

AN ACT
RELATING TO EMPLOYMENT; ENACTING PROVISIONS APPLYING TO
INDIAN TRIBES AND THEIR EMPLOYEES UNDER THE UNEMPLOYMENT
COMPENSATION LAW.

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

Section 1. Section 51-1-2 NMSA 1978 (being Laws 1979, Chapter 280, Section 11, as amended) is amended to read:

"51-1-2. DEFINITIONS.--As used in the Unemployment Compensation Law:

A. "department" means the labor department;

B. "division" means the employment security division of the labor department, the director of the division or an employee of the division exercising authority lawfully delegated to the employee by the director; and

C. "secretary" means the secretary of labor or an employee of the department exercising authority lawfully delegated to the employee by the secretary."

Section 2. Section 51-1-42 NMSA 1978 (being Laws 1936 (S.S.), Chapter 1, Section 19, as amended by Laws 2000, Chapter 3, Section 4 and also by Laws 2000, Chapter 7, Section 4) is amended to read:

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

A. "base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year;

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

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

D. "employing unit" means any individual or type of organization, including any partnership, association, cooperative, trust, estate, joint-stock company, agricultural enterprise, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, household, fraternity or club, the legal representative of a deceased person or any state or local government entity to the extent required by law to be covered as an employer, which has in its employ one or more individuals performing services for it within this state. All individuals performing services for any employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of the Unemployment

Compensation Law. Individuals performing services for contractors, subcontractors or agents that are performing work or services for an employing unit, as described in this subsection, which is within the scope of the employing unit's usual trade, occupation, profession or business, shall be deemed to be in the employ of the employing unit for all purposes of the Unemployment Compensation Law unless such contractor, subcontractor or agent is itself an employer within the provisions of Subsection E of this section;

E. "employer" includes:

(1) any employing unit which:

(a) unless otherwise provided in this section, paid for service in employment as defined in Subsection F of this section wages of four hundred fifty dollars (\$450) or more in any calendar quarter in either the current or preceding calendar year or had in employment, as defined in Subsection F of this section, for some portion of a day in each of twenty different calendar weeks during either the current or the preceding calendar year, and irrespective of whether the same individual was in employment in each such day, at least one individual;

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

another such week; and

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

(2) any individual or type of organization that acquired the trade or business or substantially all of the assets thereof, of an employing unit that at the time of the acquisition was an employer subject to the Unemployment Compensation Law; provided that where such an acquisition takes place, the secretary may postpone activating the separate account pursuant to Subsection A of Section 51-1-11 NMSA 1978 until such time as the successor employer has employment as defined in Subsection F of this section;

(3) any employing unit that acquired all or part of the organization, trade, business or assets of another employing unit and that, if treated as a single unit with such other employing unit or part thereof, would be an

employer under Paragraph (1) of this subsection;

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

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

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

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

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

(7) any employing unit for which any services performed in its employ are deemed to be performed

in this state pursuant to an election under an arrangement entered into in accordance with Subsection A of Section 51-1-50 NMSA 1978; and

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

F. "employment":

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

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

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

(b) the service is not localized in any state but some of the service is performed in this state and: 1) the base of operations or, if there is no base of operations, the place from which such service is directed or controlled, is in this state; or 2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in this state;

(3) means services performed within this state but not covered under Paragraph (2) of this subsection if contributions or payments in lieu of contributions are not

required and paid with respect to such services under an unemployment compensation law of any other state, the federal government or Canada;

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

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

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

(b) such service is either outside the usual course of business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(c) such individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in

the contract of service;

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

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

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

(c) for purposes of this paragraph, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for a farm operator or other person shall be treated as an employee of such crew leader: 1) if such crew leader meets the requirements of a crew leader as defined in Subsection L of

this section; or 2) substantially all the members of such crew operate or maintain mechanized agricultural equipment that is provided by the crew leader; and 3) the individuals performing such services are not, by written agreement or in fact, within the meaning of Paragraph (5) of this subsection, performing services in employment for the farm operator or other person;

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

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

(a) the service is excluded from "employment" as defined in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(8) of that act; and

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

(9) means service of an individual who is a

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

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

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

(c) none of the criteria of Subparagraphs (a) and (b) of this paragraph are met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

"American employer" for purposes of this paragraph means a person who is: 1) an individual who is a resident of the United States; 2) a partnership if two-thirds or more of

the partners are residents of the United States; 3) a trust if all of the trustees are residents of the United States; or 4) a corporation organized under the laws of the United States or of any state. For the purposes of this paragraph, "United States" includes the United States, the District of Columbia, the commonwealth of Puerto Rico and the Virgin Islands;

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

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

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

(b) the service is not otherwise excluded from employment pursuant to the Unemployment Compensation Law;

(12) does not include:

(a) service performed in the employ

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

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

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

(d) service performed in the employ of the United States government or an instrumentality of the United States immune under the constitution of the United States from the contributions imposed by the Unemployment Compensation Law except that to the extent that the congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, all of the provisions of the Unemployment Compensation Law shall be applicable to such instrumentalities, and to service performed for such instrumentalities in the same manner, to the same extent and on the same terms as to all

other employers, employing units, individuals and services; provided, that if this state shall not be certified for any year by the secretary of labor of the United States under Section 3304 of the federal Internal Revenue Code (26 U.S.C. Section 3304), the payments required of such instrumentalities with respect to such year shall be refunded by the department from the fund in the same manner and within the same period as is provided in Subsection D of Section 51-1-36 NMSA 1978 with respect to contributions erroneously collected;

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

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

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

(h) service performed by an individual

for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

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

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

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

(l) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational

activities are carried on as a student in a full-time program, taken for credit at the institution that combines academic instruction with work experience, if the service is an integral part of such program and the institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

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

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

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

(p) service performed by an individual for a fixed or contract fee officiating at a sporting event that is conducted by or under the auspices of a nonprofit or governmental entity if that person is not otherwise an employee of the entity conducting the sporting event;

(q) service performed for a private, for-profit person or entity by an individual as a product

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

(r) service performed for a private,

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

(13) for the purposes of this subsection, if the services performed during one-half or more of any pay period by an individual for the person employing him constitute employment, all the services of such individual for such period shall be deemed to be employment but, if the services performed during more than one-half of any such pay period by an individual for the person employing him do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment.

As used in this paragraph, the term "pay period" means a period, of not more than thirty-one consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an individual for the person employing him where any of such service is excepted by Subparagraph (f) of Paragraph (12) of this subsection;

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

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

I. "unemployment" means, with respect to an individual, any week during which he performs no services and with respect to which no wages are payable to him and during which he is not engaged in self-employment or receives an award of back pay for loss of employment. The secretary shall prescribe by regulation what constitutes part-time and intermittent employment, partial employment and the

conditions under which individuals engaged in such employment are eligible for partial unemployment benefits;

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

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

L. "crew leader" means a person who:

(1) holds a valid certificate of registration as a crew leader or farm labor contractor under the Migrant and Seasonal Agricultural Worker Protection Act;

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

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

(4) has not entered into a written agreement with the other person for whom he furnishes individuals in

agricultural labor that such individuals will be the employees of the other person;

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

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

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

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

Q. "agricultural labor" includes all services performed:

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

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

(3) in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes when such ditches, canals, reservoirs or waterways are owned and operated by the farmers using the water stored or carried therein; and

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing or delivery to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity but only if such service is performed as an incident to ordinary farming operations. The provisions of this paragraph shall

not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

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

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

S. "department" means the labor department; and

T. "wages" means all remuneration for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be established and determined in accordance with regulations prescribed by the secretary; provided that the term "wages" shall not include:

(1) subsequent to December 31, 1977, that part of the remuneration in excess of the base wage as determined by the secretary for each calendar year. The base wage upon which contribution shall be paid during any

calendar year shall be sixty percent of the state's average annual earnings computed by the division by dividing total wages reported to the division by contributing employers for the second preceding calendar year before the calendar year the computed base wage becomes effective by the average annual employment reported by contributing employers for the same period rounded to the next higher multiple of one hundred dollars (\$100); provided that the base wage so computed for any calendar year shall not be less than seven thousand dollars (\$7,000). Wages paid by an employer to an individual in his employ during any calendar year in excess of the base wage in effect for that calendar year shall be reported to the department but shall be exempt from the payment of contributions unless such wages paid in excess of the base wage become subject to tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund;

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

provide for any such payment, on account of:

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

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

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

(d) death; provided the individual in its employ has not the option to receive, instead of provision for such death benefit, any part of such payment, or, if such death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit and has not the right under the provisions of the plan or system or policy of insurance providing for such death benefit to assign such benefit, or to receive a cash

consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his service with such employing unit;

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

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

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

(6) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

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

(8) any payment made to or for the benefit

of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under Section 106 of the federal Internal Revenue Code of 1986; or

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

Section 3. A new section of the Unemployment Compensation Law, Section 51-1-59 NMSA 1978, is enacted to read:

"51-1-59. COVERAGE OF INDIAN TRIBES. --

A. The legislature finds that:

(1) the state of New Mexico recognizes and respects the Indian tribes and pueblos as governments that possess the inherent right of self-government;

(2) under the Federal Unemployment Tax Act, federal law now expressly exempts Indian tribes and requires that state law provide that an Indian tribe may elect to make contributions for employment or make reimbursable payments in lieu of contributions; and

(3) in order to comply with the change in federal law, state law must be amended to provide for the treatment of Indian tribes under the state unemployment

insurance system.

B. Benefits based on service in employment of an Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service in employment for other employers pursuant to the Unemployment Compensation Law.

C. An Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe may make contributions in the same manner and under the same conditions as other employers or may elect to reimburse the fund with payments equal to the amounts of benefits attributable to service in the employ of the tribe, unit, subdivision, subsidiary or enterprise.

D. If an Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe elects to make payments in lieu of contributions, the following provisions shall apply:

(1) as used in this section, "electing entity" means a tribe, tribal unit or a subdivision, subsidiary or business enterprise, wholly owned by a tribe, that elects to make payments in lieu of contributions. The tribe as a whole may be an electing entity or an individual tribal unit, subdivision, subsidiary or enterprise, or a

combination of these may be electing entities;

(2) an electing entity may elect to make payments in lieu of contributions by filing a written notice of its election with the division not later than thirty days prior to the beginning of the taxable year for which its election shall first be effective; except that, if an election is made prior to July 1, 2001, at the option of the electing entity the election shall be deemed to be effective December 21, 2000 or January 1, 2001; and

(3) once an election is made, payments in lieu of contributions will be used by the electing entity for the following two taxable years.

E. The following provisions apply to payments in lieu of contributions made by an electing entity:

(1) at the end of each calendar quarter, the division shall bill each electing entity for an amount calculated pursuant to this subsection; except that, in calculating the initial payments due for an electing entity that has made an election prior to July 1, 2001, the secretary shall bill the electing entity for the period elapsed since December 21, 2000;

(2) each calendar quarter, each electing entity making payments in lieu of contributions shall pay to the division an amount equal to twenty-five percent of the total benefit charges made to the electing entity during the

four calendar quarters ending the preceding June 30. The due date for the payments shall be the tenth day of the first month of each calendar quarter;

(3) in the event that an electing entity making payments in lieu of contributions incurred no benefit charges during the four calendar quarters ending the preceding June 30, the electing entity shall pay to the division, each calendar quarter, an amount equal to one-eighth of one percent of the electing entity's annual taxable wages paid for such period for employment as estimated by the secretary. The due date for the payments shall be the tenth day of the first month of the calendar quarter;

(4) for each calendar quarter, the secretary shall determine the amount paid by each electing entity subject to payment in lieu of contributions and the amount of benefits charged to the electing entity's account; provided that an electing entity shall not be relieved of charges for benefits paid to an individual who was separated from the employ of that electing entity for any reason. Each electing entity who has made payments in an amount less than the amount of benefits charged to the electing entity's account shall pay the balance of the amount charged within twenty-five days of the notification by the division. If the quarterly payment made by an electing entity pursuant to Paragraph (2) or (3) of this subsection exceeds the amount of

benefits charged to the electing entity's account, the excess payment shall be refunded on a quarterly basis;

(5) payments made by an electing entity pursuant to the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the electing entity;

(6) two or more electing entities may file a joint application for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employ of the entities. The application shall identify and authorize a group representative to act as the group's agent for the purpose of this paragraph. Upon its approval of the application, the division shall establish a group account for the electing entities effective as of the beginning of the calendar quarter in which it receives the application and shall notify the group's representative of the effective date of the account. The account shall remain in effect for not less than two years and thereafter until terminated at the discretion of the secretary or upon application by the group. Each group account shall be liable for the prepayment of payments in lieu of contributions as provided in Paragraphs (2), (3) and (4) of this subsection. Each member of the group account shall be liable to the division for payments in

lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in the quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment for such member during the quarter bear to the total wages paid during the quarter for service performed in the employ of all members of the group. The secretary shall prescribe rules as he deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this paragraph, for addition of new members to, and withdrawal of active members from, the accounts and for the determination of the amounts that are payable under this subsection by members of the group and the time and manner of payments. Each group account may apportion liability for amounts due to the group representative as the group shall determine; and

(7) past-due payments in lieu of contributions are subject to the same penalties that are applied to past-due contributions under Section 51-1-12 NMSA 1978.

F. Contributions or payments in lieu of contributions unpaid on the date on which they are due and payable shall bear interest at the rate of one percent per month from and after such date until payment is received by

the division. Interest collected pursuant to this subsection shall be paid into the employment security department fund.

G. Any person, group of individuals, partnership or employing unit that acquires the organization, trade or business or substantially all the assets thereof from an Indian tribe or tribal entity shall notify the division in writing by registered mail not later than five days prior to the acquisition. Unless such notice is given, such acquisition shall be void as against the division, if, at the time of the acquisition, any contributions or payments in lieu of contributions are due and unpaid by the tribe or tribal entity, and the assets so acquired shall, if otherwise allowed by law, be subject to attachment for the debt.

H. If an Indian tribe or a tribal entity fails to make a contribution or payment in lieu of contribution pursuant to the Unemployment Compensation Law, the division shall mail a notice of nonpayment or delinquency to the noncomplying tribe or tribal entity at its last known address as shown in division records. If the payment is not made within ninety days of the date the notice is mailed, the account of the noncomplying tribe or tribal entity shall be terminated. Notice of the termination shall be mailed to the tribe or tribal entity at its last known address shown in division records. The notice shall be accompanied by a written description of protest rights pursuant to Section 51-

1-8 NMSA 1978. Termination of an account pursuant to this subsection terminates the tribe or tribal entity's participation as a contributing employer.

I. The secretary may reinstate the account of an Indian tribe or tribal entity that loses coverage pursuant to Subsection H of this section if the tribe or the tribal entity pays all contributions, payments in lieu of contributions, interest, penalties, surcharges and fees that are due and owing.

J. If an Indian tribe or tribal entity fails to make contributions or payments in lieu of contributions pursuant to this section, including any assessed interest and penalties, within ninety days of a notice of nonpayment or delinquency, the secretary shall immediately notify the United States internal revenue service and the United States department of labor.

K. Notices of payment and reporting delinquency to an Indian tribe or a tribal entity shall include an explanation that failure to make full payment within the prescribed time will cause the tribe or the tribal entity to:

- (1) be liable for taxes pursuant to the Federal Unemployment Tax Act;
- (2) lose the option to make payments in lieu of contributions; and
- (3) lose its status as an employer under the

Unemployment Compensation Law and will cause services performed for the tribe or tribal entity to not be treated as "employment" under that law.

L. Extended benefits paid that are attributable to service in the employ of an Indian tribe or tribal entity and not reimbursed by the federal government shall be the responsibility of the Indian tribe or tribal entity.

M Nothing in this section shall be deemed to be a waiver of tribal sovereignty or sovereign immunity, either directly or indirectly. Compliance by an Indian tribe or tribal entity with the provisions of this section shall not be deemed to directly or indirectly waive tribal sovereignty or sovereign immunity. "

Section 4. TEMPORARY PROVISION--TRANSITION.--The labor department shall waive any unpaid contributions, including interest and penalties, from an Indian tribe, tribal unit or a subdivision, subsidiary or business enterprise wholly owned by a tribe due between January 1, 2000 and December 21, 2000 if, before January 31, 2004, the tribe, tribal unit or subdivision, subsidiary or business enterprise pays to the unemployment compensation fund an amount equal to the total benefits actually paid from the fund between January 1, 2000 and December 21, 2000 to the employees of that tribe, tribal unit or subdivision, subsidiary or business enterprise. _____

