

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILLS 348 AND 349

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

AN ACT

RELATING TO UNEMPLOYMENT COMPENSATION; CHANGING COMPUTATION OF  
BENEFITS TO INCREASE THEM; ELIMINATING THE WAITING PERIOD;  
EXTENDING THE BENEFITS PERIOD; CHANGING THE BASE PERIOD FOR  
THE COMPUTATION OF BENEFITS; BROADENING THE SCOPE OF  
ELIGIBILITY; AMENDING SECTIONS OF THE NMSA 1978; DECLARING AN  
EMERGENCY.

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

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

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

A. All benefits provided herein are payable from

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1 the unemployment compensation administration fund. All  
2 benefits shall be paid in accordance with such [~~regulations~~]  
3 rules as the secretary may prescribe through employment  
4 offices or other agencies as the secretary may by general rule  
5 approve.

6 B. Weekly benefits shall be as follows:

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

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

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

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1 pension, retirement pay, annuity or other similar periodic  
2 payment that exceeds the percentage contributed to the plan by  
3 the eligible individual. The maximum benefit amount payable  
4 to such eligible individual shall be an amount not more than  
5 twenty-six times his reduced weekly benefit amount. If  
6 payments referred to in this section are being received by any  
7 individual under the federal Social Security Act, the division  
8 shall take into account the individual's contribution and make  
9 no reduction in the weekly benefit amount;

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

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

1 Any overpayment of unemployment compensation benefits  
 2 resulting from the application of the provisions of this  
 3 paragraph shall be recovered from the claimant in accordance  
 4 with the provisions of Section 51-1-38 NMSA 1978.

5 C. Any otherwise eligible individual is entitled  
 6 during ~~[any]~~ a benefit year to a total amount of benefits  
 7 equal to whichever is the lesser of twenty-six times his  
 8 weekly benefit amount or sixty percent of his wages for  
 9 insured work paid during his base period.

10 D. Any benefit as determined in Subsection B or C  
 11 of this section, if not a multiple of one dollar (\$1.00),  
 12 shall be rounded to the next lower multiple of one dollar  
 13 (\$1.00).

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

22 F. The division, on its own initiative, ~~may~~  
 23 reconsider a monetary determination whenever it is determined  
 24 that an error in computation or identity has occurred or that  
 25 wages of the claimant pertinent to such determination but not

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1 considered have been newly discovered or that the benefits  
2 have been allowed or denied on the basis of misrepresentation  
3 of fact, but no redetermination shall be made after one year  
4 from the date of the original monetary determination. Notice  
5 of a redetermination shall be given to all interested parties  
6 and shall be subject to an appeal in the same manner as the  
7 original determination. In the event that an appeal involving  
8 an original monetary determination is pending at the time a  
9 redetermination is issued, the appeal, unless withdrawn, shall  
10 be treated as an appeal from such redetermination. "

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

15 "51-1-5. BENEFIT ELIGIBILITY CONDITIONS. --

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

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

21 (2) has registered for work at, and  
22 thereafter continued to report at, an employment office in  
23 accordance with such [~~regulations~~] rules as the secretary may  
24 prescribe, except that the secretary may, by [~~regulation~~]  
25 rule, waive or alter either or both of the requirements of

1 this paragraph as to individuals attached to regular jobs and  
 2 as to such other types of cases or situations with respect to  
 3 which he finds that compliance with such requirements would be  
 4 oppressive or would be inconsistent with the purposes of the  
 5 Unemployment Compensation Law. No such ~~[regulation]~~ rule  
 6 shall conflict with Subsection A of Section 51-1-4 NMSA 1978;

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

18 ~~[(4) has been unemployed for a waiting period~~  
 19 ~~of one week. No week shall be counted as a week of~~  
 20 ~~unemployment for the purposes of this paragraph.~~

21 ~~(a) unless it occurs within the benefit~~  
 22 ~~year that includes the week with respect to which he claims~~  
 23 ~~payment of benefits;~~

24 ~~(b) if benefits have been paid with~~  
 25 ~~respect thereto; and~~

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

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

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

18 (1) benefits based on services performed in  
19 an instructional, research or principal administrative  
20 capacity for an educational institution shall not be paid for  
21 any week of unemployment commencing during the period between  
22 two successive academic years or terms or, when an agreement  
23 provides for a similar period between two regular but not  
24 successive terms, during such period or during a period of  
25 paid sabbatical leave provided for in the individual's

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1 contract, to any individual if such individual performs such  
2 services in the first of such academic years or terms and if  
3 there is a contract or a reasonable assurance that such  
4 individual will perform services in any such capacity for any  
5 educational institution in the second of such academic years  
6 or terms;

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

25 (3) benefits shall be denied to any

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1 individual for any week that commences during an established  
 2 and customary vacation period or holiday recess if such  
 3 individual performs any services described in Paragraphs (1)  
 4 and (2) of this subsection in the period immediately before  
 5 such period of vacation or holiday recess and there is a  
 6 reasonable assurance that such individual will perform any  
 7 such services in the period immediately following such  
 8 vacation period or holiday recess;

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

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

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1 capacity.

2 D. Paragraphs (1), (2), (3), (4) and (5) of  
3 Subsection C of this section shall apply to services performed  
4 for all educational institutions, public or private, for  
5 profit or nonprofit, which are operated in this state or  
6 subject to an agreement for coverage under the Unemployment  
7 Compensation Law [~~of this state~~], unless otherwise exempt by  
8 law.

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

25 F. Notwithstanding any other provisions of this

1 section, benefits shall not be payable on the basis of  
2 services performed by an alien unless such alien is an  
3 individual who was lawfully admitted for permanent residence  
4 at the time such services were performed, was lawfully present  
5 for the purposes of performing such services or was  
6 permanently residing in the United States under color of law  
7 at the time such services were performed, including an alien  
8 who was lawfully present in the United States as a result of  
9 the application of the provisions of Section 212(d)(5) of the  
10 federal Immigration and Nationality Act; provided that:

11 (1) any information required of individuals  
12 applying for benefits to determine their eligibility for  
13 benefits under this subsection shall be uniformly required  
14 from all applicants for benefits; and

15 (2) no individual shall be denied benefits  
16 because of his alien status except upon a preponderance of the  
17 evidence.

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

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1 reasonable assurance that such individual will perform such  
2 services in the latter of such seasons or similar periods.

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

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

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

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

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

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

18 Section 3. Section 51-1-7 NMSA 1978 (being Laws 1936  
19 (S.S.), Chapter 1, Section 5, as amended) is amended to read:

20 "51-1-7. DISQUALIFICATION FOR BENEFITS. --

21 A. An individual shall be disqualified for, and  
22 shall not be eligible to receive, benefits:

23 [~~A.~~] (1) if it is determined by the division  
24 that he left his employment voluntarily without good cause in  
25 connection with his employment; provided, however, that no

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1 person shall be denied benefits under this ~~[subsection]~~  
2 paragraph:

3 (a) solely on the basis of pregnancy or  
4 the termination of pregnancy; or

5 (b) because of compelling domestic  
6 circumstances for leaving work;

7 ~~[For purposes of this subsection, "employment" means the~~  
8 ~~individual's last employer as defined by the regulations of~~  
9 ~~the secretary and the provisions of the Subsection C of~~  
10 ~~Section 51-1-8 NMSA 1978. The disqualification shall continue~~  
11 ~~for the duration of his unemployment and until he has earned~~  
12 ~~wages in such bona fide employment other than self-employment~~  
13 ~~as provided by regulation of the secretary in an amount~~  
14 ~~equivalent to five times his weekly benefit amount otherwise~~  
15 ~~payable;~~

16 B.] (2) if it is determined by the division  
17 that he has been discharged for misconduct connected with his  
18 employment; ~~[For purposes of this subsection, "employment"~~  
19 ~~means the individual's last employer as defined by the~~  
20 ~~regulations of the secretary and the provisions of Subsection~~  
21 ~~C of Section 51-1-8 NMSA 1978. The disqualification shall~~  
22 ~~continue for the duration of his unemployment and until he has~~  
23 ~~earned wages in such bona fide employment other than self-~~  
24 ~~employment as provided by regulation of the secretary in an~~  
25 ~~amount equivalent to five times his weekly benefit amount~~



1 ~~otherwise payable;~~

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

17           (1)] B. In determining whether or not any work is  
18 suitable for an individual pursuant to Paragraph (3) of  
19 Subsection A of this section, the division shall consider the  
20 degree of risk involved to his health, safety and morals, his  
21 physical fitness and prior training, his experience and prior  
22 earnings, his length of unemployment and prospects for  
23 securing local work in his customary occupation and the  
24 distance of available work from his residence. [(2)]  
25 Notwithstanding any other provisions of the Unemployment

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1 Compensation Law, no work shall be deemed suitable and  
2 benefits shall not be denied under the Unemployment  
3 Compensation Law to any otherwise eligible individual for  
4 refusing to accept new work under any of the following  
5 conditions:

6 ~~[(a)]~~ (1) if the position offered is vacant  
7 due directly to a strike, lockout or other labor dispute;

8 ~~[(b)]~~ (2) if the wages, hours or other  
9 conditions of the work offered are substantially less  
10 favorable to the individual than those prevailing for similar  
11 work in the locality; or

12 ~~[(c)]~~ (3) if, as a condition of being  
13 employed, the individual would be required to join a company  
14 union or to resign from or refrain from joining any bona fide  
15 labor organizations.

16 ~~[D.]~~ C. An individual shall be disqualified for,  
17 and shall not be eligible to receive, benefits for any week  
18 with respect to which the division finds that his unemployment  
19 is due to a labor dispute at the factory, establishment or  
20 other premises at which he is or was last employed; provided  
21 that this subsection shall not apply if it is shown to the  
22 satisfaction of the division that:

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

25 (2) he does not belong to a grade or class of

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1 workers of which, immediately before the commencement of the  
 2 labor dispute, there were members employed at the premises at  
 3 which the labor dispute occurs, any of whom are participating  
 4 in or directly interested in the dispute; provided that if in  
 5 any case separate branches of work which are commonly  
 6 conducted in separate businesses in separate premises are  
 7 conducted in separate departments of the same premises, each  
 8 such department shall, for the purposes of this subsection, be  
 9 deemed to be a separate factory, establishment or other  
 10 premises. [~~and~~

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

20 E. A disqualification pursuant to Paragraph (1) or  
 21 (2) of Subsection A of this section shall continue for the  
 22 duration of the individual's unemployment and until he has  
 23 earned wages in bona fide employment other than self-  
 24 employment, as provided by rule of the secretary, in an amount  
 25 equivalent to five times his weekly benefit otherwise payable.

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1 A disqualification pursuant to Paragraph (3) of Subsection A  
2 of this section shall include the week the failure occurred  
3 and shall continue for the duration of the individual's  
4 unemployment and until he has earned wages in bona fide  
5 employment other than self-employment, as provided by rule of  
6 the secretary, in an amount equivalent to five times his  
7 weekly benefit amount otherwise payable; provided that no more  
8 than one such disqualification shall be imposed upon an  
9 individual for failure to apply for or accept the same  
10 position, or a similar position, with the same employer,  
11 except upon a determination by the division of  
12 disqualification pursuant to Subsection C of this section.

13 F. As used in this section:

14 (1) "child care conflicts" means:

15 (a) the loss of an existing child care  
16 arrangement that forces an individual to quit his job because  
17 he is unable to find comparable and affordable care; or

18 (b) an employer-instigated schedule  
19 change or work-location change that forces the individual to  
20 quit because he cannot find affordable child care that  
21 accommodates the new schedule or location;

22 (2) "compelling domestic circumstances"  
23 means:

24 (a) child care conflicts;

25 (b) domestic abuse, and the individual;

1 1) reasonably fears future domestic abuse at or en route to or  
2 from the individual's place of employment; 2) wishes to  
3 relocate to another geographic area in order to avoid future  
4 abuse against the individual or the individual's family or co-  
5 workers; 3) reasonably believes that termination of employment  
6 is necessary for the future safety of the individual, the  
7 individual's family or co-workers; or 4) is required to leave  
8 employment as a condition of receiving services or shelter  
9 from an agency that provides support services or shelter to  
10 victims of domestic abuse; or

11 (c) sick dependents;

12 (3) "domestic abuse" means that term as  
13 defined in Section 40-13-2 NMSA 1978; and

14 (4) "employment" means employment by the  
15 individual's last employer as defined by rules of the  
16 secretary. "

17 Section 4. Section 51-1-42 NMSA 1978 (being Laws 1936  
18 (S.S.), Chapter 1, Section 19, as amended) is amended to read:

19 "51-1-42. DEFINITIONS. --As used in the Unemployment  
20 Compensation Law:

21 A. "base period" means the first four of the last  
22 five completed calendar quarters immediately preceding the  
23 first day of an individual's benefit year, except that "base  
24 period" means for benefit years effective on or after April 1,  
25 2002 for an individual who does not have sufficient wages in

1 the base period as defined to qualify for benefits pursuant to  
2 Section 51-1-5 NMSA 1978, the individual's base period shall  
3 be the last four completed calendar quarters immediately  
4 preceding the first day of the individual's benefit year if  
5 that period qualifies the individual for benefits pursuant to  
6 Section 51-1-5 NMSA 1978; provided that:

7 (1) wages that fall within the base period of  
8 claims established pursuant to this subsection are not  
9 available for reuse in qualifying for a subsequent benefit  
10 year; and

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

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

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

23 D. "employing unit" means any individual or type  
24 of organization, including any partnership, association,  
25 cooperative, trust, estate, joint-stock company, agricultural

1 enterprise, insurance company or corporation, whether domestic  
 2 or foreign, or the receiver, trustee in bankruptcy, trustee or  
 3 successor thereof, household, fraternity or club, the legal  
 4 representative of a deceased person or any state or local  
 5 government entity to the extent required by law to be covered  
 6 as an employer, which has in its employ one or more  
 7 individuals performing services for it within this state. All  
 8 individuals performing services for any employing unit that  
 9 maintains two or more separate establishments within this  
 10 state shall be deemed to be employed by a single employing  
 11 unit for all the purposes of the Unemployment Compensation  
 12 Law. Individuals performing services for contractors,  
 13 subcontractors or agents that are performing work or services  
 14 for an employing unit, as described in this subsection, which  
 15 is within the scope of the employing unit's usual trade,  
 16 occupation, profession or business, shall be deemed to be in  
 17 the employ of the employing unit for all purposes of the  
 18 Unemployment Compensation Law unless such contractor,  
 19 subcontractor or agent is itself an employer within the  
 20 provisions of Subsection E of this section;

21 E. "employer" includes:

22 (1) any employing unit which:

23 (a) unless otherwise provided in this  
 24 section, paid for service in employment as defined in  
 25 Subsection F of this section wages of four hundred fifty

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1 dollars (\$450) or more in any calendar quarter in either the  
2 current or preceding calendar year or had in employment, as  
3 defined in Subsection F of this section, for some portion of a  
4 day in each of twenty different calendar weeks during either  
5 the current or the preceding calendar year, and irrespective  
6 of whether the same individual was in employment in each such  
7 day, at least one individual;

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

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

24 (2) any individual or type of organization  
25 that acquired the trade or business or substantially all of

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1 the assets thereof, of an employing unit that at the time of  
2 the acquisition was an employer subject to the Unemployment  
3 Compensation Law; provided that where such an acquisition  
4 takes place, the secretary may postpone activating the  
5 separate account pursuant to Subsection A of Section 51-1-11  
6 NMSA 1978 until such time as the successor employer has  
7 employment as defined in Subsection F of this section;

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

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

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

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

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

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

10 (7) any employing unit for which any services  
11 performed in its employ are deemed to be performed in this  
12 state pursuant to an election under an arrangement entered  
13 into in accordance with Subsection A of Section 51-1-50 NMSA  
14 1978; and

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

17 F. "employment":

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

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

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

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

3 1) the base of operations or, if there is no base of  
4 operations, the place from which such service is directed or  
5 controlled, is in this state; or 2) the base of operations or  
6 place from which such service is directed or controlled is not  
7 in any state in which some part of the service is performed  
8 but the individual's residence is in this state;

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

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

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

24 (a) such individual has been and will  
25 continue to be free from control or direction over the

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1 performance of such services both under his contract of  
2 service and in fact;

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

8 (c) such individual is customarily  
9 engaged in an independently established trade, occupation,  
10 profession or business of the same nature as that involved in  
11 the contract of service;

12 (6) means service performed after December  
13 31, 1977 by an individual in agricultural labor as defined in  
14 Subsection Q of this section if:

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

25 (b) such service is not performed

1 before January 1, 1980 by an individual who is an alien  
2 admitted to the United States to perform service in  
3 agricultural labor pursuant to Sections 214(c) and 101(15)(H)  
4 of the federal Immigration and Nationality Act; and

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

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

24 (8) means service performed after December  
25 31, 1971 by an individual in the employ of a religious,

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1 charitable, educational or other organization but only if the  
2 following conditions are met:

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

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

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

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

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

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

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

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

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

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

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

7 (12) does not include:

8 (a) service performed in the employ of:  
9 1) a church or convention or association of churches; or 2) an  
10 organization that is operated primarily for religious purposes  
11 and that is operated, supervised, controlled or principally  
12 supported by a church or convention or association of  
13 churches;

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

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

22 (d) service performed in the employ of  
23 the United States government or an instrumentality of the  
24 United States immune under the constitution of the United  
25 States from the contributions imposed by the Unemployment

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1 Compensation Law except that to the extent that the congress  
 2 of the United States shall permit states to require any  
 3 instrumentalities of the United States to make payments into  
 4 an unemployment fund under a state unemployment compensation  
 5 act, all of the provisions of the Unemployment Compensation  
 6 Law shall be applicable to such instrumentalities, and to  
 7 service performed for such instrumentalities in the same  
 8 manner, to the same extent and on the same terms as to all  
 9 other employers, employing units, individuals and services;  
 10 provided, that if this state shall not be certified for any  
 11 year by the secretary of labor of the United States under  
 12 Section 3304 of the federal Internal Revenue Code of 1986, 26  
 13 U.S.C. Section 3304, the payments required of such  
 14 instrumentalities with respect to such year shall be refunded  
 15 by the department from the fund in the same manner and within  
 16 the same period as is provided in Subsection D of Section  
 17 51-1-36 NMSA 1978 with respect to contributions erroneously  
 18 collected;

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

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 [bracketed material] = delete

1 receiving such rehabilitation or remunerative work;

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

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

8 (h) service performed by an individual  
9 for a person as an insurance agent or as an insurance  
10 solicitor, if all such service performed by such individual  
11 for such person is performed for remuneration solely by way of  
12 commi ssi on;

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

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

24 (k) service performed, as part of an  
25 unemployment work-relief or work-training program assisted or

1 financed in whole or part by any federal agency or an agency  
2 of a state or political subdivision thereof, by an individual  
3 receiving such work relief or work training;

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

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

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

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

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1 classes at such school, college or university;

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

7 (q) service performed for a private,  
8 for-profit person or entity by an individual as a product  
9 demonstrator or product merchandiser if the service is  
10 performed pursuant to a written contract between that  
11 individual and a person or entity whose principal business is  
12 obtaining the services of product demonstrators and product  
13 merchandisers for third parties, for demonstration and  
14 merchandising purposes and the individual: 1) is compensated  
15 for each job or the compensation is based on factors related  
16 to the work performed; 2) provides the equipment used to  
17 perform the service, unless special equipment is required and  
18 provided by the manufacturer through an agency; 3) is  
19 responsible for completion of a specific job and for any  
20 failure to complete the job; 4) pays all expenses, and the  
21 opportunity for profit or loss rests solely with the  
22 individual; and 5) is responsible for operating costs, fuel,  
23 repairs and motor vehicle insurance. For the purpose of this  
24 subparagraph, "product demonstrator" means an individual who,  
25 on a temporary, part-time basis, demonstrates or gives away

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1 samples of a food or other product as part of an advertising  
 2 or sales promotion for the product and who is not otherwise  
 3 employed directly by the manufacturer, distributor or  
 4 retailer, and "product merchandiser" means an individual who,  
 5 on a temporary, part-time basis builds or resets a product  
 6 display and who is not otherwise directly employed by the  
 7 manufacturer, distributor or retailer; or

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

25 (13) for the purposes of this subsection, if

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

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

21 H. "fund" means the unemployment compensation fund  
22 established by the Unemployment Compensation Law to which all  
23 contributions and payments in lieu of contributions required  
24 under the Unemployment Compensation Law and from which all  
25 benefits provided under the Unemployment Compensation Law

1 shall be paid;

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

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

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

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1 administrative expenses under the Unemployment Compensation  
2 Law shall be paid;

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

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

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

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

12 (4) has not entered into a written agreement  
13 with the other person for whom he furnishes individuals in  
14 agricultural labor that such individuals will be the employees  
15 of the other person;

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

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

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



1 Law;

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

14 Q. "agricultural labor" includes all services  
15 performed:

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

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

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1 performed on a farm;

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

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

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

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

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

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

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

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1 department but shall be exempt from the payment of  
2 contributions unless such wages paid in excess of the base  
3 wage become subject to tax under a federal law imposing a tax  
4 against which credit may be taken for contributions required  
5 to be paid into a state unemployment fund;

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

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

24 (b) sickness or accident disability if  
25 such payments are received under a workers' compensation or

1 occupational disease disablement law;

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

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

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

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

23 (5) any payment made, or benefit furnished to  
24 or for the benefit of an employee if at the time of such  
25 payment or such furnishing it is reasonable to believe that

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1 the employee will be able to exclude such payment or benefit  
2 from income under Section 129 of the federal Internal Revenue  
3 Code of 1986;

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

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

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

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

22 Section 5. Section 51-1-48 NMSA 1978 (being Laws 1971,  
23 Chapter 209, Section 7, as amended) is amended to read:

24 "51-1-48. DEFINITIONS--EXTENDED BENEFITS.--As used in  
25 this section, unless the context clearly requires otherwise:

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1           A. "extended benefit period" means a period  
2     ~~[which]~~ that:

3                   (1) begins with the third week after a week  
4     for which there is a state "on" indicator;

5                   (2) ends with either of the following weeks,  
6     whichever occurs later:

7                           (a) the third week after the first week  
8     for which there is a state "off" indicator; or

9                           (b) the thirteenth consecutive week of  
10    such period; and

11                   (3) ~~[provided that no extended benefit period~~  
12    ~~may]~~ does not begin by reason of a state "on" indicator before  
13    the fourteenth week following the end of a prior extended  
14    benefit period which was in effect with respect to this state.

15                   ~~[B.—There is a "state 'on' indicator" for this~~  
16    ~~state for a week if the secretary determines, in accordance~~  
17    ~~with the regulations of the United States secretary of labor,~~  
18    ~~that for the period consisting of such week and the~~  
19    ~~immediately preceding twelve weeks, the rate of insured~~  
20    ~~unemployment (not seasonally adjusted) under this section:~~

21                           (1) ~~equalled or exceeded five percent or~~  
22    ~~equalled or exceeded one hundred twenty percent of the average~~  
23    ~~of such rates for the corresponding thirteen-week period~~  
24    ~~ending in each of the preceding two calendar years and equalled~~  
25    ~~or exceeded four percent; provided that for weeks of~~

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1 ~~unemployment beginning after September 25, 1982, the~~  
2 ~~provisions of subparagraph (2) of this subsection shall apply~~  
3 ~~in determining a state "on" indicator; and~~

4 ~~(2) for weeks beginning after September 25,~~  
5 ~~1982, equaled or exceeded six percent or equaled or exceeded~~  
6 ~~one hundred twenty percent of the average of such rates for~~  
7 ~~the corresponding thirteen-week period ending in each of the~~  
8 ~~preceding two calendar years and equaled or exceeded five~~  
9 ~~percent.~~

10 ~~C. There is a "state 'off' indicator" for this~~  
11 ~~state for a week if the secretary determines, in accordance~~  
12 ~~with the regulations of the United States secretary of labor,~~  
13 ~~that for the period consisting of such week and the~~  
14 ~~immediately preceding twelve weeks, the rate of insured~~  
15 ~~unemployment (not seasonally adjusted) under this section:~~

16 ~~(1) was less than one hundred twenty percent~~  
17 ~~of the average of such rates for the corresponding thirteen-~~  
18 ~~week period ending in each of the preceding two calendar~~  
19 ~~years; or~~

20 ~~(2) was less than four percent or, for weeks~~  
21 ~~beginning after September 25, 1982, was less than five~~  
22 ~~percent.]~~

23 B. There is a "state 'on' indicator" for this  
24 state for a week if the rate of insured unemployment not  
25 seasonally adjusted under this section for the period



1 consisting of that week and the immediately preceding twelve  
2 weeks:

3 (1) equaled or exceeded one hundred twenty  
4 percent of the average of the rates for the corresponding  
5 thirteen-week period ending in each of the preceding two  
6 calendar years; and

7 (2) equaled or exceeded five percent; or

8 (3) equaled or exceeded six percent,  
9 regardless of the rate of insured unemployment in the two  
10 previous years; or

11 (4) with respect to benefits for weeks of  
12 unemployment beginning after January 1, 2002:

13 (a) the average rate of total  
14 unemployment, seasonally adjusted, as determined by the United  
15 States secretary of labor, for the period consisting of the  
16 most recent three months for which data for all states are  
17 published before the close of such week equals or exceeds six  
18 and one-half percent; and

19 (b) the average rate of total  
20 unemployment in this state, seasonally adjusted, as determined  
21 by the United States secretary of labor, for the three-month  
22 period referred to in Subparagraph (a) of this paragraph,  
23 equals or exceeds one hundred ten percent of such average for  
24 either or both of the corresponding three-month periods ending  
25 in the two preceding calendar years.

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1           C. There is a "state 'off' indicator" for this  
2 state for a week only if, for the period consisting of that  
3 week and the immediately preceding twelve weeks, none of the  
4 options specified in Subsection B of this section result in a  
5 "state 'on' indicator".

6           D. Except as provided in Subsection E of this  
7 section, the total extended benefit amount payable to an  
8 eligible individual with respect to the applicable benefit  
9 year shall be the least of the following amounts:

10                   (1) fifty percent of the total amount of  
11 regular benefits that were payable to the individual pursuant  
12 to this section in the individual's applicable benefit year;

13                   (2) thirteen times the individual's average  
14 weekly benefit amount that was payable to an individual  
15 pursuant to this section for a week of total unemployment in  
16 the applicable benefit year; or

17                   (3) thirty-nine times the individual's  
18 average weekly benefit amount that was payable to the  
19 individual pursuant to this section for a week of total  
20 unemployment in the applicable benefit year, reduced by the  
21 total amount of regular benefits that were paid, or deemed  
22 paid, to the individual pursuant to this section with respect  
23 to the benefit year; provided that the amount determined  
24 pursuant to this paragraph shall be reduced by the total  
25 amount of additional benefits paid, or deemed paid, to the

1 individual under the provisions of this section for weeks of  
 2 unemployment in the individual's benefit year that began prior  
 3 to the effective date of the extended benefit period that is  
 4 current in the week for which the individual first claims  
 5 extended benefits; and provided further, if the benefit year  
 6 of an individual ends within an extended benefit period, the  
 7 remaining balance of the extended benefits that the individual  
 8 would, but for this paragraph, be entitled to receive in that  
 9 extended benefit period, with respect to weeks of unemployment  
 10 beginning after the end of the benefit year, shall be reduced,  
 11 but not below zero, by the product of the number of weeks for  
 12 which the individual received any amounts as readjustment  
 13 allowances within that benefit year, multiplied by the  
 14 individual weekly benefit amount for extended benefits.

15 E. Effective with respect to weeks beginning in a  
 16 high-unemployment period, the total extended benefit amount  
 17 payable to an eligible individual with respect to the  
 18 applicable benefit year shall be the least of the following  
 19 amounts:

20 (1) eighty percent of the total amount of  
 21 regular benefits that were payable to the individual pursuant  
 22 to this section in the individual's applicable benefit year;

23 (2) twenty times the individual's average  
 24 weekly benefit amount that was payable to an individual  
 25 pursuant to this section for a week of total unemployment in

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1 the applicable benefit year; or  
2 (3) forty-six times the individual's average  
3 weekly benefit amount that was payable to the individual  
4 pursuant to this section for a week of total unemployment in  
5 the applicable benefit year, reduced by the total amount of  
6 regular benefits that were paid, or deemed paid, to the  
7 individual pursuant to this section with respect to the  
8 benefit year; provided that the amount determined pursuant to  
9 this paragraph shall be reduced by the total amount of  
10 additional benefits paid, or deemed paid, to the individual  
11 under the provisions of this section for weeks of unemployment  
12 in the individual's benefit year that began prior to the  
13 effective date of the extended benefit period that is current  
14 in the week for which the individual first claims extended  
15 benefits; and provided further, if the benefit year of an  
16 individual ends within an extended benefit period, the  
17 remaining balance of the extended benefits that the individual  
18 would, but for this paragraph, be entitled to receive in that  
19 extended benefit period, with respect to weeks of unemployment  
20 beginning after the end of the benefit year, shall be reduced,  
21 but not below zero, by the product of the number of weeks for  
22 which the individual received any amounts as readjustment  
23 allowances within that benefit year, multiplied by the  
24 individual weekly benefit amount for extended benefits.

25 F. For purposes of Subsection E of this section,

1 "high-unemployment period" means a period during which an  
2 extended benefit period would be in effect if Paragraph (4) of  
3 Subsection B of this section were applied by substituting  
4 "eight percent" for "six and one-half percent".

5 G. A benefit paid to an individual pursuant to  
6 this section shall not be charged to the employer's account  
7 but shall be charged to the solvency account.

8 ~~[D.]~~ H. As used in this section:

9 (1) "rate of insured unemployment" [for  
10 purposes of Subsections B and C of this section] means the  
11 percentage derived by dividing:

12 ~~[(1)]~~ (a) the average weekly number of  
13 individuals filing claims for regular benefits in this state  
14 for weeks ~~[for]~~ of unemployment with respect to the most  
15 recent thirteen-consecutive-week period, as determined by the  
16 secretary on the basis of his reports to the United States  
17 secretary of labor, by

18 ~~[(2)]~~ (b) the average monthly  
19 employment covered under the Unemployment Compensation Law for  
20 the first four of the most recent six completed calendar  
21 quarters ending before the end of such thirteen-week period;

22 ~~[E.]~~ (2) "regular benefits" means benefits  
23 payable to an individual under the Unemployment Compensation  
24 Law or under any other state law, including benefits payable  
25 to federal civilian employees and to ex-servicemen pursuant to

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1 5 U. S. C. , Chapter 85, other than extended benefits;

2 [F-] (3) "extended benefits" means benefits,  
3 including benefits payable to federal civilian employees and  
4 to ex-servicemen pursuant to 5 U. S. C. , Chapter 85, payable to  
5 an individual under the provisions of this section for weeks  
6 of unemployment in his eligibility period;

7 [G-] (4) "eligibility period" of an  
8 individual means the period consisting of the weeks in his  
9 benefit year [~~which~~] that begin in an extended benefit period  
10 and, if his benefit year ends within such extended benefit  
11 period, any weeks thereafter [~~which~~] that begin in such  
12 period;

13 [H-] (5) "exhaustee" means an individual who,  
14 with respect to any week of unemployment in his eligibility  
15 period:

16 [~~(1)~~] (a) has received, prior to such  
17 week, all of the regular benefits that were available to him  
18 under the Unemployment Compensation Law or any other state  
19 law, including dependent's allowance and benefits payable to  
20 federal civilian employees and ex-servicemen under 5 U. S. C. ,  
21 Chapter 85, in his current benefit year that includes such  
22 week; provided that, for the purposes of this subparagraph, an  
23 individual shall be deemed to have received all of the regular  
24 benefits that were available to him, although, as a result of  
25 a pending appeal with respect to wages that were not

1 considered in the original monetary determination in his  
 2 benefit year, he may subsequently be determined to be entitled  
 3 to added regular benefits; or

4 [~~(2)~~] (b) his benefit year, having  
 5 expired prior to such week, has no, or insufficient, wages on  
 6 the basis of which he could establish a new benefit year that  
 7 would include such week; and

8 [~~(3)~~] (c) has no right to unemployment  
 9 benefits or allowances, as the case may be, under the Railroad  
 10 Unemployment Insurance Act, the Trade Expansion Act of 1962,  
 11 the Trade Act of 1974, the Automotive Products Trade Act of  
 12 1965 and such other federal laws as are specified in  
 13 regulations issued by the United States secretary of labor;  
 14 and has not received and is not seeking unemployment benefits  
 15 under the unemployment compensation law of Canada, but if he  
 16 is seeking such benefits and the appropriate agency finally  
 17 determines that he is not entitled to benefits under such law  
 18 he is considered an exhaustee; and

19 [~~(4)~~] (6) "state law" means the unemployment  
 20 insurance law of any state, approved by the United States  
 21 secretary of labor under Section 3304 of the Internal Revenue  
 22 Code of [~~1954~~] 1986. "

23 Section 6. REPEAL.--Laws 2000, Chapter 3, Section 1 is  
 24 repealed.

25 Section 7. EMERGENCY.--It is necessary for the public

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1 peace, health and safety that this act take effect  
2 immediately.

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