

Changes in State unemployment insurance legislation in 2007

State enactments include provisions that relate to confidentiality and disclosure of unemployment compensation information, exclude “services” from the definition of employment, change rate schedules, address fraud and nonfraud benefit overpayments, provide for noncharging employers’ accounts for benefits paid, and address requirements for filing and reporting contributions

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To meet Federal requirements, some States enacted conforming legislation in 2007 relating to confidentiality and disclosure of unemployment compensation information. In 2006, the Department of Labor issued a final rule governing the confidentiality and disclosure of State unemployment compensation information. This rule, which became effective October 27, 2006, requires that State laws meet the confidentiality requirements, if necessary by enacting new legislation or modifying rules and practices. States have 2 years to make any necessary conforming changes.

During 2007, two Federal legislative enactments affected the Federal-State unemployment compensation program. First, the Revised Continuing Appropriations Resolution, 2007 (P.L. 110–5) amended the Workforce Investment Act of 1998 (a) to transfer Federal equity in State employment security real property to the States, (b) to provide that such property and proceeds from their sale may be used only for unemployment insurance (UI), employment service (ES), or Workforce Investment Act (WIA) activities, and (c) to provide that

States may no longer use UI, ES, or WIA funds to amortize costs of future real property purchases. Second, the Energy Independence and Security Act of 2007 (P.L. 110–140) included a 1-year extension of the 0.2-percent Federal Unemployment Tax Act (FUTA) surtax through 2008.

The Department of Labor issued a final rule (effective February 15, 2007) specifying that only unemployed individuals who are “able and available” to work are eligible for unemployment compensation. Among other issues, the final rule addresses the meaning of “able and available” in relation to local labor markets and an individual’s temporary unavailability for work because of injury, illness, jury duty, or involvement in job training. Another relevant part of the rule states that active search for work is not required, but that individuals whose actions indicate a “withdrawal” from the labor market are not eligible for unemployment compensation.

Following is a summary of some significant changes in State UI laws that occurred during 2007:

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Arizona

Appeals. All appeal tribunal hearings must be recorded, and the tribunal is allowed to secure a court reporter or an electronic means to create a clear and accurate record of the proceeding at the Department's expense. Hearings will be transcribed at the Department's expense when an application for appeal to the court of appeals has been made. A scheduled hearing date may be postponed or advanced if the parties agree to do so or upon showing of good cause. (Previously, postponement was granted if requested at least 5 calendar days prior to the hearing for the first request or upon showing of good cause.)

Arkansas

Financing. An employer who discharges an individual for testing positive for an illegal drug screen will not be charged for benefits paid to the individual if the benefits are based upon wages prior to the discharge. The Arkansas Revenue Stabilization Law provides that the Employment Security Special Fund will also consist of unemployment compensation contribution interest and penalty payments collected as a result of State Unemployment Tax Act (SUTA) dumping.

Nonmonetary eligibility. Individuals discharged for misconduct as a result of testing positive for an illegal drug will be disqualified from the date of filing the claim until they have worked 10 weeks and in each week earned wages equal to their weekly benefit amount and until they pass a U.S. Department of Transportation (DOT)-qualified drug screen by testing negative for illegal drugs.

An individual applying for benefits after March 27, 2007, who was rejected for offered employment for failing to appear for a U.S. DOT-qualified drug screen after receiving a bona fide job offer of suitable work subject to passage of the drug screen, or who fails to pass a U.S. DOT-qualified drug screen by testing positive for an illegal drug after having received a bona fide job offer of suitable work, is disqualified for benefits. The disqualification must continue until a U.S. DOT-qualified drug screen is passed.

Colorado

Administration. An individual applying for UI benefits through an interstate agreement who is not a Colorado resident and is unable to produce a Colorado driver's license or identification card (ID) must produce one of the other documents required by law or a valid driver's license or State ID issued in another State, or in the case of individuals residing in Canada, a valid Canadian ID or valid Canadian driver's

license, and execute an affidavit stating that he or she is a U.S. citizen, a legal permanent resident, or otherwise lawfully present in the U.S. pursuant to Federal law (applicable to claims filed on or after August 8, 2007).

Financing. For purposes of determination of employment-based tax credits, such as economic development, enterprise zone, development zone, and other such economic incentives provided by the State or any other governmental entity, work-site employees will be deemed employees solely of the work-site employer.

Connecticut

Monetary entitlement. The alternative base period, which was to expire on December 31, 2007, is now permanent.

Florida

Coverage. New law provides that employment by a public employer is not subject to the Florida UI law if the service is performed by an individual in a position that, under State law, is designated as a major nontenured policy making or advisory position, including any major nontenured policy making or advisory position in the Senior Management Service, or a policy making or advisory position for which the duties do not ordinarily require more than 8 hours of work per week.

Hawaii

Coverage. An individual on work furlough is considered an employee or employed. Services performed by an inmate or any person committed to a penal institution will not be considered employment.

Iowa

Administration. The Department must hold confidential UI information received by the Department from an UI agency of another State.

A public official or an agent or contractor of a public official who receives unemployment information, or a third party other than an agent acting on behalf of a claimant or employer and who violates the confidentiality requirements, is guilty, upon conviction, of a serious misdemeanor. For purposes of this provision, "public official" means an official or employee within the executive branch of Federal, State, or local government, or an elected official of Federal, State, or local government. (Previously, this provision applied to an employee of the Department, an administrative law judge, or a member of the appeal board.)

Kansas

Coverage. The definition of "employment" excludes service performed by an owner-operator of a motor vehicle that is leased from a licensed motor carrier, provided that under the terms of the lease agreement, the owner-operator is not treated as an employee under Federal law. Additionally, the employees or agents of the owner-operator will not be considered employees of the licensed motor carrier.

The definition of "employment" excludes service performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of certain Federal law provisions; employees or agents of the owner-operator must not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation.

Kentucky

Financing. An application must contain a certificate from the Division of UI reciting that all employer contributions, interest, penalties, and service capacity upgrade fund assessments have been paid before a corporation can be reinstated. The deadline for recovery of contributions, interest, or penalties has been extended from 5 years to 10 years. The time limit (within a worker's benefit year) to make determinations of a worker's eligibility for benefits based on new information, or due to clerical error in the case of determining the insured status of a worker, has been removed. The deadline for commencing proceedings to collect contributions, interest, or penalties via levy has been extended from 5 years to 10 years.

Louisiana

Administration. The Secretary may require certain employers to file both contribution and wage reports on magnetic media or by other electronic means according to the following: (a) employers employing 250 or more employees for contribution and wage reports due after January 31, 2008; (b) employers employing 200 or more employees for contribution and wage reports due after January 31, 2010; (c) employers employing 100 or more employees for contribution and wage reports due after January 31, 2012; and (d) employers employing fewer than 100 employees for contribution and wage reports due after January 31, 2014. The Secretary may prescribe the types of media and record layout to be used in the submission of these reports. The reporting

requirements may be waived by the Secretary if the employer is able to show hardship in a request for a waiver.

Financing. The administrator must establish by October 14 of each year the amount to be collected for the Incumbent Worker Training Account. The administrator must notify employers by December 31 of each year of their contribution rate for the subsequent year.

Maine

Coverage. The definition of “employment” excludes service performed by an individual in the employ of that individual’s son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of that child’s father or mother, except for periods of such service for which UI contributions are paid.

Financing. The provision stating that a successor employer’s contribution rate must remain as previously determined prior to the acquisition until the end of the current rate period to conform with requirements of the SUTA Dumping Prevention Act of 2004 has been repealed.

Maryland

Administration. The Joint Committee on UI Oversight has been reestablished, and the membership and staffing of the Committee have been established. The committee must examine the condition of the UI system as a result of the implementation of the 2005 amendments to Chapter 169 and the examination of additional alterations, including charging and taxation provisions and the eligibility and benefit provisions that are allowed. The committee must report its findings and recommendations on December 31 of each year. The committee will dissolve on December 31, 2007, unless it is reestablished by action of the General Assembly.

Financing. The definition of the “taxable wage base” has been modified to include the first \$8,500 in wages that (a) an employing unit pays to each employee for covered employment in this State and another State during a calendar year, if the employee was continuously employed immediately before and after a transfer of a business from another State during a calendar year; (b) a reorganized employer pays to each employee for covered employment if the employee was continuously employed immediately before and after the reorganization in a calendar year and if the contribution rate of the reorganized employer is based on the experience with payrolls and benefit charges of the employing unit before the reorganization; or (c) an employing unit

or predecessor employer or combination of both pays to each employee for covered employment during a calendar year if the payrolls and benefit charges of the predecessor employing unit are transferred to the successor employing unit.

Monetary entitlement. The maximum weekly benefit amount increased from \$340 to \$380; the minimum qualifying wages needed in the base period to qualify for the maximum weekly benefit amount increased from \$12,240 to \$13,680; and the high quarter wages needed in the base period to qualify for the maximum weekly benefit amount increased from \$8,136.01 to \$9,096.01 (applicable to claims filed establishing a new benefit year on or after October 7, 2007).

Minnesota

Administration. The UI telephone system now must have an option available to any individual calling in to the system to allow them to speak to an UI specialist who can provide direct assistance or can direct the caller to the person or office that is able to respond to the caller’s needs.

Financing. The special assessment due from contributing employers will be levied at the rate of 0.10 percent per year on all taxable wages. Previously, the rate was 0.10 percent for calendar years 2006 and 2007, and 0.085 percent beginning January 1, 2008.

Missouri

Extensions and special programs. The definition of “war on terror veteran” has been modified by limiting the term to Missouri residents—that is, members of the Missouri National Guard or U.S. Armed Forces reserve units officially domiciled in Missouri before deployment—who, as found by a Missouri court or U.S. district court in Missouri, were discharged or laid off from their regular jobs while they were deployed. Erroneously paid benefits to war on terror veterans must be collected.

Montana

Administration. Effective October 1, 2007, a “licensed and practicing health care provider” is defined as a health care provider who is primarily responsible for the treatment of a person seeking UI benefits and who is licensed to practice in Montana as one of the following: a physician, a dentist, an advanced practice registered nurse who is recognized as a nurse practitioner or certified nurse specialist by the board of nursing, a physical therapist, a chiropractor, a clinical psychologist, or a physician assistant; or with respect to a person seeking

UI benefits who resides outside of Montana, a health care provider licensed or certified as a member of one of the aforementioned professions in the jurisdiction where the person seeking the benefit lives.

Effective October 1, 2007, in the aftermath of a disaster, the Department may waive, suspend, or modify its rules concerning the filing of a claim for benefits, filing continued claims, registering for work, or searching for work if the following conditions are met: the President of the United States declares a disaster pursuant to 42 U.S.C. 5170, et seq.; and the Governor issues an executive order directing the Department to waive, suspend, or modify rules relating to claims. In the aftermath of a disaster that meets these conditions, the Department may waive, suspend, or modify its rules relating to claims in portions of the State named by the Department as appropriate to address the nature of the disaster and for the purposes of UI laws (effective October 1, 2007).

Coverage. Effective January 1, 2008, the definition of “employment” has been modified to mean service—including service in interstate commerce—by an individual, a manager or member of a limited liability company treated as a corporation pursuant to the UI law, or an officer of a corporation performed for wages or under any contract of hire, written or oral, express or implied. Effective January 1, 2008, the exclusions from the definition of “employment” for service performed by sole proprietors, working members of a partnership, members of a limited liability company treated as a partnership or sole proprietorship pursuant to the UI law, or partners in a limited liability partnership that has filed with the Secretary of State also have been modified.

Extensions and special programs. The extended benefits provision has been modified. The total extended benefit amount payable to an eligible individual with respect to that individual’s applicable benefit year must be the least of the following three amounts (formerly the first two amounts): 50 percent of the total amount of regular benefits that were payable to the individual in the individual’s applicable benefit year; 13 times the individual’s weekly benefit amount that was payable to the individual for a week of total unemployment in the individual’s applicable benefit year; or 39 times the individual’s weekly benefit amount, less the amount of regular benefits paid or considered paid during the individual’s applicable benefit year.

Financing. Effective October 1, 2007, the UI administration account will no longer consist of all money appropriated by the State from the general fund for the purpose of administering the UI law; all money, trust funds,

supplies, facilities, or services furnished, deposited, paid, and received from: the State of Montana or any agency of the State; any other State or any of its agencies; political subdivisions of the State; or any other source for administrative expense and purpose. The provision for giving a bond in connection with the UI administration account and payment for the bond from money in such account has been removed, effective October 1, 2007.

Effective July 1, 2007, an employer's account will not be charged for benefits paid to an employee who is laid off as a result of the return to work of a permanent employee who was called to military service, and had completed 4 or more weeks of military service and exercised certain reemployment rights. The corporate bankruptcy provisions have been modified to provide that the liability imposed upon an individual remains unaffected by the bankruptcy of a business entity to which a discharge cannot be granted under Federal law, and the individual is liable for the unpaid amount of taxes, penalties and interest, effective January 1, 2008.

Effective January 1, 2008, the liability provisions are modified to provide that in the case of a limited liability company treated as a partnership pursuant to the unemployment law, the liability for UI taxes, penalties, and interest owed extends jointly and severally to each member; not treated as a partnership pursuant to the unemployment law, liability for UI taxes, penalties, and interest owed extends jointly and severally to the managers of the limited liability company. In addition, effective October 1, 2007, the contribution rate schedule IX has been modified to add (.0025) as the minimum ratio of fund to total wages. Benefits paid are not chargeable to the employer's account when an individual leaves employment because of the mandatory military transfer of spouse.

Effective January 1, 2008, the provisions relating to assessments for administrative expenses have been revised by providing that the following assessments must be levied against and paid by the indicated employers: beginning January 1, 2008, 0.13 percent of all taxable wages paid by employers assigned a rate class 1, Schedules I and II, and rate class 2, schedule I, contribution rate; 0.18 percent of all taxable wages paid by employers assigned a contribution rate other than rate class 1, Schedules I and II, and rate class 2, schedule I; 0.18 percent of all taxable wages paid by employers assigned an industrial rate; 0.08 percent of total wages paid by all employers; beginning July 1, 2008, 0.09 percent of total wages paid by all employers. (Formerly, the law provided that an assessment equal to 0.13 percent of all taxable wages provided and 0.05 percent of total wages paid by employers not covered by an

experience rating must be levied against and paid by all employers.)

Effective January 1, 2008, all assessments and investment income must be deposited in the employment security account. In addition, effective January 1, 2008, the following assessments and investment income from those assessments are designated to be used for the administration of the UI program: 0.05 percent of all taxable wages paid by all employers; 0.05 percent of all taxable wages paid by employers assigned an industry rate; 0.03 percent of total wages paid by all employers; and beginning July 1, 2008, 0.04 percent of total wages paid by all employers.

Effective January 1, 2008, if UI funding sources exceed the needs of the UI program, all or a portion of the excess may be appropriated and used for other specific expenses. Effective October 1, 2007, money is permitted to be deposited in the employment security account to be appropriated for payment of expenses incurred in the administration of the UI program. Effective July 1, 2008, the language concerning payments of contributions specific to newly covered governmental entities and that currently requires all governmental entities to make payments at the median rate will be removed. Effective July 1, 2008, the minimum rate for experience-rated governmental entities may not be less than 0.06 percent (previously, 0.1 percent).

Effective January 1, 2008, the ratios that are used to calculate UI contribution rates have been revised, resulting in the following rates: for eligible employers, the most favorable rates range from 0.00 percent to 1.42 percent. The least favorable rates for eligible employers range from 1.62 percent to 3.42 percent. For deficit employers, the most favorable rates range from 2.92 percent to 6.12 percent. The least favorable rates for deficit employers range from 4.92 percent to 6.12 percent. Also effective January 1, 2008, the provisions for determining uncollectible debts, transferring debts to the Department of Revenue for collection, collection fees and costs, and debtor liability for repayment of debt, the costs and fees will be removed.

Monetary entitlement. The maximum weekly benefit amount increases from 66.5 percent to 67.5 percent of the average weekly wage and the minimum weekly benefit amount increases from 19 percent to 20 percent of the average weekly wage during years the UI contribution schedule I is in effect. An individual may not be disqualified for benefits if the individual leaves employment because of the mandatory military transfer of his or her spouse.

Nonmonetary eligibility. The provision for disqualification for failure to apply for or to accept suitable work has been modified such that an individual is disqualified for benefits

if he or she fails without good cause to accept an offer from a former employer or a new employer of suitable work that the individual is physically able and mentally qualified to perform, effective October 1, 2007. In addition, effective October 1, 2007, the provision that an individual is disqualified for benefits for any week with respect to which the individual receives payment in the form of compensation for disability under the Social Security disability law has been removed.

Nebraska

Administration. An employee of the Commission who violates any provision concerning information obtained and disclosed under certain circumstances and any person who receives certain information that has been disclosed to them and rediscloses such information for any purpose other than the purpose for which it was originally obtained, is guilty of a class III misdemeanor. Confidential information obtained under certain circumstances, not limited to but including, the following may be disclosed: for the proper presentation of the contest of an unemployment benefit claim or tax appeal to any claimant or employer or representative of a claimant or employer, as a party before an appeal tribunal or court; in appeals records and decisions on coverage of employers, employment, wages, and benefit eligibility if all Social Security numbers have been removed and such disclosure is otherwise consistent with Federal and State law; or to public officials or their agent/contractor for use in the performance of their official duties.

Confidential information obtained about an individual or employer may be disclosed under certain conditions to certain agents acting for the individual or employer, including elected officials, attorneys, a third party or its agent. Confidential information obtained may be disclosed under the following circumstances: information about an individual or employer must only be disclosed to the respective individual or employer; to a local State or Federal governmental official; disclosures to a Federal official for purposes of unemployment compensation program oversight and audits, including disclosures under certain Codes of Federal Regulations, as they existed on January 1, 2007. Costs must be recovered for providing information unrelated to the administration of the Employment Security Law or the UI compensation program prior to providing the information, unless costs are nominal or the entity is a governmental agency that provides reciprocal service.

Financing. The term "wages" has been redefined for purposes of service performed in employment in agricultural labor to mean cash remuneration and the cash value of commodities not intended for personal consump-

tion by the worker and his or her immediate family for such services. The Commissioner is permitted to assess a fee to recover payments for returned check charges and electronic payments not accepted. The provision has been removed that stated that if the State's reserve ratio on September 30, 2008, or September 30, 2009, is less than 0.4 percent and an emergency solvency surcharge is imposed for such year, then the maximum weekly benefit amount for the following calendar year will not be increased over the then current maximum weekly benefit amount.

The law has been modified to provide that for any employer who has not been subject to the payment of contributions during each of the two 4-calendar-quarter periods ending on September 30 of any year, but has been subject to the payment of contributions in any two 4-calendar-quarter periods regardless of whether such 4-calendar-quarter periods are consecutive, such employer's combined tax rate for the following tax year must be one of the following: the highest combined tax rate for employers with a positive experience account balance if the employer's experience account balance exhibits a positive balance as of September 30 of the year of rate computation; or the standard rate if the employer's experience account exhibits a negative balance as of September 30 of the year of rate computation.

(The law previously provided that for any employer who has been subject to the payment of contributions for any eight preceding calendar quarters, regardless of whether such calendar quarters are consecutive, and whose experience account exhibits a negative balance as of September 30 of the year of rate computation, the rate on its annual payroll must be equal to or greater than the highest combined tax rate for employers whose experience account balance is positive—but not greater than the standard rate—until such time as the experience account exhibits a positive balance.)

The experience factor has been changed from 0.15 to 0.00 for eligible experience-rated employers in the lowest rate category, making the minimum rate 0.00 percent. The experience factors for categories 15, 16, and 17 also were changed. Employers delinquent in filing their combined tax reports as of October 31 of any year must be assigned to category 20 for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation. All voluntary contributions must be received on or before January 10 (previously March 10) of any year to be considered as paid at the beginning of the calendar year. An individual employer, partner, corporate officer, or member of a limited liability company or limited liability partnership who willfully fails or refuses to make any combined tax payment must be jointly

and severally liable for the payment of such combined tax and any penalties and interest owed.

Overpayments. Individuals liable to repay an overpayment of benefits because they willfully fail to disclose amounts earned at the same time benefits are claimed, or because they willfully fail to disclose or have falsified facts, and who fail or refuse to repay such overpayment within 12 months after the final determination may be subject to a levy on their salary, wages, or other regular payment either due to or received by them; the levy will be continuous from the date the levy is served until the amount of the levy is satisfied. The law provides for appeal of a levy, and it provides that any person failing or refusing to honor the levy without cause may be held liable for the amount of the levy up to the value of the total assets of the person liable to repay the overpayment.

Nevada

Appeals. The Administrator (formerly, the Board of Review) is required to (a) appoint one or more impartial Appeal Tribunals consisting in each case of a selected salaried examiner; or (b) enter into an interlocal agreement with another public agency for the appointment of a single hearing officer to hear and decide appealed claims. The option of having an Appeal Tribunal consisting of three members has been eliminated. The position of the Chairman of the Appeal Tribunal has been removed. The provision stating that, while engaged in the business of the tribunal, each tribunal member is entitled to receive the per diem allowance and travel expenses has been removed. The provision requiring the Administrator to provide the Board of Review and the Appeal Tribunal with proper facilities and assistants for the execution of their functions also has been removed.

Financing. If a claimant leaves his last or next to last employer (previously, "an employer") to take other employment and leaves or is discharged by the latter employer, benefits paid to him must not be charged against the record for experience rating of the former employer.

New Hampshire

Administration. The Social Security Administration and the Department of Unemployment Security are permitted to establish a reciprocal electronic data exchange agreement, provided that data exchanged through this agreement are used for establishing and verifying eligibility and payment amounts and for preventing and detecting waste, abuse, fraud and identity theft. Access will be granted to authorized Federal employees on a case-by-

case basis upon a finding by the Commissioner that sufficient guarantees of continued confidentiality are in place.

Financing. Effective April 1, 2007, each contributing employer's rate will be reduced by two-tenths of 1 percent (previously one-tenth of 1 percent) beginning in the second quarter of 2007. All employers are required to pay an administrative contribution equal to the amount of this reduction. Also effective April 1, 2007, the provision has been removed that stated that in the event the unemployment compensation trust fund fails to equal or exceed \$275,000,000 throughout the preceding calendar quarter, the administrative contribution funds will not be deposited quarterly in the training fund as required, but shall be deposited in the contingent fund and expended only as needed for the contingent fund purposes and not for any other purposes.

New Jersey

Nonmonetary eligibility. Unemployment benefits will not be reduced if there has been an eligible rollover distribution from a qualified trust to an eligible retirement plan within 60 days of receipt. Any distributions subject to Federal income tax will require reduction in unemployment benefits by the amount of the distribution.

New Mexico

Administration. The New Mexico Workforce Solutions Department replaces the (New Mexico) Department of Labor. The title of the Secretary of the Department of Labor has been changed to the Secretary of Workforce Solutions. The Employment Security division is renamed the Workforce Transition Services division. The Department will have access to all records, data and information of other departments, and agencies and institutions not specifically held confidential by law.

New York

Administration. The New York Department of Labor is allowed to receive and redisclose UI information from quarterly combined withholding, wage reporting, and UI returns filed by employers for the administration of the UI program, the employment services program, and Federal and State employment and training programs, employment statistics and labor market information programs, worker protection programs, other Federal programs for which the Department of Labor has responsibility, or other purposes deemed appropriate by the Commissioner of Labor. (The law previously allowed the disclosure of such information for employment security programs, evaluation of employment and training pro-

grams, reporting, and monitoring.) Information is allowed to be used in court in actions pursuant to disclosures to Federal, State, or local agencies, or to adjudicate a claim for benefits. Information must be disclosed upon request to any Federal, State, or local agency entitled to such information under the Social Security Act or any other Federal law in the manner prescribed by such law or its implementing regulations.

The Commissioner is allowed to require written agreements with requesting Federal, State, or local agencies consistent with Federal regulations—including the regulation concerning the confidentiality and disclosure of State unemployment compensation information—and assurances that the requesting agency has adequate security safeguards in place. Information is allowed to be disclosed to Federal, State, or local agencies for the following legitimate governmental purposes: investigation of fraud or misuse of public funds; programmatic purposes of workforce agencies, workforce investment boards and their agents, one-stop operating partners; U.S. Department of Labor requirements for receipt of Federal administrative funding; carrying out statutory functions of State and local economic development agencies; and determining coverage compliance of the Worker's Compensation Board, the State Insurance Fund, and the State Insurance Department.

Wage reporting information obtained from the Department of Taxation and Information from quarterly combined withholding, wage reporting, and UI returns filed by employers must be confidential and must be used for the administration of the UI program, the employment services program, Federal and State employment and training programs, employment statistics and labor market information programs, employer services program, worker protection programs, other Federal programs for which the Department of Labor has responsibility, or other purposes deemed appropriate by the Commissioner of Labor.

North Dakota

Administration. Employers with more than 99 employees at any time must file contribution and wage reports via an electronic method approved by the North Dakota Department of Labor beginning with the calendar quarter in which the 99-employee requirement is met. Employers not complying with the electronic filing of reports requirements are deemed to have failed to submit their contribution and wage reports. All payers making payments on behalf of more than one employer must make all payments electronically.

Financing. The calculation of the tax rate necessary to generate the amount of income needed to reach a solvency balance has been

modified by adding that the negative rate arrays must have a minimum multiplier of 100 percent. Appropriation for the Federal advance interest repayment fund will continue to be provided, and use of monies in this fund is authorized for the purposes of reemployment programs to ensure the integrity of the UI program.

Design and engineering firms connected with construction projects estimated at a cost of at least \$50 million planned for completion or discontinuance within a 7-year period are excluded from posting a bond or an irrevocable letter of credit. The computations of the amount of bond or irrevocable letter of credit, the estimation of contributions expected, and the estimation of benefits paid have been changed. The general or prime contractor, or the owner when there is no general or prime contractor, must remain liable for any amount of benefits paid to the employees working on the project that exceeds the amount of contributions collected from the employers who worked on the project and not covered by the amount of the bond or irrevocable letter of credit.

The provision on determination of rates has been modified by providing that the positive employer minimum rate in the first rate schedule is 0.01 percent and in each subsequent rate schedule the rate is the previous rate schedule's positive employer minimum rate plus 0.01 percent; the negative employer minimum rate required to generate the amount of income needed to pay benefits is the positive employer minimum (previously maximum) rate plus 6 percent (previously 5.1 percent); the positive employer minimum (previously maximum) rate necessary to generate the amount of income needed to pay benefits must be set so that all rates combined generate the average required rate for income needed to pay benefits; and new employers must be assigned a rate that is 90 percent (previously 150 percent) of the positive employer maximum rate or a rate of 1 percent, whichever is greater, unless classified in construction services.

The provisions on how the variations in standard rate of contributions are determined have been amended to provide that in the schedule of positive employer rate groups, each successive rate group for positive employers must be assigned a rate equal to 120 percent of the previous group's rate, with a minimum increase of 0.1 percent and a maximum increase of 0.4 percent; there must be 10 rate groups in the positive employer schedule; after assigning rates on the basis of ranking employers with the highest reserve ratio, each successively ranked positive employer must be assigned to a rate such that the first rate in the schedule is assigned 60 percent of the positive employer's prior year's taxable wages and each of the remaining nine rates within the rate

schedule are assigned the same proportion of the remaining 40 percent of the positive employer's prior year's taxable wages (previously the rates in the schedule were assigned in the same proportion); and an employer with a quarterly taxable payroll in excess of \$50,000 and at least 3 times its established average annual payroll or the average annual payroll is zero, the employer's cumulative lifetime reserve balance is positive, then the employer's tax rate is 90 percent (previously 150 percent) of the positive employer maximum rate in effect that year or a rate of 1 percent, whichever is greater, beginning the first day of the calendar quarter in which it occurred and for the remainder of the calendar year.

Oklahoma

Administration. Information may be released to any State or Federal law enforcement authority when necessary in the investigation of any crime of which the Commission is a victim. Confidential information will be held confidential by the law enforcement authority unless and until it is required for use in court in the prosecution of a defendant in a criminal prosecution. A representative from the Oklahoma Department of Career and Technology Education has been added to the Worker Safety Policy Council. This representative will be appointed by the Commissioner of Labor and will serve at the pleasure of the Commissioner.

Appeals. If an employer fails to file an appeal to the district court within the time allowed, the order will be final and no further appeal will be allowed for determinations on any aspect of an employer's account. If a Petition for Review is not filed within the time allowed by law, the administrative order, ruling or finding will become final and the district court will not have jurisdiction to consider the appeal.

Financing. An employer's account will not be charged if the Commission receives a notice of amounts paid as benefits by another State under a reciprocal agreement, and the notice is received after 3 years from the effective date of the underlying benefit claim. The employer will be relieved of the charge when the facts are brought before the commission, if a charge is made based on such notice. The Commission will make its assessments or amend its assessments for payments in lieu of contributions within 3 years of the ending date of the calendar quarter to which the assessment or amendment applies.

Nonmonetary eligibility. An individual's receipt of payments from a pension, retired or retirement pay, annuity, or other similar payment plan that the employee contributed to in any amount will not result in a reduction in

his or her weekly benefit amount.

If a person filing a claim was discharged for misconduct by his or her employer after testing positive for an illegal drug or for alcohol, a copy of the drug or alcohol test will be accepted as prima facie evidence of the administration and results of the drug or alcohol test. The employer's written drug or alcohol testing policy on the substances tested for need only state that the substances tested for are drugs and alcohol as defined in the Standards for Workplace Drug and Alcohol Testing Act, including controlled substances approved for testing by rule by the State Commissioner of Health.

Oregon

Administration. The Oregon Department of Labor may provide confidential information, including names and addresses of employers and employees and payroll data to the Department of Transportation in order to assist in debt collection, including unpaid taxes. The Department of Transportation is proscribed from releasing such information in any manner that would identify any employing unit or employee except as required to carry out Department of Transportation duties; disclosing this information to any private collection agency also is prohibited.

The circumstances under which the director may reconsider a determination of employer subjectivity, tax rate, or tax assessment is expanded to include determinations when there is evidence of computation errors, clerical errors, misinformation provided to a party by the Employment Department, facts not previously known to the Department, or errors by the Department caused by misapplication of the law.

Coverage. The term "employer" is redefined to mean any employing unit that employs one or more individuals employed in each of 18 separate weeks during any calendar year, or in which the employing unit's total payroll during any calendar quarter amounts to \$1,000 or more (previously, \$225). In addition, the term "services excluded from employment" is redefined to exclude service not in the course of the employer's trade or business that does not promote or advance the trade or business of the employer, unless the service is performed in each of 18 weeks in a calendar year or total payroll for the service during any calendar quarter is \$1,000 or more (previously, \$225).

Financing. The provision that specifies that a business entity that has a single owner and is disregarded as an entity separate from its owner for Federal tax purposes and is deemed to be the same employing unit as its owner for unemployment compensation tax purposes has been repealed.

Nonmonetary eligibility. New legislation modifies the conditions under which an individual may be eligible for UI benefits when the individual is unemployed due to a lockout resulting from a labor dispute. (This applies to UI claims made on or after June 26, 2007.)

South Dakota

Financing. As of January 1, 2006, new legislation excludes from the definition of "wages" the employer's contributions to retirement or pension payments, if the payment is made to certain qualified plans provided by Federal law (other than certain elective contributions).

Texas

Administration. An offense of the law pertaining to disclosure of information is now a class A misdemeanor; previously, the penalty was a fine of \$20 to \$200 or 90 days in jail (or both). The term "unemployment compensation information" is defined as records of the Commission that pertain to the administration of the unemployment compensation program, including all information collected, received, developed, and maintained in the administration of both the unemployment compensation benefits and tax systems.

The Commission must adopt and enforce reasonable rules governing the confidentiality, custody, use, preservation, and disclosure of unemployment compensation information consistent with Federal law. These rules must include safeguards to protect the confidentiality of identifying information regarding any individual or any past or present employer or employing unit contained in unemployment compensation information. Unemployment compensation information is not public information. A person has committed an offense if the person solicits, discloses, receives, uses, authorizes, permits, participates in, or acquiesces in another person's use of unemployment compensation information if doing so reveals identifying information regarding any individual or any past or present employer, or if the information could be paired with other publicly available information that could reveal identifying information regarding any individual or past or present employer or employing unit.

Financing. Benefits computed on benefit wage credits of an employee or former employee may not be charged to the account of an employer if the employee's last separation from the employer before his or her benefit year resulted from the employee leaving his or her workplace to care for the employee's terminally ill spouse, as evidenced by a physician's statement or other medical documentation—but only if no reasonable alternative

care was available.

Nonmonetary eligibility. Specific information is required in a physician's statement or other medical documentation for it to be considered evidence that an individual left the workplace to protect the individual from family violence or stalking, in which case the individual would not be disqualified from benefits. The law now stipulates that an individual is not disqualified from benefits if the individual leaves the workplace to care for the individual's terminally ill spouse as evidenced by a physician's statement or other medical documentation, but only if no reasonable, alternative care was available.

Utah

Administration. The State agency may require employers to file contribution reports on electronic media as well as on magnetic media or in other machine-readable form. Rules must be prescribed to provide standards for determining which contribution reports must be filed on electronic media. An employer may not be required to file contribution reports on magnetic or electronic media unless the employer is required to file wage data on at least 250 employees during any calendar quarter or is an authorized employer representative who files quarterly tax reports on behalf of 100 or more employers during any calendar quarter.

The Department of Workforce Services may disclose to an individual the suspected misuse of the individual's personal identifying information and report suspected abuse to appropriate law enforcement agencies responsible for investigating identity fraud violations. An employee of Workforce Services who makes a disclosure of information obtained from an employing unit or individual or uses the list of applicants for work or claimant information for political purposes has committed a violation under a class C misdemeanor instead of a violation under class A.

Financing. The provision that employers not be charged for benefits paid due to the 50-percent Social Security benefits offset to an individual's weekly unemployment benefit amount has been removed. The provision that these costs be funded from Federal Reed Act money also has been removed.

Nonmonetary eligibility. The disqualification provisions related to unreported or underreported work or earnings have been clarified. If a fraud determination is based solely on a claimant's unreported or underreported work or earnings and the claimant would have been eligible for benefits that week, the claimant does not lose eligibility for that week, but is liable for the overpayment and subject to

disqualification of benefits for subsequent weeks.

Virginia

Administration. Employers who report 100 or more employees in any calendar quarter must file quarterly reports on an electronic medium in a format prescribed by the Commissioner beginning January 1, 2009. A penalty of \$75 will be imposed for failure to file electronically without good cause for employers who do not obtain a waiver. Penalties collected must be paid to the Special Unemployment Compensation Administration Fund.

Financing. Payroll and tax reports and payment of taxes may be filed annually if the employment is exclusively domestic service in a private home and quarterly payroll does not exceed \$5,000, regardless of the number of persons providing such service.

Monetary entitlement. The maximum weekly benefit amount increased from \$347 to \$363, effective July 1, 2007.

Washington

Administration. The Department of Labor of the State of Washington must provide to new employers printed material of all recommended or required postings and a copy of any printed material that has substantive changes to each employer. Churches, church conventions and associations, and organizations operated primarily for religious purposes must provide written notification, at the time of hire, to each individual performing services exempt from the definition of "employment" that they may not be eligible to receive unemployment benefits based upon such services. In addition, the employer must display a poster, as provided by the Employment Security Department, giving notice of the exclusion.

Coverage. A corporation that is a public company (other than nonprofit, governmental, or tribal) may exempt from coverage an officer who is voluntarily elected or appointed, consistent with articles of incorporation or bylaws; is a shareholder; exercises substantial control in daily management; and whose primary responsibilities do not include the performance of manual labor. In a nonpublic company, the law allows a corporation to exempt from coverage eight or fewer officers who agree to be exempted, are voluntarily elected or appointed, and who exercise substantial control in the daily management of the company without regard to performance of manual labor if the officer is a shareholder. It may also exempt from coverage any number of officers if all of the exempted officers are

related by blood within the third degree or by marriage.

The requirements for corporations to file exemptions from or reinstatements of coverage for corporate officers have been defined. In addition, personal services provided by corporate offices are not considered services in employment unless the corporation registers and elects to provide coverage. An officer or family member who owns 10 percent or more of company stock and whose claim for benefits is based on wages with the corporation is not considered unemployed in any week during the individual's term of office or ownership, but the officer is considered unemployed upon dissolution of the corporation or if the officer resigns or is permanently removed from his or her appointment.

Extensions and special programs. A self-employment assistance (SEA) program has been established. Unemployed individuals are eligible to participate in the SEA program if they are otherwise eligible for regular benefits; likely to exhaust regular unemployment benefits under a profiling program; and enrolled in an SEA program approved by the Commissioner. Individuals participating in an SEA program are eligible to receive regular unemployment benefits. The requirements relating to availability for work, active search for work, and refusal to accept suitable work are not applicable for the first 52 weeks of an individual's participation in the program.

Failure to participate in an approved SEA program disqualifies the individual from continuation in the program. Individuals completing the program may not compete with their separating employer for a period of up to 1 year based on identified factors. The Commissioner is not obligated to expend funds for the operation of the SEA program unless specific funding is provided through Federal or State appropriation. Individuals enrolled in a course of study of 12 or more hours per week in an approved SEA program are not disqualified from receiving benefits. The Department must report to the House and Senate Committees by December 1, 2011, on the performance of the SEA program, including an analysis of the self-employment impacts, wage and salary outcomes, benefit payment outcomes, and a cost-benefit analysis. The program is effective January 1, 2008, and expires July 1, 2012.

Financing. Employers must register, obtain an employment security account number, and provide specific information to the Department. Any changes in owners, partners, members or corporate officers must be reported to the Department at intervals prescribed by the Commissioner. New requirements for employer reports have been added to include the full names, Social Security numbers and total

hours worked for each worker. Benefits paid using computed hours are not considered an overpayment and are not subject to collection when the correction of computed hours results in an invalid or reduced claim. However, contribution paying employers who fail to report the number of hours worked will have their experience rating account charged based on the number of computed hours, and reimbursing employers who fail to report the number of hours worked will have to reimburse the trust fund for benefits paid based on the number of hours computed. When a benefit claim becomes invalid due to an employer failing to report or inaccurately reporting hours worked, remuneration paid, or both, the employer will be charged or reimbursed based on the originally filed incomplete or inaccurate report.

A penalty of \$25 per violation will be imposed for an employer who fails to file timely reports. (Previously, the imposed penalty was up to the lesser of \$250 or 10 percent of the employer's quarterly contribution.) New penalties have been added for employers who file incomplete or incorrectly formatted tax and wage reports as follows: for the first occurrence, the employer must receive a warning letter; for subsequent occurrences within 5 years of the last occurrence, the penalties, when no contribution is due, will result in increasing penalties (second, \$75; third, \$150; and fourth and each occurrence thereafter, \$250). When contributions are due, the penalties are as follows: for a second occurrence, 10 percent of the quarterly contribution due (not less than \$75 and not more than \$250); for third, 10 percent (not less than \$150 or more than \$250); and for fourth and each occurrence thereafter, \$250. Penalties may be waived for good cause if the employer is not at fault.

Definitions for a professional employer organization, client employer, covered employee, professional employer services, co-employment relationship, and professional employer agreement have been added. Professional employer organizations must register; provide the Department with specific information regarding client employers; notify the Department within 30 days each time it adds or terminates a relationship with a client employer; provide proof it is authorized to act on behalf of the client employer for UI purposes; ensure separate and distinct information for each client employer is filed in quarterly wage and contribution reports; and maintain and make available for review accurate payroll records for each client employer. A professional employer organization's authority may be revoked if it fails to comply with these requirements. Each client employer is assigned its individual contribution rate based on its own experience and is liable for payment of any taxes, interest, or penalties due. Professional employer organizations may collect and pay taxes for client employers. Collection proce-

dures for late payments have been specified.

The definition of a temporary staffing services company has changed. The temporary staffing services company is now considered the employer. The employee leasing agency definition has been removed. The services referral agency definition has changed. A definition for third-party payers has been added. A definition for common paymasters has been added, and the common paymaster is not considered the employer. Joint accounts may not be established for professional employer organizations or third-party payers and their clients.

Any officer, member, or owner of a company that is dissolved who willfully evades contributions, willfully destroys or falsifies any record, or fails to account truthfully for the condition of the company is personally liable for any unpaid contributions and interest and penalties on those contributions. A limited liability company has been added to the definition of employer. A corporation is not an employing unit when all personal services are performed only by bona fide corporate officers, unless the corporation registers and elects to provide coverage. The Department must report on the impact of this act on professional employer organizations, small businesses, and the integrity of the UI system by December 1, 2010.

The language has been removed that formerly required that all penalties and interest collected for State Unemployment Tax Act (SUTA) dumping activities be expended solely for prevention, detection, and collection activities related to evasion of the successorship provisions, and for no other purposes. The Commissioner must engage in prevention, detection, and collection activities related to evasion of the successorship provisions.

The provision has been modified that formerly required that any amount of contributions payable to finance the Employment Security Department's administrative account in the administrative contingency fund that

exceeded the amount that would have been collected at a rate of 0.004 of 1 percent be deposited into the unemployment compensation trust fund by requiring the excess instead to be deposited in the account that finances the special programs to assist the unemployed.

The requirement for using the 1 percent interest penalty imposed for failing to repay an overpayment assessment or arranging for repayment terms for fully funding either Social Security number cross match audits or other more effective activities, and to fund other detection and recovery of overpayment and collection activities, but that requires the Department to continue to conduct such activities has been removed.

Overpayments. Effective January 1, 2008, the former disqualification provision for individuals who knowingly made a false statement or representation involving a material fact or knowingly failed to report a material fact and obtained or attempted to obtain benefits has changed as follows: the first time an individual is disqualified, he or she is disqualified for an additional 26 weeks; the second time an individual is disqualified, he or she is disqualified for an additional 52 weeks and is subject to an additional penalty of 25 percent of the benefits overpaid; in subsequent disqualifications, the individual is disqualified for an additional 104 weeks and is subject to an additional penalty of 50 percent of the benefits overpaid. (Previously, the disqualification was for an additional 26 weeks, but not applicable after 2 years from the date of mailing of the disqualification determination.) All penalties must be collected, and collected penalties must be used for UI administration.

Wyoming

Financing. The Department must by rule and regulation establish an additional formula to apportion the positive fund balance adjustment factor between employers whose

accounts have incurred a benefit ratio of zero and employers whose accounts have incurred a benefit ratio that is greater than zero. For purposes of the apportionment, employers who have no established experience period must be treated the same as employers whose accounts have incurred a benefit ratio that is greater than zero. The apportionment formula must reflect the proportion of contribution revenue received from each of the two groups of employers during the previous calendar year and an additional surcharge for employers whose accounts have incurred a benefit ratio that is greater than zero.

The provision concerning delinquent rates has been modified to provide that an employer satisfies his or her delinquent account by paying all contributions, interest, and penalties due and submitting all contribution reports that are due. The estimated construction cost of any project in Wyoming that requires incremental bond payments for impact industries has increased from at least \$25,000,000 to at least \$100,000,000.

Overpayments. The overpayment provisions have been modified to provide permit recoupment, without civil action, of benefits liable for repayment by offsetting against future benefits within 5 years from the effective date of the claim resulting in the overpayment, if the claim was nonfraudulent; the provisions now state that the limitation on recoupment extends beyond the 5-year limitation, if the claim resulting in the overpayment was fraudulent; and they permit the cancellation of amounts of overpayments or penalty due on any overpayments after the expiration of the aforementioned time period, when the individual cannot be located. (Previously, cancellation of amounts of overpayments or penalty due on any overpayments were permitted 5 years after the effective date of the claim resulting in an overpayment, when the individual could not be located within the State of Wyoming.) □