

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
Washington, D.C. 20210

REPORT ON STATE LEGISLATION

REPORT NO. 5

December 2009

ALASKA SB 170 ENACTED May 25, 2009
 (CH 27) EFFECTIVE May 25, 2009, or as noted

Coverage

Amends the definition of “employing unit” to include service performed for an Indian tribe, resulting in unemployment insurance coverage of such services and to exclude coverage of certain services.

Excludes from the definition of “employment” service performed in the employ of a federally recognized tribe in Alaska if performed in the exercise of duties as an officer of the federally recognized tribe and meets the requirements of Federal law.

Allows an Indian tribe to either pay contributions or to elect to make reimbursements. (Election of reimbursements payments is effective January 1 after effective date of this act.)

May require an Indian tribe that elects to make reimbursement to execute and file a surety bond or deposit money or securities.

Under certain circumstances, terminates the reimbursement election when a tribe fails to make the required payments until a time provided by the department.

Requires extended benefits not reimbursed by the Federal government to be financed in their entirety by the Indian tribe.

Monetary Entitlement

Provides that if individuals would not be eligible for benefits because of use of a base period consisting of the first 4 of the last 5 completed calendar quarters then their eligibility will be determined using a base period that includes the 4 most recently completed calendar quarters before the start of the benefit year. (Effective as of January 1, 2010.)

(Note: Alaska SB 170 was reprinted in this report because the summary in Report 4 did not contain the Monetary Entitlement paragraph.)

CALIFORNIA AB 23c ENACTED and EFFECTIVE March 27, 2009
 (CH 22)

Extensions and Special Programs

Provides for the optional extended benefits (EB) “on” indicator based on the seasonally adjusted total unemployment rate (TUR). Provides for up to 13 weeks of EB if the average TUR for the most recent 3 months is at least 6.5 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years. Provides for up to an additional 7 weeks of EB if the state is in a high unemployment period. (The average TUR is at least 8 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years.)

Effective for weeks of unemployment beginning on or after February 1, 2009, and continuing until the week ending 3 weeks prior to the last week for which the Federal government pays 100 percent of most EB costs.

Provides that the 100 percent Federal government payment of EB costs is not applicable to reimbursable entities.

DISTRICT OF COLUMBIA

B 187

ENACTED April 27, 2009

(Law No. 180024)

EFFECTIVE July 7, 2009

Extensions and Special Programs

Provides for the optional extended benefits (EB) “on” indicator based on the seasonally adjusted total unemployment rate (TUR). Provides for up to 13 weeks of EB if the average TUR for the most recent 3 months is at least 6.5 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years. Provides for up to an additional 7 weeks of EB if the state is in a high unemployment period. (The average TUR is at least 8 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years.)

Effective for weeks of unemployment beginning March 15, 2009. Provision ceases to be effective either for weeks of unemployment commencing on December 6, 2009, or such other week as the Congress may specify in any amendments to American Recovery and Reinvestment Act of 2009, whichever is later.

The provision of this act shall expire February 17, 2010.

HAWAII

SB 947

ENACTED April 30, 2009

(Act No. 32)

EFFECTIVE June 9, 2005

Financing

Changes the effective date for the experience record calculation when an employing unit transfers its organization, trade or business to another employing unit to be the calendar year immediately following the date of the transfer of the organization, trade or business (was effective the calendar quarter immediately following the transfer).

INDIANA

HB 1379
(CH 30)

ENACTED May 13, 2009
EFFECTIVE May 13, 2009,
except as otherwise indicated

Administration

Establishes an Unemployment Insurance (UI) Oversight Committee to oversee implementation of legislation and administration of UI program and make recommendations for improvement. Defines membership of the committee and appropriates general fund money for operation of the committee.

By September 30, 2009, the commissioner must:

- Examine the costs of implementing changes to eligibility and other requirements in order for the state to qualify for the maximum amount available under the American Recovery and Reinvestment Act of 2009;
- Compare the cost determined above to the maximum amount available to the state as a result of making the changes;
- Initiate the changes above unless it is determined that a negative fiscal impact outweighs the benefits of the amount available and the expansion and other eligibility requirements of the state's system.
- Submit an electronic report to the legislative council, the committee, the speaker of the house of representatives and the president pro tempore of the senate.

The report must provide the following:

- Details of the commissioner's actions or decision not to initiate changes;
- Recommendations for any legislation necessary to modify the state's system in order to qualify for the amount available under the Recovery Act;
- An analysis of the fiscal impact to the fund of the commissioner's actions or decision not to initiate change and any legislation recommended.

This section expires July 1, 2011.

Provides that the department may charge a fee of up to \$2 for each record that provides information about an individual's last known employer released in compliance with a court order.

Effective July 1, 2009, requires written notice to the employer after a determination of eligibility. Notice must include time by which the employer must respond, complete information on the rules of evidence and standards of proof that the department will apply to determine the validity of the claim if the employer disputes the claim.

Establishes an unemployment claims compliance center no later than January 1, 2010. Provides that claims must be referred to the compliance center for investigation when information provided by the individual does not match information from the separating employer.

Establishes the Hoosier Workers First Training Program to improve manufacturing productivity levels, enable firms to become competitive, create and retain jobs, encourage training, and avoid payment of unemployment compensation by providing enhanced job skills. The department shall administer the program and report on the fund annually.

Appeals

Effective July 1, 2009, provides for annual training of all administrative law judges, review board members and other individuals who adjudicate claims concerning:

- Unemployment compensation law;
- Rules for the conduct of hearings and appeals; and
- Rules of conduct during a hearing and other adjudicative process.

Provides that the department monitor hearings and decisions to ensure that the hearings and decisions strictly comply with the law and the rules of conduct. An individual who does not strictly comply with the law and the rules, including rules of conduct, is subject to disciplinary action up to and including suspension or termination.

Requires employer notification of transfer of hearing to the review board prior to determination or action concerning a claim. Requires notice of hearing to include complete information about the rules of evidence and standards of proof that will be used to determine the validity of a claim. An employer must be supplied with information necessary to the proper presentation of a matter before the hearing (previously the law required it for claimant only).

Coverage

Effective July 1, 2009, expands the definition of employing unit to include limited liability partnerships. Provides that 2 or more entities who concurrently employ the same individual and utilize a common paymaster are an employing unit. Expands the definition of employment to include service performed for certain entities including limited liability partnerships.

Extensions and Special Programs

Provides for the optional extended benefits (EB) “on” indicator based on the seasonally adjusted total unemployment rate (TUR). Provides for up to 13 weeks of EB if the average TUR for the most recent 3 months is at least 6.5 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years. Provides for up to an additional 7 weeks of EB if the state is in a high unemployment period. (The average TUR is at least 8 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years.)

Effective for weeks of unemployment beginning on or after May 13, 2009. Provision ceases to be effective either on December 5, 2009, or at the end of the week ending 4 weeks prior to the last week for which the Federal government pays 100 percent of most EB costs, whichever is later.)

For weeks of unemployment beginning after February 17, 2009, and before January 1, 2010, defines the eligibility period for extended compensation to include any week that begins after the date the individual exhausts all rights to EUC during an EB period.

Financing

Effective July 1, 2009, provides for a transfer to the unemployment insurance benefit fund of the amount by which the balance in the special employment and training services fund exceeds \$8,500,000.

Provides for the establishment of the Hoosier worker's first training fund to administer the costs of the Hoosier works first training program, undertake any program activity that furthers the purpose of the program, and obtain all information necessary to determine qualifications for a grant and allocate money in the fund.

Provides that the employer's experience account must be charged 50 percent of the benefits paid if the employer did not provide information and the individual was later determined to be ineligible. If the employee repays all or part of the benefits on which determination is based, the employer must receive a credit equal to the amount of the repayment. If the employee repays benefits, the employer must receive a credit equal to the amount repaid by the employee up to the amount charged to the employer's experience account.

Increases the taxable wage base to \$9,500 during a calendar year beginning after December 31, 2009 (previously \$7,000).

Effective July 1, 2009, modifies the definition of "payment in lieu of contributions" to include extended benefits not reimbursed by the Federal government (previously half of EB costs).

Requires employers to pay contributions equal to 12 percent of wages after December 31, 2009, except as otherwise provided. Effective after December 31, 2009.

Provides that employers making payments in lieu of contributions will be charged for benefits not reimbursed by the Federal government under EB.

Establishes new employer rate of 2.5 percent for each CY after December 31, 2009. For state or political subdivisions of the state, employer contribution rate is raised to 1.6 percent (from 1 percent) after December 31, 2009.

After December 31, 2009, in addition to other conditions and requirements, raises the rate to 12 percent (previously 5.6 percent) for employers who fail to file required contribution and wage reports within 31 days following the computation date, and who fail to pay all contributions, penalties, and interest due and owing by the employer or predecessor before and including the computation date within 31 days following the computation date, or within 10 days after written notice of delinquency or failure to file, whichever is the later date. Rate may be waived if the employer's failure to meet deadlines was for excusable cause. Requires written notice to the employer before the additional condition or requirement will apply.

Establishes a new fund ratio schedule and new rate schedules (which include additional schedules and different ranges of rates for accounts with credit or debit balances for calendar years after December 31, 2009. Rates range from .75 percent to 10.2 percent for Schedule A (previously 1.2 to 5.7 percent) and 0 percent to 5.4 percent for Schedule I (new). For calendar year 2010, Schedule B will be used to assign each employer's contribution rate.

Adds additional factors related to limited liability partnerships, including a change in the percentage used to determine ownership (from at least 80 percent to more than 50 percent) for the department to consider when determining whether an employing unit or other person acquired a business solely for the purpose of obtaining a lower contribution rate.

Monetary Entitlement

Effective on and after January 1, 2010, increases the wage credits required for an individual to qualify for benefits to 1.5 (previously 1.25) times the wages in the highest quarter, wage credits of \$2,500 in the last 2 quarters (previously \$1,650), and total base period wages of \$4,200 (previously \$2,750).

Nonmonetary Eligibility

Effective July 1, 2009, provides that the department may waive certain requirements concerning registering for work and reporting for a week when one of the following applies to an individual:

- attending approved training;
- job-attached worker with a recall date not more than 60 days after the separation date;
- using a hiring service, referral service or job placement service determined by the department; or
- Any other situation the department considers inconsistent with the purpose of the article.

Requires the submission of at least one application for work each week an individual claims benefits; an online application complies with this requirement. Effective July 1, 2009.

Provides for a reduced maximum benefit amount for individuals separated from employment under disqualifying conditions or who fail to apply for suitable work (amounts rounded to the next higher dollar):

1. 75 percent - first separation/failure to apply;
2. 85 percent of the amount in 1 - second separation/failure to apply;
3. 90 percent of the amount in 2 - third and subsequent separation/failure to apply.

Modifies the definition of "discharge for just cause" to include violation of an employer rule regarding attendance or unsatisfactory attendance if the employer does not have an attendance rule and the individual cannot show good cause for absences or tardiness.

Changes the definition of "suitable employment" to:

- Not less than 90 percent of the individual's prior weekly wage during the fifth through eighth week of unemployment;

- Not less than 80 percent of the prior weekly wage after 8 consecutive weeks of unemployment;
- work is not considered suitable if it pays less than Indiana’s minimum wage.

Effective July 1, 2009, expands the definition of “gross misconduct” to include any of the following committed in connection with work, as determined by the department by a preponderance of the evidence:

- Working, or reporting for work, in a state of intoxication caused by individual’s use of alcohol or a controlled substance;
- Battery on another individual while on the employer’s property or during work hours;
- Theft or embezzlement;
- Fraud.

Provides that an employer has the burden of proving by a preponderance of the evidence that a discharged employee’s conduct was gross misconduct. The employer may present evidence that the employer filled or maintained the position or job held by the discharged employee after the employee’s discharge.

Evidence may be presented that a discharged employee’s conduct did not result in prosecution or conviction for an offence. If evidence is presented that an action or requirement of the employer may have caused the conduct that is the basis for the discharge, conduct is not gross misconduct. Lawful conduct not otherwise prohibited by an employer is not gross misconduct.

MARYLAND

HB 242
(CH 383)

ENACTED May 7, 2009
EFFECTIVE June 1, 2009

Nonmonetary Eligibility

Provides that the same eligibility provision concerning severance/dismissal payments applies whether the unemployment resulted or did not result from abolishment of the individual’s job. (Previously, separate severance/dismissal payments provisions applied to unemployment resulting from abolishment of jobs and unemployment not resulting from abolishment of jobs.) Applicable to all claims filed establishing a new benefit on or after June 7, 2009.

MINNESOTA

HB 1362
(CH 79)

ENACTED and EFFECTIVE May 14, 2009

Coverage

Allows a personal care assistant the option of being the employee of a referring agency or the employee of the patient, assuming direction and control exists.

MINNESOTA

SB 1197
(CH 15)

ENACTED April 8, 2009
EFFECTIVE April 9, 2009
or as otherwise indicated

Administration

Provides that the commissioner may accept an applicant certification based upon applicant records to issue a determination of benefit account when a wage detail is not yet due and the applicant is using an alternate base period effective August 2, 2009.

Requires an employer to provide wage detail information on an applicant within 5 calendar days of request when the applicant is using an alternate base period effective August 2, 2009.

Authorizes ARRA funds for unemployment insurance administration and requires interpretation of changes to be consistent with ARRA requirements for incentive payments.

Monetary Entitlement

Effective August 2, 2009, defines the primary base period is defined as the last 4 completed calendar quarters before the effective date of an application, if the application is filed after the month following the last completed calendar quarter. Defines the secondary base period as the first 4 of the last completed 5 calendar quarters before the effective date of an application, if the application is filed during the month following the last completed calendar quarter.

Effective for unemployment benefits filed on or after August 2, 2009, provides that an alternate base period of the last 4 completed calendar quarters before the effective date of an application will be used if the applicant has insufficient wage credits using the secondary base period.

Provides that an applicant must have wage credits in the high quarter of \$1,000 or more to establish a benefit account using the secondary base period, effective for unemployment benefits filed on or after August 2, 2009.

Nonmonetary Eligibility

Defines immediate family member to mean applicant's spouse, parent, step-parent, son or daughter, stepson or stepdaughter, or grandson or granddaughter.

Modifies the definition of "reemployment assistance training" and provides that apprenticeship training is considered "reemployment assistant training."

Effective August 2, 2009, modifies the definition of suitable employment and specifies that full time employment is not considered suitable employment for an applicant if a majority of the applicant's weeks of employment in the base period includes part-time employment.

Unless an applicant is in reemployment assistance training, requires that a student who has regularly scheduled classes be willing to discontinue classes to accept suitable employment when class attendance restricts applicant from accepting suitable employment and the applicant cannot change the scheduled class or make other arrangements.

Effective August 2, 2009, expands eligibility for applicants who quit employment to include:

- An applicant who quit employment in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant if the applicant informs the employer of the medical problem and no reasonable accommodation is available;
- Domestic abuse of the applicant or an immediate family member of the applicant;
- Relocation to accompany a spouse whose job location changed making it impractical for the applicant to commute.

Effective August 2, 2009, provides that misconduct shall not include:

- Conduct that was a consequence of applicant's mental illness or impairment;
- Absence, with proper notice to the employer, to provide necessary care to immediate family member because of illness, injury or disability;
- Conduct as a result of domestic violence to the applicant or immediate family.

Provides that conduct involving only a single incident is an important fact that must be considered in deciding whether it rises to the level of misconduct violating the employer's standards of behavior, effective August 2, 2009.

MINNESOTA

SB 643
(CH 25)

ENACTED April 27, 2009
EFFECTIVE April 28, 2009

Extensions and Special Programs

Provides that unemployment benefits are payable to an employee in the WIRED program in proportion to the amount of the worker's reduced hours as though the employee were qualified under the shared work program. The training program must be contained in a written plan signed by an officer of the employer and the commissioner (or designee) of employment and economic development. Expires June 30, 2011.

MISSOURI

HB 1075

ENACTED June 12, 2009
EFFECTIVE June 12, 2009 or as noted

Administration

Provides that both the training program and compelling family reason provisions will not take effect and no benefits paid unless first certified by the U.S. Department of Labor under Federal law amended by the Recovery Act of 2009.

Provides that both the training program and compelling family reason provisions will be subject to renewal in the second regular session and, if not renewed, must expire once the funds provided under the Recovery Act of 2009 are expended.

Extensions and Special Programs

Provides for the optional extended benefits (EB) "on" indicator based on the seasonally adjusted total unemployment rate (TUR). Provides for up to 13 weeks of EB if the average TUR for the

most recent 3 months is at least 6.5 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years. Provides for up to an additional 7 weeks of EB if the state is in a high unemployment period. (The average TUR is at least 8 percent and is 110 percent of the rate for the corresponding 3-month period in either or both of the 2 previous years.)

The TUR provision is effective for weeks of unemployment beginning on or after February 1, 2009, and ending on or before December 5, 2009.

Provides that all individuals who have exhausted all rights to regular unemployment compensation, and who are enrolled in and making satisfactory progress in a state-approved training program or in a training program authorized under the Workforce Investment Act of 1998, will be entitled to an additional amount of benefits equal to 26 times their average weekly benefit amount for the most recent benefit year. These training benefits will be paid after any extended benefits or any similar benefits paid by a federally funded program.

Priority for training funds under the above training provision must be given to claimants laid off through no fault of their own from Missouri automobile manufacturing facilities.

Financing

Removes the language providing that the unpaid principal amount of any outstanding credit instruments, combined with the unpaid principal amount of any financing agreement entered into will not exceed \$450 million at any time. Removes all other language referring to the \$450 million limit on borrowing from credit instruments including interest.

Requires the director to separately track payments made under the training program and compelling family reason provision. When payments exceed the amount of federal incentive funds available because of the enactment of the training program and the compelling family reason provision, the unemployment compensation fund must be reimbursed from general revenue for all subsequent payments to the claimants.

Noncharges an employer's account for benefits paid under the provision regarding separation for a compelling family reason.

Noncharges an employer's account for benefits paid under the above-mentioned training program.

Monetary Entitlement

Provides that if individuals would not be eligible for benefits because of use of a base period consisting of the first 4 of the last 5 completed calendar quarters, then their eligibility must be determined using an alternate base period (ABP) that includes the last 4 completed calendar quarters. If wage information for the most recent quarter of the ABP is unavailable, eligibility determination may be based on the claimant's affidavit and required payroll documentation. Eligibility determination based on the ABP must be amended if the quarterly wage report is

timely received and such information causes a change in the determination. No calendar quarter in a base period or ABP used in the current benefit year will be used to establish a subsequent benefit year.

Nonmonetary Eligibility

Provides that individuals will not be disqualified from receiving benefits due to separation from employment if that separation is for a compelling family reason. Compelling family reason means:

- the illness or disability of a member of the individuals' immediate family, including spouse, parent, or minor child under 18 years old;
- the need for individuals to accompany their spouse to a place from which it is impractical for them to commute and due to a change in location of the spouse's employment; or
- domestic violence verified by documentation which causes individuals to reasonably believe continued employment would jeopardize their or any immediate family member's safety.

OREGON HB 2201 ENACTED and EFFECTIVE May 5, 2009
(CH 79)

Coverage

Changes the effective date of the election to exclude from coverage corporate officers and directors who are family members from the first day of the calendar quarter in which the request was submitted to the first day of the current calendar quarter or of the calendar quarter preceding the calendar quarter in which the request was submitted. (Applicable to elections of coverage by corporations occurring on or after January 1, 2010.)

Financing

Provides that if an employer defaults on any required payment due the Unemployment Compensation Trust Fund, a person who is an officer or employee of a corporation, a member or employee of a limited liability company, or a partner in or employee of a limited liability partnership is personally liable for such amounts due. A notice of assessment must be issued to the liable person, and if that liable person is insolvent, a jeopardy assessment may be issued. Amounts assessed may be reviewed in the manner provided in the unemployment compensation law.

WASHINGTON SB 5009 ENACTED April 10, 2009
(CH 50) EFFECTIVE July 25, 2009

Financing

Allows for relief of charges for benefits if they result from payment to an individual who was hired to replace an employee who is a member of the military reserves or National Guard when

they were called to active duty and was subsequently laid off when that employee is reemployed upon release from active duty.

WEST VIRGINIA SB 246
(CH 218)

ENACTED and EFFECTIVE May 11, 2009

Administration

Requires the Executive Director to establish an employer violator system to identify individuals and employers who are in default to the fund.

Financing

Defines the term “average annual wage” to mean the state’s average annual wage which is computed on or before September 30 of the year immediately preceding the rate year and is the total remuneration paid by employers as reported on contribution reports on or before that date with respect to all employment during the 4 consecutive calendar quarters ending on June 30 of that year divided by the average monthly number of individuals performing services in employment during the same 4 calendar quarters as reported on the contribution reports.

Defines the term “threshold wage” (also referred to as the taxable wage base) to mean the wage amount the employer pays unemployment taxes on for each person in his or her employ during a calendar year. Effective May 11, 2009, increases the threshold wage from \$8,000 to \$12,000; provided that when the moneys in the unemployment fund reach \$220 million on February 15 of any year, the taxable wage base, thereafter, will be reduced to \$9,000; provided however, that each year thereafter the taxable wage base will increase or decrease by the same percentage that the state’s average wage increases or decreases.

Monetary Entitlement

Defines “alternative base period” to mean the last 4 completed calendar quarters immediately preceding the first day of the individual’s benefit year.

Provides that to be eligible for benefits under the alternative base period, individuals must not be eligible under their regular base period and must within the alternative base period been paid wages for employment equal to at least \$2,200 and earned wages in at least 2 quarters of the alternative base period.

Defines “alternative base period employer” and “alternative base period wages.”

Requires the commissioner not to increase or decrease the maximum weekly benefit rate for the period beginning on May 11, 2009, until the taxable wage base is reduced to \$9,000, as required in the unemployment compensation (UC) law.

Nonmonetary Eligibility

Provides that individuals will not be deemed to have left recent work voluntarily without good cause involving fault on the part of the employer if compelled to leave for health related reasons and notifies the employer prior to leaving the job or within 2 business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within 30 days of leaving the job that their work aggravated, worsened or will worsen the individual's health problem. (Previously, provision did not require: (1) notifying the employer prior to leaving the job or within 2 business days after leaving the job or as soon as practicable and (2) the certification be in writing and submitted within 30 days of leaving the job.)

Changes from an individual being disqualified for misconduct to being disqualified for gross misconduct. Changes the disqualification provision for being discharged for gross misconduct to include reporting to work under the influence of any controlled substance, as defined in the UC law without a valid prescription, or being under the influence of any controlled substance as defined in the UC law without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety sensitive positions as defined in the UC law.

Provides that an individual will be disqualified for benefits for accepting an early retirement incentive package, unless he or she: (i) establishes a well-grounded fear of imminent layoff supported by definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.