Changes in unemployment insurance legislation during 1990

The States generally took little action regarding their unemployment insurance laws during the year; some States modified benefit eligibility requirements for aliens, and a few increased their maximum weekly benefit amounts

Diana Runner

On November 5, President George Bush signed into law the Omnibus Budget Reconciliation Act of 1990 (P.L. 101–508), which contained amendments to the Federal Unemployment Tax Act. These included extending the 0.2-percent temporary tax, which was assessed under the Unemployment Compensation Amendments of 1976 (P.L. 94-566), for 5 additional years through December 31, 1995. The maximum State employer tax offset credit against the Federal tax liability remains at 5.4 percent. The net Federal tax, which is the employer's residual Federal obligation to the program after the tax offset credit has been applied, remains at 0.8 percent. The legislation also deleted the 35-year limitation on the expenditure of the 1956, 1957, and 1958 distributions of funds allocated to the States under the 1954 Reed Act for administrative purposes.[1] Therefore, the funds can be drawn on by the States to meet administrative costs in perpetuity.

In general, State legislatures made very few changes in their unemployment insurance laws during 1990. Six States—Alaska, Arizona, Florida, Maryland, Nebraska, and Virginia—increased their maximum weekly benefit amounts, and two States—Alaska and Virginia—increased their minimum weekly benefit amounts. Three States—Arizona, Minnesota, and South Dakota—changed the amount of earnings to be disregarded when computing the weekly benefit for partial benefits.

Colorado, Connecticut, Hawaii, Idaho, Indiana, Mississippi, New Mexico, Rhode Island, South Dakota, Vermont, and West Virginia amended their laws to require that benefits not be paid on the basis of services performed by an alien unless the individual was lawfully present in the United States both at the time the services on which benefits are based were performed and at the time the claim was filed.

Kentucky, Maine, Minnesota, New Mexico, Oklahoma, and Vermont amended their laws so as to prohibit information obtained in the administration of the unemployment insurance law from being used as evidence in any proceeding between a person and an employer that is brought before an arbitrator, court, or judge of the State in question or of the United States.

Massachusetts, Rhode Island, and Vermont amended their laws to allow access, on a reimbursable basis, to program records on wage and benefit information by the U.S. Department of Housing and Urban Development and by public housing authorities. Also, California, Massachusetts, and Vermont now permit the Federal Parent Locater Service of the child support enforcement program to have access to wage and benefit information.

Following is a summary of some significant changes in State unemployment insurance laws during 1990.

Diana Runner is an unemployment insurance program specialist in the Office of Legislation and Actuarial Services, Employment and Training Administration, U.S. Department of Labor.

Alabama

Financing. An employer's experience rating account will not be charged with benefits paid as a result of a major disaster if the benefit recipient would otherwise have been eligible for disaster benefits.

Alaska

Benefits. The minimum weekly benefit amount was increased from $38 to $44, and the maximum amount from $188 to $212.

Arizona

Coverage. The definition of wages under State law was amended to exclude any wages that are excluded under the Federal Unemployment Tax Act.

Benefits. The maximum weekly benefit amount increased from $155 to $165. The amount of earnings disregarded when computing partial benefits increased from $15 to $30.

California

Financing. The California Unemployment Insurance Code was amended to require collection of the 0.1-percent employment training tax only through calendar year 1993, rather than through 1995, as formerly provided. Revenues from the training tax, first imposed in 1982, are used to fund training, to cover costs of administering the Employment Training Fund, and, with the approval of the legislature, to pay outstanding interest-bearing advances from the Federal Government.

Benefits. The 1-week waiting period requirement before benefits are paid may be suspended if the Governor determines that strict compliance with the requirement would in any way prevent, hinder, or delay the mitigation of the effects of any state of war emergency or state of emergency.

Colorado

Financing. The amount of the employee's base wages that is taxable to the employer for program purposes was changed from $9,000 when the trust fund balance was more than $350 million, and $10,000 otherwise, to a standard $10,000. New employers will pay fund contributions which are the greater of the State's standard rate or their actual experience rate. Reimbursements paid from the fund for benefits paid under an interstate reciprocal arrangement will not be charged to an employer's experience rating account. A solvency tax surcharge will be assessed on contributing employers when the monthly fund balance is equal to or less than 0.09 percent of total wages covered by the program for the calendar year. The surcharge will be 0.01 percent, and will increase in increments of 0.01 percent (not to exceed the maximum contribution rate in effect) until the monthly fund balance is greater than 0.09 percent of total wages. The surcharge will decrease in increments of 0.01 percent so long as the fund balance remains above 0.09 percent of total wages.

Disqualification. An individual who works for a temporary help contracting firm will be eligible for benefits if, upon finishing an assignment, he or she requests another assignment but is not offered one and no other employment had been offered or accepted for a period of 5 regular working days.

Penalties. An individual who received a benefit overpayment due to fraudulent misrepresentation will be required to pay the Colorado Division of Employment and Training the total amount of the overpayment plus a penalty of 50 percent of the overpayment.

Connecticut

Financing. An employer's account will not be charged for benefits paid to an individual if the employer paid the individual $500 or less in the employee's base period—a prior period during which the individual was engaged in work covered by the unemployment insurance law.

Delaware

Disqualification. An individual will not be disqualified from receiving benefits on the grounds of voluntarily leaving employment if he or she elected to be separated under the terms of a collective bargaining agreement or a written employer plan for a temporary layoff for lack of work not to exceed 30 calendar days. Individuals hired for seasonal, durational, temporary, or casual employment for a specific period of less than 130 days will be ineligible for benefits at the completion of employment. However, any individual who is collecting benefits at the time the employment is accepted will not lose subsequent benefit rights upon the completion of such employment.

Florida

Benefits. The maximum weekly benefit amount was increased from $200 to $225. For the period July 1 through December 1, 1990, an individual could have qualified for 10 weeks of benefits if the individual had earned wages equal to 10 times his or her average weekly wage of not less than $20 during the base period.

Disqualification. An individual will not be denied benefits for any week spent serving on a jury.

Administration. The operations of the Florida Unemployment Compensation Advisory Council were extended until October 1, 2000.

Georgia

Coverage. A new enactment excludes from program coverage services performed by an officer or member of the crew of a boat engaged in catching fish or other forms of aquatic life, if certain conditions are met.

Hawaii

Coverage. The law was amended to exclude from coverage services for a family-owned private corporation, organized for profit, that employs family members who own at least 50 percent of the corporate shares, provided certain criteria are met.

Financing. New owners will be allowed to assume the existing experience rating in cases of partial transfers of businesses for the period January 1, 1990, to December 31, 1992. During that period, the enterprise must be continued in the case of either partial or total transfer.

Benefits. To qualify for benefits in a successive benefit year, an individual must have earned at least 5 times the weekly benefit amount subsequent to the beginning of the preceding benefit year.

Idaho

Disqualification. An individual will not be denied benefits for inability to work, unavailability for work, or refusal of suitable work if he or she is a participant in a training program sponsored under Title III of the Job Training Partnership Act; is attending a job training course under the Trade Act of 1974; or is attending a job training course with the approval of the director of the State unemployment insurance program. The above provision will apply only if the individual submits with each benefit claim a written certification from the training facility that he or she is attending and satisfactorily completing the course or has good cause for failure to attend the course.

Penalties. A civil action brought by the State to collect benefit overpayments due to a recipient's fraudulent misrepresentation or concealment of a material fact must commence within 8 years of the date of the overpayment determination.

Illinois

Financing. For the second quarter of 1991, the fund building rate that is added to an employer's contribution rate to ensure fund solvency will be 0.3 percent for contribution rates of 0.2 percent or higher. Over that period, the contribution rate of each employer will be equal to the sum of such rate and 0.1 percent. However, this excludes employers whose rates are between 5.1 percent and 5.3 percent, and those who qualify for the 5.4-percent rate ceiling for that quarter.

Benefits. For the period January 1 through December 31, 1991, dependents' allowances for a nonworking spouse will be 8.3 percent of the claimant's prior average weekly wage, not to exceed 57.3 percent of the State average weekly wage. For other dependents, the allowance will be 15.3 percent of the claimant's prior average weekly wage, not to exceed 64.3 percent of the State average weekly wage.

Indiana

Financing. The computation date for determining an employer's rate of contribution was changed from June 30 to September 30. Wage credits earned by an employee who voluntarily leaves without good cause in connection with the work, or who is discharged for just cause, will be used to compute the individual's benefit eligibility, but charges to an employer based on the wage credits will be paid from the unemployment fund and will not be charged to the employer's experience rating account.

Disqualification. An individual will not be disqualified from receiving benefits if he or she left employment to accept previously secured full-time work with an employer located within the individual's labor market. When an individual is discharged for gross misconduct, all of his or her wage credits established prior to the discharge will be cancelled. If an individual remains unemployed for at least 4 weeks, the Indiana Department of Employment and Training Services must provide job counseling or training.

Administration. When a claim determination is appealed, 3 days must be added to the term of a notice if it is served through the U.S. Post Office. Second-stage appeals, formerly heard by a

referee, are now to be brought before an administrative law judge.

Kansas

Coverage. The exclusion from program coverage of services performed in casual labor not in the course of an employer's business will not apply to governmental entities or to any employer specified in section 501(c)(3) of the Internal Revenue Code to be exempt from income taxation.

Financing. If an employer pays additional voluntary contributions to the program, the experience rate reduction will be limited to five rate groups for employers with positive fund balances, and other limitations will apply for negative-balance employers.

Kentucky

Benefits. The base period for computation of benefits may be extended by up to 4 quarters if an individual has insufficient wages to establish a claim because of job-related injury or if an individual who has received worker's compensation files an unemployment insurance claim within 4 weeks of having received worker's compensation.

Disqualification. An individual may be disqualified for benefits for leaving the next most recent suitable work to return to work with the usual employer or to avoid imminent layoff by accepting other work, or for leaving part-time work which preceded the most recent suitable work to accept the most recent suitable full-time work.

Administration. Unemployment insurance records may be used in court proceedings or administrative hearings in any action on a violation of State or Federal law to which the Kentucky Cabinet for Human Resources is a party, or upon order of the court.

Louisiana

Financing. Benefits paid to an individual after he or she requalified following a disqualification for voluntary leaving, discharge for misconduct, refusal of suitable work, or discharge for using illegal drugs will not be charged to a base-period employer's account if the employer protests the charges.

Disqualification. To purge a disqualification for voluntary leaving, discharge for misconduct, or discharge for illegal drug use, an individual must earn 10 times the weekly benefit amount following the week in which the separation occurred, or the week of occurrence with regard to drug use. Louisiana deleted the provision of the law specifying that a disqualification would be applicable to other than the last separation if the time worked subsequent to the separation did not satisfy the monetary requalification requirements, and if the claim was filed 6 months or more after the disqualifying separation. An individual will be disqualified for benefits for receiving vacation pay if the week or weeks the vacation is actually taken occur during a period of temporary layoff and a collective bargaining agreement does not allocate vacation pay to a specified period of time.

Maine

Administration. The law was amended to prohibit information obtained in the administration of the unemployment insurance law from being used as evidence in any proceeding between a person and an employer that is brought before an arbitrator, court, or judge of the State of Maine or of the United States.

Maryland

Financing. The standard rate of employer contributions increased from 5.4 percent to 6.0 percent, and on July 1, 1991, it will increase to 6.5 percent. The maximum tax rate for the period July 1, 1990, through June 30, 1993, will increase from 6.0 percent to 7.6 percent. The range of contribution rates for the most favorable experience rating schedule is 0.1 to 6.0 percent, and on July 1, 1991, it will be 0.1 to 6.5 percent. The percentage adjustment by which an employer's contribution rate increases under the least favorable schedule for the period July 1, 1990, through June 30, 1993, will drop from 2.7 percent to 1.7 percent and, when the rate adjustment necessary to maintain the stipulated fund balance is taken into account, the least favorable schedule will range from 1.8 to 7.6 percent.

Benefits. The maximum weekly benefit amount was increased from $205 to $215, and will rise to $223 on July 1, 1991.

Massachusetts

Financing. If a nonprofit organization elects to switch from the practice of reimbursing the State fund for benefit claims to the contribution payment plan, its contribution will be the rate that applies to an employer with a positive reserve balance of zero but less than 0.5 percent, or 5.4 percent—whichever is less—until the employer becomes experience rated.

Disqualification. If an individual's backpay award is reduced due to receipt of benefits, the employer who has been assessed a backpay award must reimburse the unemployment fund for the amount of benefits paid, equal to the amount of the award reduction.

Administration. The name of the unemployment insurance law was changed from the Massachusetts Employment Security Law to the Massachusetts Employment and Training Law. The agency that administers the law will be known as the Department of Employment and Training, headed by a commissioner. The commissioner may waive recovery of benefit overpayments if recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience.

The law was amended to allow access, on a reimbursable basis, to records on wage and benefit information by the U.S. Department of Housing and Urban Development, public housing authorities, and the Federal Parent Locater Service of the child support enforcement program.

Penalties. The penalty for employers who refuse to pay benefits and fund contributions was changed to a fine of not less than $2,500 or more than $10,000 or imprisonment for 1 year, or both fine and imprisonment. A 6-year statute of limitations was established for recovery of benefit overpayments by civil action. If an individual's failure to furnish accurate information resulted in a benefit overpayment, he or she will be assessed interest at a rate of 12 percent, but the penalty must not exceed 50 percent of the total amount due.

Michigan

Administration. The Michigan Employment Security Commission shall not provide to any organization income and eligibility verification or wage file information or claimant data base information, unless the disclosure of information is authorized under the Michigan Employment Security Act and the requesting organization provides a grant transfer to the Michigan Department of Labor to cover the full costs of that service.

Minnesota

Benefits. When an individual's weekly benefit amount for partial benefits is computed, the earnings disregarded will be the greater of $50 or 25 percent of earnings in work other than service in the national guard or a military reserves unit.

Disqualification. Holiday pay in excess of $25 will not be considered disqualifying income.

Administration. Tape recordings and transcripts of proceedings before a referee and exhibits offered by parties other than the Department of Jobs and Training which are received into evidence are private, and shall be disclosed only in the administration of the appeals process or in answer to a court order.

Nebraska

Benefits. The maximum weekly benefit amount was increased from $134 to $144, and will rise to $154 on January 1, 1992.

New Hampshire

Coverage. Agricultural labor will not be considered covered employment unless it meets the definition of agricultural labor under the Federal Unemployment Tax Act.

New Mexico

Administration. A new enactment prohibits findings of fact or law, conclusions, or final orders made by an unemployment insurance hearing officer or board of review to be used as evidence in any proceeding brought before any court, arbitrator, or judge of the State of New Mexico or the United States.

New York

Benefits. The law was amended to make permanent a demonstration project which allows claimants in approved training to receive additional benefits.

Ohio

Financing. The taxable wage base will increase from $8,000 to $8,250 on January 1, 1992; to $8,500 on January 1, 1993; to $8,750 on January 1, 1994; and to $9,000 on January 1, 1995. However, if in a calendar year, the fund level is 60 percent or more below the minimum safe level, the wage base will be $9,000 as of January 1 of the following calendar year. Excluding adjustments, the maximum contribution rate for negative-balance employers for calendar years 1991–93 will be limited as follows: for 1991, if the negative balance is 5.0 percent or more, the rate will be 5.7 percent; for 1992, if the negative

balance is 11 percent or more, the rate will be 6.0 percent; and for 1993, if the negative balance is 17.0 percent or more, the rate will be 6.3 percent. The law was amended to repeal the 0.01-percent automation surcharge imposed in 1987 to pay for automation of the unemployment insurance system.

Benefits. The wages that must be earned during the 20-week qualifying requirement to be eligible for benefits changed from 37 times the minimum hourly wage to $85.10 per week. On January 1, 1992, the wages needed in the 20 weeks will be 27.5 percent of the statewide average weekly wage. The maximum weekly benefit amount will not exceed (1) 50 percent of the statewide average weekly wage for an individual with no dependents, (2) 60 percent for those with one or two dependents, or (3) 66⅔ percent of the statewide average for persons with three dependents or more.

Disqualification. To purge a duration disqualification, an individual must earn 6 times the average weekly wage of $85.10 per week; beginning January 1, 1992, an individual will need to earn 29.5 percent of the statewide average weekly wage.

Oklahoma

Disqualification. An individual in school, and otherwise eligible for benefits, will not be disqualified if he or she offers to quit school, adjust class hours, or change shifts in order to secure employment. The Oklahoma Employment Security Act was amended to delete the "able to work and available for work" provision that mere registration and reporting at a local employment office is not conclusive evidence of ability to work, availability for work, or willingness to work.

Administration. When disclosure of information to the State's attorney general or a district attorney is allowed, evidence may be used only in proceedings to prosecute or defend allegations of violations of the Oklahoma Employment Security Act. If such information is disclosed for any other reason, the violation will be a felony.

Rhode Island

Administration. The law was amended to permit disclosure of wage and unemployment claims information, on a reimbursable basis, to the U.S. Department of Health and Human Services, the U.S. Department of Housing and Urban Development, and public housing authorities.

South Dakota

Coverage. The law was amended to make permanent a provision which includes as employment the services performed by an individual in the employ of an elementary or secondary school operated by the Federal Government or an agency of the Federal Government.

Benefits. When the weekly benefit amount for partial unemployment is computed, one-fourth of the amount of wages over $25 will be disregarded.

Disqualification. The pension offset provision was amended to exclude from offset that part of a pension or retirement payment that was contributed to by the individual. The between-terms denial-of-benefits provisions will not apply to educational employees of federally operated schools.

Tennessee

Penalties. The penalty for employer misrepresentation to prevent the payment or reduce the amount of benefits changed from a felony conviction carrying a prison term of 1 to 3 years to a Class E felony.

Texas

Financing. An employer's experience rating account will not be charged for benefits paid for unemployment due directly to a disaster if the claimant would otherwise have been eligible for disaster benefits.

Utah

Financing. The computation date for determining employer contribution rates was changed from January 1 to July 1.

Administration. The first-stage appeals body, formerly an appeals referee, is now an administrative law judge.

Vermont

Financing. Until June 30, 1991, a temporary supplemental contribution of 0.05 percent will be required of contributing employers so long as rate schedule II is in effect. The supplemental contribution will be used for employment and training services.

Administration. The law was amended to allow access, on a reimbursable basis, to program records on wage and benefit information by the U.S. Department of Housing and Urban Development, public housing authorities, and the Federal Parent Locater Service of the child support enforcement program. However, information may not be requested or released unless the individual about whom the information is being sought signs a consent form. A new enactment prohibits findings of fact, conclusions, or final orders made by an unemployment insurance hearing officer to be used as evidence in any proceeding brought before any court, arbitrator, or judge of the State of Vermont or the United States.

Virginia

Financing. The taxable wage base increased from $7,000 to $8,000. The unemployment insurance commission may, for a service charge, allow employers to use credit cards to pay their taxes.

Benefits. Beginning on January 6, 1991, an individual must serve a 1-week waiting period before receiving benefits. On January 1, 1991, the minimum weekly benefit amount will increase from $56 to $60 (effective January 5, 1992, to $65), with qualifying wages in the two highest-earnings quarters of the claimant's base period of $3,000 (beginning January 5, 1992, $3,250.) On January 1, 1991, the maximum weekly benefit amount will increase from $176 to $198 (effective January 5, 1992, to $208), with qualifying wages in the two highest quarters of $9,900.01 (effective January 5, 1992, $10,400.01).

Penalties. A claimant will be permitted to use a credit card to repay benefit overpayments.

Washington

Benefits. Backpay awards will be considered wages paid during the period for which backpay was awarded. When the amount of the backpay award or settlement is reduced by the amount of unemployment benefits received, the employer must pay that amount to the unemployment compensation fund.

Penalties. If an individual fails to repay or arrange for repayment of an overpayment assessment, he or she will be assessed an interest penalty of 1 percent of the outstanding balance for each month during which repayment is not made.

West Virginia

Financing. The law was amended to repeal the 1-percent surtax which was added to each employer's rate until the trust fund assets equaled or exceeded the average benefit payments from the fund for the 3 preceding years. Also deleted was the optional assessment on employees and employers to be imposed when the unemployment insurance agency determined, for a projected quarter, that contributions would not finance benefits. Starting January 1, 1991, positive-balance employers could pay contribution rates as low as zero to 2.0 percent, depending on the level of the unemployment insurance fund's assets for the preceding year.

Disqualification. The definition of gross misconduct was amended to include reporting to work or being at work under the influence of any controlled substance.

Administration. State and local child support enforcement agencies may receive benefit, as well as wage, information on claimants.

Penalties. The monetary penalty for a claimant's fraudulent misrepresentation to obtain or attempt to obtain or increase benefits was raised from $100–$500 to $100–$1,000.

Wyoming

Financing. The adjustment factor for noncharged and ineffectively charged benefits[2] will not exceed 1.5 percent, and will be charged against employers.

Administration. The department of employment was created to replace the employment security commission. □

Footnotes

[1] By the terms of the Reed Act, funds in excess of the legal maximum in the Federal Unemployment Account are distributed to the States to be used for administrative costs.

[2] Ineffectively charged benefits are benefits charged to an employer's experience rating account after benefits previously charged to that account have qualified the employer for the maximum rate of contributions.