Changes in unemployment insurance legislation in 1994

Michigan and Wisconsin made extensive modifications to their laws; among the States generally, changes involved requiring claimants to participate in reemployment services

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In 1994, Congress enacted the General Agreement on Tariffs and Trade (GATT) of 1994 (P.L. 103–465), which requires each State to establish a system for withholding Federal income tax from unemployment insurance benefits, so that withholding can occur at the option of a claimant. This provision will be effective for benefit payments made after December 31, 1996. Congress also enacted the Social Security Independence and Program Improvements Act of 1994 (P.L. 103–296), which gives the States the *option* of excluding from coverage services performed by aliens who are admitted to the United States under a "q" visa. The "q" visa received its name because it is issued under subparagraph (Q) of Section 101(a)(15) of the Immigration and Nationality Act. Aliens are issued temporary "q" visas for a period not to exceed 15 months so that they may come to the United States to participate in an international cultural exchange program approved by the U.S. Attorney General. These aliens are to be employed under the same wage terms and working conditions as are domestic workers.

Also enacted was the Social Security Domestic Employment Reform Act of 1994 (P.L. 103–387), which authorizes the U.S. Secretary of the Treasury to enter into agreements with States to collect State unemployment taxes from employers of domestic workers by allowing individuals to report wages paid to these workers on Form 1040 of their Federal income tax returns. States are not required to enter into such agreements, however.

Maine and New Jersey amended their unemployment insurance laws to provide an alternate "trigger" for the payment of Federal-State Extended Benefits. The alternate trigger will allow a State to "switch on" the payment of such benefits more easily because it is based on the total unemployment rate in the State. States currently trigger benefits based on changes in their insured unemployment rate—a measure of statewide unemployment among those covered by unemployment compensation.

Eighteen[1] States amended their unemployment insurance laws to require that, as a condition of eligibility for benefits, an individual must participate in reemployment services, such as job search assistance, if the individual is determined through a profiling system to be likely to exhaust regular benefits. The profiling system assists individuals in making a successful transition to new employment.

California, Connecticut, Maine, New York, and Rhode Island established self-employment assistance programs, in which selected claimants may continue to receive periodic unemployment payments while engaged full time in establishing a business and becoming self-employed.

Following is a summary of some significant changes in State unemployment insurance laws during 1994.

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Alabama

Benefits. The maximum weekly benefit increased from $165 to $180.

Disqualification. A misconduct disqualification from benefits will apply if an individual tests positive for the use of illegal drugs after being warned that positive results would result in dismissal, or for refusing to undergo a drug test, and for knowingly altering a blood or urine specimen. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services.

Arizona

Benefits. An individual who receives temporary total disability benefits may, for purposes of benefit calculation, use a base period of the first 4 of the last 5 completed calendar quarters preceding the disability, if a claim is filed within four calendar quarters after the end of the disability period and within 2 years after the disability period begins, and if the individual has attempted to return to employment upon release from workers' compensation.

Disqualification. An individual will be disqualified from receiving benefits for refusing to undergo drug or alcohol testing or for testing positive for use of drugs or alcohol.

Administration. The number of members on the appeals board increased from three to four.

California

Benefits. A temporary self-employment assistance program was established, until December 5, 1998, for individuals who meet the eligibility requirements to receive, in lieu of regular benefits, an allowance that will assist them in establishing a business and becoming self-employed.

Disqualification. To be eligible for benefits, an individual must participate in reemployment activities such as orientation and assessment if he or she is identified through a profiling system as likely to exhaust regular benefits, unless the individual has shown good cause for failure to participate in the activities.

Colorado

Coverage. The exclusion from coverage of aliens performing agricultural labor was extended to January 1, 1995.

Financing. An employer's experience rating account, which reflects the employer's experience of unemployment, will not be charged for benefits paid to an individual who was separated from employment for drug or alcohol use evidenced by a drug or alcohol test conducted by a licensed or certified medical facility or laboratory.

Benefits. The "active search for work" and eligibility requirements for receipt of Federal-State Extended Benefits are suspended for the period March 6, 1994, through December 31, 1994.

Connecticut

Benefits. The State Commissioner of Labor must maintain a statewide network of job centers, which will provide comprehensive work force development assistance to workers, students, and employers. A self-employment assistance pilot program was established for individuals who meet the eligibility requirements to receive, in lieu of regular benefits, an allowance that will assist them in establishing a business and becoming self-employed.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has shown good cause for failure to participate in the services.

Delaware

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services.

Florida

Disqualification. An individual testing positive for drugs will be disqualified for misconduct and will be ineligible for benefits. In cases of refusal of suitable work, the law now disqualifies an individual who is rejected for offered employment as a direct result of a positive, confirmed drug test required as a condition of employment. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services. Beginning October 1, 1997, claimants must report in person to certify for benefits. Claimants must also continue to report biweekly and attest to being able to and available for work, seeking work, and not refusing suitable work.

Georgia

Financing. An employer's rate of contribution to the unemployment insurance program may increase or decrease by 40 or 50 percent (currently, 40 to 60 percent), depending on the reserve fund balance. No employer's experience rating account will be charged for benefit overpayments that are waived because the benefits were improperly received by an individual.

Benefits. The maximum weekly benefit increased from $185 to $195, and will increase to $205 on July 1, 1995.

Disqualification. If an individual is awarded or receives back wages while he or she is receiving unemployment benefits, the employer shall withhold from the back-pay award the amount of benefits paid and remit that amount to the Commissioner of the Georgia Department of Labor.

Penalties. A 10-percent penalty will be assessed on fraudulently received benefits. Interest of 1 percent a month will accrue on the unpaid portion of the fraudulently received benefits until it is repaid.

Hawaii

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services.

Indiana

Financing. The employment and training services fund may be used to finance training and counseling assistance.

Administration. The Indiana Department of Work Force Development was established to plan, coordinate, implement, monitor, and make recommendations regarding initiatives designed to prepare Indiana's work force for effective participation in the competitive and global economy.

Iowa

Financing. An employer's experience rating account will not be charged with benefits paid as a result of certain presidentially declared disasters.

Benefits. The temporary shared work program established in the Iowa Employment Security Law was made permanent.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services.

Kentucky

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services.

Maine

Benefits. The freeze on the maximum weekly benefit amount was extended from May 31, 1995, to October 28, 1995. The Federal-State Extended Benefits law was amended to provide an alternative trigger for the payment of extended benefits. A self-employment assistance program was established for individuals who meet the eligibility requirements to receive, in lieu of benefits, an allowance that will assist them in establishing a business and becoming self-employed.

Maryland

Financing. The percentage adjustment by which an employer's rate of contribution to the unemployment insurance program increases under the least favorable schedule will be 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 percent to 8.3 percent.

Michigan

Financing. Beginning January 1, 1997, benefits will no longer be charged to employers in inverse chronological order. Instead, the separating employer (who pays $938, or 7 times the weekly benefit amount) will be charged with the first 2 weeks of benefits, and the other base period employers will be charged proportionately for any remaining benefit payments.

Benefits. On January 1, 1997, the State of Michigan will convert from a wage request to a wage record system for establishing unemployment claims. This change means that Michigan will no longer use weekly wage information to determine if a worker may be eligible for jobless benefits, and in what amount. Instead, Michigan will rely on quarterly wage information that employers are already submitting to the Michigan Employment Security Commission. The changeover from a wage request to a wage record system will involve the following: (1) Rather than qualifying on the basis of earnings in the most recent 52 weeks, the individual will have a base period consisting of the first 4 of the last 5 completed calendar quarters. If the individual is unable to qualify on that basis, the last four quarters will be considered. (2) To qualify for benefits, an individual must earn total base period wages of 1–1/2 times wages earned in the high quarter of the base period, or have wages in two quarters of the base period totaling at least 20 times the State average weekly wage. However, a benefit year will not be established unless the individual has earned wages of at least the State minimum hourly wage multiplied by 268.66 in at least one quarter of the base period. (3) To qualify for benefits in a second benefit year, an individual must earn 5 times the weekly benefit amount. (4) The weekly benefit amount will be computed as 4.2 percent of the individual's high quarter wages, up to a maximum of 53 percent of the State average weekly wage, plus $6 for each dependent, up to a maximum of 5 dependents. (5) To determine the number of weeks of benefits an individual can receive, the benefit duration will be computed as 40 percent of base period wages. However, an individual cannot receive more than 26 weeks or less than 14 weeks of benefits. (6) A 7-week limit will be placed on benefits payable based on services performed in a family corporation of which the individual or his or her son, daughter, spouse, or parent owns more than 50 percent of the proprietary interest. (7) For the purpose of paying benefits, if the separating employer has paid at least $938, or 7 times the weekly benefit amount, and the employee is not disqualified, no other benefit adjudication (except major disqualification issues involving, for example, assault and battery) related to prior employment will be necessary.

Minnesota

Financing. Benefits paid on a combined wage claim will not be charged to an employer's experience rating account. (A combined wage claim is one in which, under an interstate agreement, workers who lack qualifying wages in any one State may combine wages from two or more States to become eligible for benefits.)

Benefits. A temporary shared work program, providing unemployment benefits for employees on shortened work schedules, was established, to last until June 30, 1996. The weeks of State additional benefits paid to individuals unemployed because the employer curtailed operations at the work facility, which resulted in a 50-percent reduction of the work force, was increased from 6 to 10. Repealed was the waiting week provision that allowed benefits to be paid for such a week if the individual becomes reemployed in full-time work after receiving 4 weeks of benefits. A noncompensible waiting week still applies.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits.

Mississippi

Financing. Benefits paid to an individual who is in approved training will not be charged to the employer's experience rating account.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits.

Nebraska

Financing. Beginning January 1, 1996, a portion of the current State unemployment insurance collections that go directly to the Federal unemployment insurance trust fund will be diverted to a State unemployment insurance trust fund. The interest earned from that fund will be used to create a State Job Training Fund.

Benefits. The maximum weekly benefit amount increased from $154 to $170, and will increase to $184 on January 1, 1995.

Disqualification. An individual will be disqualified from benefits if he or she is on a leave of absence from work that is mutually and voluntarily agreed to by the employer and employee, or to which he or she is entitled as a matter of State or Federal law. When an individual is discharged for

misconduct for being under the influence of an intoxicating beverage or illegal drug, all of his or her wage credits established prior to the discharge will be canceled.

New Hampshire

Disqualification. To be eligible for benefits, an individual must participate in reemployment services when so directed by the Commissioner of the New Hampshire Department of Employment Security, unless the individual has completed the services or has good cause for failure to participate in the services.

New Jersey

Benefits. The Federal-State Extended Benefits Law was amended to provide an alternative trigger for the payment of extended benefits.

New York

Financing. An employer's experience rating account will not be charged for benefits paid to an individual following that individual's disqualification from benefits for voluntary separation without good cause.

Benefits. A profiling system will be established to assist unemployed individuals to become reemployed. A temporary self-employment assistance program was established, to extend through December 7, 1998, for individuals who meet the eligibility requirements to receive, in lieu of regular benefits, an allowance that will assist them in establishing a business and becoming self-employed.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in such services.

North Carolina

Financing. The standard rate of employer contributions decreased from 2.25 percent to 1.8 percent of an employer's taxable payroll. For the least favorable contribution rate schedule to be invoked, the ratio of the unemployment insurance fund to total taxable payrolls of covered employers must be less than 2.0 percent, and for the most favorable schedule, at least 9.0 percent of payrolls.

Benefits. The formula for computing benefits changed from 1/52 of the wages paid in the two highest quarters to 1/26 of high quarter wages. When an individual's weekly benefit amount for partial benefits is computed, an amount equal to 10 percent of the average weekly wage in the high quarter will be disregarded. The duration of benefits will be based on a ratio of base period wages to high quarter wages, multiplied by 8–2/3.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services.

Ohio

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is a justifiable cause for failure to participate in the services.

Oklahoma

Coverage. The Oklahoma Employment Security Act was amended to exempt from coverage services performed for a corporation, not considered nonprofit, by an individual who owns 100 percent of the corporate stock.

Financing. The taxable wage base will be computed as 50 percent of the State's average annual wage for the second preceding calendar year. State government entities that reimburse the fund for benefits paid to their employees are required to make payments to the fund equal to 1.0 percent of taxable wages paid to covered employees.

Benefits. When an individual's weekly benefit amount for partial benefits is computed, the earnings disregarded will be $100. The definition of partial unemployment was amended to a week of less than full-time work, if earnings are less than the worker's weekly benefit amount plus $100.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits. An individual who fails to accept an offer of work, to apply for or accept work when so directed by the employment office, or to accept work from a union hiring hall when it is offered will be disqualified from benefits for the duration of unemployment or until the individual becomes reemployed and earns wages equal to or in excess of 10 times the weekly benefit amount.

Rhode Island

Benefits. An Entrepreneurial Training Assistance Program was instituted for individuals who participate in employment assistance activities for the purpose of establishing a business and becoming self-employed. An individual identified through a worker profiling system as likely to exhaust regular benefits must participate in employment assistance activities, which will consist of entrepreneurial training, business counseling, and technical assistance.

South Dakota

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

Utah

Disqualification. The disqualification and ineligibility provisions that applied to students while they were attending school were repealed.

Vermont

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if it is determined through a profiling system that the individual is likely to exhaust benefits. An individual will be disqualified from receiving benefits if he or she was unable to perform normal job duties because of a conviction in a criminal or civil matter. An individual will be disqualified for any week for which he or she receives a cash severance payment, unless the employer elected to treat the payment as nondisqualifying because of a work agreement.

Washington

Benefits. A new additional benefits program was established to permit claimants whose benefits were cut off at the end of the Emergency Unemployment Compensation program in March to receive the remaining benefits to which they would otherwise have been entitled.

West Virginia

Financing. The 1.0-percent contribution rate for debit-balance employers and for foreign construction employers was made permanent.

Benefits. The maximum weekly benefit amount increased from $225 to $280. When an individual's weekly benefit amount for partial benefits is computed, the amount of earnings disregarded will be $60. The definition of partial unemployment was amended to a week of less than full-time work, if earnings are less than the worker's weekly benefit amount plus $61.

Disqualification. To be eligible for benefits, an individual must participate in reemployment services such as job search assistance if he or she is determined through a profiling system to be likely to exhaust regular benefits, unless the individual has completed the services or there is justifiable cause for the claimant's failure to participate in the services.

Wisconsin

Financing. A seasonal employer will be charged for benefits when a seasonal employee works for the employer for more than 90 days, regardless of that employee's outside earnings.

Benefits. The maximum weekly benefit amount increased from $243 to $256, and will increase to $266 on January 1, 1995. The minimum weekly benefit amount also was increased, from $46 to $48; it will rise to $50 on January 1, 1995. In addition to meeting the qualifying requirement of having earned 30 times the weekly benefit amount, an individual must have earned base period wages equal to at least 7 times his or her weekly benefit amount outside the high quarter to be eligible for benefits. To qualify for benefits in a second benefit year, an individual must earn 8 times the weekly benefit amount. When an individual's weekly benefit amount for partial benefits is computed, the first $30 will be disregarded and the weekly benefit will be reduced by 67 percent of the remaining amount. When partial benefits are computed, wages received as a volunteer firefighter or voluntary medical technician will be excluded from the benefit computation.

Disqualification. A disqualification for voluntarily leaving employment will not apply if an individual claiming partial benefits left to accept work offering an average weekly wage greater than the average weekly wage in the work terminated. A member of the armed forces will be eligible for benefits if he or she quits a job held concurrently with a tour of duty, and quits because of completion of the tour of duty or a discharge from the service for a reason that would allow the payment of benefits. Benefits paid based on the above provisions will be charged not to the employer's experience rating account, but to the unemployment compensation benefit fund's balancing account. The Wisconsin Unemployment Reserves Compensation Act was amended to apply a denial of benefits between terms and during vacation periods to individuals employed by an educational service agency. An educational service agency is a government agency or entity established and operated exclusively to provide services to educational institutions.

Penalties. The Wisconsin Department of Industry, Labor and Human Relations will waive recovery of erroneously paid benefits if the overpayment was the result of a departmental or employer error. □

Footnote

[1] Alabama, California, Connecticut, Delaware, Florida, Hawaii, Iowa, Kentucky, Minnesota, Mississippi, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Rhode Island, Vermont, and West Virginia.