

UNEMPLOYMENT INSURANCE BENEFITS

An Employer's Guide

The New York State Unemployment Insurance Program provides immediate, short term financial protection for people who are out of work through no fault of their own. Unemployment Insurance Reform Legislation effective April 1, 1999 brought significant changes to the program. This brochure reviews the rules under which your former employees can collect unemployment insurance benefits, and explains what you should do when a former employee files a claim for benefits.

Statements in this brochure are intended for general information and do not have the effect of law or regulation. You may review the New York State Unemployment Insurance Law (Article 18 of the New York State Labor Law) at our website (www.labor.state.ny.us) or at your local library.

RULES FOR RECEIVING UNEMPLOYMENT BENEFITS

To qualify for unemployment benefits, claimants must demonstrate recent, substantial attachment to the labor market; must be out of work through no fault of their own; must be ready, willing and able to work and must be actively seeking employment.

A claimant who has qualified for benefits according to the guidelines above can have the active work search requirement waived and remain eligible for benefits if the claimant is attending a training course approved by the Commissioner of Labor.

EMPLOYMENT AND EARNINGS REQUIREMENTS

To qualify for benefits, the law requires that a person have:

1. Work in covered employment in at least two quarters out of the first four of the last five completed calendar quarters prior to the filing of the claim for benefits, with wages of at least \$1600 paid in the quarter with the highest wages, and total wages paid equal to at least one and one-half times the wages in the quarter with the highest wages,*

or

2. Work in covered employment in at least two quarters out of the last four completed calendar quarters prior to the filing of the claim for benefits, with wages of at least \$1600 paid in the quarter with the highest wages, and total wages paid equal to at least one and one-half times the wages in the quarter with the highest wages.*

Those claimants who have some covered employment and earnings in the last five completed calendar quarters prior to filing the claim but do not qualify for benefits under either of the above conditions due to insufficient earnings, may have their base period of the first four of the last five completed calendar quarters extended by the equivalent number of quarters they received Workers' Compensation or Volunteer Firefighters' Benefit Law payments up to a maximum of two quarters.

Wages earned in employment that was lost to misconduct or the commission of a felony in connection with that employment cannot be used to establish a valid claim under either of the above conditions. Those wages will not be used in the computation of the claimant's benefit rate.

*For this purpose, wages up to twenty-two times of high quarter earnings are used to determine the current maximum benefit rate. (See "How Much Can a Jobless Worker Receive?" on page 2.)

CONDITIONS THAT AFFECT ELIGIBILITY FOR BENEFITS

Claimants are **ineligible** for benefits if:

1. They left their job without good cause, or due to marriage; were dismissed for job-related misconduct; or after filing for benefits, refused suitable employment without good reason. Benefits are denied until they work again and earn an amount equal to at least five times their weekly benefit rate, and then lose that later job through no fault of their own. A claimant may or may not be eligible if the reason for leaving the employer is to follow a spouse.
2. They are not ready, willing and able to work or not actively seeking employment for which they are fitted by training and experience. Benefits are denied for as long as any of these conditions exist.
3. They are unemployed because of a strike, lockout or other industrial controversy in the establishment where they work. The suspension of benefits lasts for 49 days, unless the dispute ends earlier, and applies to all employees, whether or not they are involved in the dispute.
4. They lose their employment because of a criminal act which involves the commission of a felony in connection with their job. No benefits are payable for a year after discharge.
5. They are not totally unemployed. No benefits are payable for any day on which they performed some work whether full-time or part-time, or on a self-employed or freelance basis.
6. They are corporate officers who are devoting any time or effort to the corporation's business, even though wages or salaries may not be paid at that time.
7. They are receiving vacation or holiday pay for a previously designated period.
8. They are employees of educational institutions and may not use wages paid for filing` claims for benefits based on such employment between academic years or terms and during customary vacation or holiday recesses provided they have a contract or reasonable assurance of employment in the ensuing academic period.

NOTE: After receiving 13 weeks of benefits, claimants who do not have a definite date to return to work and do not obtain employment through a union hiring arrangement will be required to accept employment they are capable of performing, even if they are not suited for the job by training or experience, as long as the position pays not less than the prevailing local wage for the job and 80% of the claimant's high calendar quarter earnings in the base period.

HOW MUCH CAN A JOBLESS WORKER RECEIVE?

Beginning January 3, 2000, the benefit rate for a week of total unemployment is one twenty-sixth of the worker's wages in the calendar quarter with the highest wages during the base period. If highest quarter wages are \$3,575 or less, the benefit rate is one twenty-fifth of wages. Benefits range from \$64 to a maximum of \$365 until September 4, 2000, when the maximum benefit shall equal one-half of the state average weekly wage for covered employment, or \$405.* The first week of unemployment after the claim is filed is a waiting week for which no benefits are paid.

Partial benefits can be paid for any week in which a claimant works no more than 3 days and earns no more than the maximum benefit rate. Benefits under the state's regular unemployment insurance program are payable for up to 26 weeks of total unemployment at the full weekly benefit rate or in an equivalent amount during a greater number of weeks if the claimant is partially employed. These benefits are payable during the claimant's benefit year - the 52 week period following the week in which the claim is filed.

*Beginning with new claims for benefits filed as of April 17, 2000 and later, an individual who qualifies for benefits under the quarterly wage criteria may apply within ten days of receipt of such notification to have the weekly benefit amount recomputed, based upon one-half his or her average weekly wage for all employment during the base period which established the claimant's eligibility. The maximum amount used to set high quarter earnings for entitlement purposes is \$8910 (22 times \$405). The burden of proof of these earnings falls on the claimant.

During periods of high unemployment, up to 13 additional weeks of Extended Benefits or a varying amount of emergency benefits may be payable. Also, claimants who are eligible for regular benefits while attending a training course approved by the Commissioner may be eligible for up to 26 additional weeks of benefits if their regular benefits expire while they are still in training. These additional 26 weeks are not chargeable to the employer's account.

Pension Reduction. Individuals who are eligible for unemployment insurance and are receiving a retirement pension financed by a base period employer may have their weekly benefits reduced if their base period employment with that employer resulted in eligibility for the pension or an increase in the amount of the pension.

Benefits are reduced as follows:

1. If a base period employer contributed 100 percent to a claimant's pension plan, the weekly benefit will be reduced by 100 percent of the weekly pension amount.
2. If a base period employer contributed at least 50 percent (but less than 100 percent) to the pension plan, the weekly benefit will be reduced by 50 percent of the weekly pension amount.
3. If a base period employer contributed less than 50 percent to the pension plan, there will be no reduction in the weekly benefit rate.

Social Security benefits are not deductible from the benefit rate.

Workers' Compensation Limitation. The unemployment insurance benefits to which a claimant may be entitled are limited to the difference between the amount of workers' compensation benefits and 100% of the claimant's average weekly wage.

SHARED WORK

Shared Work is a voluntary program providing an alternative to layoffs for employers who have five or more full-time employees and who are faced with a temporary decline in business. Rather than laying off a percentage of the workforce to cut costs, an employer can reduce the hours and wages of all, or a particular group, of employees. The employees whose hours and wages are reduced can receive partial unemployment insurance benefits to supplement their lost wages.

The Shared Work Program helps employers avoid some of the burdens that accompany a layoff situation. If employees are retained during a temporary slowdown, employers can quickly gear up when business conditions improve. Employers are then spared the expense of recruiting, hiring and training new employees; and employees are spared the hardships of full unemployment. More information about Shared Work appears in the pamphlet SW 1, Shared Work (see page 7 to order).

PROVIDING INFORMATION ABOUT BENEFIT CLAIMS

REPORTING EARNINGS

Beginning April 1, 1999, benefit rates and claimant entitlement are primarily determined based on wages reported by employers on forms NYS-45 and NYS-45-ATT, Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return. In some circumstances, employers may be requested to provide additional wage information for a specific claim.

Employers should be sure that all employment and wages are promptly and correctly reported. Errors can be costly because they may result in incorrect charges to an employer's account which may increase future years' tax rates and delay the payment of benefits to the claimant. Also, penalties may be imposed for failure to file reports, or failure to file complete, accurate, and timely reports.

NOTICE TO EMPLOYEES LEAVING THE JOB

An employer must give written notice to any employee who goes off the payroll, regardless of the reason for separation or whether it is a temporary or permanent separation. This notice must be provided on a form furnished or approved by the Department of Labor and must include: (1) the employer's name, (2) the New York State Employer Registration Number, (3) the mailing address where payroll records are kept and (4) a statement instructing the employee when filing a claim to provide the information on the form to the unemployment insurance Claims Center. An employer may request a supply of the Department's form IA 12.3, Record of Employment (to order, see page 7), or request approval of an equivalent form from the Liability and Determination Section.

CHARGING OF BENEFITS

BASE PERIOD

When an individual files a claim for benefits, a base period is established. This period is either the first four of the last five completed calendar quarters or the last four completed calendar quarters prior to the filing of the claim. A claimant's benefit rate and entitlement to benefits are based on the amount of earnings during the base period.

NOTIFICATION OF ENTITLEMENT

When an individual filing for benefits is determined to be entitled, a Notice of Entitlement and Potential Charges, form LO 400, is sent to all employers whose experience rating accounts might be charged for benefits paid to that individual. Any discrepancies in wage information or any potentially disqualifying information should be reported immediately. Do not return the form, unless you are making changes to the wage data or know of any reason why the claimant should not be paid.

CHARGING FORMULA

Benefits are first charged to the account of the last employer for whom the claimant worked prior to filing the claim for benefits. The last employer is charged for an amount equal to seven times the claimant's weekly benefit amount, regardless of the total wages paid to the claimant by that employer. Thereafter, benefits are charged in a proportional manner to all base period employers according to how the amount of wages an employer paid relates to the claimant's total base period wages. Exceptions to the above charging formula may occur as a result of employment with out-of-state employers or the federal government.

A claimant is entitled to up to 26 regular benefit payments, all of which are chargeable to employers' accounts. Also, during periods of high unemployment, the claimant may receive up to 13 additional weeks of Extended Benefit payments. Half of each such payment is chargeable to base period employers and half to the federal government. Accounts of governmental employers, however, are chargeable for the total amount of the Extended Benefit payment.

Under the Self-Employment Assistance Program, benefits may be available to assist certain unemployed persons in becoming self-employed. Participants in the program receive benefits as they pursue, on a full-time basis, activities related to the establishment of a business. The activities may include training. Benefits are charged to base period employers.

Claimants who are eligible for benefits while attending a training course approved by the Commissioner of Labor may be eligible for up to 26 additional weeks of benefit payments if their regular benefits expire while they are still in training. These additional benefits are not chargeable to base period employers.

NOTIFICATION OF CHARGES

Employers are advised monthly on form IA 96, Notice of Experience Rating Charges, about all benefit payments to former employees that are charged to their accounts. The charges shown represent weekly payments except for the payments made under the Interstate Plan for Combining Wage Credits, which are shown as quarterly amounts.

Employers electing the benefit reimbursement option* are notified on form IA 96R, Notice of Benefit Reimbursement Charges.

EXCEPTIONS TO THE GENERAL CHARGING FORMULA

Misconduct. A claimant who was discharged for reasons that constitute misconduct under the Unemployment Insurance Law may not use wages earned with that employer to establish a claim for benefits. The account of such an employer will not be charged under these circumstances.

Leaving Employment Without Good Cause. An employer's account will not be charged if:

1. The claimant, upon leaving employment with the employer, (a) filed a claim for benefits and (b) was disqualified from receiving benefits due to a determination the employment was lost due to leaving without good cause,

and

2. The claimant requalifies for benefits after loss of subsequent employment under nondisqualifying circumstances.

Work Release Program. An employer's account will not be charged for benefits that are based on work done by a claimant as part of a work release program while the claimant was an inmate of a correctional institution, providing the work release employment was terminated solely because the inmate relocated to another area as a condition of parole or voluntarily relocated to another area immediately after being released from the correctional institution.

If you have questions concerning charges to your account based on a discharge for misconduct, leaving employment without good cause, or work release issues, please write to the Unemployment Insurance Office where the claim was filed providing details, including a copy of any relevant determination issued by the Department. The office address appears on the initial Notice of Entitlement and Potential Charges, form LO 400. Also, a directory of Unemployment Insurance Offices can be found in the Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax, NYS-50 (to order, see page 7).

Claimant Who Continues to be Employed Part-time. An employer's account will not be charged for a claimant's benefits if:

1. The claimant worked for the employer on a part-time basis, and
2. The part-time employment for that employer included work during the four weeks immediately preceding the filing of a claim, and
3. The claimant continues to work for that employer on a part-time basis without significant interruption and to the same extent as during the weeks immediately preceding the filing of the claim.

Combined Wage Claims. Under the Interstate Plan for Combining Wage Credits, a claimant who has covered employment and earnings in more than one state that participates in this plan may have the claim determined on the

*Nonprofit organizations organized and operated for religious, charitable, scientific, literary or educational purposes (those exempt under Section 501 (c)(3) of the Internal Revenue Code) and governmental entities may elect to discharge their obligations under the Unemployment Insurance Law by reimbursing the unemployment insurance fund for benefits paid to their former employees and charged to their accounts in lieu of tax contributions. A request to elect the reimbursement option must be submitted in writing to the Unemployment Insurance Division. Additional information on the benefit reimbursement option is available in pamphlet IA 318.13, Benefit Reimbursement (to order, see page 7).

basis of combined employment and earnings in all participating states. The claimant's entitlement to benefits is then determined under the laws and regulations of the state in which the claim for benefits is filed.

New York State, as a participant in the Interstate Plan for Combining Wage Credits, transfers remuneration under the New York State Unemployment Insurance Law to other participating states and also accepts employment and earnings covered under the laws of other participating states to be combined for the purpose of determining the claimant's entitlement to benefits. The paying state then periodically bills each participating state for benefits paid to the claimant in the same proportions the claimant's earnings in each state bear to the total earnings used to determine the claimant's entitlement to benefits. Benefits charged to New York State under the Interstate Plan for Combining Wage Credits are then charged to the experience rating accounts of the New York State employers.

New or Corrected Information. If an employer provides new or corrected information in response to the initial Notice of Entitlement and Potential Charges, form LO 400, any adjustments to benefit rates or experience rating charges will be prospective as of the date the information was received by the Department. However, the adjustments will be retroactive to the beginning of the claim if the new information results in: a higher benefit rate; the claimant's failure to establish a valid claim; or a determination that the established benefit rate was based on the claimant's willful false statement.

EFFECT OF CHARGES ON TAX RATES

Benefit payments charged to an employer's experience rating account may have the effect of increasing that employer's tax rate in future years. When a former employee files for unemployment insurance and is determined eligible to collect benefits, the Department of Labor sends to the employer form LO 400, Notice of Entitlement and Potential Charges. This gives the employer an early opportunity to verify that benefits are being paid to former employees.

If an employer is in a position to reemploy a claimant, the claimant should be contacted directly. The claimant's address will appear on the initial Notice of Entitlement and Potential Charges, form LO 400. The Unemployment Insurance Office or Telephone Claims Center should be notified if the claimant refuses rehire or fails to report to work. The employer should supply the date the claimant refused work or failed to report to work; the type of employment offered; and the wages offered for the position. The address of the office where the claim for benefits was filed is shown on the form LO 400. Offices are also identified on the form IA 96, Notice of Experience Rating Charges, under the heading "Local Office." A directory of Unemployment Insurance Offices and Telephone Claims Centers can be found in the Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax, NYS-50 (to order, see page 7).

An employment offer may be considered as acceptable to the claimant, if the prevailing wage for similar work is offered, even if the amount is less than the claimant earned on the last job, or is less than salary desired. After 13 full weeks of unemployment insurance benefits are paid, the claimant may be required to accept employment which the claimant is capable of performing, if the prevailing wage is offered and the pay is at least 80% of the claimant's base period high quarter wages.

If the employer believes that the claimant is not eligible for benefits, the Unemployment Insurance Office where the claim for benefits was filed should be contacted. For examples of eligibility issues, see Conditions that Affect Eligibility for Benefits, page 2.

If it is believed that benefits were improperly charged (for example, claimant may never have worked for the employer), the employer should write to the New York State Department of Labor, Liability and Determination Section, State Office Campus, Albany, NY 12240-0322 or telephone (518) 457-2635. Please provide the claimant's name and Social Security Account Number along with the reasons you believe the charges are incorrect.

If the employer believes that the claimant has been working at the same time benefits were paid, or has otherwise fraudulently collected benefits, the employer should write to the Department of Labor, Liability and Determination Section, Fraud Control Subunit, State Office Campus, Albany, NY 12240 or call the 24 hour toll-free fraud hotline at 1(888)598-2077.

ADDITIONAL INFORMATION

The Employer's Guide to Unemployment Insurance, Wage Reporting and Withholding Tax, NYS-50, contains information on a variety of unemployment insurance issues, including:

- What constitutes employment under the Unemployment Insurance Law
- Who is a liable employer
- Record keeping requirements
- Reporting requirements
- Your right to a hearing on unemployment insurance determinations
- How unemployment insurance tax rates are computed
- Controlling unemployment insurance costs

The employer's guide and other informational pamphlets covering specific unemployment insurance topics may be requested by mailing the order form below to the Department of Labor, Registration Subsection, State Office Campus, Albany NY 12240-0339 or calling (518) 485-8589. You may also fax this completed form to (518) 485-8010.

PAMPHLETS/FORMS WHICH CONTAIN INFORMATION ABOUT UNEMPLOYMENT INSURANCE

IA 12.3	Record of Employment
IA 15	Change of Business Information
IA 116.3	Jurisdiction of Employment
IA 318D	Householder's Guide for Unemployment Insurance
IA 318.10	Students and NYS and Federal Unemployment Insurance Tax Reporting
IA 318.11	Agricultural Employment
IA 318.12	Experience Rating
IA 318.13	Benefit Reimbursement
IA 318.14	Independent Contractors
IA 318.15	Reporting Meals, Lodging, Tips and Other Forms of Remuneration
IA 318.17	Guidelines for Determining Worker Status: Performing Artists
IA 318.18	Guidelines for Determining Worker Status: Life Insurance Sales Industry
IA 318.19	Guidelines for Determining Worker Status: Newspaper and Shopping Guide Publishing Industry
IA 318.20	Guidelines for Determining Worker Status: Translating and Interpreting Industry
IA 318.21	Guidelines for Determining Worker Status: Tour Guide Industry
IA 318.22	Guidelines for Determining Worker Status: Van Operators in the Moving Industry
IA 318.60	How You Can Help Keep Your Unemployment Insurance Costs Down
NYS-50	Employer's Guide to UI, Wage Reporting and Withholding Tax
SW 1	Shared Work

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