

## Part 2 Definitions

### 35A-4-201 General definitions.

As used in this chapter:

- (1)
  - (a) Except as otherwise provided in Subsection (1)(b), "base period" means the first four of the last five completed calendar quarters next preceding the first day of the individual's benefit year with respect to any individual whose benefit year commences on or after January 5, 1986.
  - (b)
    - (i) For a claimant whose benefit year is effective on or after January 2, 2011, and who does not have sufficient wages in the first four of the last five completed calendar quarters to otherwise qualify for benefits under Subsection (1)(a), the base period is the last four completed calendar quarters.
    - (ii) Wages used to establish eligibility regardless of how the base period is calculated are not available for qualifying benefits in any subsequent benefit year.
- (2) "Benefit year" means the 52 consecutive week period beginning with the first week with respect to which an individual files for benefits and is found to have an insured status.
- (3) "Benefits" means the money payments payable to an individual as provided in this chapter with respect to the individual's unemployment.
- (4) "Calendar quarter" means the period of three consecutive months ending on March 31, June 30, September 30, or December 31, or the equivalent, as the department may by rule prescribe.
- (5) "Contribution" means the money payments required by this chapter to be made into the Unemployment Compensation Fund by any employing unit on account of having individuals in its employ.
- (6) "Division" means the Unemployment Insurance Division.
- (7) "Employment office" means a free public employment office or branch operated by this or any other state as a part of a state-controlled system of public employment offices or by a federal agency charged with the administration of an unemployment compensation program or free public employment offices.
- (8) "Extended benefits" has the meaning specified in Subsection 35A-4-402(7)(f).
- (9) "Fund" means the Unemployment Compensation Fund established by this chapter.
- (10) "Insured average annual wage" means on or before the 15th day of May of each year, the total wages of insured workers for the preceding calendar year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding calendar year as determined under the rules of the department calculated to two decimal places, disregarding any fraction of one cent.
- (11) "Insured average fiscal year wage" means on or before the 15th day of November of each year, the total wages of insured workers for the preceding fiscal year, divided by the average monthly number of insured workers, determined by dividing by 12 the total insured workers for the preceding fiscal year as determined under the rules of the department calculated to two decimal places, disregarding any fraction of one cent.
- (12) "Insured average fiscal year weekly wage" means the insured average fiscal year wage determined in Subsection (11), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.

- (13) "Insured average weekly wage" means the insured average annual wage determined in Subsection (10), divided by 52, calculated to two decimal places, disregarding any fraction of one cent.
- (14) "Insured status" means that an individual has, during the individual's base-period, performed services and earned wages in employment sufficient to qualify for benefits under Section 35A-4-403.
- (15) "Insured work" means employment for an employer, as defined in Section 35A-4-203.
- (16) "Monetary base period wage requirement" means 8% of the insured average fiscal year wage for the preceding fiscal year, for example, fiscal year 1990 for individuals establishing benefit years in 1991, rounded up to the next higher multiple of \$100.
- (17) "State" includes the Commonwealth of Puerto Rico, the Virgin Islands, and the District of Columbia.
- (18) "Tribal unit" means a subdivision, subsidiary, or business enterprise wholly owned by an American Indian tribe.
- (19) "Week" means the period or periods of seven consecutive calendar days as the department may prescribe by rule.

Amended by Chapter 277, 2010 General Session

Amended by Chapter 278, 2010 General Session

Amended by Chapter 282, 2010 General Session

### **35A-4-202 Employing units.**

As used in this chapter:

- (1)
  - (a) "Employing unit" means:
    - (i) any individual or type of organization that has or subsequent to January 1, 1935, had one or more individuals performing services for it within the state including any:
      - (A) partnership;
      - (B) association;
      - (C) trust;
      - (D) estate;
      - (E) joint stock company;
      - (F) insurance company;
      - (G) limited liability company;
      - (H) limited liability partnership;
      - (I) joint venture;
      - (J) corporation, whether domestic or foreign;
      - (K) the receiver, trustee in bankruptcy, trustee or successor of any entity listed in Subsections (1)(a)(i)(A) through (J);
      - (L) the legal representative of a deceased person; or
      - (M) a tribal unit; or
    - (ii) any properly and legally registered professional employer organization as defined by Section 31A-40-102.
  - (b) The department may adopt rules specific to a professional employer organization pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (c) All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state are considered to be performing services for a single employing unit for all the purposes of this chapter.

- (d) Each individual employed to perform or to assist in performing the work of any person in the service of an employing unit is considered to be engaged by the employing unit for all the purposes of this chapter whether the individual was hired or paid directly by the employing unit or by the person, provided the employing unit had actual or constructive knowledge of the work.
- (2) "Hospital" means an institution that is licensed, certified, or approved by the Department of Health as a hospital.
- (3) "Institution of higher education," for the purposes of this section, means an educational institution that:
  - (a)
    - (i) admits, as regular students only, individuals having a certificate of graduation from a high school or the recognized equivalent of a certificate;
    - (ii) is legally authorized in this state to provide a program of education beyond high school;
    - (iii) provides:
      - (A) an educational program for which it awards a bachelor's or higher degree;
      - (B) a program that is acceptable for full credit toward a bachelor's or higher degree;
      - (C) a program of postgraduate or postdoctoral studies; or
      - (D) a program of training to prepare students for gainful employment in a recognized occupation; and
    - (iv) is a public or other nonprofit institution.
  - (b) All colleges and universities in this state are institutions of higher education for purposes of this section.

Amended by Chapter 318, 2008 General Session

Amended by Chapter 382, 2008 General Session

**35A-4-203 Definition of employer -- Joint employers -- Franchisors.**

- (1) As used in this chapter "employer" means:
  - (a) an individual or employing unit which employs one or more individuals for some portion of a day during a calendar year, or that, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, under the act, to be an employer;
  - (b) an employing unit that, having become an employer under Subsection (1)(a), has not, under Sections 35A-4-303 and 35A-4-310, ceased to be an employer subject to this chapter; or
  - (c) for the effective period of its election under Subsection 35A-4-310(3), an employing unit that has elected to become fully subject to this chapter.
- (2)
  - (a) For purposes of this Subsection (2), "federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec. 105, of the federal government.
  - (b) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (3)
  - (a) As used in this Subsection (3):
    - (i) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
    - (ii) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
    - (iii) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.

- (b) For purposes of this chapter, a franchisor is not considered to be an employer of:
  - (i) a franchisee; or
  - (ii) a franchisee's employee.
- (c) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (3) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Amended by Chapter 370, 2016 General Session

**35A-4-204 Definition of employment.**

- (1) Subject to the other provisions of this section, "employment" means any service performed for wages or under any contract of hire, whether written or oral, express or implied, including service in interstate commerce, and service as an officer of a corporation.
- (2) "Employment" includes an individual's entire service performed within or both within and without this state if one of Subsections (2)(a) through (k) is satisfied.
  - (a) The service is localized in this state. Service is localized within this state if:
    - (i) the service is performed entirely within the state; or
    - (ii) the service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.
  - (b)
    - (i) The service is not localized in any state but some of the service is performed in this state and the individual's base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is in this state; or
    - (ii) the individual's base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.
  - (c)
    - (i)
      - (A) The service is performed entirely outside this state and is not localized in any state;
      - (B) the worker is one of a class of employees who are required to travel outside this state in performance of their duties; and
      - (C)
        - (I) the base of operations is in this state; or
        - (II) if there is no base of operations, the place from which the service is directed or controlled is in this state.
    - (ii) Services covered by an election under Subsection 35A-4-310(3), and services covered by an arrangement under Section 35A-4-106 between the division and the agency charged with the administration of any other state or federal unemployment compensation law, under which all services performed by an individual for an employing unit are considered to be performed entirely within this state, are considered to be employment if the division has approved an election of the employing unit for whom the services are performed, under which the entire service of the individual during the period covered by the election is considered to be insured work.
  - (d)

- (i) The service is performed in the employ of the state, a county, city, town, school district, or other political subdivision of the state, or in the employ of an Indian tribe or tribal unit or an instrumentality of any one or more of the foregoing which is wholly owned by the state or one of its political subdivisions or Indian tribes or tribal units if:
    - (A) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(7);
    - (B) the service is not excluded from employment by Section 35A-4-205; and
    - (C) as to any county, city, town, school district, or political subdivision of this state, or an instrumentality of the same or Indian tribes or tribal units, that service is either:
      - (I) required to be treated as covered employment as a condition of eligibility of employers in this state for Federal Unemployment Tax Act employer tax credit;
      - (II) required to be treated as covered employment by any other requirement of the Federal Unemployment Tax Act, as amended; or
      - (III) not required to be treated as covered employment by any requirement of the Federal Unemployment Tax Act, but coverage of the service is elected by a majority of the members of the governing body of the political subdivision or instrumentality or tribal unit in accordance with Section 35A-4-310.
  - (ii) Benefits paid on the basis of service performed in the employ of this state shall be financed by payments to the division instead of contributions in the manner and amounts prescribed by Subsections 35A-4-311(2)(a) and (4).
  - (iii) Benefits paid on the basis of service performed in the employ of any other governmental entity or tribal unit described in this Subsection (2) shall be financed by payments to the division in the manner and amount prescribed by the applicable provisions of Section 35A-4-311.
- (e) The service is performed by an individual in the employ of a religious, charitable, educational, or other organization, but only if:
- (i) the service is excluded from employment as defined in the Federal Unemployment Tax Act, 26 U.S.C. 3306(c)(8), solely by reason of Section 3306(c)(8) of that act; and
  - (ii) the organization had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not the weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.
- (f)
- (i) The service is performed outside the United States, except in Canada, in the employ of an American employer, other than service that is considered employment under the provisions of this Subsection (2) or the parallel provisions of another state's law if:
    - (A) the employer's principal place of business in the United States is located in this state;
    - (B) the employer has no place of business in the United States but is:
      - (I) an individual who is a resident of this state;
      - (II) a corporation that is organized under the laws of this state; or
      - (III) a partnership or trust in which the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state; or
    - (C) none of the criteria of Subsections (2)(f)(i)(A) and (B) is met but:
      - (I) the employer has elected coverage in this state; or
      - (II) the employer fails to elect coverage in any state and the individual has filed a claim for benefits based on that service under the law of this state.
  - (ii) "American employer" for purposes of this Subsection (2) means a person who is:
    - (A) an individual who is a resident of the United States;

- (B) a partnership if 2/3 or more of the partners are residents of the United States;
  - (C) a trust if all of the trustees are residents of the United States;
  - (D) a corporation organized under the laws of the United States or of any state;
  - (E) a limited liability company organized under the laws of the United States or of a state;
  - (F) a limited liability partnership organized under the laws of the United States or of any state;
  - or
  - (G) a joint venture if 2/3 or more of the members are individuals, partnerships, corporations, limited liability companies, or limited liability partnerships that qualify as American employers.
- (g) The service is performed:
- (i) by an officer or member of the crew of an American vessel on or in connection with the vessel; and
  - (ii) the operating office from which the operations of the vessel, operating on navigable waters within, or within and without, the United States, is ordinarily and regularly supervised, managed, directed, and controlled within this state.
- (h) A tax with respect to the service in this state is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or that, as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required to be covered under this chapter.
- (i)
- (i) Notwithstanding Subsection 35A-4-205(1)(p), the service is performed:
    - (A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages other than milk, or laundry or dry cleaning services, for the driver's principal; or
    - (B) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged on a full-time basis in the solicitation on behalf of and the transmission to the salesman's principal, except for sideline sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.
  - (ii) The term "employment" as used in this Subsection (2) includes services described in Subsection (2)(i)(i) performed only if:
    - (A) the contract of service contemplates that substantially all of the services are to be performed personally by the individual;
    - (B) the individual does not have a substantial investment in facilities used in connection with the performance of the services other than in facilities for transportation; and
    - (C) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.
- (j) The service is performed by an individual in agricultural labor as defined in Section 35A-4-206.
- (k) The service is domestic service performed in a private home, local college club, or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more during any calendar quarter in either the current calendar year or the preceding calendar year to individuals employed in the domestic service.
- (3) Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the division that:

- (a) the individual is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as that involved in the contract of hire for services; and
  - (b) the individual has been and will continue to be free from control or direction over the means of performance of those services, both under the individual's contract of hire and in fact.
- (4) If an employer, consistent with a prior declaratory ruling or other formal determination by the division, has treated an individual as independently established and it is later determined that the individual is in fact an employee, the department may by rule provide for waiver of the employer's retroactive liability for contributions with respect to wages paid to the individual prior to the date of the division's later determination, except to the extent the individual has filed a claim for benefits.

Amended by Chapter 22, 2006 General Session

**35A-4-205 Exempt employment.**

- (1) If the services are also exempted under the Federal Unemployment Tax Act, as amended, employment does not include:
- (a) service performed in the employ of the United States Government or an instrumentality of the United States immune under the United States Constitution from the contributions imposed by this chapter, except that, to the extent that the Congress of the United States shall permit, this chapter shall apply to those instrumentalities and to services performed for the instrumentalities to the same extent as to all other employers, employing units, individuals and services; provided, that if this state is not certified for any year by the Secretary of Labor under Section 3304 of the Federal Internal Revenue Code of 1954, 26 U.S.C. 3304, the payments required of the instrumentalities with respect to that year shall be refunded by the division from the fund in the same manner and within the same period as is provided in Subsection 35A-4-306(5) with respect to contributions erroneously collected;
  - (b) service performed by an individual as an employee or employee representative as defined in Section 1 of the Railroad Unemployment Insurance Act, 45 U.S.C., Sec. 351;
  - (c) agricultural labor as defined in Section 35A-4-206;
  - (d) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in Subsection 35A-4-204(2)(k);
  - (e)
    - (i) service performed in the employ of a school, college, or university, if the service is performed:
      - (A) by a student who is enrolled and is regularly attending classes at that school, college, or university; or
      - (B) by the spouse of the student, if the spouse is advised, at the time the spouse commences to perform that service, that the employment of that spouse to perform that service is provided under a program to provide financial assistance to the student by the school, college, or university, and that the employment will not be covered by any program of unemployment insurance;
    - (ii) service performed by an individual who is enrolled at a nonprofit or public educational institution, that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at the institution, that combines academic instruction with work experience, if the service is an integral part of the program and the institution has so certified to the employer, but this Subsection (1) does

not apply to service performed in a program established for or on behalf of an employer or group of employers;

- (iii) service performed in the employ of a hospital, if the service is performed by a patient of the hospital; or
- (iv) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved under state law;
- (f) service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's parent;
- (g) for the purposes of Subsections 35A-4-204(2)(d) and (e), service performed:
  - (i) in the employ of:
    - (A) a church or convention or association of churches; or
    - (B) an organization that is operated primarily for religious purposes and that is operated, supervised, controlled, or principally supported by a church or convention or association of churches;
  - (ii) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
  - (iii) in the employ of a governmental entity or Indian tribe referred to in Subsection 35A-4-204(2) (d) if the service is performed by an individual in the exercise of the individual's duties:
    - (A) as an elected official;
    - (B) as a member of a legislative body or the judiciary;
    - (C) as a member of the National Guard or Air National Guard;
    - (D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;
    - (E) in an advisory position or a policymaking position the performance of the duties of which ordinarily does not require more than eight hours per week; or
    - (F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;
  - (iv) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age, physical or mental deficiency, injury, or providing a remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving that rehabilitation or remunerative work;
  - (v) as part of an unemployment work-relief or work-training program, assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision of the state or of an Indian tribe, by an individual receiving the work-relief or work-training; and
  - (vi) by an inmate of a custodial or penal institution;
- (h) casual labor not in the course of the employing unit's trade or business;
- (i) service performed in any calendar quarter in the employ of any organization exempt from income tax under Subsection 501(a), Internal Revenue Code, other than an organization described in Subsection 401(a) or Section 521 Internal Revenue Code, if the remuneration for the service is less than \$50;
- (j) service performed in the employ of a foreign government, including service as a consular or other officer, other employee, or a nondiplomatic representative;
- (k) service performed in the employ of an instrumentality wholly owned by a foreign government:

- (i) if the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and
  - (ii) if the division finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government with respect to whose instrumentality exemption is claimed grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;
  - (l) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all the service performed by the individual for that person is performed for remuneration solely by way of commission;
  - (m) 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;
  - (n) service covered by an arrangement between the division and the agency charged with the administration of any other state or federal unemployment compensation law under which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are considered to be performed entirely within the agency's state or under the federal law;
  - (o) service performed by lessees engaged in metal mining under lease agreements, unless the individual lease agreement, or the practice in actual operation under the agreement, is such as would constitute the lessees' employees of the lessor at common law; and
  - (p) services as an outside salesman paid solely by way of commission if the services were performed outside of all places of business of the enterprises for which the services are performed except:
    - (i) as provided in Subsection 35A-4-204(2)(i); or
    - (ii) if the services would constitute employment at common law.
- (2)
- (a) "Included and excluded service" means if the services performed during 1/2 or more of any pay period by an individual for the person employing the individual constitute employment, all the services of the individual for the period are considered to be employment.
  - (b) If the services performed during more than 1/2 of any pay period by an individual for the person employing the individual do not constitute employment, then none of the services of the individual for the period are considered to be employment.
  - (c) As used in this Subsection (2), "pay period" means a period of not more than 31 consecutive days for which payment of remuneration is ordinarily made to the individual by the person employing the individual.
- (3) The following services are exempt employment under the Utah Employment Security Act:
- (a) service performed by an individual as a licensed real estate agent or salesman, if all the service performed by the individual is performed for remuneration solely by way of commission;
  - (b) service performed by an individual as a licensed securities agent or salesman or a registered representative, if all the service performed by the individual is performed for remuneration solely by way of commission;
  - (c) service performed by an individual as a telephone survey conductor or pollster if:
    - (i) the individual does not perform the service on the principal's premises; and
    - (ii) the individual is paid for the service solely on a piece-rate or commission basis; and
  - (d) service performed by a nurse licensed or registered under Title 58, Chapter 31b, Nurse Practice Act, if:
    - (i) the service of the nurse is performed in the home of the patient;

- (ii) substantially all of the nurse's compensation for the service is from health insurance proceeds; and
- (iii) no compensation or fee for the service is paid to an agency or company as a business furnishing nursing services.

Amended by Chapter 22, 2006 General Session

**35A-4-206 Agricultural labor.**

- (1) "Agricultural labor" means any remunerated service performed after December 31, 1971:
  - (a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;
  - (b) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;
  - (c) in connection with:
    - (i) the production or harvesting of any commodity defined as an agricultural commodity in Subsection 15(g) of the Federal Agricultural Marketing Act, as amended, 46 Stat. 1550, Sec. 3; 12 U.S.C. 1141j;
    - (ii) the ginning of cotton; or
    - (iii) the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used primarily for supplying and storing water for farming purposes;
  - (d) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than 1/2 of the commodity with respect to which the service is performed; or
  - (e) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in Subsection (1)(d), but only if the operators produced more than 1/2 of the commodity with respect to which the service is performed.
- (2)
  - (a) Subsections (1)(d) and (e) are not applicable with respect to service:
    - (i) performed in connection with commercial canning or commercial freezing;
    - (ii) in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or
    - (iii) on a farm operated for profit if the service is not in the course of the employer's trade or business.
  - (b) As used in Subsection (1), "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.
- (3)
  - (a) Services performed by an individual in agricultural labor are considered employment when the service is performed for a person who:
    - (i) during any calendar quarter in either the current or the preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or

- (ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.
- (b) For the purposes of this Subsection (3), any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person is treated as an employee of the crew leader:
  - (i) if the crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act;
  - (ii) if substantially all the members of the crew operate or maintain tractors, mechanized harvesting, or crop dusting equipment, or any other mechanized equipment, that is provided by the crew leader; and
  - (iii) if the individual is not an employee of the other person within the meaning of Section 35A-4-204.
- (c) For the purposes of this Subsection (3), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of the crew leader under Subsection (3)(b)(iii):
  - (i) the other person and not the crew leader is treated as the employer of the individual; and
  - (ii) the other person is treated as having paid cash remuneration to the individual in an amount equal to the amount of cash remuneration paid to the individual by the crew leader, either on the individual's own behalf or on behalf of the other person, for the service in agricultural labor performed for the other person.
- (d) For the purposes of this Subsection (3), "crew leader" means an individual who:
  - (i) furnishes individuals to perform service in agricultural labor for any other person;
  - (ii) pays, either on the individual's own behalf or on behalf of the other person, the individuals so furnished by the individual's for the service in agricultural labor performed by them; and
  - (iii) has not entered into a written agreement with the other person under which the individual is designated as an employee of the other person.

Amended by Chapter 375, 1997 General Session

**35A-4-207 Unemployment.**

- (1)
  - (a) An individual is "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full-time work if the wages payable to him with respect to the week are less than his weekly benefit amount.
  - (b) The department shall prescribe rules applicable to unemployed individuals making distinctions in the procedure as to total unemployment, part-total unemployment, partial unemployment of individuals attached to their regular jobs, and other forms of short-time work, as the department considers necessary.
- (2) The department may by rule prescribe in the case of individuals working on a regular attachment basis the existence of unemployment for periods longer than a week if:
  - (a) it is a period of less than full-time work;
  - (b) insofar as possible the loss of wages required as a condition of being considered unemployed in those periods shall be such as to allow comparable benefits, for comparable loss in wages, to those individuals working less than full-time in each week as would be payable on a weekly claim period basis to those individuals working full-time and not at all in alternate weeks.
- (3) Unemployment shall in no case be measured on a basis of longer than a four-week period.

Renumbered and Amended by Chapter 240, 1996 General Session

**35A-4-208 Wages defined.**

- (1) As used in this chapter, "wages" means wages as currently defined by Section 3306(b), Internal Revenue Code of 1986, with modifications, subtractions, and adjustments provided in Subsections (2), (3), and (4).
- (2) For purposes of Section 35A-4-303, "wages" does not include that amount paid to an individual by an employer with respect to employment subject to this chapter that is in excess of 75% of the insured average fiscal year wage, rounded to the next higher multiple of \$100, during the fiscal year prior to the calendar year of the payment to the individual by the individual's employer on or after January 1, 1988.
- (3) For the purpose of determining whether the successor employer during the calendar year has paid remuneration to an individual with respect to employment equal to the applicable taxable wages as defined by this Subsection (3), any remuneration with respect to employment paid to the individual by a predecessor employer during the calendar year and prior to an acquisition is considered to have been paid by a successor employer if:
  - (a) the successor employer during any calendar year acquires the unemployment experience within the meaning of Subsection 35A-4-303(8) or 35A-4-304(3) of a predecessor employer; and
  - (b) immediately after the acquisition employs in the successor employer's trade or business an individual who immediately prior to the acquisition was employed in the trade or business of the predecessor.
- (4) The remuneration paid to an individual by an employer with respect to employment in another state, upon which contributions were required of the employer under the unemployment compensation law of that state, shall be included as a part of the taxable wage base defined in this section.
- (5) As used in this chapter, "wages" does not include:
  - (a) the amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for a payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer that makes provision for:
    - (i)
      - (A) the employer's employees generally;
      - (B) the employer's employees generally and their dependents;
      - (C) a class or classes of the employer's employees; or
      - (D) a class or classes of the employer's employees and their dependents; and
    - (ii) on account of:
      - (A) sickness or accident disability, but, in the case of payments made to an employee or any of the employee's dependents, Subsection (5)(a)(i) excludes from wages only payments that are received under a workers' compensation law;
      - (B) medical or hospitalization expenses in connection with sickness or accident disability; or
      - (C) death;
  - (b) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for the employer;

- (c) the payment by an employing unit, without deduction from the remuneration of the individual in its employ, of the tax imposed upon an individual in its employ under Section 3101, Internal Revenue Code, with respect to domestic services performed in a private home of the employer or for agricultural labor;
- (d) any payment made to, or on behalf of, an employee or the employee's beneficiary:
  - (i) from or to a trust described in Section 401(a), Internal Revenue Code, that is exempt from tax under Section 501(a), Internal Revenue Code, at the time of the payment, except for a payment made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust;
  - (ii) under or to an annuity plan that at the time of the payment is a plan described in Section 403(a), Internal Revenue Code;
  - (iii) under a simplified employee pension, as defined in Section 408(k)(l), Internal Revenue Code, other than any contributions described in Section 408(k)(6), Internal Revenue Code;
  - (iv) under or to an annuity contract described in Section 403(b), Internal Revenue Code, except for a payment for the purchase of the contract that is made by reason of a salary reduction agreement whether or not the agreement is evidenced by a written instrument;
  - (v) under or to an exempt governmental deferred compensation plan as defined in Section 3121(v)(3), Internal Revenue Code; or
  - (vi) to supplement pension benefits under a plan or trust described in Subsections (5)(d)(i) through (v) to take into account a portion or all of the increase in the cost of living, as determined by the Secretary of Labor, since retirement, but only if the supplemental payments are under a plan that is treated as a welfare plan under Section 3(2)(B)(ii) of the Employee Income Security Act of 1974; or
- (e) any payment made to, or on behalf of, an employee or the employee's beneficiary under a cafeteria plan within the meaning of Section 125, Internal Revenue Code, if the payment would not be treated as wages under a cafeteria plan.

Amended by Chapter 12, 2005 General Session