Labor in General, provided the Labor Commission enters into a written agreement with the division pursuant to Subsection (6)(b); or

(iii) [~~where obtained~~] pursuant to the terms of a court order obtained pursuant to Subsection

63-2-202(7) and Section 63-2-207 of the Government Records Access and Management Act.

[~~(4)~~] (b) The information obtained by the division pursuant to this section shall be disclosed to:

[~~(a)~~] (i) a party to [~~a~~] an unemployment insurance hearing before an administrative law judge of the department or [~~the division~~] a review by the Workforce Appeals Board to the extent necessary for the proper presentation of the party's case; or

[~~(b)~~] (ii) an employer, upon request in writing for any information concerning claims for benefits with respect to the employer's former employees.

(5) The information obtained by the division pursuant to this section may be disclosed to:

(a) an employee of the department in the performance of the employee's duties in administering this chapter or other programs of the department;

(b) an employee of the Labor Commission for the purpose of carrying out the programs administered by the [~~department for the protection of workers in the workplace~~] Labor Commission;

(c) an employee of the governor's office and other state governmental agencies administratively responsible for statewide economic development, to the extent necessary for economic development policy analysis and formulation;

(d) an employee of [~~the department or~~] other governmental [~~agency~~] agencies that [~~is~~] are specifically identified and authorized by federal or state law to receive the information for the purposes stated in the law authorizing the employee of the agency to receive the information;

(e) an employee of a governmental agency or workers' compensation insurer to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against a workers' compensation program, public assistance funds, or the recovery of overpayments of workers' compensation or public assistance funds;

(f) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or in aid of a felony criminal investigation;

(g) an employee of the State Tax Commission or the Internal Revenue Service for the purposes of audit verification or simplification, state or federal tax compliance, verification of Standard Industry Codes, and statistics;

(h) an employee or contractor of the department[~~,~~] or an educational institution, or other governmental entity engaged in [~~programs providing job training to individuals~~] workforce investment and development activities pursuant to the Workforce Investment Act of 1998 for the purpose of coordinating services [~~and~~] with the department, evaluating the effectiveness of [~~the job training programs~~] those activities, and measuring performance; [~~or~~]

(i) an employee of the Department of Community and Economic Development, for the purpose of periodically publishing in the Directory of Business and Industry, the name, address, telephone number, number of employees by range, Standard Industrial Code, and type of ownership of Utah employers[~~.~~];

(j) the public for any purpose following a written waiver by all interested parties of their rights to nondisclosure; or

(k) an individual whose wage data has been submitted to the department by an employer, so long as no information other than the individual's wage data and the identity of the party who submitted the information is provided to the individual.

(6) Disclosure of private information pursuant to Subsection (4)(a)(ii) or Subsection (5), with the exception of Subsections (5)[~~(d)~~] (a) and (f), shall be made only if:

(a) the division determines that the disclosure will not have a negative effect on the willingness of employers to report wage and employment information or on the willingness of individuals to file claims for unemployment benefits; and

(b) the agency enters into a written agreement with the division in accordance with rules made by the department.

(7) The employees of a division of the department other than the Division of Workforce Information and Payment Services or an agency receiving private information from the division under this chapter are subject to the same requirements of privacy and confidentiality and to the same penalties for misuse or improper disclosure of the information as employees of the division. Use of private information obtained from the department by a person, or for a purpose other than one authorized in Subsection (4) or (5) violates Subsection 35A-4-104(4).

Section 4. Section **35A-4-405** is amended to read:

35A-4-405. Ineligibility for benefits.

An individual is ineligible for benefits or for purposes of establishing a waiting period:

(1) (a) For the week in which the claimant left work voluntarily without good cause, if so found by the division, and for each week thereafter until the claimant has performed services in bona fide, covered employment and earned wages for those services equal to at least six times the claimant's weekly benefit amount.

(b) A claimant shall not be denied eligibility for benefits if the claimant leaves work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

(c) [~~The~~] Using available information from employers and the claimant, the division shall[~~, in cooperation with the employer,~~] consider for the purposes of this chapter the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(d) Notwithstanding any other subsection of this section, a claimant who has left work voluntarily to accompany, follow, or join the claimant's spouse to or in a new locality does so without good cause for purposes of Subsection (1).

(2) (a) For the week in which the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which is deliberate, willful, or wanton and adverse to the employer's rightful interest, if so found by the division, and thereafter until the claimant has earned an amount equal to at least six times the claimant's weekly benefit amount in bona fide covered employment.

(b) For the week in which he was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with his work as shown by the facts, together with his admission, or as shown by his conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks. Wage credits shall be deleted from the claimant's base period, and are not available for this or any subsequent claim for benefits.

(3) (a) If the division finds that the claimant has failed without good cause to properly apply

for available suitable work, to accept a referral to suitable work offered by the employment office, or to accept suitable work offered by an employer or the employment office. The ineligibility continues until the claimant has performed services in bona fide covered employment and earned wages for the services in an amount equal to at least six times the claimant's weekly benefit amount.

(b) (i) A claimant shall not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances of such a nature that it would be contrary to equity and good conscience to impose a disqualification.

(ii) The division shall consider the purposes of this chapter, the reasonableness of the claimant's actions, and the extent to which the actions evidence a genuine continuing attachment to the labor market in reaching a determination of whether the ineligibility of a claimant is contrary to equity and good conscience.

(c) In determining whether or not work is suitable for an individual, the division shall consider the:

(i) degree of risk involved to his health, safety, and morals;

(ii) individual's physical fitness and prior training;

(iii) individual's prior earnings and experience;

(iv) individual's length of unemployment;

(v) prospects for securing local work in his customary occupation;

(vi) wages for similar work in the locality; and

(vii) distance of the available work from his residence.

(d) Prior earnings shall be considered on the basis of all four quarters used in establishing eligibility and not just the earnings from the most recent employer. The division shall be more prone to find work as suitable the longer the claimant has been unemployed and the less likely the prospects are to secure local work in his customary occupation.

(e) Notwithstanding any other provision of this chapter, no work is suitable, and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(i) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(ii) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(iii) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) For any week in which the division finds that his unemployment is due to a stoppage of work that exists because of a strike involving his grade, class, or group of workers at the factory or establishment at which he is or was last employed.

(a) If the division finds that a strike has been fomented by a worker of any employer, none of the workers of the grade, class, or group of workers of the individual who is found to be a party to the plan, or agreement to foment a strike, shall be eligible for benefits. However, if the division finds that the strike is caused by the failure or refusal of any employer to conform to the provisions of any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike shall not render the workers ineligible for benefits.

(b) If the division finds that the employer, his agent or representative has conspired, planned, or agreed with any of his workers, their agents or representatives to foment a strike, that strike shall not render the workers ineligible for benefits.

(c) A worker may receive benefits if, subsequent to his unemployment because of a strike as defined in this Subsection (4), he has obtained employment and has been paid wages of not less than the amount specified in Subsection 35A-4-401(4) and has worked as specified in Subsection 35A-4-403(1)(f). During the existence of the stoppage of work due to this strike the wages of the worker used for the determination of his benefit rights shall not include any wages he earned from the employer involved in the strike.

(5) (a) For each week with respect to which the claimant willfully made a false statement or representation or knowingly failed to report a material fact to obtain any benefit under the provisions of this chapter, and an additional 13 weeks for the first week the statement or representation was made or fact withheld and six weeks for each week thereafter; the additional weeks not to exceed 49 weeks.

(b) The additional period shall commence on the Sunday following the issuance of a

determination finding the claimant in violation of this Subsection (5).

(c) Each individual found in violation of this Subsection (5) shall repay to the division the amount of benefits the claimant actually received and, as a civil penalty, an amount equal to the benefits the claimant received by direct reason of his fraud. The penalty amount shall be regarded as any other penalty under this chapter. These amounts shall be collectible by civil action or warrant in the manner provided in Subsections 35A-4-305(3) and (5).

(d) A claimant is ineligible for future benefits or waiting week credit, and any wage credits earned by the claimant shall be unavailable for purposes of paying benefits, if any amount owed under this Subsection (5) remains unpaid.

(e) Determinations under this Subsection (5) shall be appealable in the manner provided by this chapter for appeals from other benefit determinations.

(6) For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or the United States. If the appropriate agency of the other state or of the United States finally determines that he is not entitled to those unemployment benefits, this disqualification does not apply.

(7) (a) For any week with respect to which he is receiving, has received, or is entitled to receive remuneration in the form of:

(i) wages in lieu of notice, or a dismissal or separation payment; or

(ii) accrued vacation or terminal leave payment.

(b) If the remuneration is less than the benefits that would otherwise be due, he is entitled to receive for that week, if otherwise eligible, benefits reduced as provided in Subsection 35A-4-401(3).

(8) (a) For any week in which the individual's benefits are based on service for an educational institution in an instructional, research, or principal administrative capacity and that begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual performs services in the first of those academic years or terms and if there is a contract or reasonable assurance that the individual will perform services

in that capacity for an educational institution in the second of the academic years or terms.

(b) For any week in which the individual's benefits are based on service in any other capacity for an educational institution, and that week begins during a period between two successive academic years or terms if the individual performs those services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If compensation is denied to any individual under this Subsection (8) and the individual was not offered an opportunity to perform the services for the educational institution for the second of the academic years or terms, the individual shall be entitled to a retroactive payment of compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this Subsection (8).

(c) With respect to any services described in Subsection (8)(a) or (b), compensation payable on the basis of those services shall be denied to an individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the individual will perform the services in the period immediately following the vacation period or holiday recess.

(d) With respect to services described in Subsection (8)(a) or (b), compensation payable on the basis of those services as provided in Subsection (8)(a), (b), or (c) shall be denied to an individual who performed those services in an educational institution while in the employ of an educational service agency. For purposes of this Subsection (8)(d), "educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing the services described in Subsection (8)(a) or (b) to an educational institution.

(e) Benefits based on service in employment, defined in Subsections 35A-4-204(2)(d) and (e) are payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this chapter.

(9) For any week that commences during the period between two successive sport seasons or similar periods if the individual performed any services, substantially all of which consists of participating in sports or athletic events or training or preparing to participate in the first of those

seasons or similar periods and there is a reasonable assurance that individual will perform those services in the later of the seasons or similar periods.

(10) (a) For any week in which the benefits are based upon services performed by an alien, unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or, was permanently residing in the United States under color of law at the time the services were performed, including an alien who is lawfully present in the United States as a result of the application of Subsection 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. 1182(d)(5)(A).

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.