

Part 4 Benefits and Eligibility

35A-4-401 Benefits -- Weekly benefit amount -- Computation of benefits -- Department to prescribe rules -- Notification of benefits -- Bonuses.

- (1)
 - (a) Benefits are payable from the fund to an individual who is or becomes unemployed and eligible for benefits.
 - (b) All benefits shall be paid through the employment offices or other agencies designated by the division in accordance with rules the department may prescribe in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (2)
 - (a)
 - (i) Except as otherwise provided in Subsection (2)(a)(ii), an individual's "weekly benefit amount" is an amount equal to 1/26th, disregarding any fraction of \$1, of the individual's total wages for insured work paid during that quarter of the base period in which the total wages were highest.
 - (ii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, an individual's weekly benefit amount is an amount equal to 1/26th minus \$5, disregarding any fraction of \$1, of the individual's total wages for insured work paid during that quarter of the base period in which the total wages were highest.
 - (b)
 - (i) The weekly benefit amount may not exceed 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year, disregarding any fraction of \$1.
 - (ii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, the weekly benefit amount may not exceed 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year minus \$5, disregarding any fraction of \$1.
 - (c)
 - (i) Except as otherwise provided in Subsections (2)(c)(ii) and (iii), the "weekly benefit amount" of an individual who is receiving, or who is eligible to receive, based upon the individual's previous employment, a pension, which includes a governmental, Social Security, or other pension, retirement or disability retirement pay, under a plan maintained or contributed to by a base-period employer is the "weekly benefit amount" which is computed under this section less 100% of the retirement benefits, that are attributable to a week, disregarding any fraction of \$1.
 - (ii) With respect to an individual whose benefit year begins after July 1, 2004, and ends on or before the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, the "weekly benefit amount" of that individual, who is receiving or who is eligible to receive Social Security benefits based upon the individual's previous employment, is the "weekly benefit amount" which is computed under this section less 50% of the individual's Social Security benefits that are attributable to the week, but not below zero.
 - (iii) With respect to an individual whose benefit year begins after the termination of any payable week under Pub. L. No. 111-5, Sec. 2002 as amended, this Subsection (2)(c) and Subsection (2)(d) do not apply to Social Security benefits an individual is receiving or

is eligible to receive as they are not considered retirement benefits for purposes of those subsections.

(d)

(i)

(A) The weekly benefit amount and the potential benefits payable to an individual who, subsequent to the commencement of the individual's benefit year, becomes or is determined to be eligible to receive retirement benefits or increased retirement benefits, shall be recomputed effective with the first calendar week during the individual's benefit year with respect to which the individual is eligible to receive retirement benefits or increased retirement benefits.

(B) The new weekly benefit amount shall be determined under this Subsection (2).

(ii) As recomputed the total benefits potentially payable, commencing with the effective date of the recomputation, shall be equal to the recomputed weekly benefit amount times the quotient obtained by dividing the potential benefits unpaid prior to the recomputation by the initial weekly benefit amount, disregarding fractions.

(3)

(a) An eligible individual who is unemployed in any week shall be paid with respect to that week a benefit in an amount equal to the individual's weekly benefit amount less that part of the individual's wage payable to the individual with respect to that week that is in excess of 30% of the individual's weekly benefit amount.

(b) The resulting benefit payable shall disregard any fraction of \$1.

(c) For the purpose of this Subsection (3) "wages" does not include a grant paid to the individual as public assistance.

(4)

(a) An otherwise eligible individual is entitled during a benefit year to a total amount of benefits determined by multiplying the individual's weekly benefit amount times the individual's potential duration.

(b) To determine an individual's potential duration, the individual's total wages for insured work paid during the base period is multiplied by 27%, disregarding any fraction of \$1, and divided by the individual's weekly benefit amount, disregarding any fraction, but not less than 10 nor more than 26.

(5)

(a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may by rule prescribe:

(i) that the existence of unemployment, eligibility for benefits, and the amount of benefits payable shall be determined in the case of an otherwise eligible individual who, within a week or other period of unemployment, is separated from or secures work on a regular attachment basis for that portion of the week or other period of unemployment occurring before or after separation from or securing of work; and

(ii) in the case of an individual working on a regular attachment basis, eligibility for benefits and the amount of benefits payable for periods of unemployment longer than a week.

(b) The rules made shall be reasonably calculated to secure general results substantially similar to those provided by this chapter with respect to weeks of unemployment.

(6) The division shall, in all cases involving actual or potential disqualifying issues and prior to the payment of benefits to an eligible individual, notify the individual's most recent employer of the eligibility determination.

(7) Upon written request of an individual made under rules of the department in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all remuneration for insured work

paid to the individual during the individual's period in the form of a bonus or lump-sum payment shall, for benefit purposes, be apportioned to the calendar quarters in which the remuneration was earned.

Amended by Chapter 255, 2013 General Session

35A-4-402 Extended benefits.

- (1) Except when the result would be inconsistent with the other provisions of this section or the rules of the department, the provisions of this chapter that apply to claims for or payments of regular benefits apply to claims for and payments of extended benefits.
- (2) An individual is eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the division finds that with respect to that week the individual:
 - (a) is an "exhaustee" as defined in this section;
 - (b) has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and
 - (c) has satisfied the federal requirements as adopted by state regulation for the receipt of extended benefits.
- (3) The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period is an amount equal to the weekly benefit amount payable to him during his applicable benefit year.
- (4) The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year is the lesser of the following amounts:
 - (a) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;
 - (b) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year; or
 - (c) 39 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year, reduced by the total amount of regular benefits which were paid or deemed paid to him under this chapter with respect to the benefit year.
- (5) Notwithstanding any other provision of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced, but not below zero, by the product of the number of weeks for which the individual received any amounts as trade adjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.
- (6)
 - (a) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator, the division shall make an appropriate public announcement.
 - (b) Computations required by Subsection (7)(f) shall be made by the division, in accordance with regulations prescribed by the United States Secretary of Labor.
- (7) As used in this section:
 - (a) "Extended benefit period" means a period that:
 - (i) begins with the third week after a week for which there is a state "on" indicator; and
 - (ii) ends with either:

- (A) the third week after the first week for which there is a state "off" indicator; or
 - (B) after the 13th consecutive week of duration of that period, whichever occurs later; however, no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.
- (b) There is a "state 'on' indicator" for this state for a week if the division determines, in accordance with the regulations of the Secretary of Labor, that for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter equaled or exceeded 120% of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years and that the rate equaled or exceeded 4% until the weeks beginning after September 25, 1982, at which time it will become 5%.
 - (c) There is a "state 'off' indicator" for this state for a week if the division determines, in accordance with the regulations of the Secretary of Labor, that for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment, not seasonally adjusted, under this chapter was less than 120% of the average of the rates for the corresponding 13-week period ending in each of the preceding two calendar years or that the rate was less than 4% until the weeks beginning after September 25, 1982, at which time it will become 5%.
 - (d) "Rate of insured unemployment," for purposes of Subsections (7)(b) and (7)(c), means the percentage derived by dividing the average weekly number of individuals filing claims for regular compensation in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the division on the basis of its reports to the Secretary of Labor, by the average monthly employment covered under this chapter for the first four of the most recent six completed calendar quarters ending before the end of the 13-week period.
 - (e) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen under 5 U.S.C. Chapter 85, other than extended benefits.
 - (f) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen under 5 U.S.C. Chapter 85, payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.
 - (g) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within the extended benefit period, any weeks thereafter which begin in that period.
 - (h) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:
 - (i) has received, prior to that week, all of the regular benefits that were available to him under this chapter or any other state law, including dependent's allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. Chapter 85, in his current benefit year that includes such week. An individual, for the purposes of this subsection, shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages or employment, or both, that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or
 - (ii) has no, or insufficient, wages or employment or both on the basis of which he could establish a new benefit year that would include that week, his benefit year having expired prior to that week; and

- (iii) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, or any other federal laws as are specified in regulations issued by the Secretary of Labor and has not received, and is not seeking, unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada. However, if that person is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under that law he is considered an "exhaustee," provided that the reference in this subsection to the Virgin Islands shall be inapplicable effective on the day on which the U. S. Secretary of Labor approves under Section 3304 (a) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a), an unemployment compensation law submitted to the Secretary by the Virgin Islands for approval.
- (i) "State law" means the unemployment insurance law of any state, approved by the Secretary of Labor under Section 3304 of the Internal Revenue Code of 1954, 26 U.S.C. 3304(a).

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-403 Eligibility of individual -- Conditions -- Furnishing reports -- Weeks of employment -- Successive benefit years.

- (1) Except as provided in Subsections (2) and (3), an unemployed individual is eligible to receive benefits for any week if the division finds:
 - (a) the individual has made a claim for benefits for that week in accordance with rules the department may prescribe, except as provided in Subsection (4);
 - (b) the individual has registered for work with the department and acted in a good faith effort to secure employment during each and every week for which the individual made a claim for benefits under this chapter in accordance with rules the department may prescribe, except as provided in Subsection (4);
 - (c) the individual is able to work and is available for work during each and every week for which the individual made a claim for benefits under this chapter;
 - (d) the individual has been unemployed for a waiting period of one week for each benefit year, but a week may not be counted as a week of unemployment for the purpose of this Subsection (1)(d):
 - (i) unless it occurs within the benefit year that includes the week for which the individual claims benefits;
 - (ii) if benefits have been paid for the claim; or
 - (iii) unless the individual was eligible for benefits for the week as provided in this section and Sections 35A-4-401 and 35A-4-405, except for the requirement of this Subsection (1)(d);
 - (e)
 - (i) the individual has furnished the division separation and other information the department may prescribe by rule, or proves to the satisfaction of the division that the individual had good cause for failing to furnish the information;
 - (ii) if an employer fails to furnish reports concerning separation and employment as required by this chapter and rules adopted under the chapter, the division shall, on the basis of information it obtains, determine the eligibility and insured status of an individual affected by that failure and the employer is not considered to be an interested party to the determination;
 - (f)

- (i) the individual's base-period wages were at least 1-1/2 times the individual's wages for insured work paid during that quarter of the individual's base period in which the individual's wages were highest; or
 - (ii) for any claimant whose benefit year is effective on or before January 1, 2011, the individual shows to the satisfaction of the division that the individual worked at least 20 weeks in insured work during the individual's base-period and earned wages of at least 5% of the monetary base-period wage requirement each week, rounded to the nearest whole dollar, provided that the individual's total base-period wages were not less than the monetary base-period wage requirement as defined in Section 35A-4-201; and
- (g)
- (i) the individual applying for benefits in a successive benefit year has had subsequent employment since the effective date of the preceding benefit year equal to at least six times the individual's weekly benefit amount, in insured work; and
 - (ii) the individual's total wages and employment experience in the individual's base period meet the requirements specified in Subsection (1)(f).
- (2)
- (a) For purposes of this Subsection (2), "suitable employment" means:
- (i) work of a substantially equal or higher skill level than the individual's past adversely affected employment as defined for purposes of the Trade Act of 1974; and
 - (ii) wages for that work at not less than 80% of the individual's average weekly wage as determined for purposes of the Trade Act of 1974.
- (b)
- (i) An individual in training with the approval of the division is not ineligible to receive benefits by reason of nonavailability for work, failure to search for work, refusal of suitable work, failure to apply for or to accept suitable work, or not having been unemployed for a waiting period of one week for any week the individual is in the approved training.
 - (ii) For purposes of Subsection (2)(b)(i), the division shall approve any mandatory apprenticeship-related training.
- (c) Notwithstanding any other provision of this chapter, the division may not deny an otherwise eligible individual benefits for any week:
- (i) because the individual is in training approved under Section 236 (a)(1) of the Trade Act of 1974, 19 U.S.C. 2296(a);
 - (ii) for leaving work to enter training described in Subsection (2)(c)(i) if the work left is not suitable employment; or
 - (iii) because of the application to any such week in training of provisions in this law or any applicable federal unemployment compensation law relating to availability for work, active search for work, or refusal to accept work.
- (3) An individual located in a foreign country for three or more days of a week and who is otherwise eligible for benefits is only eligible to receive benefits for that week if:
- (a) the individual is legally authorized to work in the foreign country; and
 - (b) the state and the foreign country have entered into a reciprocal agreement concerning the payment of unemployment benefits.
- (4) The department may, by rule, waive or alter either or both of the requirements of Subsections (1)(a) and (b) as to:
- (a) individuals attached to regular jobs;
 - (b) a disaster in Utah as declared by the president of the United States or by the state's governor after giving due consideration to factors directly associated with the disaster, including:

- (i) the disaster's impact on employers and their ability to employ workers in the affected area in Utah;
 - (ii) the disaster's impact on claimants and their ability to comply with filing requirements in the affected area in Utah; and
 - (iii) the magnitude of the disaster and the anticipated time for recovery; and
- (c) cases or situations when it finds that compliance with the requirements would be oppressive, or would be inconsistent with the purposes of this chapter, as long as the rule does not conflict with Subsection 35A-4-401(1).

Amended by Chapter 371, 2014 General Session

35A-4-404 Eligibility for benefits after receiving workers' compensation or occupational disease compensation.

- (1) Notwithstanding any requirements involving base periods or other benefit compensational factors provided for under this chapter a person who has had a continuous period of sickness or injury for which the person was compensated under the workers' compensation or the occupational disease laws of this state or under federal law shall, if the person is otherwise eligible, thereafter be entitled to receive the unemployment compensation benefits the person would have been entitled to receive under the law and regulations based on the person's potential eligibility at the time of the person's last employment.
- (2) Benefit rights are not preserved under this section unless the individual:
- (a) files a claim for benefits with respect to a week no later than 90 days after the end of the continuous period of sickness or injury; and
 - (b) files the claim with respect to a week within the 36-month period immediately following the commencement of such period of sickness or injury.

Amended by Chapter 297, 2011 General Session

35A-4-405 Ineligibility for benefits.

Except as otherwise provided in Subsection (5), 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 may not be denied eligibility for benefits if the claimant leaves work under circumstances where it would be contrary to equity and good conscience to impose a disqualification.
 - (c) Using available information from employers and the claimant, the division shall 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) Except as provided in Subsection (1)(e), a claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so without good cause for purposes of this Subsection (1).

- (e) A claimant who has left work voluntarily to accompany or follow the claimant's spouse to a new locality does so with good cause for purposes of this Subsection (1) and is eligible to receive benefits if:
 - (i) the claimant's spouse is a member of the United States armed forces and the claimant's spouse has been relocated by a full-time assignment scheduled to last at least 180 days while on:
 - (A) active duty as defined in 10 U.S.C. Sec. 101(d)(1); or
 - (B) active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6);
 - (ii) it is impractical as determined by the division for the claimant to commute to the previous work from the new locality;
 - (iii) the claimant left work voluntarily no earlier than 15 days before the scheduled start date of the spouse's active-duty assignment; and
 - (iv) the claimant otherwise meets and follows the eligibility and reporting requirements of this chapter, including registering for work with the division or, if the claimant has relocated to another state, the equivalent agency of that state.
- (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 the claimant was discharged for dishonesty constituting a crime or any felony or class A misdemeanor in connection with the claimant's work as shown by the facts, together with the claimant's admission, or as shown by the claimant's conviction of that crime in a court of competent jurisdiction and for the 51 next following weeks.
 - (c) 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)
 - (i) 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.
 - (ii) 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 may not be denied eligibility for benefits for failure to apply, accept referral, or accept available suitable work under circumstances where 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 work is suitable for an individual, the division shall consider the:
 - (i) degree of risk involved to the individual's 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 the individual's customary occupation;
 - (vi) wages for similar work in the locality; and
 - (vii) distance of the available work from the individual's 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 may 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 the claimant's unemployment is due to a stoppage of work that exists because of a strike involving the claimant's grade, class, or group of workers at the factory or establishment at which the claimant 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 any law of the state or of the United States pertaining to hours, wages, or other conditions of work, the strike may not render the workers ineligible for benefits.
- (b) If the division finds that the employer, the employer's agent or representative has conspired, planned, or agreed with any of the employer's workers, their agents or representatives to foment a strike, that strike may not render the workers ineligible for benefits.
- (c) A worker may receive benefits if, subsequent to the worker's unemployment because of a strike as defined in this Subsection (4), the worker 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 may not include any wages the worker earned from the employer involved in the strike.
- (5)
- (a) For each week a claimant obtains a benefit under this chapter by willfully making a false statement or representation or by knowingly failing to report a material fact, and a penalty of no more than 49 additional weeks as follows:
- (i) 13 weeks for the first week the false statement or representation was made or fact withheld to receive a benefit; and
 - (ii) six weeks for each additional week the false statement or representation was made or fact withheld to receive a benefit.
- (b) The additional penalty weeks shall begin on the Sunday of the week the determination finding the claimant in violation of this Subsection (5) is issued.
- (c)
- (i) Each claimant found in violation of this Subsection (5) shall repay to the division the overpayment and, as a civil penalty for fraud, an amount equal to the overpayment.
 - (ii) The overpayment is the amount of benefits the claimant received by direct reason of fraud.

- (iii) Subject to the requirements of Subsection 35A-4-506(7), the civil penalty for fraud amount shall be treated as any other penalty under this chapter.
- (iv) The repayment of an overpayment and a civil penalty for fraud 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.
- (f) If the fraud determination is based solely on unreported or underreported work or earnings, or both, and the claimant would have been eligible for benefits if the work or earnings, or both, had been correctly reported, the individual does not lose eligibility for that week because of the misreporting but is liable for the overpayment and subject to the penalties in Subsection (5)(c) and the disqualification periods for future weeks in Subsection (5)(a).
- (6) For any week with respect to which or a part of which the claimant 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 the claimant is not entitled to those unemployment benefits, this disqualification does not apply.
- (7)
 - (a) For any week with respect to which the claimant 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, the claimant 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)
 - (i) 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.
 - (ii) 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)
 - (i) 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 in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(iv).
 - (ii) 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) 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:
 - (i) to or on behalf of an educational institution in accordance with the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3304(a)(6)(A)(v); and
 - (ii) while employed by a governmental entity, Indian tribe, or nonprofit organization, to which the Federal Unemployment Tax Act, 26 U.S.C. Sec. 3309(a)(1) applies.
- (f) 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 services 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 consist 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.

Amended by Chapter 315, 2013 General Session

35A-4-406 Claims for benefits -- Continuing jurisdiction -- Appeal -- Notice of decision -- Repayment of benefits fraudulently received.

- (1)
 - (a) Claims for benefits shall be made and shall be determined by the division or referred to an administrative law judge in accordance with rules adopted by the department.
 - (b) Each employer shall post and maintain in places readily accessible to individuals in his service printed statements concerning benefit rights, claims for benefits, and the other matters relating to the administration of this chapter as prescribed by rule of the department.
 - (c) Each employer shall supply to individuals in his service copies of the printed statements or other materials relating to claims for benefits when and as the department may by rule prescribe. The printed statements and other materials shall be supplied by the division to each employer without cost to the employer.
- (2)
 - (a) Jurisdiction over benefits shall be continuous.
 - (b) Upon its own initiative or upon application of any party affected, the division may on the basis of change in conditions or because of a mistake as to facts, review a decision allowing or disallowing in whole or in part a claim for benefits.
 - (c) The review shall be conducted in accordance with rules adopted by the department and may result in a new decision that may award, terminate, continue, increase, or decrease benefits, or may result in a referral of the claim to an appeal tribunal.
 - (d) Notice of any redetermination shall be promptly given to the party applying for redetermination and to other parties entitled to notice of the original determination, in the manner prescribed in this section with respect to notice of an original determination.
 - (e) The new order shall be subject to review and appeal as provided in this section.
 - (f) A review may not be made after one year from the date of the original determination, except in cases of fraud or claimant fault as provided in Subsection (4).
- (3)
 - (a) The claimant or any other party entitled to notice of a determination as provided by department rule may file an appeal from the determination with the Division of Adjudication within 10 days after the date of mailing of the notice of determination or redetermination to the party's last-known address or, if the notice is not mailed, within 10 days after the date of delivery of the notice.
 - (b) Unless the appeal or referral is withdrawn with permission of the administrative law judge, after affording the parties reasonable opportunity for a fair hearing, the administrative law judge shall make findings and conclusions and on that basis affirm, modify, or reverse the determination or redetermination.
 - (c) The administrative law judge shall first give notice of the pendency of an appeal to the division, which may then be a party to the proceedings. The administrative law judge shall receive into the record of the appeal any documents or other records provided by the division, and may obtain or request any additional documents or records held by the division or any of the parties that the administrative law judge considers relevant to the proper determination of the appeal.
 - (d) The parties shall be promptly notified of the administrative law judge's decision and shall be furnished with a copy of the decision and the findings and conclusions in support of the decision.
 - (e) The decision is considered to be final unless, within 30 days after the date of mailing of notice and a copy of the decision to the party's last-known address, or in the absence of mailed

notice, within 30 days after the delivery of the notice, further appeal is initiated in accordance with Section 35A-4-508 and Chapter 1, Part 3, Adjudicative Proceedings.

- (4)
 - (a) Any person who, by reason of his fraud, has received any sum as benefits under this chapter to which he was not entitled shall repay the sum to the division for the fund.
 - (b) If any person, by reason of his own fault, has received any sum as benefits under this chapter to which under a redetermination or decision pursuant to this section he has been found not entitled, he shall repay the sum, or shall, in the discretion of the division, have the sum deducted from any future benefits payable to him, or both.
 - (c) In any case in which under this subsection a claimant is liable to repay to the division any sum for the fund, the sum shall be collectible in the same manner as provided for contributions due under this chapter.
- (5)
 - (a) If any person has received any sum as benefits under this chapter to which under a redetermination or decision he was not entitled, and it has been found that he was without fault in the matter, he is not liable to repay the sum but shall be liable to have the sum deducted from any future benefits payable to him.
 - (b) The division may waive recovery of the overpayment if it is shown to the satisfaction of the division that the claimant has the inability to meet more than the basic needs of survival for an indefinite period lasting at least several months.

Renumbered and Amended by Chapter 240, 1996 General Session

35A-4-407 Voluntary income tax withholding.

- (1) The department shall advise an individual filing a new claim for benefits at the time of filing the claim that:
 - (a) unemployment benefits may be subject to federal, state, and local income tax;
 - (b) there are requirements for estimating tax payments;
 - (c) the individual may elect to have federal income tax deducted and withheld from the individual's payment of benefits at the amount specified by the Internal Revenue Code;
 - (d) the individual may elect to have state income tax deducted and withheld from the individual's payment of benefits at the rate of 5%; and
 - (e) the individual may change a previously elected withholding status.
- (2) Amounts deducted and withheld from benefits for income taxes under Subsection (1) shall remain in the unemployment trust fund until transferred to the federal or state taxing authority as a payment of income tax.
- (3)
 - (a) The department shall follow all procedures specified by the United States Department of Labor, the Internal Revenue Service, and the State Tax Commission pertaining to deducting, withholding, and submitting amounts deducted and withheld for income taxes.
 - (b) Amounts deducted and withheld for income taxes under this section shall be deducted and withheld only after amounts are deducted and withheld for:
 - (i) overpayment of unemployment compensation;
 - (ii) child support obligations; or
 - (iii) any other amount required to be deducted and withheld under this chapter.

Renumbered and Amended by Chapter 240, 1996 General Session

