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HOUSE BILL 528

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Ray Ruiz

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; PROVIDING UNEMPLOYMENT BENEFITS TO PARENTS WHO LEAVE EMPLOYMENT TO BE WITH THEIR NEWBORNS OR NEWLY ADOPTED CHILDREN.

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 paid in accordance with such [~~regulations~~] rules as the secretary may prescribe through employment offices or other

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1 agencies as the secretary may by general rule approve.

2 B. Weekly benefits shall be as follows:

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

22 (2) each eligible individual who is
23 unemployed in any week during which he is in a continued
24 claims status shall be paid, with respect to such week, a
25 benefit in an amount equal to his weekly benefit amount, less

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

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

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1 twenty-six times his reduced weekly benefit amount. If
2 payments referred to in this section are being received by any
3 individual under the federal Social Security Act, the division
4 shall take into account the individual's contribution and make
5 no reduction in the weekly benefit amount;

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

14 (5) the retroactive payment of a pension,
15 retirement or retired pay, annuity or any other similar
16 periodic payment as provided in Paragraphs (3) and (4) of this
17 subsection attributable to weeks during which an individual
18 has claimed or has been paid unemployment compensation shall
19 be allocated to such weeks and shall reduce the amount of
20 unemployment compensation for such weeks, but not below zero,
21 by an amount equal to the prorated amount of such pension.
22 Any overpayment of unemployment compensation benefits
23 resulting from the application of the provisions of this
24 paragraph shall be recovered from the claimant in accordance
25 with the provisions of Section 51-1-38 NMSA 1978.

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1 C. ~~[Any]~~ Except as provided in Subsection D of
2 this section, an otherwise eligible individual is entitled
3 during any benefit year to a total amount of benefits equal to
4 whichever is the lesser of twenty-six times his weekly benefit
5 amount or sixty percent of his wages for insured work paid
6 during his base period.

7 D. As long as the total benefits received pursuant
8 to the Unemployment Compensation Law are less than the maximum
9 calculated pursuant to Subsection C of this section, an
10 individual qualifying for benefits pursuant to Section 51-1-59
11 NMSA 1978 is entitled during any benefit year to a total
12 amount of benefits equal to whichever is the lesser of
13 thirteen times the individual's weekly benefit amount or
14 thirty percent of his wages for insured work paid during his
15 base period.

16 ~~[D-]~~ E. Any benefit as determined in Subsection B,
17 ~~[or]~~ C or D of this section, if not a multiple of one dollar
18 (\$1.00), shall be rounded to the next lower multiple of one
19 dollar (\$1.00).

20 ~~[E-]~~ F. The secretary may prescribe ~~[regulations]~~
21 rules to provide for the payment of benefits that are due and
22 payable to the legal representative, dependents, relatives or
23 next of kin of claimants since deceased. These ~~[regulations]~~
24 rules need not conform with the laws governing successions,
25 and the payment shall be deemed a valid payment to the same

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1 extent as if made under a formal administration of the
2 succession of the claimant.

3 [F-] G. The division, on its own initiative, may
4 reconsider a monetary determination whenever it is determined
5 that an error in computation or identity has occurred or that
6 wages of the claimant pertinent to such determination but not
7 considered have been newly discovered or that the benefits
8 have been allowed or denied on the basis of misrepresentation
9 of fact, but no redetermination shall be made after one year
10 from the date of the original monetary determination. Notice
11 of a redetermination shall be given to all interested parties
12 and shall be subject to an appeal in the same manner as the
13 original determination. In the event that an appeal involving
14 an original monetary determination is pending at the time a
15 redetermination is issued, the appeal, unless withdrawn, shall
16 be treated as an appeal from such redetermination. "

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

21 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS. --

22 A. Except as provided in Section 51-1-59 NMSA
23 1978, an unemployed individual shall be eligible to receive
24 benefits with respect to any week only if he:

25 (1) has made a claim for benefits with

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1 respect to such week in accordance with such [~~regulations~~]
2 rules as the secretary may prescribe;

3 (2) has registered for work at, and
4 thereafter continued to report at, an employment office in
5 accordance with such [~~regulations~~] rules as the secretary may
6 prescribe, except that the secretary may, by [~~regulation~~]
7 rule, waive or alter either or both of the requirements of
8 this paragraph as to individuals attached to regular jobs and
9 as to such other types of cases or situations with respect to
10 which he finds that compliance with such requirements would be
11 oppressive or would be inconsistent with the purposes of the
12 Unemployment Compensation Law. No such [~~regulation~~] rule
13 shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

14 (3) is able to work and is available for work
15 and is actively seeking permanent and substantially full-time
16 work in accordance with the terms, conditions and hours common
17 in the occupation or business in which the individual is
18 seeking work, except that the secretary may, by [~~regulation~~]
19 rule, waive this requirement for individuals who are on
20 temporary layoff status from their regular employment with an
21 assurance from their employers that the layoff shall not
22 exceed four weeks or who have an express offer in writing of
23 substantially full-time work that will begin within a period
24 not exceeding four weeks;

25 (4) has been unemployed for a waiting period

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1 of one week. No week shall be counted as a week of
2 unemployment for the purposes of this paragraph:

3 (a) unless it occurs within the benefit
4 year that includes the week with respect to which he claims
5 payment of benefits;

6 (b) if benefits have been paid with
7 respect thereto; and

8 (c) unless the individual was eligible
9 for benefits with respect thereto as provided in this section
10 and Section 51-1-7 NMSA 1978, except for the requirements of
11 this subsection and of Subsection E of Section 51-1-7 NMSA
12 1978;

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

15 (6) has reported to an office of the division
16 in accordance with the [~~regulations~~] rules of the secretary
17 for the purpose of an examination and review of the
18 individual's availability for and search for work, for
19 employment counseling, referral and placement and for
20 participation in a job finding or employability training and
21 development program. No individual shall be denied benefits
22 under this section for any week that he is participating in a
23 job finding or employability training and development program;
24 and

25 (7) participates in reemployment services,

1 such as job search assistance services, if the division
2 determines that the individual is likely to exhaust regular
3 benefits and need reemployment services pursuant to a
4 profiling system established by the division, unless the
5 division determines that:

6 (a) the individual has completed such
7 services; or

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

10 B. A benefit year as provided in Section 51-1-4
11 NMSA 1978 and Subsection P of Section 51-1-42 NMSA 1978 may be
12 established; provided no individual may receive benefits in a
13 benefit year unless, subsequent to the beginning of the
14 immediately preceding benefit year during which he received
15 benefits, he performed service in "employment", as defined in
16 Subsection F of Section 51-1-42 NMSA 1978, and earned
17 remuneration for such service in an amount equal to at least
18 five times his weekly benefit amount.

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

25 (1) benefits based on services performed in

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1 an instructional, research or principal administrative
2 capacity for an educational institution shall not be paid for
3 any week of unemployment commencing during the period between
4 two successive academic years or terms or, when an agreement
5 provides for a similar period between two regular but not
6 successive terms, during such period or during a period of
7 paid sabbatical leave provided for in the individual's
8 contract, to any individual if such individual performs such
9 services in the first of such academic years or terms and if
10 there is a contract or a reasonable assurance that such
11 individual will perform services in any such capacity for any
12 educational institution in the second of such academic years
13 or terms;

14 (2) benefits based on services performed for
15 an educational institution other than in an instructional,
16 research or principal administrative capacity shall not be
17 paid for any week of unemployment commencing during a period
18 between two successive academic years or terms if such
19 services are performed in the first of such academic years or
20 terms and there is a reasonable assurance that such individual
21 will perform services for any educational institution in the
22 second of such academic years or terms. If compensation is
23 denied to any individual under this paragraph and the
24 individual was not offered an opportunity to perform such
25 services for the educational institution for the second of

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1 such academic years or terms, the individual shall be entitled
2 to a retroactive payment of benefits for each week for which
3 the individual filed a claim and certified for benefits in
4 accordance with the [~~regulations~~] rules of the division and
5 for which benefits were denied solely by reason of this
6 paragraph;

7 (3) benefits shall be denied to any
8 individual for any week that commences during an established
9 and customary vacation period or holiday recess if such
10 individual performs any services described in Paragraphs (1)
11 and (2) of this subsection in the period immediately before
12 such period of vacation or holiday recess and there is a
13 reasonable assurance that such individual will perform any
14 such services in the period immediately following such
15 vacation period or holiday recess;

16 (4) benefits shall not be payable on the
17 basis of services specified in Paragraphs (1) and (2) of this
18 subsection during the periods specified in Paragraphs (1), (2)
19 and (3) of this subsection to any individual who performed
20 such services in or to or on behalf of an educational
21 institution while in the employ of a state or local
22 governmental educational service agency or other governmental
23 entity or nonprofit organization; and

24 (5) for the purpose of this subsection, to
25 the extent permitted by federal law, "reasonable assurance"

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1 means a reasonable expectation of employment in a similar
2 capacity in the second of such academic years or terms based
3 upon a consideration of all relevant factors, including the
4 historical pattern of reemployment in such capacity, a
5 reasonable anticipation that such employment will be available
6 and a reasonable notice or understanding that the individual
7 will be eligible for and offered employment in a similar
8 capacity.

9 D. Paragraphs (1), (2), (3), (4) and (5) of
10 Subsection C of this section shall apply to services performed
11 for all educational institutions, public or private, for
12 profit or nonprofit, which are operated in this state or
13 subject to an agreement for coverage under the Unemployment
14 Compensation Law of this state, unless otherwise exempt by
15 law.

16 E. Notwithstanding any other provisions of this
17 section or Section 51-1-7 NMSA 1978, no otherwise eligible
18 individual is to be denied benefits for any week because he is
19 in training with the approval of the division nor is such
20 individual to be denied benefits by reason of application of
21 provisions in Paragraph (3) of Subsection A of this section or
22 Subsection C of Section 51-1-7 NMSA 1978 with respect to any
23 week in which he is in training with the approval of the
24 division. The secretary shall provide, by [~~regulation~~] rule,
25 standards for approved training and the conditions for

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1 approving such training for claimants, including any training
2 approved or authorized for approval pursuant to Section
3 236(a)(1) and (2) of the Trade Act of 1974, as amended, or
4 required to be approved as a condition for certification of
5 the state's Unemployment Compensation Law by the United States
6 secretary of labor.

7 F. Notwithstanding any other provisions of this
8 section, benefits shall not be payable on the basis of
9 services performed by an alien unless such alien is an
10 individual who was lawfully admitted for permanent residence
11 at the time such services were performed, was lawfully present
12 for the purposes of performing such services or was
13 permanently residing in the United States under color of law
14 at the time such services were performed, including an alien
15 who was lawfully present in the United States as a result of
16 the application of the provisions of Section 212(d)(5) of the
17 Immigration and Nationality Act; provided that:

18 (1) any information required of individuals
19 applying for benefits to determine their eligibility for
20 benefits under this subsection shall be uniformly required
21 from all applicants for benefits; and

22 (2) no individual shall be denied benefits
23 because of his alien status except upon a preponderance of the
24 evidence.

25 G. Notwithstanding any other provision of this

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1 section, benefits shall not be paid to ~~[any]~~ an individual on
2 the basis of any services substantially all of which consist
3 of participating in sports or athletic events or training or
4 preparing to so participate for any week that commences during
5 the period between two successive sport seasons, or similar
6 periods, if such individual performed such services in the
7 first of such seasons, or similar periods, and there is a
8 reasonable assurance that such individual will perform such
9 services in the latter of such seasons or similar periods.

10 H. Students who are enrolled in a full-time course
11 schedule in an educational or training institution or program,
12 other than those persons in an approved vocational training
13 program in accordance with Subsection E of this section, shall
14 not be eligible for unemployment benefits except as provided
15 by ~~[regulations]~~ rules promulgated by the secretary.

16 I. As used in this subsection, "seasonal ski
17 employee" means an employee who has not worked for a ski area
18 operator for more than six consecutive months of the previous
19 twelve months or nine of the previous twelve months. Any
20 employee of a ski area operator who has worked for a ski area
21 operator for six consecutive months of the previous twelve
22 months or nine of the previous twelve months shall not be
23 considered a seasonal ski employee. The following benefit
24 eligibility conditions apply to a seasonal ski employee:

25 (1) except as provided in Paragraphs (2) and

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1 (3) of this subsection, a seasonal ski employee employed by a
2 ski area operator on a regular seasonal basis shall be
3 ineligible for a week of unemployment benefits that commences
4 during a period between two successive ski seasons unless such
5 individual establishes to the satisfaction of the secretary
6 that he is available for and is making an active search for
7 permanent full-time work;

8 (2) a seasonal ski employee who has been
9 employed by a ski area operator during two successive ski
10 seasons shall be presumed to be unavailable for permanent new
11 work during a period after the second successive ski season
12 that he was employed as a seasonal ski employee; and

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

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

25 Section 3. Section 51-1-7 NMSA 1978 (being Laws 1936

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1 (S.S.), Chapter 1, Section 5, as amended) is amended to read:

2 "51-1-7. DISQUALIFICATION FOR BENEFITS. -- Except as
3 provided in Section 51-1-59 NMSA 1978, an individual shall be
4 disqualified for, and shall not be eligible to receive,
5 benefits:

6 A. if it is determined by the division that he
7 left his employment voluntarily without good cause in
8 connection with his employment; provided, however, that no
9 person shall be denied benefits under this subsection solely
10 on the basis of pregnancy or the termination of pregnancy.

11 For purposes of this subsection, "employment" means the
12 individual's last employer as defined by the [~~regulations~~]
13 rules of the secretary and the provisions of [~~the~~]

14 Subsection C of Section 51-1-8 NMSA 1978. The
15 disqualification shall continue for the duration of his
16 unemployment and until he has earned wages in such bona fide
17 employment other than self-employment as provided by
18 regulation of the secretary in an amount equivalent to five
19 times his weekly benefit amount otherwise payable;

20 B. if it is determined by the division that he has
21 been discharged for misconduct connected with his employment.

22 For purposes of this subsection, "employment" means the
23 individual's last employer as defined by the [~~regulations~~]
24 rules of the secretary and the provisions of Subsection C of
25 Section 51-1-8 NMSA 1978. The disqualification shall continue

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1 for the duration of his unemployment and until he has earned
2 wages in such bona fide employment other than self-employment
3 as provided by ~~[regulation]~~ rule of the secretary in an amount
4 equivalent to five times his weekly benefit amount otherwise
5 payable;

6 C. if it is determined by the division that he has
7 failed without good cause either to apply for available,
8 suitable work when so directed or referred by the ~~[employment~~
9 ~~security]~~ division or to accept suitable work when offered
10 him. The disqualification shall include the week such failure
11 occurred and shall continue for the duration of his
12 unemployment and until he has earned wages in bona fide
13 employment other than self-employment as provided by
14 ~~[regulations]~~ rules of the secretary in an amount equivalent
15 to five times his weekly benefit amount otherwise payable;
16 provided, that no more than one such disqualification shall be
17 imposed upon any individual for failure to apply for or accept
18 the same position, or a similar position, with the same
19 employer, except upon a determination by the division of
20 disqualification under Subsection D of this section.

21 (1) In determining whether or not any work is
22 suitable for an individual, the division shall consider the
23 degree of risk involved to his health, safety and morals, his
24 physical fitness and prior training, his experience and prior
25 earnings, his length of unemployment and prospects for

1 securing local work in his customary occupation and the
2 distance of available work from his residence.

3 (2) Notwithstanding any other provisions of
4 the Unemployment Compensation Law, no work shall be deemed
5 suitable and benefits shall not be denied under the
6 Unemployment Compensation Law to any otherwise eligible
7 individual for refusing to accept new work under any of the
8 following conditions:

9 (a) if the position offered is vacant
10 due directly to a strike, lockout or other labor dispute;

11 (b) if the wages, hours or other
12 conditions of the work offered are substantially less
13 favorable to the individual than those prevailing for similar
14 work in the locality; or

15 (c) if, as a condition of being
16 employed, the individual would be required to join a company
17 union or to resign from or refrain from joining any bona fide
18 labor organizations;

19 D. for any week with respect to which the division
20 finds that his unemployment is due to a labor dispute at the
21 factory, establishment or other premises at which he is or was
22 last employed; provided that this subsection shall not apply
23 if it is shown to the satisfaction of the division that:

24 (1) he is not participating in or directly
25 interested in the labor dispute; and

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1 (2) he does not belong to a grade or class of
2 workers of which, immediately before the commencement of the
3 labor dispute, there were members employed at the premises at
4 which the labor dispute occurs, any of whom are participating
5 in or directly interested in the dispute; provided that if in
6 any case separate branches of work [~~which~~] that are commonly
7 conducted in separate businesses in separate premises are
8 conducted in separate departments of the same premises, each
9 such department shall, for the purposes of this subsection, be
10 deemed to be a separate factory, establishment or other
11 premises; and

12 E. for any week with respect to which, or a part
13 of which, he has received or is seeking, through any agency
14 other than the division, unemployment benefits under an
15 unemployment compensation law of another state or of the
16 United States; provided that if the appropriate agency of such
17 other state or of the United States finally determines that he
18 is not entitled to such unemployment benefits, this
19 disqualification shall not apply. "

20 Section 4. Section 51-1-11 NMSA 1978 (being Laws 1961,
21 Chapter 139, Section 3, as amended by Laws 2000, Chapter 3,
22 Section 3 and also by Laws 2000, Chapter 7, Section 3) is
23 amended to read:

24 "51-1-11. FUTURE RATES BASED ON BENEFIT EXPERIENCE. --

25 A. The division shall maintain a separate account

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1 for each contributing employer and shall credit his account
2 with all contributions paid by him under the Unemployment
3 Compensation Law. Nothing in the Unemployment Compensation
4 Law shall be construed to grant any employer or individuals in
5 his service prior claims or rights to the amounts paid by the
6 employer into the fund.

7 B. Except as provided in Section 51-1-59 NMSA
8 1978, benefits paid to an individual shall be charged against
9 the accounts of his base-period employers on a pro rata basis
10 according to the proportion of his total base-period wages
11 received from each, except that no benefits paid to a claimant
12 as extended benefits under the provisions of Section 51-1-48
13 NMSA 1978 shall be charged to the account of any base-period
14 employer who is not on a reimbursable basis and who is not a
15 governmental entity and, except as the secretary shall by
16 [~~regulation~~] rule prescribe otherwise, in the case of benefits
17 paid to an individual who:

18 (1) left the employ of a base-period employer
19 who is not on a reimbursable basis voluntarily without good
20 cause in connection with his employment;

21 (2) was discharged from the employment of a
22 base-period employer who is not on a reimbursable basis for
23 misconduct connected with his work;

24 (3) is employed part time by a base-period
25 employer who is not on a reimbursable basis and who continues

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1 to furnish the individual the same part-time work while the
2 individual is separated from full-time work for a
3 nondisqualifying reason; or

4 (4) received benefits based upon wages earned
5 from a base-period employer who is not on a reimbursable basis
6 while attending approved training under the provisions of
7 Subsection E of Section 51-1-5 NMSA 1978.

8 C. The division shall not charge a contributing or
9 reimbursing base-period employer's account with any portion of
10 benefit amounts that the division can bill to or recover from
11 the federal government as either regular or extended benefits.

12 D. All contributions to the fund shall be pooled
13 and available to pay benefits to any individual entitled
14 thereto, irrespective of the source of such contributions.
15 The standard rate of contributions payable by each employer
16 shall be five and four-tenths percent.

17 E. No employer's rate shall be varied from the
18 standard rate for any calendar year unless, as of the
19 computation date for that year, his account has been
20 chargeable with benefits throughout the preceding thirty-six
21 months, except that:

22 (1) the provisions of this subsection shall
23 not apply to governmental entities;

24 (2) subsequent to December 31, 1984, any
25 employing unit that becomes an employer subject to the payment

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1 of contributions under the Unemployment Compensation Law or
2 has been an employer subject to the payment of contributions
3 at a standard rate of two and seven-tenths percent through
4 December 31, 1984 shall be subject to the payment of
5 contributions at the reduced rate of two and seven-tenths
6 percent until, as of the computation date of a particular
7 year, the employer's account has been chargeable with benefits
8 throughout the preceding thirty-six months; and

9 (3) any individual, type of organization or
10 employing unit that acquires all or part of the trade or
11 business of another employing unit, pursuant to Paragraphs (2)
12 and (3) of Subsection E of Section 51-1-42 NMSA 1978, that has
13 a reduced rate of contribution shall be entitled to the
14 transfer of the reduced rate to the extent permitted under
15 Subsection G of this section.

16 F. The secretary shall, for the year 1942 and for
17 each calendar year thereafter, classify employers in
18 accordance with their actual experience in the payment of
19 contributions and with respect to benefits charged against
20 their accounts, with a view of fixing such contribution rates
21 as will reflect such benefit experience. Each employer's rate
22 for any calendar year shall be determined on the basis of his
23 record and the condition of the fund as of the computation
24 date for such calendar year.

25 An employer may make voluntary payments in addition to

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1 the contributions required under the Unemployment Compensation
2 Law, which shall be credited to his account in accordance with
3 department ~~[regulation]~~ rule. The voluntary payments shall be
4 included in the employer's account as of the employer's most
5 recent computation date if they are made on or before the
6 following March 1. Voluntary payments when accepted from an
7 employer shall not be refunded in whole or in part.

8 G. In the case of a transfer of an employing
9 enterprise, the experience history of the transferred
10 enterprise as provided in Subsection F of this section shall
11 be transferred from the predecessor employer to the successor
12 under the following conditions and in accordance with the
13 applicable ~~[regulations]~~ rules of the secretary:

14 (1) Definitions:

15 (a) "employing enterprise" is a
16 business activity engaged in by a contributing employing unit
17 in which one or more persons have been employed within the
18 current or the three preceding calendar quarters;

19 (b) "predecessor" means the owner and
20 operator of an employing enterprise immediately prior to the
21 transfer of such enterprise;

22 (c) "successor" means any individual or
23 any type of organization that acquires an employing enterprise
24 and continues to operate such business entity; and

25 (d) "experience history" means the

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1 experience rating record and reserve account, including the
2 actual contributions, benefit charges and payroll experience
3 of the employing enterprise.

4 (2) For the purpose of this section, two or
5 more employers who are parties to or the subject of any
6 transaction involving the transfer of an employing enterprise
7 shall be deemed to be a single employer and the experience
8 history of the employing enterprise shall be transferred to
9 the successor employer if the successor employer has acquired
10 by the transaction all of the business enterprises of the
11 predecessor; provided that:

12 (a) all contributions, interest and
13 penalties due from the predecessor employer have been paid;

14 (b) notice of the transfer has been
15 given in accordance with the [~~regulations~~] rules of the
16 secretary within four years of the transaction transferring
17 the employing enterprise or the date of the actual transfer of
18 control and operation of the employing enterprise;

19 (c) in the case of the transfer of an
20 employing enterprise, the successor employer must notify the
21 division of the acquisition on or before the due date of the
22 successor employer's first wage and contribution report. If
23 the successor employer fails to notify the division of the
24 acquisition within this time limit, the division, when it
25 receives actual notice, shall effect the transfer of the

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1 experience history and applicable rate of contribution
2 retroactively to the date of the acquisition, and the
3 successor shall pay a penalty of fifty dollars (\$50.00); and

4 (d) where the transaction involves only
5 a merger, consolidation or other form of reorganization
6 without a substantial change in the ownership and controlling
7 interest of the business entity, as determined by the
8 secretary, the limitations on transfers stated in
9 Subparagraphs (a), (b) and (c) of this paragraph shall not
10 apply. No party to a merger, consolidation or other form of
11 reorganization described in this paragraph shall be relieved
12 of liability for ~~any~~ contributions, interest or penalties
13 due and owing from the employing enterprise at the time of the
14 merger, consolidation or other form of reorganization.

15 (3) The applicable experience history may be
16 transferred to the successor in the case of a partial transfer
17 of an employing enterprise if the successor has acquired one
18 or more of the several employing enterprises of a predecessor
19 but not all of the employing enterprises of the predecessor
20 and each employing enterprise so acquired was operated by the
21 predecessor as a separate store, factory, shop or other
22 separate employing enterprise and the predecessor, throughout
23 the entire period of his contribution with liability
24 applicable to each enterprise transferred, has maintained and
25 preserved payroll records that, together with records of

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1 contribution liability and benefit chargeability, can be
2 separated by the parties from the enterprises retained by the
3 predecessor to the satisfaction of the secretary or his
4 delegate. A partial experience history transfer will be made
5 only if:

6 (a) the successor notifies the division
7 of the acquisition, in writing, not later than the due date of
8 the successor's first quarterly wage and contribution report
9 after the effective date of the acquisition;

10 (b) the successor files an application
11 provided by the division that contains the endorsement of the
12 predecessor within thirty days from the delivery or mailing of
13 such application by the division to the successor's last known
14 address; and

15 (c) the successor files with the
16 application a Form ES-903A or its equivalent with a schedule
17 of the name and social security number of and the wages paid
18 to and the contributions paid for each employee for the three
19 and one-half year period preceding the computation date as
20 defined in Subparagraph (d) of Paragraph (3) of Subsection H
21 of this section through the date of transfer or such lesser
22 period as the enterprises transferred may have been in
23 operation. The application and Form ES-903A shall be
24 supported by the predecessor's permanent employment records,
25 which shall be available for audit by the division. The

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1 application and Form ES-903A shall be reviewed by the division
2 and, upon approval, the percentage of the predecessor's
3 experience history attributable to the enterprises transferred
4 shall be transferred to the successor. The percentage shall
5 be obtained by dividing the taxable payrolls of the
6 transferred enterprises for such three and one-half year
7 period preceding the date of computation or such lesser period
8 as the enterprises transferred may have been in operation by
9 the predecessor's entire payroll.

10 H. For each calendar year, adjustments of
11 contribution rates below the standard or reduced rate and
12 measures designed to protect the fund are provided as follows:

13 (1) The total assets in the fund and the
14 total of the last annual payrolls of all employers subject to
15 contributions as of the computation date for each year shall
16 be determined. These annual totals are here called "the fund"
17 and "total payrolls". For each year, the "reserve" of each
18 employer qualified under Subsection E of this section shall be
19 fixed by the excess of his total contributions over total
20 benefit charges computed as a percentage of his average
21 payroll reported for contributions. The determination of each
22 employer's annual rate, computed as of the computation date
23 for each calendar year, shall be made by matching his reserve
24 as shown in the reserve column with the corresponding rate
25 shown in the applicable rate schedule of the table provided in

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1 Paragraph (4) of this subsection.

2 (2) Each employer's rate for each calendar
3 year commencing January 1, 1979 or thereafter shall be:

4 (a) the rate in schedule 1 of the table
5 provided in Paragraph (4) of this subsection on the
6 corresponding line as his reserve if the fund equals at least
7 three and four-tenths percent of the total payrolls;

8 (b) the rate in schedule 2 of the table
9 provided in Paragraph (4) of this subsection on the
10 corresponding line if the fund has dropped to less than three
11 and four-tenths percent and not less than two and seven-tenths
12 percent;

13 (c) the rate in schedule 3 of the table
14 provided in Paragraph (4) of this subsection on the
15 corresponding line if the fund has dropped to less than two
16 and seven-tenths percent and not less than two percent;

17 (d) the rate in schedule 4 of the table
18 provided in Paragraph (4) of this subsection on the
19 corresponding line if the fund has dropped to less than two
20 percent and not less than one and one-half percent;

21 (e) the rate in schedule 5 of the table
22 provided in Paragraph (4) of this subsection on the
23 corresponding line if the fund has dropped to less than one
24 and one-half percent and not less than one percent; or

25 (f) the rate in schedule 6 of the table

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1 provided in Paragraph (4) of this subsection on the
2 corresponding line if the fund has dropped less than one
3 percent.

4 (3) As used in this section:

5 (a) "annual payroll" means the total
6 amount of remuneration from an employer for employment during
7 a twelve-month period ending on a computation date, and
8 "average payroll" means the average of the last three annual
9 payrolls;

10 (b) "base-period wages" means the wages
11 of an individual for insured work during his base period on
12 the basis of which his benefit rights were determined;

13 (c) "base-period employers" means the
14 employers of an individual during his base period; and

15 (d) "computation date" for each
16 calendar year means the close of business on June 30 of the
17 preceding calendar year.

18 (4) Table of employer reserves and
19 contribution rate schedules:

Employer Reserve	Contribution Schedule 1	Contribution Schedule 2	Contribution Schedule 3
10.0% and over	0.05%	0.1%	0.6%
9.0%- 9.9%	0.1%	0.2%	0.9%
8.0%- 8.9%	0.2%	0.4%	1.2%
7.0%- 7.9%	0.4%	0.6%	1.5%

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1	6.0%- 6.9%	0.6%	0.8%	1.8%
2	5.0%- 5.9%	0.8%	1.1%	2.1%
3	4.0%- 4.9%	1.1%	1.4%	2.4%
4	3.0%- 3.9%	1.4%	1.7%	2.7%
5	2.0%- 2.9%	1.7%	2.0%	3.0%
6	1.0%- 1.9%	2.0%	2.4%	3.3%
7	0.9%- 0.0%	2.4%	3.3%	3.6%
8	(- 0.1%) - (- 0.5%)	3.3%	3.6%	3.9%
9	(- 0.5%) - (- 1.0%)	4.2%	4.2%	4.2%
10	(- 1.0%) - (- 2.0%)	5.0%	5.0%	5.0%
11	Under (- 2.0%)	5.4%	5.4%	5.4%
12	Employer	Contri buti on	Contri buti on	Contri buti on
13	Reserve	Schedul e 4	Schedul e 5	Schedul e 6
14	10.0% and over	0.9%	1.2%	2.7%
15	9.0%- 9.9%	1.2%	1.5%	2.7%
16	8.0%- 8.9%	1.5%	1.8%	2.7%
17	7.0%- 7.9%	1.8%	2.1%	2.7%
18	6.0%- 6.9%	2.1%	2.4%	2.7%
19	5.0%- 5.9%	2.4%	2.7%	3.0%
20	4.0%- 4.9%	2.7%	3.0%	3.3%
21	3.0%- 3.9%	3.0%	3.3%	3.6%
22	2.0%- 2.9%	3.3%	3.6%	3.9%
23	1.0%- 1.9%	3.6%	3.9%	4.2%
24	0.9%- 0.0%	3.9%	4.2%	4.5%
25	(- 0.1%) - (- 0.5%)	4.2%	4.5%	4.8%

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1	(- 0. 5%) - (- 1. 0%)	4. 5%	4. 8%	5. 1%
2	(- 1. 0%) - (- 2. 0%)	5. 0%	5. 1%	5. 3%
3	Under (- 2. 0%)	5. 4%	5. 4%	5. 4%.

4 I. The division shall promptly notify each
5 employer of his rate of contributions as determined for any
6 calendar year pursuant to this section. Such notification
7 shall include the amount determined as the employer's average
8 payroll, the total of all his contributions paid on his own
9 behalf and credited to his account for all past years and
10 total benefits charged to his account for all such years.
11 Such determination shall become conclusive and binding upon
12 the employer unless, within thirty days after the mailing of
13 notice thereof to his last known address or in the absence of
14 mailing, within thirty days after the delivery of such notice,
15 the employer files an application for review and
16 redetermination, setting forth his reason therefor. The
17 employer shall be granted an opportunity for a fair hearing in
18 accordance with ~~regulations~~ rules prescribed by the
19 secretary, but no employer shall have standing, in ~~any~~ a
20 proceeding involving his rate of contributions or contribution
21 liability, to contest the chargeability to his account of
22 ~~any~~ benefits paid in accordance with a determination,
23 redetermination or decision pursuant to Section 51-1-8 NMSA
24 1978, except upon the ground that the services on the basis of
25 which such benefits were found to be chargeable did not

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1 constitute services performed in employment for him and only
2 in the event that he was not a party to such determination,
3 redetermination or decision, or to any other proceedings under
4 the Unemployment Compensation Law in which the character of
5 such services was determined. The employer shall be promptly
6 notified of the decision on his application for
7 redetermination, which shall become final unless, within
8 fifteen days after the mailing of notice thereof to his last
9 known address or in the absence of mailing, within fifteen
10 days after the delivery of such notice, further appeal is
11 initiated pursuant to Subsection D of Section 51-1-8 NMSA
12 1978.

13 J. The division shall provide each contributing
14 employer, within ninety days of the end of each calendar
15 quarter, a written determination of benefits chargeable to his
16 account. Such determination shall become conclusive and
17 binding upon the employer for all purposes unless, within
18 thirty days after the mailing of the determination to his last
19 known address or in the absence of mailing, within thirty days
20 after the delivery of such determination, the employer files
21 an application for review and redetermination, setting forth
22 his reason therefor. The employer shall be granted an
23 opportunity for a fair hearing in accordance with
24 [~~regulations~~] rules prescribed by the secretary, but no
25 employer shall have standing in any proceeding involving his

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1 contribution liability to contest the chargeability to his
2 account of any benefits paid in accordance with a
3 determination, redetermination or decision pursuant to Section
4 51-1-8 NMSA 1978, except upon the ground that the services on
5 the basis of which such benefits were found to be chargeable
6 did not constitute services performed in employment for him
7 and only in the event that he was not a party to such
8 determination, redetermination or decision, or to any other
9 proceedings under the Unemployment Compensation Law in which
10 the character of such services was determined. The employer
11 shall be promptly notified of the decision on his application
12 for redetermination, which shall become final unless, within
13 fifteen days after the mailing of notice thereof to his last
14 known address or in the absence of mailing, within fifteen
15 days after the delivery of such notice, further appeal is
16 initiated pursuant to Subsection D of Section 51-1-8 NMSA
17 1978.

18 K. The contributions, together with interest and
19 penalties thereon imposed by the Unemployment Compensation
20 Law, shall not be assessed nor shall action to collect the
21 same be commenced more than four years after a report showing
22 the amount of the contributions was due. In the case of a
23 false or fraudulent contribution report with intent to evade
24 contributions or a willful failure to file a report of all
25 contributions due, the contributions, together with interest

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1 and penalties thereon, may be assessed or an action to collect
2 such contributions may be begun at any time. Before the
3 expiration of such period of limitation, the employer and the
4 secretary may agree in writing to an extension thereof and the
5 period so agreed on may be extended by subsequent agreements
6 in writing. In any case where the assessment has been made
7 and action to collect has been commenced within four years of
8 the due date of any contribution, interest or penalty,
9 including the filing of a warrant of lien by the secretary
10 pursuant to Section 51-1-36 NMSA 1978, such action shall not
11 be subject to any period of limitation.

12 L. The secretary shall correct any error in the
13 determination of an employer's rate of contribution during the
14 calendar year to which the erroneous rate applies,
15 notwithstanding that notification of the employer's rate of
16 contribution may have been issued and contributions paid
17 pursuant to the notification. Upon issuance by the division
18 of a corrected rate of contribution, the employer shall have
19 the same rights to review and redetermination as provided in
20 Subsection I of this section.

21 M. ~~Any~~ Interest required to be paid on advances
22 to this state's unemployment compensation fund under Title 12
23 of the Social Security Act shall be paid in a timely manner as
24 required under Section 1202 of Title 12 of the Social Security
25 Act and shall not be paid, directly or indirectly, by the

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1 state from amounts in the state's unemployment compensation
2 fund.

3 N. Notwithstanding the provisions of this section,
4 the rate in schedule 1 of the table provided in Paragraph (4)
5 of Subsection H of this section shall be applied for four
6 calendar years beginning January 1, 1999. "

7 Section 5. A new section of the Unemployment
8 Compensation Law, Section 51-1-59 NMSA 1978, is enacted to
9 read:

10 "51-1-59. [NEW MATERIAL] FAMILY LEAVE UNEMPLOYMENT
11 COMPENSATION BENEFITS-- FINDINGS-- PURPOSE-- CALCULATION OF
12 BENEFITS. --

13 A. The legislature finds that:

14 (1) birth and adoption unemployment
15 compensation recognizes the impact of women in the workplace
16 and responds to the dramatic societal and economic changes
17 resulting from the large number of families where both parents
18 work. It supports a stable workforce by allowing parents to
19 provide the initial care a child needs, to form a strong
20 emotional bond with the child and to establish a secure system
21 of child care that, once in place, will promote the parents'
22 long-term attachment to the workforce;

23 (2) the initial time period during which a
24 new child is introduced into a home and how the child's care
25 will be assimilated into the working lives of parents is

1 critical; and

2 (3) many working individuals, especially
3 those in low- and moderate-paying jobs, who need to take
4 parental leave after birth or adoption of a child do not take
5 leave from work because they cannot afford to.

6 B. The purpose of this section is to help workers
7 who become parents by making wage replacement available to
8 those for whom parental leave heretofore has been merely an
9 illusory right, while still ensuring that the state has
10 adequate resources to pay unemployment compensation benefits.

11 C. Notwithstanding the provisions of Subsection A
12 of Section 51-1-5 NMSA 1978, an individual who is on leave of
13 absence or who left employment to be with the individual's
14 child during the first year of life, or during the first year
15 following placement with the individual for adoption, shall be
16 eligible to receive benefits with respect to any week if the
17 individual has:

18 (1) made a claim for benefits with respect to
19 such week in accordance with such rules as the secretary may
20 prescribe; and

21 (2) been paid wages in at least two quarters
22 of the individual's base period.

23 D. Notwithstanding the provisions of Section
24 51-1-7 NMSA 1978, an individual qualifying for benefits
25 pursuant to this section shall not be disqualified because of

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1 a determination by the division pursuant to Subsection A or C
2 of Section 51-1-7 NMSA 1978.

3 E. Weekly benefits, calculated pursuant to
4 Subsection B of Section 51-1-4 NMSA 1978, payable to an
5 individual qualifying for benefits pursuant to this section
6 shall be reduced by:

7 (1) a payment from the employer received by
8 the individual because of the birth or adoption; and

9 (2) a payment from a disability insurance
10 plan received by the individual because of the birth or
11 adoption, but only the portion of the payment attributable to
12 an employer's contribution to the plan.

13 F. Notwithstanding the provisions of Subsection B
14 of Section 51-1-11 NMSA 1978, benefits paid to an individual
15 qualifying pursuant to this section shall not be charged
16 against the accounts of the individual's base-period
17 employers.

18 G. The secretary shall bill employers that make
19 payments in lieu of contributions for a pro rata share of
20 benefits paid to individuals eligible pursuant to this
21 section.

22 H. Each employer shall post at a site operated by
23 the employer in a conspicuous place accessible to all
24 employees information relating to the availability of family
25 leave unemployment compensation. "

