

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