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**SENATE BILL 324**

**45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002**

**INTRODUCED BY**

**Ben D. Altamirano**

**AN ACT**

**RELATING TO UNEMPLOYMENT COMPENSATION; CHANGING THE BASE PERIOD FOR COMPUTATION OF BENEFITS; PROVIDING FOR BENEFITS FOR UNEMPLOYED PART-TIME WORKERS; PROVIDING FOR DEPENDENTS' ALLOWANCES; AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 51-1-4 NMSA 1978 (being Laws 1969, Chapter 213, Section 1, as amended by Laws 2000, Chapter 3, Section 1 and also by Laws 2000, Chapter 7, Section 1) is amended to read:**

**"51-1-4. MONETARY COMPUTATION OF BENEFITS-- PAYMENT GENERALLY. --**

**A. All benefits provided herein are payable from the unemployment compensation fund. All benefits shall be**

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1 paid in accordance with such [~~regulations~~] rules as the  
2 secretary may prescribe through employment offices or other  
3 agencies as the secretary may by general rule approve.

4 B. Weekly benefits shall be as follows:

5 (1) an individual's "weekly benefit amount"  
6 is an amount equal to one twenty-sixth of the total wages for  
7 insured work paid to him in that quarter of his base period in  
8 which total wages were highest. No benefit as so computed may  
9 be less than ten percent or more than fifty-two and one-half  
10 percent of the state's average weekly wage for all insured  
11 work. The state's average weekly wage shall be computed from  
12 all wages reported to the department from employing units in  
13 accordance with [~~regulations~~] rules of the secretary for the  
14 period ending June 30 of each calendar year divided by the  
15 total number of covered employees divided by fifty-two,  
16 effective for the benefit years commencing on or after the  
17 first Sunday of the following calendar year. Any such  
18 individual is not eligible to receive benefits unless he has  
19 wages in at least two quarters of his base period. For  
20 purposes of this subsection, "total wages" means all  
21 remuneration for insured work, including commissions and  
22 bonuses and the cash value of all remuneration in a medium  
23 other than cash;

24 (2) each eligible individual who is  
25 unemployed in any week during which he is in a continued

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1 claims status shall be paid, with respect to such week, a  
2 benefit in an amount equal to his weekly benefit amount, less  
3 that part of the wages, if any, or earnings from self-  
4 employment, payable to him with respect to such week which is  
5 in excess of one-fifth of his weekly benefit amount. For  
6 purposes of this subsection only, "wages" includes all  
7 remuneration for services actually performed in any week for  
8 which benefits are claimed, vacation pay for any period for  
9 which the individual has a definite return-to-work date, wages  
10 in lieu of notice and back pay for loss of employment but does  
11 not include payments through a court for time spent in jury  
12 service;

13 (3) notwithstanding any other provision of  
14 this section, each eligible individual who, pursuant to a plan  
15 financed in whole or in part by a base-period employer of such  
16 individual, is receiving a governmental or other pension,  
17 retirement pay, annuity or any other similar periodic payment  
18 that is based on the previous work of such individual and who  
19 is unemployed with respect to any week ending subsequent to  
20 April 9, 1981 shall be paid with respect to such week, in  
21 accordance with [~~regulations~~] rules prescribed by the  
22 secretary, compensation equal to his weekly benefit amount  
23 reduced, but not below zero, by the prorated amount of such  
24 pension, retirement pay, annuity or other similar periodic  
25 payment that exceeds the percentage contributed to the plan by

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1 the eligible individual. The maximum benefit amount payable  
2 to such eligible individual shall be an amount not more than  
3 twenty-six times his reduced weekly benefit amount. If  
4 payments referred to in this section are being received by any  
5 individual under the federal Social Security Act, the division  
6 shall take into account the individual's contribution and make  
7 no reduction in the weekly benefit amount;

8 (4) in the case of a lump-sum payment of a  
9 pension, retirement or retired pay, annuity or other similar  
10 payment by a base-period employer that is based on the  
11 previous work of such individual, such payment shall be  
12 allocated, in accordance with ~~[regulations]~~ rules prescribed  
13 by the secretary, and shall reduce the amount of unemployment  
14 compensation paid, but not below zero, in accordance with  
15 Paragraph (3) of this subsection; and

16 (5) the retroactive payment of a pension,  
17 retirement or retired pay, annuity or any other similar  
18 periodic payment as provided in Paragraphs (3) and (4) of this  
19 subsection attributable to weeks during which an individual  
20 has claimed or has been paid unemployment compensation shall  
21 be allocated to such weeks and shall reduce the amount of  
22 unemployment compensation for such weeks, but not below zero,  
23 by an amount equal to the prorated amount of such pension.  
24 Any overpayment of unemployment compensation benefits  
25 resulting from the application of the provisions of this

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1 paragraph shall be recovered from the claimant in accordance  
2 with the provisions of Section 51-1-38 NMSA 1978.

3 C. An individual otherwise eligible for benefits  
4 shall be paid for each week of unemployment, in addition to  
5 the amount payable under Subsection B of this section, the sum  
6 of fifteen dollars (\$15.00) for each unemancipated child of  
7 the individual who is in fact dependent upon and wholly or  
8 mainly supported by the individual and is:

9 (1) under the age of eighteen;

10 (2) eighteen years of age or over and  
11 incapable of earning wages because of mental or physical  
12 incapacity;

13 (3) under the age of twenty-four and is a  
14 full-time student at an educational institution that normally  
15 maintains a regular faculty and curriculum and normally has a  
16 regularly organized body of students in attendance at the  
17 place where its educational activities are carried on;

18 (4) under the age of eighteen and in the  
19 individual's custody pending the adjudication of a petition  
20 filed by the individual for the adoption of the child in a  
21 court of competent jurisdiction; or

22 (5) under the age of eighteen and for whom  
23 the individual is under a decree or order from a court of  
24 competent jurisdiction required to contribute to the child's  
25 support and for whom no other person is receiving allowances

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1 under the Unemployment Compensation Law if the child is  
2 domiciled within the United States or its territories or  
3 possessions.

4 D. Dependency benefits shall not exceed fifty  
5 percent of the individual's weekly benefit rate. The amount  
6 of dependency benefits determined as of the beginning of an  
7 individual's benefit year shall not be reduced for the  
8 duration of the benefit year, but this provision does not  
9 prevent the transfer of dependents' benefits from one spouse  
10 to another in accordance with this subsection. If both the  
11 husband and wife receive benefits with respect to a week of  
12 unemployment, only one of them is entitled to a dependency  
13 allowance with respect to a child. The division shall  
14 prescribe standards as to who may receive a dependency  
15 allowance when both the husband and wife are eligible to  
16 receive unemployment compensation benefits. No dependency  
17 benefits shall be paid unless the individual submits  
18 documentation satisfactory to the division establishing the  
19 existence of the claimed dependent. If the above provisions  
20 are satisfied, an otherwise eligible individual who has been  
21 appointed guardian of a dependent child by a court of  
22 competent jurisdiction shall be paid dependency benefits.

23 ~~[E.]~~ E. Any otherwise eligible individual is  
24 entitled during any benefit year to a total amount of benefits  
25 equal to whichever is the lesser of twenty-six times his

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1 weekly benefit amount, plus any dependency benefit amount, or  
2 sixty percent of his wages for insured work paid during his  
3 base period.

4 ~~[D.]~~ F. Any benefit as determined in Subsection B  
5 or C of this section, if not a multiple of one dollar (\$1.00),  
6 shall be rounded to the next lower multiple of one dollar  
7 (\$1.00).

8 ~~[E.]~~ G. The secretary may prescribe ~~[regulations]~~  
9 rules to provide for the payment of benefits that are due and  
10 payable to the legal representative, dependents, relatives or  
11 next of kin of claimants since deceased. These ~~[regulations]~~  
12 rules need not conform with the laws governing successions,  
13 and the payment shall be deemed a valid payment to the same  
14 extent as if made under a formal administration of the  
15 succession of the claimant.

16 ~~[F.]~~ H. The division, on its own initiative, may  
17 reconsider a monetary determination whenever it is determined  
18 that an error in computation or identity has occurred or that  
19 wages of the claimant pertinent to such determination but not  
20 considered have been newly discovered or that the benefits  
21 have been allowed or denied on the basis of misrepresentation  
22 of fact, but no redetermination shall be made after one year  
23 from the date of the original monetary determination. Notice  
24 of a redetermination shall be given to all interested parties  
25 and shall be subject to an appeal in the same manner as the

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1 original determination. In the event that an appeal involving  
2 an original monetary determination is pending at the time a  
3 redetermination is issued, the appeal, unless withdrawn, shall  
4 be treated as an appeal from such redetermination. "

5 Section 2. Section 51-1-5 NMSA 1978 (being Laws 1969,  
6 Chapter 213, Section 2, as amended by Laws 2000, Chapter 3,  
7 Section 2 and also by Laws 2000, Chapter 7, Section 2) is  
8 amended to read:

9 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS. --

10 A. An unemployed individual shall be eligible to  
11 receive benefits with respect to any week only if he:

12 (1) has made a claim for benefits with  
13 respect to such week in accordance with such [~~regulations~~]  
14 rules as the secretary may prescribe;

15 (2) has registered for work at, and  
16 thereafter continued to report at, an employment office in  
17 accordance with such [~~regulations~~] rules as the secretary may  
18 prescribe, except that the secretary may, by [~~regulation~~]  
19 rule, waive or alter either or both of the requirements of  
20 this paragraph as to individuals attached to regular jobs and  
21 as to such other types of cases or situations with respect to  
22 which he finds that compliance with such requirements would be  
23 oppressive or would be inconsistent with the purposes of the  
24 Unemployment Compensation Law. No such [~~regulation~~] rule  
25 shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

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1 (3) is able to work and is available for work  
2 and is actively seeking permanent [~~and substantially~~  
3 full-time work or part-time work in accordance with Subsection  
4 I of Section 51-1-42 NMSA 1978 and in accordance with the  
5 terms, conditions and hours common in the occupation or  
6 business in which the individual is seeking work, except that  
7 the secretary may, by [~~regulation~~] rule, waive this  
8 requirement for individuals who are on temporary layoff status  
9 from their regular employment with an assurance from their  
10 employers that the layoff shall not exceed four weeks or who  
11 have an express offer in writing of substantially full-time  
12 work that will begin within a period not exceeding four weeks;

13 (4) has been unemployed for a waiting period  
14 of one week. No week shall be counted as a week of  
15 unemployment for the purposes of this paragraph:

16 (a) unless it occurs within the benefit  
17 year that includes the week with respect to which he claims  
18 payment of benefits;

19 (b) if benefits have been paid with  
20 respect thereto; and

21 (c) unless the individual was eligible  
22 for benefits with respect thereto as provided in this section  
23 and Section 51-1-7 NMSA 1978, except for the requirements of  
24 this subsection and of Subsection E of Section 51-1-7 NMSA  
25 1978;

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1 (5) has been paid wages in at least two  
2 quarters of his base period;

3 (6) has reported to an office of the division  
4 in accordance with the [~~regulations~~] rules of the secretary  
5 for the purpose of an examination and review of the  
6 individual's availability for and search for work, for  
7 employment counseling, referral and placement and for  
8 participation in a job finding or employability training and  
9 development program. No individual shall be denied benefits  
10 under this section for any week that he is participating in a  
11 job finding or employability training and development program;  
12 and

13 (7) participates in reemployment services,  
14 such as job search assistance services, if the division  
15 determines that the individual is likely to exhaust regular  
16 benefits and need reemployment services pursuant to a  
17 profiling system established by the division, unless the  
18 division determines that:

19 (a) the individual has completed such  
20 services; or

21 (b) there is justifiable cause for the  
22 individual's failure to participate in the services.

23 B. A benefit year as provided in Section 51-1-4  
24 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be  
25 established; provided no individual may receive benefits in a

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1 benefit year unless, subsequent to the beginning of the  
2 immediately preceding benefit year during which he received  
3 benefits, he performed service in "employment", as defined in  
4 Subsection F of Section 51-1-42 NMSA 1978, and earned  
5 remuneration for such service in an amount equal to at least  
6 five times his weekly benefit amount.

7 C. Benefits based on service in employment defined  
8 in Paragraph (8) of Subsection F of Section 51-1-42 and  
9 Section 51-1-43 NMSA 1978 are to be paid in the same amount,  
10 on the same terms and subject to the same conditions as  
11 compensation payable on the basis of other services subject to  
12 the Unemployment Compensation Law; except that:

13 (1) benefits based on services performed in  
14 an instructional, research or principal administrative  
15 capacity for an educational institution shall not be paid for  
16 any week of unemployment commencing during the period between  
17 two successive academic years or terms or, when an agreement  
18 provides for a similar period between two regular but not  
19 successive terms, during such period or during a period of  
20 paid sabbatical leave provided for in the individual's  
21 contract, to any individual if such individual performs such  
22 services in the first of such academic years or terms and if  
23 there is a contract or a reasonable assurance that such  
24 individual will perform services in any such capacity for any  
25 educational institution in the second of such academic years

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1 or terms;

2 (2) benefits based on services performed for  
3 an educational institution other than in an instructional,  
4 research or principal administrative capacity shall not be  
5 paid for any week of unemployment commencing during a period  
6 between two successive academic years or terms if such  
7 services are performed in the first of such academic years or  
8 terms and there is a reasonable assurance that such individual  
9 will perform services for any educational institution in the  
10 second of such academic years or terms. If compensation is  
11 denied to any individual under this paragraph and the  
12 individual was not offered an opportunity to perform such  
13 services for the educational institution for the second of  
14 such academic years or terms, the individual shall be entitled  
15 to a retroactive payment of benefits for each week for which  
16 the individual filed a claim and certified for benefits in  
17 accordance with the ~~[regulations]~~ rules of the division and  
18 for which benefits were denied solely by reason of this  
19 paragraph;

20 (3) benefits shall be denied to any  
21 individual for any week that commences during an established  
22 and customary vacation period or holiday recess if such  
23 individual performs any services described in Paragraphs (1)  
24 and (2) of this subsection in the period immediately before  
25 such period of vacation or holiday recess and there is a

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1 reasonable assurance that such individual will perform any  
2 such services in the period immediately following such  
3 vacation period or holiday recess;

4 (4) benefits shall not be payable on the  
5 basis of services specified in Paragraphs (1) and (2) of this  
6 subsection during the periods specified in Paragraphs (1), (2)  
7 and (3) of this subsection to any individual who performed  
8 such services in or to or on behalf of an educational  
9 institution while in the employ of a state or local  
10 governmental educational service agency or other governmental  
11 entity or nonprofit organization; and

12 (5) for the purpose of this subsection, to  
13 the extent permitted by federal law, "reasonable assurance"  
14 means a reasonable expectation of employment in a similar  
15 capacity in the second of such academic years or terms based  
16 upon a consideration of all relevant factors, including the  
17 historical pattern of reemployment in such capacity, a  
18 reasonable anticipation that such employment will be available  
19 and a reasonable notice or understanding that the individual  
20 will be eligible for and offered employment in a similar  
21 capacity.

22 D. Paragraphs (1), (2), (3), (4) and (5) of  
23 Subsection C of this section shall apply to services performed  
24 for all educational institutions, public or private, for  
25 profit or nonprofit, which are operated in this state or

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1 subject to an agreement for coverage under the Unemployment  
2 Compensation Law of this state, unless otherwise exempt by  
3 law.

4 E. Notwithstanding any other provisions of this  
5 section or Section 51-1-7 NMSA 1978, no otherwise eligible  
6 individual is to be denied benefits for any week because he is  
7 in training with the approval of the division nor is such  
8 individual to be denied benefits by reason of application of  
9 provisions in Paragraph (3) of Subsection A of this section or  
10 Subsection C of Section 51-1-7 NMSA 1978 with respect to any  
11 week in which he is in training with the approval of the  
12 division. The secretary shall provide, by ~~[regulation]~~ rule,  
13 standards for approved training and the conditions for  
14 approving such training for claimants, including any training  
15 approved or authorized for approval pursuant to Section  
16 236(a)(1) and (2) of the federal Trade Act of 1974, as  
17 amended, or required to be approved as a condition for  
18 certification of the state's Unemployment Compensation Law by  
19 the United States secretary of labor.

20 F. Notwithstanding any other provisions of this  
21 section, benefits shall not be payable on the basis of  
22 services performed by an alien unless such alien is an  
23 individual who was lawfully admitted for permanent residence  
24 at the time such services were performed, was lawfully present  
25 for the purposes of performing such services or was

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1 permanently residing in the United States under color of law  
2 at the time such services were performed, including an alien  
3 who was lawfully present in the United States as a result of  
4 the application of the provisions of Section 212(d)(5) of the  
5 federal Immigration and Nationality Act; provided that:

6 (1) any information required of individuals  
7 applying for benefits to determine their eligibility for  
8 benefits under this subsection shall be uniformly required  
9 from all applicants for benefits; and

10 (2) no individual shall be denied benefits  
11 because of his alien status except upon a preponderance of the  
12 evidence.

13 G. Notwithstanding any other provision of this  
14 section, benefits shall not be paid to any individual on the  
15 basis of any services substantially all of which consist of  
16 participating in sports or athletic events or training or  
17 preparing to so participate for any week that commences during  
18 the period between two successive sport seasons, or similar  
19 periods, if such individual performed such services in the  
20 first of such seasons, or similar periods, and there is a  
21 reasonable assurance that such individual will perform such  
22 services in the latter of such seasons or similar periods.

23 H. Students who are enrolled in a full-time course  
24 schedule in an educational or training institution or program,  
25 other than those persons in an approved vocational training

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1 program in accordance with Subsection E of this section, shall  
2 not be eligible for unemployment benefits except as provided  
3 by ~~[regulations]~~ rules promulgated by the secretary.

4 I. As used in this subsection, "seasonal ski  
5 employee" means an employee who has not worked for a ski area  
6 operator for more than six consecutive months of the previous  
7 twelve months or nine of the previous twelve months. Any  
8 employee of a ski area operator who has worked for a ski area  
9 operator for six consecutive months of the previous twelve  
10 months or nine of the previous twelve months shall not be  
11 considered a seasonal ski employee. The following benefit  
12 eligibility conditions apply to a seasonal ski employee:

13 (1) except as provided in Paragraphs (2) and  
14 (3) of this subsection, a seasonal ski employee employed by a  
15 ski area operator on a regular seasonal basis shall be  
16 ineligible for a week of unemployment benefits that commences  
17 during a period between two successive ski seasons unless such  
18 individual establishes to the satisfaction of the secretary  
19 that he is available for and is making an active search for  
20 permanent full-time work;

21 (2) a seasonal ski employee who has been  
22 employed by a ski area operator during two successive ski  
23 seasons shall be presumed to be unavailable for permanent new  
24 work during a period after the second successive ski season  
25 that he was employed as a seasonal ski employee; and

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1 (3) the presumption described in Paragraph  
2 (2) of this subsection shall not arise as to any seasonal ski  
3 employee who has been employed by the same ski area operator  
4 during two successive ski seasons and has resided continuously  
5 for at least twelve successive months and continues to reside  
6 in the county in which the ski area facility is located.

7 J. Notwithstanding any other provision of this  
8 section, an otherwise eligible individual shall not be denied  
9 benefits for any week by reason of the application of  
10 Paragraph (3) of Subsection A of this section because he is  
11 before any court of the United States or any state pursuant to  
12 a lawfully issued summons to appear for jury duty. "

13 Section 3. Section 51-1-42 NMSA 1978 (being Laws 1936  
14 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

15 "51-1-42. DEFINITIONS. --As used in the Unemployment  
16 Compensation Law:

17 A. "base period" means the first four of the last  
18 five completed calendar quarters immediately preceding the  
19 first day of an individual's benefit year, except that "base  
20 period" means for benefit years effective on or after April 1,  
21 2002 for an individual who does not have sufficient wages in  
22 the base period as defined to qualify for benefits pursuant to  
23 Section 51-1-5 NMSA 1978, the individual's base period shall  
24 be the last four completed calendar quarters immediately  
25 preceding the first day of the individual's benefit year if

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1 that period qualifies the individual for benefits pursuant to  
2 Section 51-1-5 NMSA 1978; provided that:

3 (1) wages that fall within the base period of  
4 claims established pursuant to this subsection are not  
5 available for reuse in qualifying for a subsequent benefit  
6 year; and

7 (2) in the case of a combined-wage claim  
8 pursuant to the arrangement approved by the federal secretary  
9 of labor, the base period is that base period applicable under  
10 the unemployment compensation law of the paying state;

11 B. "benefits" means the cash unemployment  
12 compensation payments payable to an eligible individual  
13 pursuant to Section 51-1-4 NMSA 1978 with respect to his weeks  
14 of unemployment;

15 C. "contributions" means the money payments  
16 required by Section 51-1-9 NMSA 1978 to be made into the fund  
17 by an employer on account of having individuals performing  
18 services for him;

19 D. "employing unit" means any individual or type  
20 of organization, including any partnership, association,  
21 cooperative, trust, estate, joint-stock company, agricultural  
22 enterprise, insurance company or corporation, whether domestic  
23 or foreign, or the receiver, trustee in bankruptcy, trustee or  
24 successor thereof, household, fraternity or club, the legal  
25 representative of a deceased person or any state or local

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1 government entity to the extent required by law to be covered  
2 as an employer, which has in its employ one or more  
3 individuals performing services for it within this state. All  
4 individuals performing services for any employing unit that  
5 maintains two or more separate establishments within this  
6 state shall be deemed to be employed by a single employing  
7 unit for all the purposes of the Unemployment Compensation  
8 Law. Individuals performing services for contractors,  
9 subcontractors or agents that are performing work or services  
10 for an employing unit, as described in this subsection, which  
11 is within the scope of the employing unit's usual trade,  
12 occupation, profession or business, shall be deemed to be in  
13 the employ of the employing unit for all purposes of the  
14 Unemployment Compensation Law unless such contractor,  
15 subcontractor or agent is itself an employer within the  
16 provisions of Subsection E of this section;

17 E. "employer" includes:

18 (1) any employing unit which:

19 (a) unless otherwise provided in this  
20 section, paid for service in employment as defined in  
21 Subsection F of this section wages of four hundred fifty  
22 dollars (\$450) or more in any calendar quarter in either the  
23 current or preceding calendar year or had in employment, as  
24 defined in Subsection F of this section, for some portion of a  
25 day in each of twenty different calendar weeks during either

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1 the current or the preceding calendar year, and irrespective  
2 of whether the same individual was in employment in each such  
3 day, at least one individual;

4 (b) for the purposes of Subparagraph  
5 (a) of this paragraph, if any week includes both December 31  
6 and January 1, the days of that week up to January 1 shall be  
7 deemed one calendar week and the days beginning January 1,  
8 another such week; and

9 (c) for purposes of defining an  
10 "employer" under Subparagraph (a) of this paragraph, the wages  
11 or remuneration paid to individuals performing services in  
12 employment in agricultural labor or domestic services as  
13 provided in Paragraphs (6) and (7) of Subsection F of this  
14 section shall not be taken into account; except that any  
15 employing unit determined to be an employer of agricultural  
16 labor under Paragraph (6) of Subsection F of this section  
17 shall be an employer under Subparagraph (a) of this paragraph  
18 so long as the employing unit is paying wages or remuneration  
19 for services other than agricultural services;

20 (2) any individual or type of organization  
21 that acquired the trade or business or substantially all of  
22 the assets thereof, of an employing unit that at the time of  
23 the acquisition was an employer subject to the Unemployment  
24 Compensation Law; provided that where such an acquisition  
25 takes place, the secretary may postpone activating the

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1 separate account pursuant to Subsection A of Section 51-1-11  
2 NMSA 1978 until such time as the successor employer has  
3 employment as defined in Subsection F of this section;

4 (3) any employing unit that acquired all or  
5 part of the organization, trade, business or assets of another  
6 employing unit and that, if treated as a single unit with such  
7 other employing unit or part thereof, would be an employer  
8 under Paragraph (1) of this subsection;

9 (4) any employing unit not an employer by  
10 reason of any other paragraph of this subsection:

11 (a) for which, within either the  
12 current or preceding calendar year, service is or was  
13 performed with respect to which such employing unit is liable  
14 for any federal tax against which credit may be taken for  
15 contributions required to be paid into a state unemployment  
16 fund; or

17 (b) which, as a condition for approval  
18 of the Unemployment Compensation Law for full tax credit  
19 against the tax imposed by the Federal Unemployment Tax Act,  
20 is required, pursuant to such act, to be an "employer" under  
21 the Unemployment Compensation Law;

22 (5) any employing unit that, having become an  
23 employer under Paragraph (1), (2), (3) or (4) of this  
24 subsection, has not, under Section 51-1-18 NMSA 1978, ceased  
25 to be an employer subject to the Unemployment Compensation

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1 Law;

2 (6) for the effective period of its election  
3 pursuant to Section 51-1-18 NMSA 1978, any other employing  
4 unit that has elected to become fully subject to the  
5 Unemployment Compensation Law;

6 (7) any employing unit for which any services  
7 performed in its employ are deemed to be performed in this  
8 state pursuant to an election under an arrangement entered  
9 into in accordance with Subsection A of Section 51-1-50 NMSA  
10 1978; and

11 (8) an Indian tribe as defined in 26 USCA  
12 Section 3306(u) for which service in employment is performed;

13 F. "employment":

14 (1) means any service, including service in  
15 interstate commerce, performed for wages or under any contract  
16 of hire, written or oral, express or implied;

17 (2) means an individual's entire service,  
18 performed within or both within and without this state if:

19 (a) the service is primarily localized  
20 in this state with services performed outside the state being  
21 only incidental thereto; or

22 (b) the service is not localized in any  
23 state but some of the service is performed in this state and:

24 1) the base of operations or, if there is no base of  
25 operations, the place from which such service is directed or

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1 controlled, is in this state; or 2) the base of operations or  
2 place from which such service is directed or controlled is not  
3 in any state in which some part of the service is performed  
4 but the individual's residence is in this state;

5 (3) means services performed within this  
6 state but not covered under Paragraph (2) of this subsection  
7 if contributions or payments in lieu of contributions are not  
8 required and paid with respect to such services under an  
9 unemployment compensation law of any other state, the federal  
10 government or Canada;

11 (4) means services covered by an election  
12 pursuant to Section 51-1-18 NMSA 1978 and services covered by  
13 an election duly approved by the secretary in accordance with  
14 an arrangement pursuant to Paragraph (1) of Subsection A of  
15 Section 51-1-50 NMSA 1978 shall be deemed to be employment  
16 during the effective period of such election;

17 (5) means services performed by an individual  
18 for an employer for wages or other remuneration unless and  
19 until it is established by a preponderance of evidence that:

20 (a) such individual has been and will  
21 continue to be free from control or direction over the  
22 performance of such services both under his contract of  
23 service and in fact;

24 (b) such service is either outside the  
25 usual course of business for which such service is performed

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1 or that such service is performed outside of all the places of  
2 business of the enterprise for which such service is  
3 performed; and

4 (c) such individual is customarily  
5 engaged in an independently established trade, occupation,  
6 profession or business of the same nature as that involved in  
7 the contract of service;

8 (6) means service performed after December  
9 31, 1977 by an individual in agricultural labor as defined in  
10 Subsection Q of this section if:

11 (a) such service is performed for an  
12 employing unit that: 1) paid remuneration in cash of twenty  
13 thousand dollars (\$20,000) or more to individuals in such  
14 employment during any calendar quarter in either the current  
15 or the preceding calendar year; or 2) employed in agricultural  
16 labor ten or more individuals for some portion of a day in  
17 each of twenty different calendar weeks in either the current  
18 or preceding calendar year, whether or not such weeks were  
19 consecutive, and regardless of whether such individuals were  
20 employed at the same time;

21 (b) such service is not performed  
22 before January 1, 1980 by an individual who is an alien  
23 admitted to the United States to perform service in  
24 agricultural labor pursuant to Sections 214(c) and 101(15)(H)  
25 of the federal Immigration and Nationality Act; and

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1 (c) for purposes of this paragraph, any  
2 individual who is a member of a crew furnished by a crew  
3 leader to perform service in agricultural labor for a farm  
4 operator or other person shall be treated as an employee of  
5 such crew leader: 1) if such crew leader meets the  
6 requirements of a crew leader as defined in Subsection L of  
7 this section; or 2) substantially all the members of such crew  
8 operate or maintain mechanized agricultural equipment that is  
9 provided by the crew leader; and 3) the individuals performing  
10 such services are not, by written agreement or in fact, within  
11 the meaning of Paragraph (5) of this subsection, performing  
12 services in employment for the farm operator or other person;

13 (7) means service performed after December  
14 31, 1977 by an individual in domestic service in a private  
15 home, local college club or local chapter of a college  
16 fraternity or sorority for a person or organization that paid  
17 cash remuneration of one thousand dollars (\$1,000) in any  
18 calendar quarter in the current or preceding calendar year to  
19 individuals performing such services;

20 (8) means service performed after December  
21 31, 1971 by an individual in the employ of a religious,  
22 charitable, educational or other organization but only if the  
23 following conditions are met:

24 (a) the service is excluded from  
25 "employment" as defined in the Federal Unemployment Tax Act

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1 solely by reason of Section 3306(c)(8) of that act; and

2 (b) the organization meets the  
3 requirements of "employer" as provided in Subparagraph (a) of  
4 Paragraph (1) of Subsection E of this section;

5 (9) means service of an individual who is a  
6 citizen of the United States, performed outside the United  
7 States, except in Canada, after December 31, 1971 in the  
8 employ of an American employer (other than service that is  
9 deemed "employment" under the provisions of Paragraph (2) of  
10 this subsection or the parallel provisions of another state's  
11 law), if:

12 (a) the employer's principal place of  
13 business in the United States is located in this state;

14 (b) the employer has no place of  
15 business in the United States, but: 1) the employer is an  
16 individual who is a resident of this state; 2) the employer is  
17 a corporation organized under the laws of this state; or 3)  
18 the employer is a partnership or a trust and the number of the  
19 partners or trustees who are residents of this state is  
20 greater than the number who are residents of any one other  
21 state; or

22 (c) none of the criteria of  
23 Subparagraphs (a) and (b) of this paragraph are met, but the  
24 employer has elected coverage in this state or, the employer  
25 having failed to elect coverage in any state, the individual

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1 has filed a claim for benefits, based on such service, under  
2 the law of this state.

3 "American employer" for purposes of this paragraph means  
4 a person who is: 1) an individual who is a resident of the  
5 United States; 2) a partnership if two-thirds or more of the  
6 partners are residents of the United States; 3) a trust if all  
7 of the trustees are residents of the United States; or 4) a  
8 corporation organized under the laws of the United States or  
9 of any state. For the purposes of this paragraph, "United  
10 States" includes the United States, the District of Columbia,  
11 the commonwealth of Puerto Rico and the Virgin Islands;

12 (10) means, notwithstanding any other  
13 provisions of this subsection, service with respect to which a  
14 tax is required to be paid under any federal law imposing a  
15 tax against which credit may be taken for contributions  
16 required to be paid into a state unemployment fund or which as  
17 a condition for full tax credit against the tax imposed by the  
18 Federal Unemployment Tax Act is required to be covered under  
19 the Unemployment Compensation Law; [and]

20 (11) means service performed in the employ of  
21 an Indian tribe if:

22 (a) the service is excluded from  
23 "employment" as defined in 26 USCA Section 3306(c) solely by  
24 reason of 26 USCA Section 3306(c)(7); and

25 (b) the service is not otherwise

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1 excluded from employment pursuant to the Unemployment  
2 Compensation Law;

3 (12) does not include:

4 (a) service performed in the employ of:

5 1) a church or convention or association of churches; or 2) an  
6 organization that is operated primarily for religious purposes  
7 and that is operated, supervised, controlled or principally  
8 supported by a church or convention or association of  
9 churches;

10 (b) service performed by a duly  
11 ordained, commissioned or licensed minister of a church in the  
12 exercise of his ministry or by a member of a religious order  
13 in the exercise of duties required by such order;

14 (c) service performed by an individual  
15 in the employ of his son, daughter or spouse, and service  
16 performed by a child under the age of majority in the employ  
17 of his father or mother;

18 (d) service performed in the employ of  
19 the United States government or an instrumentality of the  
20 United States immune under the constitution of the United  
21 States from the contributions imposed by the Unemployment  
22 Compensation Law except that to the extent that the congress  
23 of the United States shall permit states to require any  
24 instrumentalities of the United States to make payments into  
25 an unemployment fund under a state unemployment compensation

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1 act, all of the provisions of the Unemployment Compensation  
2 Law shall be applicable to such instrumentalities, and to  
3 service performed for such instrumentalities in the same  
4 manner, to the same extent and on the same terms as to all  
5 other employers, employing units, individuals and services;  
6 provided, that if this state shall not be certified for any  
7 year by the secretary of labor of the United States under  
8 Section 3304 of the federal Internal Revenue Code of 1986, 26  
9 U.S.C. Section 3304, the payments required of such  
10 instrumentalities with respect to such year shall be refunded  
11 by the department from the fund in the same manner and within  
12 the same period as is provided in Subsection D of Section  
13 51-1-36 NMSA 1978 with respect to contributions erroneously  
14 collected;

15 (e) service performed in a facility  
16 conducted for the purpose of carrying out a program of  
17 rehabilitation for individuals whose earning capacity is  
18 impaired by age or physical or mental deficiency or injury or  
19 providing remunerative work for individuals who because of  
20 their impaired physical or mental capacity cannot be readily  
21 absorbed in the competitive labor market, by an individual  
22 receiving such rehabilitation or remunerative work;

23 (f) service with respect to which  
24 unemployment compensation is payable under an unemployment  
25 compensation system established by an act of congress;

1 (g) service performed in the employ of  
2 a foreign government, including service as a consular or other  
3 officer or employee or a nondiplomatic representative;

4 (h) service performed by an individual  
5 for a person as an insurance agent or as an insurance  
6 solicitor, if all such service performed by such individual  
7 for such person is performed for remuneration solely by way of  
8 commi ssi on;

9 (i) service performed by an individual  
10 under the age of eighteen in the delivery or distribution of  
11 newspapers or shopping news, not including delivery or  
12 distribution to any point for subsequent delivery or  
13 distribution;

14 (j) service covered by an election duly  
15 approved by the agency charged with the administration of any  
16 other state or federal unemployment compensation law, in  
17 accordance with an arrangement pursuant to Paragraph (1) of  
18 Subsection A of Section 51-1-50 NMSA 1978 during the effective  
19 period of such election;

20 (k) service performed, as part of an  
21 unemployment work-relief or work-training program assisted or  
22 financed in whole or part by any federal agency or an agency  
23 of a state or political subdivision thereof, by an individual  
24 receiving such work relief or work training;

25 (l) service performed by an individual

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1 who is enrolled at a nonprofit or public educational  
2 institution that normally maintains a regular faculty and  
3 curriculum and normally has a regularly organized body of  
4 students in attendance at the place where its educational  
5 activities are carried on as a student in a full-time program,  
6 taken for credit at the institution that combines academic  
7 instruction with work experience, if the service is an  
8 integral part of such program and the institution has so  
9 certified to the employer, except that this subparagraph shall  
10 not apply to service performed in a program established for or  
11 on behalf of an employer or group of employers;

12 (m) service performed in the employ of  
13 a hospital, if the service is performed by a patient of the  
14 hospital, or services performed by an inmate of a custodial or  
15 penal institution for any employer;

16 (n) service performed by real estate  
17 salesmen for others when the services are performed for  
18 remuneration solely by way of commission;

19 (o) service performed in the employ of  
20 a school, college or university if such service is performed  
21 by a student who is enrolled and is regularly attending  
22 classes at such school, college or university;

23 (p) service performed by an individual  
24 for a fixed or contract fee officiating at a sporting event  
25 that is conducted by or under the auspices of a nonprofit or

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1 governmental entity if that person is not otherwise an  
2 employee of the entity conducting the sporting event;

3 (q) service performed for a private,  
4 for-profit person or entity by an individual as a product  
5 demonstrator or product merchandiser if the service is  
6 performed pursuant to a written contract between that  
7 individual and a person or entity whose principal business is  
8 obtaining the services of product demonstrators and product  
9 merchandisers for third parties, for demonstration and  
10 merchandising purposes and the individual: 1) is compensated  
11 for each job or the compensation is based on factors related  
12 to the work performed; 2) provides the equipment used to  
13 perform the service, unless special equipment is required and  
14 provided by the manufacturer through an agency; 3) is  
15 responsible for completion of a specific job and for any  
16 failure to complete the job; 4) pays all expenses, and the  
17 opportunity for profit or loss rests solely with the  
18 individual; and 5) is responsible for operating costs, fuel,  
19 repairs and motor vehicle insurance. For the purpose of this  
20 subparagraph, "product demonstrator" means an individual who,  
21 on a temporary, part-time basis, demonstrates or gives away  
22 samples of a food or other product as part of an advertising  
23 or sales promotion for the product and who is not otherwise  
24 employed directly by the manufacturer, distributor or  
25 retailer, and "product merchandiser" means an individual who,

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1 on a temporary, part-time basis builds or resets a product  
2 display and who is not otherwise directly employed by the  
3 manufacturer, distributor or retailer; or

4 (r) service performed for a private,  
5 for-profit person or entity by an individual as a landman if  
6 substantially all remuneration paid in cash or otherwise for  
7 the performance of the services is directly related to the  
8 completion by the individual of the specific tasks contracted  
9 for rather than to the number of hours worked by the  
10 individual. For the purposes of this subparagraph, "landman"  
11 means a land professional who has been engaged primarily in:  
12 1) negotiating for the acquisition or divestiture of mineral  
13 rights; 2) negotiating business agreements that provide for  
14 the exploration for or development of minerals; 3) determining  
15 ownership of minerals through the research of public and  
16 private records; and 4) reviewing the status of title, curing  
17 title defects and otherwise reducing title risk associated  
18 with ownership of minerals; managing rights or obligations  
19 derived from ownership of interests and minerals; or utilizing  
20 or pooling of interest in minerals; and

21 (13) for the purposes of this subsection, if  
22 the services performed during one-half or more of any pay  
23 period by an individual for the person employing him  
24 constitute employment, all the services of such individual for  
25 such period shall be deemed to be employment but, if the

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1 services performed during more than one-half of any such pay  
2 period by an individual for the person employing him do not  
3 constitute employment, then none of the services of such  
4 individual for such period shall be deemed to be employment.  
5 As used in this paragraph, the term "pay period" means a  
6 period, of not more than thirty-one consecutive days, for  
7 which a payment of remuneration is ordinarily made to the  
8 individual by the person employing him. This paragraph shall  
9 not be applicable with respect to services performed in a pay  
10 period by an individual for the person employing him where any  
11 of such service is excepted by Subparagraph (f) of Paragraph  
12 (12) of this subsection;

13 G. "employment office" means a free public  
14 employment office, or branch thereof, operated by this state  
15 or maintained as a part of a state-controlled system of public  
16 employment offices;

17 H. "fund" means the unemployment compensation fund  
18 established by the Unemployment Compensation Law to which all  
19 contributions and payments in lieu of contributions required  
20 under the Unemployment Compensation Law and from which all  
21 benefits provided under the Unemployment Compensation Law  
22 shall be paid;

23 I. "unemployment" means, with respect to an  
24 individual, any week during which he performs no services and  
25 with respect to which no wages are payable to him and during

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1 which he is not engaged in self-employment or receives an  
2 award of back pay for loss of employment. The secretary shall  
3 prescribe by regulation what constitutes part-time and  
4 intermittent employment, partial employment and the conditions  
5 under which individuals engaged in such employment are  
6 eligible for partial unemployment benefits, but no individual  
7 who is otherwise eligible, shall be deemed ineligible for  
8 benefits solely for the reason that the individual seeks,  
9 applies for or accepts only part-time work, instead of  
10 full-time work, if the part-time work is for at least fifteen  
11 hours per week;

12 J. "state", when used in reference to any state  
13 other than New Mexico, includes, in addition to the states of  
14 the United States, the District of Columbia, the commonwealth  
15 of Puerto Rico and the Virgin Islands;

16 K. "unemployment compensation administration fund"  
17 means the fund established by Subsection A of Section 51-1-34  
18 NMSA 1978 from which administrative expenses under the  
19 Unemployment Compensation Law shall be paid. "Employment  
20 security department fund" means the fund established by  
21 Subsection B of Section 51-1-34 NMSA 1978 from which certain  
22 administrative expenses under the Unemployment Compensation  
23 Law shall be paid;

24 L. "crew leader" means a person who:

25 (1) holds a valid certificate of registration

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1 as a crew leader or farm labor contractor under the federal  
2 Migrant and Seasonal Agricultural Worker Protection Act;

3 (2) furnishes individuals to perform services  
4 in agricultural labor for any other person;

5 (3) pays, either on his own behalf or on  
6 behalf of such other person, the individuals so furnished by  
7 him for service in agricultural labor; and

8 (4) has not entered into a written agreement  
9 with the other person for whom he furnishes individuals in  
10 agricultural labor that such individuals will be the employees  
11 of the other person;

12 M. "week" means such period of seven consecutive  
13 days, as the secretary may by regulation prescribe. The  
14 secretary may by regulation prescribe that a week shall be  
15 deemed to be "in", "within" or "during" the benefit year that  
16 includes the greater part of such week;

17 N. "calendar quarter" means the period of three  
18 consecutive calendar months ending on March 31, June 30,  
19 September 30 or December 31;

20 O. "insured work" means services performed for  
21 employers who are covered under the Unemployment Compensation  
22 Law;

23 P. "benefit year" with respect to any individual  
24 means the one-year period beginning with the first day of the  
25 first week of unemployment with respect to which the

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1 individual first files a claim for benefits in accordance with  
2 Subsection A of Section 51-1-8 NMSA 1978 and thereafter the  
3 one-year period beginning with the first day of the first week  
4 of unemployment with respect to which the individual next  
5 files such a claim for benefits after the termination of his  
6 last preceding benefit year; provided that at the time of  
7 filing such a claim the individual has been paid the wage  
8 required under Paragraph (5) of Subsection A of Section 51-1-5  
9 NMSA 1978;

10 Q. "agricultural labor" includes all services  
11 performed:

12 (1) on a farm, in the employ of any person,  
13 in connection with cultivating the soil or in connection with  
14 raising or harvesting any agricultural or horticultural  
15 commodity, including the raising, shearing, feeding, caring  
16 for, training and management of livestock, bees, poultry and  
17 fur-bearing animals and wildlife;

18 (2) in the employ of the owner or tenant or  
19 other operator of a farm, in connection with the operation,  
20 management, conservation or maintenance of such farm and its  
21 tools and equipment, if the major part of such service is  
22 performed on a farm;

23 (3) in connection with the operation or  
24 maintenance of ditches, canals, reservoirs or waterways used  
25 exclusively for supplying and storing water for farming

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1 purposes when such ditches, canals, reservoirs or waterways  
2 are owned and operated by the farmers using the water stored  
3 or carried therein; and

4 (4) in handling, planting, drying, packing,  
5 packaging, processing, freezing, grading, storing or delivery  
6 to storage or to market or to a carrier for transportation to  
7 market any agricultural or horticultural commodity but only if  
8 such service is performed as an incident to ordinary farming  
9 operations. The provisions of this paragraph shall not be  
10 deemed to be applicable with respect to service performed in  
11 connection with commercial canning or commercial freezing or  
12 in connection with any agricultural or horticultural commodity  
13 after its delivery to a terminal market for distribution for  
14 consumption.

15 As used in this subsection, the term "farm" includes  
16 stock, dairy, poultry, fruit, fur-bearing animal and truck  
17 farms, plantations, ranches, nurseries, greenhouses, ranges  
18 and orchards;

19 R. "payments in lieu of contributions" means the  
20 money payments made into the fund by an employer pursuant to  
21 the provisions of Subsection A of Section 51-1-13 NMSA 1978 or  
22 Subsection E of Section 51-1-59 NMSA 1978;

23 S. "department" means the labor department; and

24 T. "wages" means all remuneration for services,  
25 including commissions and bonuses and the cash value of all

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1 remuneration in any medium other than cash. The reasonable  
2 cash value of remuneration in any medium other than cash shall  
3 be established and determined in accordance with regulations  
4 prescribed by the secretary; provided that the term "wages"  
5 shall not include:

6 (1) subsequent to December 31, 1977, that  
7 part of the remuneration in excess of the base wage as  
8 determined by the secretary for each calendar year. The base  
9 wage upon which contribution shall be paid during any calendar  
10 year shall be sixty percent of the state's average annual  
11 earnings computed by the division by dividing total wages  
12 reported to the division by contributing employers for the  
13 second preceding calendar year before the calendar year the  
14 computed base wage becomes effective by the average annual  
15 employment reported by contributing employers for the same  
16 period rounded to the next higher multiple of one hundred  
17 dollars (\$100); provided that the base wage so computed for  
18 any calendar year shall not be less than seven thousand  
19 dollars (\$7,000). Wages paid by an employer to an individual  
20 in his employ during any calendar year in excess of the base  
21 wage in effect for that calendar year shall be reported to the  
22 department but shall be exempt from the payment of  
23 contributions unless such wages paid in excess of the base  
24 wage become subject to tax under a federal law imposing a tax  
25 against which credit may be taken for contributions required

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1 to be paid into a state unemployment fund;

2 (2) the amount of any payment with respect to  
3 services performed after June 30, 1941 to or on behalf of an  
4 individual in its employ under a plan or system established by  
5 an employing unit that makes provision for individuals in its  
6 employ generally or for a class or classes of such  
7 individuals, including any amount paid by an employing unit  
8 for insurance or annuities, or into a fund, to provide for any  
9 such payment, on account of:

10 (a) retirement if such payments are  
11 made by an employer to or on behalf of any employee under a  
12 simplified employee pension plan that provides for payments by  
13 an employer in addition to the salary or other remuneration  
14 normally payable to such employee or class of such employees  
15 and does not include any payments that represent deferred  
16 compensation or other reduction of an employee's normal  
17 taxable wages or remuneration or any payments made to a third  
18 party on behalf of an employee as part of an agreement of  
19 deferred remuneration;

20 (b) sickness or accident disability if  
21 such payments are received under a workers' compensation or  
22 occupational disease disablement law;

23 (c) medical and hospitalization  
24 expenses in connection with sickness or accident disability;  
25 or

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1 (d) death; provided the individual in  
2 its employ has not the option to receive, instead of provision  
3 for such death benefit, any part of such payment, or, if such  
4 death benefit is insured, any part of the premiums or  
5 contributions to premiums paid by his employing unit and has  
6 not the right under the provisions of the plan or system or  
7 policy of insurance providing for such death benefit to assign  
8 such benefit, or to receive a cash consideration in lieu of  
9 such benefit either upon his withdrawal from the plan or  
10 system providing for such benefit or upon termination of such  
11 plan or system or policy of insurance or of his service with  
12 such employing unit;

13 (3) remuneration for agricultural labor paid  
14 in any medium other than cash;

15 (4) any payment made to, or on behalf of, an  
16 employee or an employee's beneficiary under a cafeteria plan  
17 within the meaning of Section 125 of the federal Internal  
18 Revenue Code of 1986;

19 (5) any payment made, or benefit furnished to  
20 or for the benefit of an employee if at the time of such  
21 payment or such furnishing it is reasonable to believe that  
22 the employee will be able to exclude such payment or benefit  
23 from income under Section 129 of the federal Internal Revenue  
24 Code of 1986;

25 (6) any payment made by an employer to a

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1 survivor or the estate of a former employee after the calendar  
2 year in which such employee died;

3 (7) any payment made to, or on behalf of, an  
4 employee or his beneficiary under an arrangement to which  
5 Section 408(p) of the federal Internal Revenue Code of 1986  
6 applies, other than any elective contributions under Paragraph  
7 (2)(A)(i) of that section;

8 (8) any payment made to or for the benefit of  
9 an employee if at the time of such payment it is reasonable to  
10 believe that the employee will be able to exclude such payment  
11 from income under Section 106 of the federal Internal Revenue  
12 Code of 1986; or

13 (9) the value of any meals or lodging  
14 furnished by or on behalf of the employer if at the time such  
15 benefit is provided it is reasonable to believe that the  
16 employee will be able to exclude such items from income under  
17 Section 119 of the federal Internal Revenue Code of 1986. "

18 Section 4. EMERGENCY.--It is necessary for the public  
19 peace, health and safety that this act take effect  
20 immediately.