"Article 18. Unemployment Insurance Law"

Title 1. Short Title; Public Policy of State

New York Consolidated Laws, Labor Law - LAB § 500. Short title

This article shall be known and may be cited as the "unemployment insurance law."

New York Consolidated Laws, Labor Law - LAB § 501. Public policy of state

As a guide to the interpretation and application of this article, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, welfare, and morale of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden, which now so often falls with crushing force upon the unemployed worker and his family. After searching examination of the effects of widespread unemployment within the state, the joint legislative committee on unemployment appointed pursuant to a joint resolution adopted April ninth, nineteen hundred thirty-one, reported to the legislature that "the problem of unemployment can better be met by the so-called compulsory unemployment insurance plan than it is now handled by the barren actualities of poor relief assistance backed by compulsory contribution through taxation. Once the facts are apprehended this conclusion is precipitated with the certainty of a chemical reaction." Taking into account the report of its own committee, together with facts tending to support it which are matters of common knowledge, the legislature therefore declares that in its considered judgment the public good and the well-being of the wage earners of this state require the enactment of this measure for the compulsory setting aside of financial reserves for the benefit of persons unemployed through no fault of their own.

New York Consolidated Laws, Labor Law - LAB § 502. Wage reporting - findings and policy

The legislature hereby finds and declares that New York state is committed to developing the most efficient and effective system possible for administering the unemployment insurance system which, for more than a half century, has provided financial support to workers who have lost their jobs through no fault of their own.

Unlike all other states and territories, which administer their unemployment insurance systems pursuant to a wage reporting system whereby employers report employee wages on a regular basis, New York maintains a wage request system. In order to acquire the enormous amount of wage data necessary to calculate unemployment insurance benefits using such a system, the

department is required to send out hundreds of thousands of wage requests to employers every year. These requests are for information which, in large part, is submitted by employers on a quarterly basis to the statewide wage reporting system administered by the department of taxation and finance.

Given the size and complexity of the unemployment insurance system, an increase in efficiency will necessarily result in significant improvements in the services provided to benefit claimants and employers. The improvements for benefit claimants that would result from the implementation of a wage reporting system include more timely and accurate entitlement and benefit rate determinations, a reduction in the need to rely upon a claimant's own tax and wage statements and a decrease in claimant overpayments which must be recovered at a later date. As for employers, they would, for the large majority of benefit claims filed, no longer be required to provide employee wage data upon request, which would remove a significant employer burden as well as the potential for a fifty dollar penalty each time a wage request is not answered in a timely manner. Wage reporting would also reduce the number of employers incorrectly charged for benefits.

Furthermore, the department is accountable under federal and state law to measure the success of training, employment and reemployment initiatives operated pursuant to such laws. The assessment of individual performance is the best way to measure program quality and to develop program improvements. Job placement, employment duration and earnings are basic outcomes used to measure such performance. Information surveys, traditionally used to collect such data, have proved to be both expensive and unreliable because of low response rates and faulty recall by those who respond. Using the statewide wage reporting system to track such performance outcomes will avoid these problems and produce a reliable system of accountability while placing no additional burdens on employers.

Accordingly, for the above reasons, section one hundred seventy-one-a of the tax law is amended to provide the department with complete access to the wage reporting files maintained by the department of taxation and finance as the first stage in a transition to an unemployment insurance system based upon such wage reporting files, with the express requirement that the department shall design and operate such system so that an individual eligible for benefits under the current law would be eligible for the same amount of benefits under a new system based upon the wage reporting files. In addition, complete access to the wage reporting files is granted for administration of the department's employment security programs as well as for evaluation of the effect on earnings of participation in training programs with respect to which the department has reporting, monitoring or evaluating responsibilities.

Title 2. Definitions

New York Consolidated Laws, Labor Law - LAB § 510. Application of definitions

Whenever used in this article, the terms defined in this title have the respective meanings set forth herein except where the context shows otherwise.

New York Consolidated Laws, Labor Law - LAB § 511. Employment

1. General definition. "Employment" means (a) any service under any contract of employment for hire, express or implied, written, or oral and

(b) any service by a person for an employer

(1) as an agent-driver or commission-driver engaged in distributing meat, vegetable, fruit, or bakery products; beverages other than milk; or laundry or dry-cleaning services; or

(1-a) as a professional musician or a person otherwise engaged in the performing arts, and performing services as such for a television or radio station or network, a film production, a theatre, hotel, restaurant, night club or similar establishment unless, by written contract, such musician or person is stipulated to be an employee of another employer covered by this chapter. "Engaged in the performing arts" shall mean performing services in connection with the production of or performance in any artistic endeavor which requires artistic or technical skill or expertise; or

(1-b) as an employee in the construction industry unless the presumption of employment can be overcome, as provided under section eight hundred sixty-one-c of this chapter; or

(1-c) as an employee in the commercial goods transportation industry unless the presumption of employment can be overcome, as provided under section eight hundred sixty-two-b of this chapter; or

(2) as a traveling or city salesman engaged on a full-time basis in soliciting orders for merchandise for resale or supplies for use in the purchaser's business operations if the contract of service contemplates that substantially all of such services are to be performed personally by such person; such person does not have a substantial investment in facilities used in connection with the performance of such services, excepting facilities for transportation; and the services are not in the nature of a single transaction which is not part of a continuing relationship with the employer.

(3) as a professional model, where:

(i) the professional model performs modeling services for; or

(ii) consents in writing to the transfer of his or her exclusive legal right to the use of his or her name, portrait, picture or image, for advertising purposes or for the purposes of trade, directly to

a retail store, a manufacturer, an advertising agency, a photographer, a publishing company or any other such person or entity, which dictates such professional model's assignments, hours of work or performance locations and which compensates such professional model in return for a waiver of his or her privacy rights enumerated above, unless such services are performed pursuant to a written contract wherein it is stated that the professional model is the employee of another employer covered by this chapter. For purposes of this subparagraph, the term

“professional model” means a person who, in the course of his or her trade, occupation or profession, performs modeling services. For purposes of this subparagraph, the term “modeling services” means the appearance by a professional model in photographic sessions or the engagement of such model in live, filmed or taped modeling performances for remuneration.

2. Work localized in state. The term “employment” includes a person's entire service performed within or both within and without this state if the service is localized in this state. Service is deemed localized within the state if it is performed entirely within the state or is performed both within and without the state but that performed without the state is incidental to the person's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

3. Work within and without the state. The term “employment” includes a person's entire service performed both within and without this state provided it is not localized in any state but some of the service is performed in this state, and

(a) the person's base of operations is in this state; or

(b) if there is no base of operations in any state in which some part of the service is performed, the place from which such service is directed or controlled is in this state; or

(c) if the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, the person's residence is in this state.

The term “employment” shall not include services performed without this state in any calendar year during which no service was performed within this state if contributions with respect to such services are required under the unemployment compensation law of any other state or of the federal government.

4. Other included work.

The term “employment” shall include

(a) Service, wherever performed within the United States, the Virgin Islands, or Canada, if

(1) contributions are not required with respect to such service under an unemployment compensation law of any other state, the Virgin Islands, or Canada, and

(2) the place from which such service is directed or controlled is in this state;

(b) Service performed within this state not otherwise within the purview of the foregoing provisions of this section if contributions are not required with respect to such service under corresponding provisions of an unemployment compensation law of any other state.

5. Work without the state or in a foreign country. (a) Service performed entirely without the state, with respect to no part of which contributions are required under an unemployment compensation law of any other state or of the federal government, is employment if an election with respect to the person's service has been made and approved pursuant to the provisions of section five hundred sixty-one of this article.

(b) The term “employment” includes service by a citizen of the United States performed for an American employer outside the United States, except Canada or the Virgin Islands, provided contributions are not required with respect to such service under an unemployment insurance law of any other state pursuant to criteria which correspond to those of subdivisions two and three of this section, if

(1) the employer's principal place of business in the United States is in this state, or

(2) the employer has no place of business in the United States but is

(i) an individual person who is a resident of this state, or

(ii) a corporation which is organized under the laws of this state, or

(iii) a partnership or a trust and the number of partners or trustees who are residents of this state is greater than the number who are residents of any one other state, or

(3) none of the criteria of subparagraphs (1) and (2) are met but the employer has elected coverage of the service in this state or, the employer having failed to elect such coverage in any state, the individual performing the service has filed a claim for benefits under this article on the basis of such service.

(c) For purposes of this subdivision, “American employer” means

(1) an individual who is a resident of the United States; or

(2) a partnership if two-thirds or more of the partners are residents of the United States; or

(3) a trust if all of the trustees are residents of the United States; or

(4) a corporation organized under the laws of the United States or any state.

6. Agricultural labor. (a) The term “employment” does not include agricultural labor unless it is covered pursuant to section five hundred sixty-four . The term “agricultural labor” includes all service performed:

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

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed in the employ of an operator of a farm (i) as an incident to farming operations or, (ii) in the case of fruits and vegetables, as an

incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not apply to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(b) As used in this subdivision, the term “farm” includes stock, dairy, poultry, fur-bearing animal, fruit, and truck farms, plantations, nurseries, greenhouses or other similar structures, used primarily for the raising of agricultural or horticultural commodities, and orchards.

7. Spouse or child. The term “employment” does not include service for an employer by his spouse or child under the age of twenty-one.

8. Golf caddy. The term “employment” does not include service as a golf caddy.

9. Day student. The term “employment” does not include service during all or any part of the school year or regular vacation periods as a part-time worker of any person actually in regular attendance during the daytime as a student in an elementary or secondary school.

10. Employment under the federal railroad unemployment insurance act. 1 The term “employment” does not include employment subject to the federal railroad unemployment insurance act.

11. Maritime services under reciprocal agreements. The term “employment” includes a person's entire service, if such service is deemed performed in this state by virtue of reciprocal agreements pursuant to the provisions of paragraph (c) of subdivision two of section five hundred thirty-six of this article and does not include any service which by virtue of such agreements is deemed performed in another state.

12. Baby sitter. The term “employment” does not include service as a baby sitter at the home of the employer by a minor.

13. Persons under the age of twenty-one engaged in casual labor. The term “employment” does not include services of a person under the age of twenty-one engaged in casual labor consisting of yard work and household chores in and about a residence or the premises of a non-profit, non-commercial organization, not involving the use of power-driven machinery.

14. The term “employment” does not include service by a child under the age of fourteen years.

15. Students and students' spouses at educational institutions. The term “employment” does not include services rendered for an educational institution by a person who is enrolled and is in regular attendance as a student in such an institution, or the spouse of such student employed by that institution if such spouse is advised at the beginning of such services that the employment is provided under a program of financial assistance to such student and will not be covered under this article. For the purposes of this article, the term “employment” shall include services rendered for a health care facility, including academic medical centers, by fellow, resident and intern physicians.

16. Non-applicability of exclusions. The exclusions described in subdivisions eight, nine, twelve, thirteen and fourteen of this section shall not apply to services performed for a nonprofit organization as defined in section five hundred sixty-three or for a governmental entity as defined in section five hundred sixty-five or for an Indian tribe as defined in section five hundred sixty-six of this article. The exclusions described in subdivision twenty-three of this section shall not apply to commercial goods transportation services performed for a commercial goods transportation contractor within the meaning of article twenty-five-C of this chapter.

17. Certain college students. The term “employment” does not include service performed by an individual, regardless of age, who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subdivision shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

18. Freelance shorthand reporter. The term “employment” does not include the services of a freelance shorthand reporter rendered pursuant to any agreement, contract, or mutual understanding, either written or oral, with another freelance shorthand reporter or a freelance shorthand reporting service. For the purposes of this subdivision, a freelance shorthand reporter is a person who records verbatim any oral statement or series of oral statements made over a definite period of time by a written system of shorthand and whose sole compensation for making such a record is an agreed upon fee per page of record produced. Additional payment of a set dollar charge as a minimum fee or attendance fee shall not affect the above definition of a freelance shorthand reporter. For the purposes of this subdivision, a freelance shorthand reporting service means any business which provides freelance shorthand reporters through subcontracts or by any other means.

19. Qualified real estate agent. The term “employment” shall not include the services of a licensed real estate broker or sales associate if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such broker or sales associate is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) the services performed by the broker or sales associate are performed pursuant to a written contract executed between such broker or sales associate and the person for whom the services are performed within the past twelve to fifteen months; and (c) the written contract provided for in paragraph (b) herein was not executed under duress and contains the following provisions:

(i) that the broker or sales associate is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twelve-A of the real property law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation;

(ii) that the broker or sales associate (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes;

(iii) that the broker or sales associate shall be permitted to work any hours he or she chooses;

(iv) that the broker or sales associate shall be permitted to work out of his or her own home or the office of the person for whom services are performed;

(v) that the broker or sales associate shall be free to engage in outside employment;

(vi) that the person for whom the services are performed may provide office facilities and supplies for the use of the broker or sales associate, but the broker or sales associate shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vii) that the person for whom the services are performed and the broker or sales associate shall comply with the requirements of article twelve-A of the real property law and the regulations pertaining thereto, but such compliance shall not affect the broker or sales associate's status as an independent contractor nor should it be construed as an indication that the broker or sales associate is an employee of the person for whom the services are performed for any purpose whatsoever;

(viii) that the contract and the association created thereby may be terminated by either party thereto at any time upon notice given to the other.

20. The term “employment” shall not include services performed by a full-time student in the employ of an organized camp:

(a) if such camp:

(1) did not operate for more than seven months in the calendar year and did not operate for more than seven months in the preceding calendar year; or

(2) had average gross receipts for any six months in the preceding calendar year which were not more than thirty-three and one-third percent of its average gross receipts for the other six months in the preceding calendar year; and

(b) if such full-time student performs services in the employ of such camp for less than thirteen calendar weeks in any such year.

20-a. Full-time student. (a) For purposes of subdivision twenty of this section, an individual shall be treated as a full-time student for any period:

(1) during which the individual is enrolled as a full-time student at an educational institution; or

(2) which is between academic years or terms if:

(i) the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and

(ii) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in clause (i) of this subparagraph.

(b) For purposes of this subdivision, the term educational institution shall mean any educational institution of secondary, higher educational, professional or vocational educational training, as those terms are defined in the education law.

20-b. Camp. For purposes of subdivision twenty of this section, the term camp shall mean "children's overnight camp" as that term is defined in subdivision one of section thirteen hundred ninety-two of the public health law , and any "summer day camp" as that term is defined in subdivision two of section thirteen hundred ninety-two of the public health law , and any "traveling summer day camp" as that term is defined in subdivision three of section thirteen hundred ninety-two of the public health law .

21. Qualified insurance agent or broker. The term "employment" shall not include the services of a licensed insurance agent or broker if it be proven that (a) substantially all of the remuneration (whether or not paid in cash) for the services performed by such agent or broker is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; (b) such agent is not a life insurance agent receiving a training allowance subsidy described in paragraph three of subsection (e) of section four thousand two hundred twenty-eight of the insurance law ; (c) the services performed by the agent or broker are performed pursuant to a written contract executed between such agent or broker and the person for whom the services are performed; and (d) the written contract provided for in paragraph (c) of this subdivision was not executed under duress and contains the following provisions:

(i) that the agent or broker is engaged as an independent contractor associated with the person for whom services are performed pursuant to article twenty-one of the insurance law and shall be treated as such for all purposes, including but not limited to federal and state taxation, withholding (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), unemployment insurance and workers' compensation;

(ii) that the agent or broker (A) shall be paid a commission on his or her gross sales, if any, without deduction for taxes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code), which commission shall be directly related to sales or other output; (B) shall not receive any remuneration related to the number of hours worked; and (C) shall not be treated as an employee with respect to such services for federal and state tax purposes (other than federal insurance contributions act (FICA) taxes required for full time life insurance agents pursuant to section 3121(d)(3) of the federal internal revenue code);

(iii) that the agent or broker shall be permitted to work any hours he or she chooses;

(iv) that the agent or broker shall be permitted to work out of his or her own office or home or the office of the person for whom services are performed;

(v) that the person for whom the services are performed may provide office facilities, clerical support, and supplies for the use of the agent or broker, but the agent or broker shall otherwise bear his or her own expenses, including but not limited to automobile, travel, and entertainment expenses;

(vi) that the person for whom the services are performed and the agent or broker shall comply with the requirements of article twenty-one of the insurance law and the regulations pertaining thereto, but such compliance shall not affect the agent's or broker's status as an independent contractor nor should it be construed as an indication that the agent or broker is an employee of the person for whom the services are performed for any purpose whatsoever;

(vii) that the contract and the association created thereby may be terminated by either party thereto at any time with notice given to the other.

22. Recreational bowling. The term “employment” shall not include recreational bowling, such as bowling in a league where an individual may occasionally win prize money.

23. Newspaper delivery persons. The term “employment” shall not include service performed by any person if:

(a) such person is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business);

(b) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in paragraph (a) of this subdivision is directly related to sales or other output (including the performance of services) rather than to the number of hours worked; and

(c) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed, and such contract provides that person will not be treated as an employee with respect to such services for federal tax purposes.

New York Consolidated Laws, Labor Law - LAB § 512. Employer

1. “Employer” includes the state of New York and other governmental entities and any Indian tribe as defined in section five hundred sixty -six of this article and any person, partnership, firm, association, public or private, domestic or foreign corporation, the legal representatives of a deceased person, or the receiver, trustee, or successor of a person, partnership, firm, association, public or private, domestic or foreign corporation.

2. For purposes of this article, the term “employer” includes the non-profit organization or governmental entity designated as liable for contributions under this article for all services performed by individuals who are enrolled participants in a summer youth employment program conducted and funded pursuant to title II, part B of the Federal Job Training Partnership Act 1. The designation shall be made in writing by the administrative entity for the service delivery area

established pursuant to said federal act in which the summer youth employment program is operated, and shall become effective upon filing with the commissioner.

3. For the purpose of complying with the requirements of the federal personal responsibility and work opportunity reconciliation act, public law 104-193, the term “labor organizations” shall have the meaning given such term in section two (5) of the national labor relations act, and includes any entity (also known as a “hiring hall”) which is used by the organization and any employer to carry out requirements of an agreement between the organization and the employer described in section eight (f)(3) of such act. Such “labor organizations” shall be considered employers for the purpose of submitting information to the “statewide wage reporting system” as provided in section one hundred seventy-one-a of the tax law .

New York Consolidated Laws, Labor Law - LAB § 513. Fund

“Fund” means the unemployment insurance fund.

New York Consolidated Laws, Labor Law - LAB § 514. Benefit

“Benefit” means an amount payable to a claimant for unemployment.

New York Consolidated Laws, Labor Law - LAB § 515. Claimant

“Claimant” means any person seeking benefits for unemployment.

New York Consolidated Laws, Labor Law - LAB § 516. Paid

The term “wages paid” or “remuneration paid” shall, for the purposes of this article, be deemed paid on the date such payments are made.

New York Consolidated Laws, Labor Law - LAB § 517. Remuneration

1. Inclusions. “Remuneration” means every form of compensation for employment paid by an employer to his employee; whether paid directly or indirectly by the employer, including salaries, commissions, bonuses, and the reasonable money value of board, rent, housing, lodging, or similar advantage received. Where gratuities are received by the employee in the course of his employment from a person other than his employer, the value of such gratuities shall be determined by the commissioner and be deemed and included as part of his remuneration paid by his employer.

2. Exclusions. Remuneration does not include:

(a) The amount of any payment made to, or on behalf of, any employee or any of his dependents under a plan or system established by an employer which makes provision for his employees

generally, or for such employees and their dependents, or for a class or classes of his employees, or for a class or classes of such employees and their dependents, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement, or sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, or death.

(b) Payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under the federal insurance contributions act. 1

(c) Any payment made to an employee, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, on account of retirement.

(d) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.

(e) Any payment made to, or on behalf of, an employee or his beneficiary from or to a trust described in section four hundred one (a) of the federal internal revenue code 2 which is exempt from tax under section five hundred one (a) of such code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or under or to an annuity plan which, at the time of such payment, meets the requirements of section four hundred one (a)(3), (4), (5), and (6) of such code.

(f) Compensation paid in any medium other than cash to an employee for service not in the course of the employer's trade or business.

(g) Any payment, other than vacation or sick pay, made to an employee after the month in which he attains the age of sixty-five, if he did not work for the employer in the period for which such payment is made.

(h) Dismissal payments.

(i) Any payment made by an employer who is not liable for contributions under this article or for payments in lieu of contributions.

New York Consolidated Laws, Labor Law - LAB § 518. Wages

1. Limitation. (a) “Wages” means all remuneration paid, except that such term does not include remuneration paid to an employee by an employer after eight thousand five hundred dollars have been paid to such employee by such employer with respect to employment during any calendar year, except that such term does not include remuneration paid to an employee by an employer with respect to employment during any calendar year beginning with the first day of

that exceeds

January 2014 $10,300

January 2015 $10,500

January 2016 $10,700

January 2017 $10,900

January 2018 $11,100

January 2019 $11,400

January 2020 $11,600

January 2021 $11,800

January 2022 $12,000

January 2023 $12,300

January 2024 $12,500

January 2025 $12,800

January 2026 $13,000

and each year thereafter on the first day of January that exceeds sixteen percent of the state's average annual wage as determined by the commissioner on an annual basis pursuant to section five hundred twenty-nine of this article; provided, however, that in calculating such maximum amount of remuneration, the amount arrived at by multiplying the state's average annual wage times sixteen percent shall be rounded up to the nearest hundred dollars. In no event shall the state's annual average wage be reduced from the amount determined in the previous year. The term “employment” includes for the purposes of this subdivision services constituting employment under any unemployment compensation law of another state or the United States.

(b) Subject to the same limitation the term “wages” includes also all compensation paid by an employer to persons in his employ with respect to which he is not liable for contributions under any other unemployment insurance law, even though such compensation is not remuneration as defined by section five hundred seventeen of this article, or the services of such persons are not in employment as defined by section five hundred eleven of this article, if the employer is liable for a tax on such compensation under the federal unemployment tax act. 1

2. Joint consideration. If an employer has acquired all or substantially all, or a segregable portion of the assets of another employer liable for contributions under this article, or has acquired all or a segregable portion of the organization, trade or business of another employer liable for contributions pursuant to subdivision seven of section five hundred eighty-one of this article, remuneration paid by both employers shall be deemed paid by a single employer for the purposes of this section.

New York Consolidated Laws, Labor Law - LAB § 519. Week

A "week" means seven consecutive days beginning with Monday.

New York Consolidated Laws, Labor Law - LAB § 520. Base period

A claimant's "base period" is one of the following:

1. For the purpose of subdivision one of section five hundred twenty-seven of this article, the term base period shall mean the first four of the last five completed calendar quarters ending with the week immediately preceding the filing of a valid original claim.

2. For the purpose of paragraph (a) of subdivision two of section five hundred twenty-seven of this article, the term base period shall mean the last four completed calendar quarters ending with the week immediately preceding the filing of a valid original claim.

New York Consolidated Laws, Labor Law - LAB § 521. Benefit year

A claimant's "benefit year" means the period of fifty-two consecutive weeks beginning with the first Monday after he files a valid original claim.

New York Consolidated Laws, Labor Law - LAB § 522. Total unemployment

"Total unemployment" means the total lack of any employment on any day. The term "employment" as used in this section means any employment including that not defined in this title.

New York Consolidated Laws, Labor Law - LAB § 523. Effective day

"Effective day" means a full day of total unemployment provided such day falls within a week in which a claimant had four or more days of total unemployment and provided further that only those days of total unemployment in excess of three days within such week are deemed "effective days". No effective day is deemed to occur in a week in which the claimant has days of employment for which he is paid compensation exceeding the highest benefit rate which is applicable to any claimant in such week. A claimant who is employed on a shift continuing through midnight is deemed to have been employed on the day beginning before midnight with respect to such shift, except where night shift employees are regularly scheduled to start their work week at seven post meridiem or thereafter on Sunday night, their regularly scheduled starting time on Sunday shall be considered as starting on Monday.

New York Consolidated Laws, Labor Law - LAB § 524. Week of employment

For purposes of this article, "week of employment" shall mean a Monday through Sunday period during which a claimant was paid remuneration for employment for an employer or employers liable for contributions or for payments in lieu of contributions under this article.

New York Consolidated Laws, Labor Law - LAB § 527. Valid original claim

1. Basic condition. "Valid original claim" is a claim filed by a claimant who meets the following qualifications: (a) is able to work, and available for work; (b) is not subject to any disqualification or suspension under this article; (c) his or her previously established benefit year, if any, has expired; (d) has been paid remuneration by employers liable for contributions or for payments in lieu of contributions under this article, other than employers from whom the claimant lost employment and for which the commissioner makes a determination disqualifying the claimant for misconduct pursuant to subdivisions three and six of section five hundred ninety-three of this article, for employment during at least two calendar quarters of the base period, with remuneration of one and one-half times the high calendar quarter remuneration within the base period and with at least two hundred twenty-one times the minimum wage established under subdivision one of section six hundred fifty-two of this chapter rounded down to the nearest one hundred dollars of such remuneration being paid during the high calendar quarter of such base period. For purposes of this section, the remuneration in the high calendar quarter of the base period used in determining a valid original claim shall not exceed an amount equal to twenty-two times the maximum benefit rate as set forth in subdivision five of section five hundred ninety of this article for all individuals.

2. Alternate condition. (a) An individual who is unable to file a valid original claim in accordance with subdivision one of this section, files a valid original claim by meeting the qualifications enumerated in paragraphs (a), (b) and (c) of subdivision one of this section and by having been paid remuneration by employers liable for contributions or for payments in lieu of contributions under this article, other than employers from whom the claimant lost employment and for which the commissioner makes a determination disqualifying the claimant for misconduct pursuant to subdivisions three and six of section five hundred ninety-three of this article, for employment during at least two calendar quarters of the base period, with remuneration of one and one-half times the high calendar quarter remuneration within the base period and with at least two hundred twenty-one times the minimum wage established under subdivision one of section six hundred fifty-two of this chapter rounded down to the nearest one hundred dollars of such remuneration being paid during the high calendar quarter of such base period. For purposes of this section, the remuneration in the high calendar quarter of the base period used in determining a valid original claim shall not exceed an amount equal to twenty-two times the maximum benefit rate as set forth in subdivision five of section five hundred ninety of this article for all individuals.

(b) An individual who is able to file a valid original claim in accordance with subdivision one of this section, may make an application to the commissioner to determine his or her entitlement to

benefits and benefit rate pursuant to paragraph (a) of this subdivision under the following conditions:

(i) The claimant must file such application within ten days of the date the monetary determination was mailed by the department.

(ii) In those circumstances where a wage data report in relation to the alternate condition is not due or has not been received, the claimant must provide proof of remuneration paid for such quarter to the commissioner's satisfaction in order for the claimant's application to be considered.

(iii) Under those circumstances where such application results in the claimant being able to file a valid original claim under the basic condition and the alternate condition, the claimant may select the condition to be utilized.

3. Disability. In the case of a claimant who did not file a valid original claim solely because the claimant was not paid sufficient remuneration and who received workers' compensation payments or any benefits paid pursuant to the volunteer firefighters' benefit law during the base period specified in subdivision one of section five hundred twenty of this article, said period shall be extended. The term of the extension shall be equivalent to the number of calendar quarters during which the claimant received such payments, but shall not exceed two calendar quarters.

4. General condition. A valid original claim may be filed only in a week in which the claimant has at least one effective day of unemployment.

5. Utilization of wage credits. Remuneration used to establish a valid original claim pursuant to subdivision one, two or three of this section, may not be considered for the purpose of establishing a subsequent valid original claim except as provided by section five hundred twenty-eight of this article.

6. Work requirement. An individual who has filed a previous valid original claim pursuant to this section must have worked in employment and been paid remuneration for such work since the beginning of such previous claim in an amount equal to at least ten times the claimant's weekly benefit rate in order to be able to file a subsequent valid original claim.

New York Consolidated Laws, Labor Law - LAB § 528. Transitional provisions

Remuneration used to establish a valid original claim prior to the first day of April, nineteen hundred ninety-nine may be used to establish a subsequent valid original claim. Under such circumstances, the general account rather than the affected employer's account shall be charged for the portion of experience rating charges attributable to such remuneration.

New York Consolidated Laws, Labor Law - LAB § 529. Average annual wage; average weekly wage

1. The “average annual wage” shall be the average annual wage of the state of New York for the previous calendar year as determined by the commissioner no later than the thirty-first day of May of each year.

2. The “average weekly wage” shall be the average weekly wage of the state of New York for the previous calendar year as determined by the commissioner no later than the thirty-first day of May of each year.

Title 3. Administration

New York Consolidated Laws, Labor Law - LAB § 530. Industrial commissioner's powers

1. General powers. The commissioner shall administer this article and for such purpose he shall have power to make all rules and regulations and, subject to the regulations of the civil service, to appoint such officers and employees as may be necessary in the administration of this article.

2. Powers and duties in respect to the national employment service. The state of New York accepts the provisions of an act of the congress of the United States effective June sixth, nineteen hundred thirty-three, entitled “An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes.” Such act is in this article otherwise referred to as “Wagner-Peyser Act 1”.

The commissioner is hereby designated as the agent of the state as required by such act of congress and as such agent is hereby authorized, empowered and directed to cooperate with the United States employment service under and pursuant to the terms, conditions, provisions and requirements of such act and he shall have and exercise all powers necessary therefor. The commissioner is hereby further authorized, empowered and directed to take such steps and to formulate such plans and to execute such projects as may be necessary or appropriate to obtain for and on behalf of the state the full benefits, advantages and privileges derivable under and pursuant to such act of congress.

3. Acceptance of moneys. The commissioner is authorized to accept moneys to be used in carrying out any of the purposes of this article.

4. Claims for damages to personal property. The commissioner is authorized to approve, for payment out of the unemployment administration fund, notwithstanding any inconsistent provision of the court of claims act, 2 any claim for damage to personal property made by an employee of the department whose salary is paid out of that fund resulting from the deliberate act of any claimant for benefits, applicant for placement, employer, or other person acting on behalf of a claimant, applicant, or employer arising out of official business of the department. Payment of such claim shall be limited to the sum of one hundred fifty dollars and shall be subject to the prior approval of the comptroller and the attorney general.

New York Consolidated Laws, Labor Law - LAB § 531. Regularization of employment

One of the purposes of this article is to promote the regularization of employment in enterprises, industries, localities, and the state. The commissioner shall take such steps as are within his means for the reduction and prevention of unemployment and to promote the reemployment of all unemployed workers. To this end the commissioner may employ experts and may carry on and publish the results of any investigations and research which he deems relevant, whether or not directly related to the other purposes and specific provisions of this article. Also to this end, the commissioner shall undertake investigations of technological developments in industry in order to obtain information necessary for evaluating the effects of such developments on the geographical, industrial, and occupational employment patterns of the state. The commissioner shall also undertake investigations of occupational training needs of workers unemployed because of technological developments, the availability of facilities for this purpose, and ways and means for establishing required facilities where this step is needed, and shall co-operate to this end with appropriate education authorities. The commissioner shall bring the findings of such investigations to the attention of education authorities, labor organizations, employers and other appropriate bodies, public and private, in order that educational and training efforts shall be appropriate to the changing occupational needs of industry and shall be channeled in the direction of expanding occupational opportunities for the labor force. The commissioner shall also utilize such findings in connection with his responsibilities for the development and encouragement of, and recruitment for, apprenticeship training activities. The commissioner shall by these and other appropriate means assist labor and management in the development of higher occupational skills commensurate with the changing requirements of industry in the state.

New York Consolidated Laws, Labor Law - LAB § 532. Employment districts and offices

1. Establishment and maintenance. The commissioner may divide the state into such number of employment districts as he finds necessary to carry out the provisions of this article and maintain a district office in each of said districts. The commissioner shall establish such number of local employment offices as he finds necessary, which offices, in addition to the other duties prescribed herein and by the commissioner, shall act as free public employment exchanges.

Such exchanges shall provide and maintain special services for unskilled workers and public assistance recipients, which services shall include but not be limited to: maintenance of current registers of all opportunities for employment in which such workers and recipients would be able to engage which are brought to the attention of such exchanges; special activities to seek out and develop employment opportunities for such workers and recipients; employment preparation services; and continued counseling before and after referral of such workers and recipients to employment opportunities.

2. Cooperation with other agencies. The commissioner is authorized to cooperate with or to enter into agreements with the federal railroad retirement board or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private non-profit organization, with respect to the

establishment, maintenance, and use of free employment service facilities and free public employment offices, and as a part of any such agreement the commissioner may accept moneys, services, or quarters as a contribution to the special “employment service account” in the unemployment administration fund.

New York Consolidated Laws, Labor Law - LAB § 534. Appeal board

The appeal board is hereby continued. Such board shall consist of five salaried members, not more than three of whom shall be adherents of the same political party. One of the members of the board shall be designated as chairman by the governor. The governor shall appoint or reappoint members for terms of six years. Vacancies shall be filled by appointment by the governor for the unexpired term. A member of the board may be removed by the governor for cause, after a hearing.

Any hearing, inquiry, or investigation required or authorized to be conducted or made by the board may be conducted or made by any individual member thereof, and the order, decision, or determination of such member shall be deemed the order, decision, or determination of the board from the date of filing thereof in the department, unless the board on its own motion or on application duly made to it modify or rescind such order, decision, or determination.

The board shall establish and maintain a current index, by topic, of the principles of law established by the decisions rendered by the board and the courts concerning matters arising under this article. Such index shall cite all appropriate authority which supports such principles and, where appropriate, all conflicting authority. Such index shall also contain a glossary of technical and statutory terms commonly used by the board in its decisions. Copies of such index shall be open for public inspection and examination, and shall be made available at all locations where unemployment insurance hearings, authorized or mandated by section six hundred twenty of this chapter, are conducted.

New York Consolidated Laws, Labor Law - LAB § 535. Referees

The commissioner shall appoint, subject to the regulations of the civil service, as many persons as may be necessary to be referees to perform the duties prescribed by this article. It shall be the duty of a referee, under the supervision, direction, and administrative control of the appeal board, to hear and decide disputes in accordance with the provisions of this article and to conduct such other and further hearings in connection with the foregoing as may be required by the board.

New York Consolidated Laws, Labor Law - LAB § 536. Collaboration with other states, the United States, and foreign governments

1. Cooperation. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment compensation law.

2. Agreements. (a) The commissioner is authorized to enter into agreements with the appropriate agencies of other states or the United States whereby rights to benefits accumulated under the unemployment compensation laws of the several states or of the United States, or both, may constitute the basis for the payment of benefits under terms which the commissioner finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(b)(1) The commissioner is authorized to enter into arrangements with the appropriate agencies of other states or of the United States (i) whereby remuneration or services, upon the basis of which an individual may become entitled to unemployment benefits under the unemployment compensation law of another state or of the United States shall be deemed to be remuneration and weeks of employment for the purposes of this article, provided such other agency has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this article upon the basis of such remuneration or services as the commissioner finds will be fair and reasonable as to all affected interests, and (ii) whereby the commissioner will reimburse such agencies with such reasonable portion of unemployment benefits, paid under the laws of any such other states or of the United States upon the basis of employment or remuneration paid by employers for employment, as the commissioner finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed benefits for the purpose of this article. The commissioner is hereby authorized to make reimbursements from the fund to such agencies and to receive from them reimbursements to the fund, in accordance with arrangements pursuant to this section.

(2) The commissioner shall participate in any arrangements for the payment of benefits on the basis of combining a claimant's remuneration and services covered under this article with those covered under the laws of other states which are approved by the secretary of labor of the United States as provided in the federal unemployment tax act. 1 The terms of any such arrangements shall be deemed to comply with the foregoing provisions of this paragraph.

(c) The commissioner is authorized to enter into reciprocal agreements with the appropriate agencies of other states in regard to services on vessels engaged in interstate or foreign commerce whereby such services for a single employer, wherever performed, shall be deemed performed within this state or within any such other state.

(d) The commissioner is authorized to enter into reciprocal agreements with appropriate agencies of other states or of the United States, under terms which he finds will be fair and reasonable as to all affected interests, (1) whereby employer contributions erroneously paid to this state, or such other states or the United States because of the bona fide belief that all or some of the employees were covered under the unemployment insurance laws of this state, or of such other states or of the United States, may be repaid or transferred to the unemployment insurance fund of that state or of the United States under whose law such contributions were actually due, (2) whereby such contributions upon repayment or transfer to the unemployment insurance fund shall be deemed to have been paid as of the dates payments thereof were made to the transferring agency, (3) permitting such repayments or transfers by this state without regard to the time limitations governing refund of contributions contained in section five hundred seventy,

subdivision five . Such agreements may also provide for the reimbursement to the unemployment insurance fund of the transferring agency of all benefits which were paid on the basis of employment for which the contributions transferred were paid in error. Any such reimbursement of benefits by this state in accordance herewith shall be deemed benefits paid for the purposes of and pursuant to the provisions of this article as of the dates of payment of such benefits by the transferring agency.

3. Investigations and information. The commissioner is empowered to make investigations and secure information as requested by the agency of any state, of the federal government, or of any foreign government charged with the administration of any unemployment compensation law or any public employment service law as he deems necessary or appropriate to facilitate the administration of such law by such agency and may, notwithstanding the provisions of section five hundred thirty-seven of this article, transmit the results of such investigations and such information to such agency. For this purpose, the commissioner is empowered to make available services and facilities and to exercise the other powers provided in this article with respect to the administration thereof. The commissioner is further empowered to request any such agency, or the officers or employees of any such agency, to undertake on his behalf any investigation and to secure information needed in the administration of this article and to accept and utilize information, services, and facilities made available to this state by any such agency.

4. Manpower training. The commissioner is hereby authorized to participate in the federal manpower development and training act of nineteen hundred sixty-two 2 as amended and may approve for expenditure from available funds such sums as may be required to enable the state to carry out the purposes of such act.

New York Consolidated Laws, Labor Law - LAB § 537. Disclosures prohibited

1. a. Unemployment insurance information. (i) Unemployment insurance information is information contained in the records of the department pertaining to the administration of this article, including information obtained by the department from employers and employees pursuant to this article. The term includes wage reporting information obtained by the department from the state department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a and paragraph four of subsection (a) of section six hundred seventy-four of the tax law . It further includes information in the state directory of new hires that has been disclosed to the department for use in the unemployment insurance program. Such information does not include the personnel or general fiscal information of the department or information in the public domain.

(ii) For purposes of this paragraph, the term public domain means: (A) information about the department and the unemployment insurance appeal board; (B) information about applicable state and federal law, rules and regulations pertaining to unemployment insurance, including interpretations thereof and statements of general policy and interpretations of general applicability but excluding investigative manuals and procedures pertaining to unemployment insurance; and (C) any agreements relating to the administration of this article.

Notwithstanding the foregoing, nothing in this subdivision shall be construed to limit, restrict, or abrogate the department's right to deny access to any records pursuant to the provisions of the public officers law.

b. Use of unemployment insurance information. Unemployment insurance information shall be for the exclusive use and information of the commissioner in the discharge of his or her duties under this chapter and shall not be open to the public nor be used in any court in any action or proceeding pending therein unless the commissioner is a party to such action or proceeding, or such action or proceeding involves information provided pursuant to paragraph g of subdivision three of this section, notwithstanding any other provisions of law. Such information insofar as it is material to the making and determination of a claim for benefits or to adjudicating a claim for benefits shall be available to the parties affected and, in the commissioner's discretion, may be made available to the parties affected in connection with effecting placement.

c. Disclosure of unemployment insurance information to an individual or employer. (i) The department may disclose unemployment insurance information about an individual to such individual or unemployment insurance information about an employer to such employer. As a condition to making such disclosure, the department shall require a written authorization to disclose such information from the individual or employer in a form acceptable to the department together with such proof of identity or authorization to act on behalf of the individual or employer as the commissioner shall deem appropriate. Notwithstanding the foregoing, except as may otherwise be authorized under paragraph b of this subdivision, this paragraph shall not be construed to authorize the department to disclose information acquired from an employer under this article to an individual or information acquired from an employee under this article to an employer.

(ii) Nothing in this subdivision shall be construed to prohibit the disclosure of the wage reporting information obtained by the department from the department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a and paragraph four of subsection (a) of section six hundred seventy-four of the tax law pertaining to an individual to such individual or pertaining to an employer to such employer.

d. Disclosure upon informed consent. (i) The department may disclose unemployment insurance information about an individual or an employer to an agent of such individual or employer, or to a third party, on the basis of informed consent received from such individual or employer. An informed consent from an individual shall not be construed to authorize the department to disclose information acquired from an employer under this article to an agent or third party identified in an individual's informed consent nor to authorize the department to disclose information acquired from an individual under this article to the agent or third party identified in the employer's informed consent. Nothing in this subdivision shall be construed to prohibit the disclosure of the wage reporting information obtained by the department from the department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a and paragraph four of subsection (a) of section six hundred seventy-four of the tax law pertaining to an individual to the agent or third party identified in the individual's informed

consent or pertaining to an employer to the agent or third party identified in the employer's consent.

(ii) Informed consent shall consist of a written release from the individual or employer to whom the information pertains. Where a written release is impossible or impracticable to obtain, the department may accept an informed consent from a representative acceptable to the department, including but not limited to a conservator, guardian, or executor or administrator of a decedent's estate, together with such documentation as the department deems necessary, including but not limited to orders of appointment or letters of administration, to establish the right of the representative to act on the individual's behalf. An informed consent must include a statement:

(A) specifically identifying the information that is to be disclosed;

(B) acknowledging that department files will be accessed to obtain the information;

(C) identifying the specific purpose or purposes for which the information is sought, subject to the limitations on such purpose or purposes set forth in subparagraph (iii) of this paragraph, and indicating that information obtained under the release will only be used for that purpose or purposes; and

(D) identifying all the parties who may receive the information disclosed pursuant to the consent.

(iii) The purpose specified in the release must be limited to providing a service or benefit to the individual signing the release that such individual expects to receive as a result of signing the release or for the purpose of carrying out administration or evaluation of a public program to which the release pertains.

e. Funding for disclosure of requested unemployment insurance information. Except as permitted under applicable federal law or regulation, or as otherwise authorized by agreement between the department and the United States Department of Labor, federal unemployment insurance grant funds shall not be used to pay for any of the costs incurred by the department in processing and handling a request for disclosure of unemployment information made under this article.

2. Violations of the confidentiality provisions of this section. Any person, who, without authority of the commissioner or as otherwise required by law, shall disclose information in violation of the confidentiality provisions of this section, upon conviction, shall be guilty of a misdemeanor.

3. Exceptions. The commissioner may, however, disclose the information described in subdivisions one and four of this section under the following circumstances:

a. Federal law. The commissioner shall report fully and completely to the appropriate agency of the United States on the effect and administration of this article in the manner prescribed by such agency, and further he or she shall make information available, upon request, to any federal, state or local agency entitled to such information under the social security act or any other federal law in the manner prescribed by such federal law or its implementing regulations.

b. Chief administrator of the courts; commissioners of jurors; county clerks; chief judges of United States district courts; clerks of the court or jury administrators of the United States district courts.

(i) The commissioner shall provide lists of the names of persons receiving unemployment insurance benefits to the chief administrator of the courts, appointed pursuant to section two hundred ten of the judiciary law . The lists shall be provided for the sole purpose of integration into lists of prospective jurors as provided by section five hundred six of the judiciary law . The chief administrator of the courts shall upon request provide information from the lists to the commissioner of jurors in each county or, in a county within a city having a population of one million or more, the county clerk of said county, solely for the purpose of compiling lists of prospective jurors for the appropriate county. The lists of persons receiving unemployment insurance benefits shall be provided only pursuant to a cooperative agreement between the chief administrator of the courts and the commissioner that is consistent with all federal regulations or requirements governing such disclosures and guarantees that all necessary steps shall be taken by the chief administrator of the courts, the commissioners of jurors and the county clerks to insure that the lists are kept confidential and that there is no unauthorized use or disclosure of such lists. Furthermore, the lists will be provided only if the chief administrator of the courts determines that the lists are needed for integration into lists of prospective jurors in one or more counties.

(ii) The commissioner shall provide lists of the names of persons receiving unemployment insurance benefits to the chief judge of any United States district court in New York State, appointed pursuant to title twenty-eight of the United States Code, section one hundred thirty-six . The lists shall be provided for the sole purpose of integration into lists of prospective jurors in such United States district court. The chief judge of such district court shall upon request provide information from the lists to the clerk of the court or jury administrator of such United States district court, solely for the purpose of compiling lists of prospective jurors for such district court. The lists of persons receiving unemployment insurance benefits shall be provided only pursuant to a cooperative agreement between the chief judge of such district court and the commissioner that is consistent with all federal regulations or requirements governing such disclosures and guarantees that all necessary steps shall be taken by the chief judge of the district court, the clerk of the court or jury administrator of such district court to insure that the lists are kept confidential and that there is no unauthorized use or disclosure of such lists. Furthermore, the lists will be provided only if the chief judge of such district court determines that the lists are needed for integration into lists of prospective jurors in such district.

c. Nothing herein shall be construed to prohibit the delivery of unemployment benefit information contained in the department's records to the secretary of health and human services of the United States or the state agency responsible for collecting such information, in accordance with regulations promulgated by such secretary, as necessary for the purposes of the national directory of new hires as established under section four hundred fifty-three A of the social security act, 1 as added by section three hundred thirteen of the personal responsibility and work opportunity reconciliation act of 1996, P.L. 104-193.

d. (i) Nothing herein shall be construed to prohibit the disclosure quarterly, to the secretary of health and human services of the United States or the state agency responsible for collecting such information, claim information contained in the department's records, as required by section four hundred fifty-three A of the social security act 1 (establishing the national directory) as amended by section three hundred thirteen of the personal responsibility and work opportunity reconciliation act of 1996, P.L. 104-193. Such claim information is to be used only for the purposes of section four hundred fifty-three A of the social security act in carrying out child support enforcement programs. Costs of furnishing such claim information shall be reimbursed consistent with federal law and regulations.

(ii) For the purpose of this paragraph the term “claim information” means information regarding whether an individual is receiving, has received, or has made application for, unemployment insurance benefits, the amount of such benefits being received or to be received and the individual's most recent address contained in the department's records.

e. Nothing herein shall be construed to prohibit the disclosure of claim information as defined in subparagraph (ii) of paragraph d of this subdivision to the “state directory of new hires,” as established under section one hundred seventy-one-h of the tax law as amended, and to the state office of temporary and disability assistance for disseminating to support collection units designated by social services districts or their duly authorized agents for all purposes designated by the personal responsibility and worker opportunity reconciliation act of 1996, public law 104-193. The cost of providing such claim information shall be reimbursed consistent with federal law and regulations.

f. United States census bureau. Upon request to the commissioner, such information may be disclosed to the United States census bureau for statistical analyses related to population and employment measurements and trends. The confidentiality of such information shall be protected by subdivisions one and two of this section and title thirteen of the United States Code and subject to the terms of a written agreement between the United States census bureau and the commissioner.

g. Federal, state and local agencies. (i) Upon request to the commissioner, such information may be disclosed to certain federal, state and local agencies. The commissioner may require written agreements with requesting agencies in a form determined by the commissioner and consistent with 20 CFR 603 and other federal regulations. The information that may be disclosed pursuant to this paragraph shall be disclosed only after the requesting agency has demonstrated, to the commissioner's satisfaction, that the information shall be kept confidential, except for those purposes for which it was provided to the requesting agency, and that the requesting agency has security safeguards in place to prevent the unauthorized disclosure of such information.

(ii) The information disclosed pursuant to this paragraph may be disclosed to the following agencies to be used exclusively for the following legitimate governmental purposes:

(1) any federal, state or local agency in the investigation of fraud relating to public programs, or misuse of public funds;

(2) any state or United States territorial workforce agency, local workforce investment board and its agents, and one-stop operating partner receiving funds under the workforce investment act of 1998 2 for program performance purposes and other legitimate programmatic purposes authorized by the commissioner;

(3) the United States department of labor or its agents, as required by law, or in connection with the requirements imposed as a result of receiving federal administrative funding;

(4) state and local economic development agencies, or their agents, where such information is necessary to carry out the statutory functions of such agencies, shall receive a quarterly census of employment and wage information compiled by the department, provided that such disclosure shall not violate federal law. Any redisclosure of information obtained by such agencies under this clause shall be limited to tabulation and publication of such information in an aggregated statistical form. No individual identifying information obtained pursuant to this clause shall be redisclosed in the course of the tabulation or publication. As used in this clause, the term "aggregated statistical form" shall mean, in the case of information regarding individuals, a data set that includes information about not fewer than ten individuals, and, in the case of employer information, a data set that includes information about no fewer than three employers, of which no one employer comprises more than eighty percent of the aggregated data set; and

(5) the workers' compensation board, the state insurance fund and the state department of financial services, for purposes of determining compliance with the coverage of workers' compensation and disability insurance and to the workers' compensation board for purposes of determining eligibility for workers' compensation benefits.

(6) any federal, state, or local law enforcement agency in accordance with a proper judicial order or grand jury subpoena served upon the department.

(7) the office of temporary and disability assistance, or local social services districts, for purposes of establishing or verifying the income and eligibility of applicants for, or recipients of, benefits under state public assistance programs for such benefits. Information obtained by the office of temporary and disability assistance under this clause shall not be disclosed, except to local social services districts for purposes of establishing or verifying the income and eligibility of applicants for, or recipients of, benefits under state public assistance programs.

(8) the office of vocational and educational services for individuals with disabilities of the education department for the evaluation of the effect on earnings of participants, or former participants, in employment and training programs for which the office of vocational and educational services for individuals with disabilities of the education department has reporting, monitoring or evaluating responsibilities.

(9) the commission for the blind for the evaluation of the effect on earnings of participants, or former participants, in employment and training programs for which the commission for the blind has reporting, monitoring or evaluating responsibilities.

(10) any other federal, state, or local governmental agency, including the state university of New York, the city university of New York, and any of their constituent units, or the agents or

contractors of a governmental agency, where such information is to be used for (A) evaluation of program performance, including, but not limited to, longitudinal outcome analysis of programs (including programs funded by public or private moneys or a combination thereof) to the extent permitted by federal law; (B) financial or other analysis required by federal, state, or local law or regulation; (C) preparation of reports required by federal, state, or local law or regulation; (D) operation of public programs by such agencies, their agents, contractors and subcontractors, whenever the commissioner determines that such information sharing is for the purpose of improving the quality or delivery of program services or to create operational efficiencies; or (E) establishment of common case management systems between federal, state, or local agencies delivering or supporting workforce services for a shared customer base, wherever such common case management system is for the purpose of fostering workforce partnerships, program coordination, inter-agency collaboration, improving program services, or creating operational efficiencies. Any redisclosure of information obtained by such agencies, their agents, or their contractors under this clause shall be limited to tabulation and publication of such information in an aggregated statistical form, except when an agency, its agent, its contractor or other agency must exchange such information for an authorized purpose as provided for in the written agreement required by 20 CFR Part 603. No individual identifying information obtained pursuant to paragraph d of subdivision one of this section shall be redisclosed in the course of the tabulation or publication. As used in this clause, the term "aggregated statistical form" shall mean, in the case of information regarding individuals, a data set that includes information about no fewer than ten individuals, and, in the case of employer information, a data set that includes information about no fewer than three employers, of which no one employer comprises more than eighty percent of the aggregated data set. When the commissioner approves a requested disclosure of information for the purposes of a longitudinal study, the commissioner shall allow such information to be used for a specified period of time as provided for in the written agreement required by 20 CFR Part 603. Such agreement may only provide for information to be used for a period of up to ten years but may be renewed for additional periods of time.

(11)(A) Pursuant to clause ten of this subparagraph, the commissioner shall electronically post in a place accessible by the general public (i) the minimum conditions for granting a request from governmental agencies for disclosure of information, (ii) a standard application for submitting requests for disclosure of unemployment insurance information in individually identifiable form in accordance with paragraph d of subdivision one of this section, in de-identified unit level form, or aggregated statistical form, (iii) the timeframe for information request determinations by the commissioner, such that within twenty business days of receiving a request, the commissioner shall either approve or deny the request or ask for additional information; within twenty business days of receiving a request for additional information, the requesting agency shall respond to the commissioner, and; within thirty calendar days of receiving the additional information, the commissioner shall provide a final approval or denial of the request, and (iv) contact information for assistance with requests for disclosure of information.

(B) Any approval or denial pursuant to clause ten of this subparagraph shall be in writing. Denials shall identify the reason or category of reason for the denial.

(C) The commissioner shall issue guidelines regarding the development of agreements with respect to disclosures approved pursuant to clause ten of this subparagraph, and such guidelines shall include, but not be limited to, the process and timeframe for developing such agreements and the terms therein consistent with 20 CFR Part 603 and other federal regulations.

h. Department contractors, subcontractors, or agents. The department may disclose unemployment insurance information to its contractors, subcontractors, or agents as the commissioner deems necessary to carry out the statutory functions of the department. Such disclosure shall be consistent with the authorized purposes described in subdivision four of this section and all applicable federal regulations, guidelines and policies.

i. Payment to the department for disclosure of requested unemployment insurance information. (1) Except as permitted under applicable federal law or regulation, or as otherwise authorized by agreement between the department and the United States department of labor, federal unemployment insurance grant funds shall not be used to pay for any of the costs incurred by the department in processing and handling a request for disclosure of unemployment information made under this article. Such costs shall be calculated, collected, and administered by the department consistent with applicable federal rules and guidelines and shall be paid in advance of disclosure to the department by the entity requesting the information or by another party acting on behalf of such entity. Where the recipient is a public official, the department may accept payment of costs by way of reimbursement.

(2) Costs paid under this paragraph shall be income of the state unemployment insurance program and shall only be used as permitted under the provisions of applicable federal regulations or guidelines governing the assessment and expenditure of such costs.

4. Wage reporting information obtained by the department from the state department of taxation and finance pursuant to subdivision four of section one hundred seventy-one-a of the tax law , as added by chapter five hundred forty-five of the laws of nineteen hundred seventy-eight, and information obtained or derived from quarterly combined withholding, wage reporting and unemployment insurance returns required to be filed by employers pursuant to paragraph four of subsection (a) of section six hundred seventy-four of the tax law shall be considered confidential and shall be used for the administration of the unemployment insurance program, employment services program, federal and state employment and training programs, employment statistics and labor market information programs, employer services program, worker protection programs, federal programs for which the department has administrative responsibility or for other purposes deemed appropriate by the commissioner under this chapter. Such information shall not be disclosed to persons or agencies other than those considered entitled to such information under the social security act or other federal law, or as provided in subdivision three of this section or when such disclosure is necessary for the proper administration of the department's unemployment insurance program, employment services program, employment and training programs, worker protection programs, federal programs for which the department has administrative responsibility or for other purposes deemed appropriate by the commissioner under this chapter. Any reports concerning employment and training programs submitted to a state or federal agency shall also be submitted to the governor, the temporary president of the

senate, the speaker of the assembly and the chairs of the labor committees in the senate and the assembly.

5. Withholding tax information obtained by the department from the state department of taxation and finance pursuant to subsection (1) of section six hundred ninety-seven of the tax law shall be confidential and shall not be disclosed or redisclosed by any person or agency except in accordance with the provisions of subsections (e) and (l) of section six hundred ninety-seven of such law. When used for the purpose of evaluating monitoring or reporting on the department's employment security and training programs, access to such information shall be limited to that which concerns individuals who applied to or participated in such programs.

6. Repealed by L.1998, c. 589, § 8, eff. April 1, 1999 .

7. The department shall notify all applicants to, and participants in, employment security and training programs for which the department has reporting, monitoring or evaluating responsibilities that information obtained from the department of taxation and finance may be used to evaluate program effectiveness of up to ten years after such application or participation, whichever is later.

New York Consolidated Laws, Labor Law - LAB § 538. Representation and witness fees and other expenses

1. Fees and compensation of representatives. (a) No fee shall be charged in any proceeding under this article by the commissioner, by the appeal board or by any court.

(b) In any proceeding under this article a party may be represented by an agent, but no fees for services rendered by such agent shall be allowable unless such agent is registered with the appeal board or is an attorney.

(c) Claims of representatives for services rendered to a claimant in connection with any claim arising under this article shall not be enforceable unless approved by the appeal board and shall in no event exceed the benefit allowed, except as provided in paragraph (d) of this subdivision. In approving any fee requested by a representative pursuant to this section, the appeal board shall consider the following factors: (i) the total benefit allowed; (ii) the time spent in providing representation; (iii) the legal and factual complexities involved; and (iv) such other factors as the appeal board may deem relevant.

(d) In addition to any fee which may be allowed by the appeal board for services rendered to the claimant, an attorney representing a claimant shall be entitled to a fee not to exceed the sum of five hundred dollars and necessary printing and other disbursements in each of the following cases: (1) On an appeal from a decision of the appeal board in favor of the claimant. (2) On a motion for leave to appeal to the court of appeals from a decision of the appellate division of the supreme court which relates to a decision of the appeal board in favor of the claimant. (3) On an appeal to the court of appeals from a decision of the appellate division of the supreme court which relates to a decision of the appeal board in favor of the claimant. When a claimant takes

such appeal, the court shall allow a fee and disbursements only if it finds the appeal to have been meritorious.

(e) The court shall appoint an attorney to represent the claimant if he is unrepresented in each of the cases described in paragraph (d) hereof, except when the claimant takes an appeal to the court of appeals. Fees and disbursements provided in such paragraph (d) shall be fixed by the court in which the appeal is taken or the motion for leave to appeal is made. Such fees and disbursements shall be paid by the commissioner as part of the expenses incurred in the administration of this article.

(f) Any person, firm, or corporation who shall exact or receive any remuneration or gratuity for any services rendered to or on behalf of a claimant except as allowed by this section and in an amount approved by the board or a court shall be guilty of a misdemeanor. The appeal board shall order the restitution of any fee paid by a claimant to a representative to the extent that it exceeds the amount authorized by this section.

2. Fees of witnesses and other expenses. Fees of witnesses and other expenses, except representation services, involved in proceedings under this article shall be paid at a rate to be established by regulation of the commissioner except that such fees and other expenses involved in proceedings before referees and the appeal board shall be paid at a rate to be established by regulation of this board. Such fees or other expenses shall be treated as expenses under this article.

3. Representatives; lists. (a) [Eff. until Dec. 31, 2020, pursuant to L.1981, c. 831, § 3.] The appeal board shall establish the qualifications and procedures for the registration of agents authorized to represent claimants in connection with any claims arising under this article. An agent shall be registered as authorized to represent claimants by providing the appeal board with his name, business address and telephone number and by posting a bond with the appeal board in the amount of five hundred dollars for the benefit of claimants charged fees by said representative in excess of those approved pursuant to this section and with respect to which restitution has been ordered pursuant to paragraph (f) of subdivision one of this section. An agent shall be registered as authorized to represent an employer by providing the appeal board with a letter of authorization from the employer. No agent may be registered who knowingly violates paragraph (c) of subdivision one of this section.

(b) An attorney who is available to represent claimants may notify the appeal board by providing his name, business address and telephone number.

(c) [Eff. until Dec. 31, 2020, pursuant to L.1981, c. 831, § 3.] The appeal board shall maintain lists of authorized agents and attorneys who are available to represent claimants and shall make such lists available to claimants on request.

New York Consolidated Laws, Labor Law - LAB § 539. Acquisition of land and buildings

The commissioner of general services, on the recommendation of the industrial commissioner and with the approval of the director of the budget and on behalf of the state, is hereby authorized

(1) to purchase land with or without buildings;

(2) to erect buildings thereon;

(3) to enter into contracts with any person, firm or corporation which shall agree to erect on land owned by such person, firm or corporation, suitable buildings at locations acceptable to the commissioner of general services and the industrial commissioner, and to agree on behalf of the state to lease such land and buildings for a period of not more than fifteen years from the time of the completion of said buildings at such rentals and subject to such terms and conditions as may be agreed upon; such contract shall contain the plans and specifications for the proposed buildings, which must be approved by the industrial commissioner and the commissioner of general services; each such contract and lease shall provide that upon the termination of said lease, or upon the earlier payment in full of the total amount specified therein the lessor shall convey to the state title in fee simple to the land and buildings covered under said lease;

(4) to enter into lease-purchase contracts as specified under (3) above with respect to buildings already in existence:

(5) to purchase and to provide for fixtures, equipment and facilities in connection with the said buildings or premises and to make necessary alterations and improvements thereof.

The provisions of section one hundred sixty-one-a of the state finance law limiting the period for which the commissioner of general services is authorized to lease premises to a term not exceeding five years shall not be applicable to leases executed in accordance with this section.

Space in each of such buildings shall be primarily utilized by the commissioner for the administration of this article, but space in any such building in excess of such requirements, as determined by the industrial commissioner, may be rented or sub-leased under an agreement entered into by the commissioner of general services only to the state of New York, or any agency or authority of the state of New York. Rents received under such agreement shall be paid into the unemployment administration fund. However, if, in connection with such building, moneys were advanced by the special fund to carry out the purposes of this section, the rents received under such agreement shall be paid into the said fund until such time as it shall be fully reimbursed for such advances. In addition, under such circumstances, an agreement shall be entered into between the commissioner and the commissioner of general services pursuant to which the fair rental value of all space in such building utilized by the commissioner shall be determined and a transfer of amounts equal to such rental value out of the unemployment administration fund to the special fund is hereby authorized until the special fund shall be fully reimbursed for such advances. The fair rental value of space utilized by the commissioner shall not exceed the prevailing rental rate for suitable space in privately owned buildings in the same locality.

New York Consolidated Laws, Labor Law - LAB § 540. Informational pamphlet about food stamp program

The commissioner shall establish procedures whereby each person who files a claim for unemployment insurance pursuant to section five hundred ninety-six of this article, shall receive an informational leaflet about the food stamp program provided by the office of temporary and disability assistance pursuant to subdivision six of section ninety-five-a of the social services law .

Title 4. Unemployment Funds

New York Consolidated Laws, Labor Law - LAB § 550. Unemployment insurance fund

1. Composition and investment. (a) The unemployment insurance fund shall be continued. It shall consist of all contributions, interest, penalties and monies from the re-employment service fund pursuant to section five hundred eighty-one-b of this article received and paid into the fund, and of moneys credited to this state pursuant to section nine hundred three of the federal social security act, 1 of property and securities acquired by and through the use of moneys belonging to the fund, and of interest earned thereon. All money in the fund, immediately upon receipt, shall be deposited or invested in the obligations of the "Unemployment Trust Fund" of the United States government or its authorized agent, so long as said trust fund exists, notwithstanding any other statutory provision to the contrary. The commissioner shall requisition from the unemployment trust fund necessary amounts from time to time.

(b) Notwithstanding any other provision of this article, any moneys credited to the state pursuant to section nine hundred three of the federal social security act for federal fiscal years two thousand, two thousand one and two thousand two, shall be transferred into the unemployment administration fund established pursuant to section five hundred fifty-one of this title. These moneys are to be used only to pay expenses incurred by the state for the administration of the unemployment insurance law and are not to be used for the payment of unemployment compensation or for the administration of state public employment offices.

2. Custodian of funds. The state commissioner of taxation and finance and the state comptroller shall be the custodians of the funds received upon requisition by the industrial commissioner from the unemployment trust fund and, subject to audit by the state comptroller, the industrial commissioner shall direct the disbursement thereof. The state commissioner of taxation and finance, notwithstanding any other provision of law, may for the purpose of such disbursement authorize any depository of the fund to make payments out of any moneys therein upon drafts on the fund issued by the industrial commissioner and countersigned by the state comptroller. The state commissioner of taxation and finance may deposit any portion of such funds which he deems not needed for immediate use in the manner and subject to all the provisions of law respecting the deposit of other state funds by him. Interest earned by such

portion of such funds deposited by the state commissioner of taxation and finance shall be collected by him and placed to the credit of the fund.

3. Fund sole source of benefits. The fund shall be administered in trust and shall be used solely to pay benefits, except that subject to the limitations therein contained moneys credited to this fund pursuant to section nine hundred three of the federal social security act 1 may upon an appropriation duly made by the legislature be used for the administration of the unemployment insurance law and shall for such purpose and to the extent required be transferred to the administration fund established under this article. All payments shall be made upon vouchers drawn on the fund by the commissioner in accordance with procedures established by him. The fund shall be the sole and exclusive source for the payment of benefits which shall be due and payable only to the extent that contributions and other payments to the fund with increments thereon, actually collected and credited to the fund and not otherwise appropriated or allocated, are available therefor.

4. Non-liability of state. The state of New York undertakes the administration of the fund without any liability on the part of the state beyond the amount of moneys received through allotment from any agency of the United States.

New York Consolidated Laws, Labor Law - LAB § 551. Unemployment administration fund

1. Purpose. The unemployment administration fund shall be continued. It shall consist of all moneys received by the state or the commissioner for the administration of this article. Such fund shall be handled by the commissioner of taxation and finance and state comptroller as other state moneys are handled; but it shall be expended solely for the administration of this article; and its balance shall not lapse at any time but shall remain continuously available to the commissioner for expenditures consistent herewith. All federal moneys allotted or apportioned to the state by any agency of the United States for the administration of this article shall be paid into the unemployment administration fund, except that moneys received from the federal railroad retirement board as compensation for services or facilities supplied to such agency shall be paid into the unemployment administration fund or the special “employment service account” thereof, in the same proportion in which expenditures are made for such services or facilities from such fund and account. A special “employment service account” of funds received by the state in accordance with the provisions of the Wagner-Peyser act 1 shall be maintained as a part of such fund. All moneys allotted or apportioned to the state by any agency of the United States, for the administration of this article, paid into the unemployment administration fund, shall be expended solely for the purpose and in the amounts found necessary by such agency for the proper and efficient administration of this article.

2. Replacements from the special fund or general state funds. If any moneys received after June thirtieth, nineteen hundred forty-one, from the United States pursuant to the provisions of the federal social security act, 2 or any unencumbered balances in the unemployment administration fund as of that date, or any moneys granted to this state pursuant to the provisions

of the Wagner-Peyser act, 1 or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser act, are found by the appropriate agency of the United States because of any action or contingency, to have been lost or expended for the purposes other than, or in amounts in excess of, those found necessary by such agency for the proper administration of this article, it is the policy of this state that such moneys shall be replaced by moneys to be transferred from the special fund or appropriated for such purpose from the general funds of this state to the unemployment administration fund for expenditure as provided hereunder, but, for the purposes of this subdivision, such moneys shall not include any amount determined by such agency to have been expended in accordance with rules, standards, instructions, limitations, regulations, or other action by such agency, applicable to such amount and prescribed by it prior to the expenditure thereof. Upon receipt of notice of such finding by such agency, the commissioner shall, with the approval of the director of the budget, direct the transfer of the necessary moneys from the special fund into the unemployment administration fund. If the moneys available in the special fund are not sufficient for this purpose, the commissioner shall promptly report the additional amount required for such replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of such amount.

The provisions of this subdivision shall not be construed to require the replacement of any amount disbursed for the payment of expenses in relation to the operation of public employment offices by the federal government provided the liability resulting in such expenditures has been incurred in accordance with the request or with the approval of a duly authorized agency or official of the federal government.

3. Payment of administrative expenses. The total amount of expenses incurred by the commissioner in connection with the administration of this article and such proportion of the total expenses of maintaining the public employment offices as established under this chapter and for the purposes of this article, as shall be determined to be necessary and required by the provisions of this article and so certified by the commissioner, shall, upon audit by the comptroller, be disbursed from the unemployment administration fund. Annually, as soon as practicable after April first, the commissioner and the comptroller shall ascertain the total amount of such expenses incurred during the preceding fiscal year. An itemized statement of the total expenses so ascertained shall be open to public inspection in the office of the commissioner after notice in an official publication of the department. All disbursements from such fund shall be made by the commissioner of taxation and finance on the warrant of the comptroller.

New York Consolidated Laws, Labor Law - LAB § 552. Special fund

1. Source. There is hereby established the special fund. It shall consist of all moneys credited thereto pursuant to the provisions of sections five hundred thirty-nine and five hundred fifty-three of this article, of property and securities acquired by and through the use of moneys belonging to such fund, and of interest earned upon moneys belonging to such fund and

deposited or invested. The commissioner of taxation and finance shall be the custodian of such fund and the moneys therein shall be deposited by him in the same manner as other state moneys. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of the state finance law , and shall be used for the purposes specified herein. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

2. Use of fund. The moneys in this fund may be used to

(a) Finance operations deemed necessary by the commissioner in the administration of this article and approved by the director of the budget, including expenditures pursuant to section five hundred thirty-nine of this article;

(1) for which no appropriations or inadequate appropriations from federal funds are made; or

(2) for which a grant is made from appropriated federal funds but not yet received, provided the special fund is reimbursed upon receipt of such federal grant;

(b) Replace moneys in the unemployment administration fund pursuant to the provisions of subdivision two of section five hundred fifty-one of this article;

(c) Make refunds of interest and penalties erroneously collected;

(d) Defray the cost of vocational and related training courses and make payments to persons enrolled in such courses, as provided in article twenty-three-A of this chapter, and such expenditures shall not be subject to the conditions are 1 set forth in paragraph (b) of subdivision three of this section.

(e) Pay interest on contributions, interest and penalties erroneously collected.

3. Notwithstanding any provision of subdivision two of this section

(a) The special fund shall not be used in whole or in part for any purpose or in any manner which (1) would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (2) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made; and

(b) No expenditure from such fund shall be made unless the commissioner and the director of the budget find that no other funds are available or can properly be used to finance such expenditure.

4. The commissioner of taxation and finance shall, upon the direction of the industrial commissioner and with the approval of the director of the budget, transfer from the special fund to the unemployment insurance fund such moneys available in the special fund which are in excess of reasonable needs for the purposes set forth in subdivision two of this section. Such moneys shall thereupon be credited to the general account.

New York Consolidated Laws, Labor Law - LAB § 552-a. Re-employment service fund

1. There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a fund to be known as the "re-employment service fund".

2. The re-employment service fund shall consist of all moneys collected and received by the commissioner from employers pursuant to section five hundred eighty-one-b of this article as well as interest and penalties associated with such collection. All moneys collected as contributions and interest relating to re-employment services under this article shall be deposited in a bank, trust company or industrial bank designated by the state comptroller. Moneys so deposited shall be credited immediately to the account of the re-employment service fund and shall be used for the purposes set forth in section five hundred ninety-eight of this article. Moneys in such fund may be invested by the state comptroller in accordance with the provisions of section ninety-eight of the state finance law , and shall be used for the purposes specified herein. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes, provided, however, that it shall be subject to the crediting provisions of subdivision five of this section.

3. Moneys in the re-employment service fund shall be kept separate from and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance and the state comptroller. All deposits of such moneys shall, if required by the state comptroller, be secured by obligations of the United States or of this state of market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such securities for such deposits.

4. Moneys of the fund shall be used exclusively for the purpose of providing additional automated systems and staff to provide enhanced re-employment services and claimant management activities for unemployment compensation claimants and for the payment of associated administrative costs relating to unemployment compensation claimants. The moneys shall be paid out of the fund on the audit and warrant of the state comptroller on vouchers certified or approved by such commissioner or his or her duly designated officer.

5. The re-employment service fund shall not be used in whole or in part for any purpose or in any manner which (a) would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (b) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

6. On or before January thirty-first, two thousand one, the commissioner shall submit a report to the chairman of the assembly ways and means committee, the ranking minority member of the assembly ways and means committee, the chairman of the senate finance committee, the ranking minority member of the senate finance committee, and the director of the division of the budget regarding the re-employment services fund established pursuant to this section. The report shall contain the following information:

(a) the amount of money deposited in the re-employment services fund for each year of its existence;

(b) the number of department employees funded through the re-employment services fund;

(c) the results of the activities engaged in by department employees funded through the re-employment services fund.

New York Consolidated Laws, Labor Law - LAB § 552-b. Unemployment insurance control fund

1. There is hereby established in the joint custody of the commissioner of taxation and finance and the state comptroller a fund to be known as the “unemployment insurance control fund”.

2. The unemployment insurance control fund shall consist of all penalties imposed and collected pursuant to paragraph (b) of subdivision two of section five hundred eighty-one of this article, the department's share of all penalties imposed and collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law , and all other moneys credited or transferred thereto from any other fund or sources pursuant to law.

3. Moneys in the unemployment insurance control fund shall be kept separate from and shall not be commingled with any other moneys in the custody of the commissioner of taxation and finance and the state comptroller. All deposits of such moneys shall, if required by the state comptroller, be secured by obligations of the United States or of this state of market value equal at all times to the amount of the deposit and all banks and trust companies are authorized to give such securities for such deposits.

4. Moneys of the unemployment insurance control fund shall be used for the location and prevention of fraud and abuse, collection and enforcement activities, benefit payment control activities and other quality control activities related to the unemployment insurance program. The moneys shall be paid out of the unemployment insurance control fund on the audit and warrant of the state comptroller on vouchers certified or approved by the commissioner or his or her duly designated officer. Any balance in such fund shall not lapse at any time but shall remain continuously available for such purposes.

5. The unemployment insurance control fund shall not be used in whole or in part for any purpose or in any manner which (a) would permit its substitution for, or a corresponding reduction in, federal funds that would be available in its absence to finance expenditures for the administration of this article; or (b) would cause the appropriate agency of the United States government to withhold any part of an administrative grant which would otherwise be made.

New York Consolidated Laws, Labor Law - LAB § 553. Disposition of moneys collected

1. Depository. All moneys collected as contributions, interest and penalties under this article shall be deposited in a bank, trust company or industrial bank designated by the state

comptroller. All moneys so deposited shall be credited immediately to the account of the unemployment insurance fund, except as provided in subdivision two of this section.

2. Interest and penalties. The commissioner shall certify periodically to the depository the amount of interest and penalties which were imposed and collected under title six of this article and the department's share of the penalties imposed and collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law and deposited pursuant to subdivision one of this section. A sum equal to the total amount of interest and penalties certified by the commissioner, less the penalties collected pursuant to paragraph (b) of subdivision two of section five hundred eighty-one of this article and the department's share of the penalties collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law shall thereupon be credited to the special fund established pursuant to section five hundred fifty-two of this article. The penalties collected pursuant to paragraph (b) of subdivision two of section five hundred eighty-one of this article and the department's share of the penalties collected pursuant to paragraph one of subsection (v) of section six hundred eighty-five of the tax law shall thereupon be credited to the unemployment insurance control fund established pursuant to section five hundred fifty-two-b of this article.

Title 5. Coverage

New York Consolidated Laws, Labor Law - LAB § 560. Terms of coverage

1. Liability. Any employer shall become liable for contributions under this article if he has paid remuneration of three hundred dollars or more in any calendar quarter, except that liability with respect to persons employed in personal or domestic service in private homes shall be considered separately and an employer shall become liable for contributions with respect to such persons only if he has paid to them remuneration in cash of five hundred dollars or more in any calendar quarter. Such liability for contributions shall commence on the first day of such calendar quarter.

An employer who, by operation of law, purchase 1 or otherwise becomes successor to an employer liable for contributions shall become liable for contributions on the day of his succession. This provision shall not affect such successor's liability as otherwise prescribed by law for unpaid contributions due from his predecessor.

2. Hirings by helpers and assistants. Whenever any helper, assistant, or employee of an employer engages any other person in the work which said helper, assistant, or employee is doing for the employer, such employer shall for all purposes hereof be deemed the employer of such other person, whether such person is paid by the said helper, assistant, or employee, or by the employer, provided the employment has been with the knowledge, actual, constructive, or implied, of the employer.

3. Tax exemption in other laws. No exemption from taxation granted under any other law of the state shall be so construed as to apply to the payment of contributions under this article.

4. Federal instrumentalities. (a) In conformity with subsection (b) of section thirty-three hundred five of the federal unemployment tax act, 2 any instrumentality of the United States, except such as are wholly or partially owned by the United States, or exempt from tax imposed by section thirty-three hundred one of said act 3 by virtue of any provision of law, which specifically refers to such section, or the corresponding section of prior law, in granting such exemption, shall be subject to all the provisions of this article, except as provided in section fifty-two hundred forty of the revised statutes of the United States, as amended and modified by subsection (c) of section thirty-three hundred five of said act. 4 If in any year this state shall not be certified under section thirty-three hundred four of said act, 5 any contributions required under this article from any such instrumentality of the United States with respect to such year, including penalty and interest collected with respect thereto, if any, shall be refunded without interest.

(b) In conformity with subsection (c) of section thirty-three hundred five 4 of the federal unemployment tax act, the commissioner is authorized to transmit a copy of any return or report of a national banking association relative to the association's employees, their remuneration and services, to the comptroller of the currency and to request the said comptroller of the currency to cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and thereupon to transmit to the commissioner a complete statement of his findings respecting the accuracy of such returns or reports.

(c) This subdivision applies to national banking associations and any other federal instrumentalities which would be immune from contributions required under this article without authorization by subsection (b) of section thirty-three hundred five of the federal unemployment tax act. 2

5. Primary liability for contributions. Whenever one employer contracts with a second employer for any work which is part of the first employer's usual trade, occupation, profession or enterprise, the first employer shall be liable for any contributions otherwise payable by the second employer, based upon wages paid in respect to such work, unless the second employer is free to do business with anyone who may wish to contract with him. Contributions so paid by the first employer on behalf of the second employer shall be deemed paid by the second employer. If the first employer fails to pay, on the date prescribed by the commissioner, contributions due on wages paid by the second employer, the commissioner may collect such deficiency from the second employer.

New York Consolidated Laws, Labor Law - LAB § 561. Voluntary election

1. Employer. Any employer not otherwise liable for contributions under this article as an employer may become liable therefor

(a) as of the first day of any calendar quarter, provided

(1) he files an application with the commissioner to elect coverage for at least the unexpired portion of the calendar year in which such coverage is to commence and the following calendar year;

(2) such application is filed on or before the last day of the calendar quarter in which coverage is to commence; and

(3) the commissioner approve such application in writing;

(b) as of the date on which he acquired the organization, trade or business, in whole or in part, of another employer who is liable for contributions, provided

(1) he files an application with the commissioner to elect coverage for at least the unexpired portion of the calendar year in which such acquisition occurs and the following calendar year;

(2) such application is filed within thirty days following the end of the calendar quarter in which such acquisition occurred; and

(3) the commissioner approve such application in writing.

2. Employees. (a) Services without the state. The services of a person who resides within this state but performs such services entirely without the state shall be deemed employment within the meaning of this article whenever

(1) contributions are not required with respect to such services under an unemployment compensation law of any other state or of the United States; and

(2) his employer makes application to this effect; and

(3) the commissioner approves such application in writing.

(b) Agricultural labor. All services performed in agricultural labor for an employer who is not liable for contributions pursuant to section five hundred sixty-four of this article shall be deemed employment within the meaning of this article as of the first day of any calendar quarter provided:

(i) the employer makes an election to this effect for at least the unexpired portion of the calendar year in which such election is to commence and the following calendar year,

(ii) such election is filed on or before the last day of the calendar quarter in which it is to become effective, and

(iii) the commissioner approves such election in writing.

(c) Services performed at a place of religious worship. The services of a person performed at a place of religious worship as a caretaker or for the performance of duties of a religious nature, or both, shall be deemed employment within the meaning of this article, if his employer makes application to this effect and the commissioner approves such application in writing.

3. Coverage. Liability for contributions or for payments in lieu of contributions, as the case may be, shall commence as of the first day of coverage. No remuneration paid prior to the first day of coverage shall be used for the purpose of determining entitlement to benefits.

New York Consolidated Laws, Labor Law - LAB § 562. Termination of coverage

1. Required coverage. (a) Any employer who has once become liable for contributions under this article with respect to persons other than persons employed in personal or domestic service in private homes shall cease to be liable as of the first day of the calendar quarter next following the filing of his written application provided the commissioner finds that the employer has not with respect to such persons paid remuneration of three hundred dollars or more in any of the four calendar quarters preceding such day.

(b) Any employer who has once become liable for contributions under this article with respect to persons employed in personal or domestic service in a private home shall cease to be liable as of the first day of the calendar quarter next following the filing of his written application, provided the commissioner finds that the employer has not with respect to such persons paid remuneration in cash of five hundred dollars or more in any of the four calendar quarters preceding such day.

2. Voluntary coverage. Any employer who has elected to become liable for contributions under this article may terminate such liability hereunder after the expiration of the second calendar year of his liability, as of the first day of any calendar quarter, provided he files with the commissioner a written notice of his intent to terminate liability hereunder before the first day of the calendar quarter beginning with which this liability is to terminate.

3. Non-payment of wages. Any employer who has paid no wages for employment in this state during a period of four consecutive payroll years shall cease to be an employer liable for contributions as of the end of the last of such payroll years.

New York Consolidated Laws, Labor Law - LAB § 563. Non-profit organizations

1. Definition. A "non-profit organization" shall mean any corporation, unincorporated association, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

2. Exclusions. In addition to services not included pursuant to the provisions of section five hundred eleven , the term "employment" does not include services rendered for a non-profit organization by

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

(b) a lay member elected or appointed to an office within the discipline of a bona fide church and engaged in religious functions;

(c) a person employed at a place of religious worship as a caretaker or for the performance of duties of a religious nature, or both, unless voluntary election has been made pursuant to the provisions of section five hundred sixty-one of this article;

(d) a person who

(1) receives rehabilitative services in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or

(2) is given remunerative work in a facility conducted for the purpose of providing such work for persons who cannot be readily absorbed in the competitive labor market because of their impaired physical or mental capacity;

(e) an inmate of a custodial or penal institution;

(f) a person who participates in a youth service program designed to foster a commitment to community service and occupational and educational development and who, while participating in that program, performs services in the community or attends school and receives a stipend designed to cover expenses incurred in performing services or attending school, and is eligible for an award or scholarship upon leaving the program.

3. Coverage. Notwithstanding the provisions of sections five hundred sixty and five hundred sixty-two , a non-profit organization

(a) shall become liable for contributions under this article

(1) if it has paid cash remuneration of one thousand dollars or more in any calendar quarter and such liability shall commence on the first day of such quarter or

(2) if it has employed four or more persons on each of twenty days during a calendar year or the preceding calendar year, each day being in a different calendar week, and the liability shall in this event commence on the first day of the calendar year, and

(b) shall cease to be liable for contributions as of the first day of a calendar quarter next following the filing of a written application to this effect provided the commissioner finds that

(1) it has not paid cash remuneration of one thousand dollars or more in any of the four calendar quarters preceding such day and

(2) has not employed four or more persons on each of twenty days during the current or the preceding calendar year, each day being in a different week.

4. Election of payments in lieu of contributions. A non-profit organization, or a group of such organizations, liable for contributions under this article, but not subject to taxation under the federal unemployment tax act 1 pursuant to the provisions of paragraph (8) of subsection (c) of section thirty-three hundred six of that act, 2 may elect to become liable for payments in lieu of contributions as of the first day of any calendar year by filing with the commissioner a written notice to this effect before the beginning of such year or, if the organization was not liable in the

preceding calendar year, by filing the notice not later than thirty days after the end of that calendar quarter in which the event rendering it liable occurred. The commissioner may for good cause shown extend the time for the filing of such notice.

5. Obligations upon election. (a) A non-profit organization which is liable for payments in lieu of contributions shall pay into the fund an amount equal to the amount of benefits paid to claimants and charged to its employer's account in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one on the basis of remuneration paid on or after the date on which such liability became effective. The amount of payments so required shall be determined by the commissioner as soon as practicable after the end of each calendar quarter or any other period. Such amount shall be payable at such times and in such manner as the commissioner may prescribe and, when paid, the employer's account of the non-profit organization shall be discharged accordingly.

(b) If non-profit organizations elect payments in lieu of contributions as a group, the members of the group shall be severally and jointly liable for payments of amounts equal to the amounts of benefits paid to claimants and charged to the employer's accounts of all members of the group.

The commissioner may prescribe conditions and methods for such group elections and for the discharge of the obligations and responsibilities of the group and its members.

(c) If a non-profit organization was liable for contributions under this article before nineteen hundred sixty-nine and elected payments in lieu of contributions when such election first became available under this section, the payments it is required to make shall include benefits charged on the basis of weeks of employment which began before the date on which such election took effect but shall not be greater than the sum by which a balance in its employer's account as of such date is exceeded by the amount of benefits charged on and after that date. The balance in the employer's account as of such date shall for the purposes of the foregoing provisions be deemed to include contributions paid on or before January thirty-first, nineteen hundred seventy-one on the basis of wages paid in the last calendar quarter of nineteen hundred seventy.

6. Termination of election. (a) A non-profit organization may terminate its election to become liable for payments in lieu of contributions as of the first day of any calendar year by filing a written notice to this effect with the commissioner before the beginning of such year.

(b) The commissioner may cancel at any time such election of a non-profit organization which has failed to make any of the payments required hereunder within thirty days after the commissioner has notified it of the liability for and the amount of such payment. Such cancellation shall remain in force and effect until the non-profit organization files a new notice of election in accordance with the provisions of subdivision four after having satisfied conditions and requirements prescribed by the commissioner for this purpose.

(c) If such election is terminated by a non-profit organization or cancelled by the commissioner, the non-profit organization shall remain liable for payments in lieu of contributions with respect to all benefits charged to its account on the basis of remuneration paid before the date on which such termination or cancellation took effect.

7. Assessment and collection of payments in lieu of contributions. The amount of payments in lieu of contributions due hereunder but not paid upon notice shall be assessed and collected by the commissioner, together with interest and penalties, if any, in the same manner and subject to the same conditions in which contributions due from other employers may be assessed and collected under the provisions of this article.

New York Consolidated Laws, Labor Law - LAB § 564. Agricultural labor

1. Coverage. (a) Notwithstanding the provisions of section five hundred sixty of this article, an employer of persons engaged in agricultural labor shall become liable for contributions under this article if the employer:

(1) has paid cash remuneration of twenty thousand dollars or more in any calendar quarter to persons employed in agricultural labor, and such liability shall commence on the first day of such quarter, or

(2) has employed in agricultural labor ten or more persons on each of twenty days during a calendar year or the preceding calendar year, each day being in a different calendar week, and the liability shall in such event commence on the first day of the calendar year, or

(3) is liable for the tax imposed under the federal unemployment tax act 1 as an employer of agricultural labor and the liability shall in such event commence on the first day of the calendar quarter in such calendar year when he first paid remuneration for agricultural labor in this state.

(b) An employer who becomes liable for contributions under paragraph (a) of this subdivision shall cease to be liable as of the first day of a calendar quarter next following the filing of a written application provided the commissioner finds that the employer:

(1) has not paid to persons employed in agricultural labor cash remuneration of twenty thousand dollars or more in any of the eight calendar quarters preceding such day, and

(2) has not employed in agricultural labor ten or more persons on each of twenty days during the current or the preceding calendar year, each day being in a different week, and

(3) is not liable for the tax imposed under the federal unemployment tax act as an employer of agricultural labor.

2. Crew leader. Whenever a person renders services as a member of a crew which is paid and furnished by the crew leader to perform services in agricultural labor for another employer, such other employer shall, for the purpose of this article, be deemed to be the employer of such person, unless:

(a) the crew leader holds a valid certificate of registration under the federal farm labor contractor registration act of nineteen hundred sixty-three 2 or substantially all the members of the crew operate or maintain tractors, mechanized harvesting or cropdusting machinery or any other mechanized equipment which is provided by the crew leader, and

(b) the crew leader is not an employee of such other employer and has not entered into a written agreement with such employer under which he is designated as an employee.

New York Consolidated Laws, Labor Law - LAB § 565. Governmental entities

1. Definition. A governmental entity shall mean the state of New York, municipal corporations and other governmental subdivision and any instrumentality of one or more of the foregoing.

2. Exclusions. In addition to services not included pursuant to the provisions of section five hundred eleven of this article, the term "employment" does not include services rendered for a governmental entity by:

(a) an elected official;

(b) a member of a legislative body or of the judiciary;

(c) a member of the state national guard or air national guard, except a person who renders such services as a regular state employee;

(d) a person serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

(e) a person in a major nontenured policymaking or advisory position;

(f) a person in a policymaking or advisory position, the duties of which ordinarily do not require more than eight hours per week to perform; and

(g) an inmate of a custodial or penal institution.

3. Coverage. A governmental entity shall be liable for contributions under this article unless it becomes liable for payments in lieu of contributions.

4. Election of payments in lieu of contributions. A governmental entity or a group of such entities liable for contribution under this article may elect to become liable for payments in lieu of contributions as of the first day of any calendar year by filing with the commissioner a written notice to this effect before the beginning of such year or, if the governmental entity was not liable in the preceding calendar year, by filing the notice not later than thirty days after the end of the calendar quarter in which it first became liable. The commissioner may for good cause shown extend the time for the filing of such notice.

5. Obligation upon election. (a) A governmental entity which has elected to become liable for payments in lieu of contributions shall pay into the fund an amount equal to the amount of benefits paid to claimants and charged to its employer's account in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article on the basis of remuneration paid on or after the date on which such liability became effective. The amount of payments so required shall be determined by the commissioner as soon as practicable after the end of each calendar quarter or any other period. Such amount shall be

payable quarterly or at such times and in such manner as the commissioner shall prescribe and, when paid, the employer's account of the governmental entity shall be discharged accordingly.

(b) If governmental entities elect payments in lieu of contributions as a group, the members of the group shall be severally and jointly liable for payments of amounts equal to the amounts of benefits paid to claimants and charged to the employer's accounts of all members of the group. The commissioner may prescribe conditions and methods for such group elections and for the discharge of the obligations and responsibilities of the group and its members.

6. Termination of election. (a) A governmental entity may terminate its election to become liable for payments in lieu of contributions as of the first day of any calendar year by filing a written notice to this effect with the commissioner before the beginning of such year.

(b) The commissioner may cancel at any time the election of a governmental entity which has failed to make any of the payments required hereunder within thirty days after the commissioner has notified it of the liability for and the amount of such payment. Such cancellation shall remain in force and effect until the governmental entity files a new notice of election in accordance with the provisions of subdivision four of this section after having satisfied conditions and requirements prescribed by the commissioner for this purpose.

(c) If such election is terminated by a governmental entity or cancelled by the commissioner, the governmental entity shall remain liable for payments in lieu of contributions with respect to all benefits charged to its account on the basis of remuneration paid before the date on which such termination or cancellation took effect.

7. Joint accounts. Any two or more governmental entities may form a joint account by complying with rules and regulations prescribed by the commissioner for the establishment, maintenance and dissolution of such accounts.

8. Assessment and collection of payments in lieu of contributions. The amount of payments in lieu of contributions due hereunder from governmental entities but not paid upon notice shall be assessed and collected by the commissioner, together with interest and penalties, if any, in the same manner and subject to the same conditions under which contributions due from other employers may be assessed and collected under provisions of this article.

9. Special provisions applicable to the state. (a) In lieu of contributions, the state of New York shall pay into the fund an amount equivalent to the amount of benefits paid to claimants and charged to the account of the state of New York in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article.

(b) The amount of payments into the fund required shall be ascertained by the commissioner as soon as practicable after the end of each calendar year or any other shorter period and shall be payable from the general funds of the state, except if a claimant to whom benefits were paid remuneration by the state of New York during his base period from a special or administrative fund provided for by law, other than an income fund of the state university or the mental hygiene services fund, the payment into the fund shall be made from such special or administrative fund with the approval of the director of the budget. Such payments by the state shall be made at

such times and in such manner as the commissioner, with the approval of the director of the budget, may determine and prescribe.

New York Consolidated Laws, Labor Law - LAB § 566. Indian tribes

1. Definitions. (a) Indian tribe shall mean any Indian tribe, subdivision, subsidiary or business enterprise wholly owned by such Indian tribe, as defined in section 3306(u) of the federal unemployment tax act (FUTA).

(b) The term "employer" as defined under section five hundred twelve of this article shall include any Indian tribe for which service in employment as defined under this article is performed.

(c) The term "employment" as defined under section five hundred eleven of this article shall include service performed in the employ of an Indian tribe provided such service is excluded from "employment" as defined in FUTA solely by reason of section 3306(c)(7), FUTA, and is not otherwise excluded from "employment" under this article. For purposes of this section, the exclusions from employment in subdivision two of section five hundred sixty-five of this article shall be applicable to services performed in the employ of an Indian tribe.

2. Benefits based on service in employment defined in this section shall be payable in the same amount, on the same terms and subject to the same conditions as benefits payable on the basis of other service subject to this article.

3. Coverage. An Indian tribe shall be liable for contributions under this article unless it becomes liable for payments in lieu of contributions.

4. Election of payments in lieu of contributions. (a) Indian tribes liable for contributions under this article may elect to become liable for payments in lieu of contributions in the same manner and under the same conditions as provided in section five hundred sixty -five of this article except as otherwise provided in this section. Indian tribes may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe.

(b) An Indian tribe which has elected to become liable for payments in lieu of contributions shall pay into the fund an amount equal to the amount of benefits paid to claimants and charged to its employer's account in accordance with the provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article on the basis of remuneration paid on or after the date on which such liability became effective. The amount of payments so required shall be determined by the commissioner as soon as practicable after the end of each calendar quarter or any other period. Such amount shall be payable quarterly or at such times and in such manner as the commissioner shall prescribe and, when paid, the employer's account of the Indian tribes shall be discharged accordingly.

(c) If an Indian tribe elects payments in lieu of contributions as a group, the members of the group shall be severally and jointly liable for payments of amounts equal to the amounts of

benefits paid to claimants and charged to the employer's accounts of all members of the group. The commissioner may prescribe conditions and methods for such group elections and for the discharge of the obligations and responsibilities of the group and its members. Such request shall be made in accordance with the provisions of paragraph (a) of this subdivision.

(d) Any Indian tribe that elects to become liable for payments in lieu of contributions shall, within ninety days of the approval date of its election, execute and file with the commissioner a surety bond approved by the commissioner as to amount and form. Such surety bond shall continue in effect during periods covering such election, but may be revised annually as to amount and form at the discretion of the commissioner.

5. Termination of election. (a) An Indian tribe may terminate its election to become liable for payments in lieu of contributions as of the first day of any calendar year by filing a written notice to this effect with the commissioner before the beginning of such year.

(b) If such election is terminated by an Indian tribe or cancelled by the commissioner, the Indian tribe shall remain liable for payments in lieu of contributions with respect to all benefits charged to its account on the basis of remuneration paid before the date on which such termination or cancellation took effect.

(c) Failure of an Indian tribe to make required payments, including assessments of interest and penalty, within ninety days of receipt of the notice of delinquency, will cause the Indian tribe to lose the option to make payments in lieu of contributions, as described in subdivision four of this section, for the following calendar year unless payment in full is received before the computation date preceding the following calendar year.

(d) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in paragraph (c) of this subdivision, may request such option be reinstated prospectively by the commissioner, if all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties or interest are outstanding. Such request shall be made in accordance with the provisions of paragraph (a) of subdivision four of this section.

6. Termination of coverage. (a) If, within ninety days of receipt of a notice of delinquency, an Indian tribe fails to make required contributions, payments in lieu of contributions, payments of penalties or interest under this article or fails to post a payment bond, and after all collection activities deemed necessary by the commissioner have been exhausted, the commissioner may cause services performed for such tribe to not be treated as “employment” for purposes of subdivision one of this section. Such termination of coverage shall be effective on the first day of the quarter following the quarter in which notice of termination was mailed.

(b) The commissioner may determine that an Indian tribe that loses coverage under paragraph (a) of this subdivision, may have services performed for such tribe again included as “employment” for purposes of subdivision one of this section if all contributions, payments in lieu of contributions, penalties and interest have been paid. Such coverage shall begin as of the

quarter following the calendar quarter in which all contributions, payments in lieu of contributions and interest have been paid.

7. Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(a) will cause the Indian tribe to be liable for taxes under FUTA;

(b) will cause the Indian tribe to lose the option to make payments in lieu of contributions;

(c) could cause the Indian tribe to be exempted from the definition of "employer", as provided in subdivision one of this section, and services in the employ of the Indian tribe, as provided in subdivision two of this section, to be exempted from "employment".

8. Joint accounts. Any two or more Indian tribes may form a joint account by complying with rules and regulations prescribed by the commissioner for the establishment, maintenance and dissolution of such accounts.

9. Assessment and collection of payments in lieu of contributions. The amount of payments in lieu of contributions due hereunder from Indian tribes but not paid upon notice shall be assessed and collected by the commissioner, together with interest and penalties, if any, in the same manner and subject to the same conditions under which contributions due from other employers may be assessed and collected under provisions of this article.

10. Extended benefits paid that are attributable to service in the employ of an Indian tribe and not reimbursed by the federal government shall be financed in their entirety by such Indian tribe.

11. If an Indian tribe fails to make payments required under this section (including assessments of interest and penalty) within ninety days of a final notice of delinquency, the commissioner will immediately notify the United States internal revenue service and the United States department of labor.

Title 6. Contributions to Fund

New York Consolidated Laws, Labor Law - LAB § 570. Payment of contributions

1. Rate. Each employer liable under this article shall pay contributions on all wages paid by him at the rate of five and four-tenths per centum or, if applicable to the employer, at the rate provided by the provisions of sections five hundred seventy-seven and five hundred eighty-one . However, if contributions so established exceed five and four-tenths per centum of wages paid by him which are subject to the federal unemployment tax act 1, they shall be reduced by that part of such excess, if any, which is caused by the provisions of paragraph (b) of subdivision one of section five hundred eighteen .

2. Time and method of payment. Contributions shall become payable by any employer for wages paid on and after the date on which he becomes liable under this article. All contributions from employers shall be paid at such times and in such manner as the commissioner may prescribe.

3. Default. An employer who fails to pay contributions required to be made by him to the fund shall pay interest at the rate of one per centum of the amount of such contributions for each month he is in default. Such interest shall be assessed, collected and paid as part of the payment required to be made by the employer to the fund.

4. Fraud. If any part of any deficiency is due to fraud with intent to avoid payment of contributions to the fund, fifty per centum of the total amount of the deficiency, in addition to such deficiency, shall be assessed, collected, and paid in the same manner as if it were a deficiency.

5. Refunds and credits. If an employer shall make application for a refund of any contribution, interest, or penalty paid by him or for a credit thereof and the commissioner shall determine that such contribution, interest or penalty, or any portion thereof was erroneously collected, the commissioner shall refund said amount or allow a credit therefor. If said refund was created as a result of departmental error then the commissioner shall pay said refund with interest paid at the rate of three-fourths of one per centum of the amount of such contribution, interest and penalty for each month between the time of the erroneous collection and thirty days previous to the date of the refund check, as specified in this subdivision, unless the employer shall have already deducted said amount by way of credit against moneys payable by him into the fund. No refund or credit shall be allowed unless an application therefor shall be made on or before whichever of the following dates shall be the later: (a) one year from the date on which such payment was made; or (b) three years from the last day of the first month following the end of that calendar quarter during which the remuneration was paid which formed the basis for contributions, interest, or penalty claimed to have been erroneously collected. For a like cause and within the same period a refund may be so made or a credit allowed on the initiative of the commissioner. Any credit or refund of interest and penalties erroneously collected, any interest on such credit or refund, and any interest on contributions, interest and penalties erroneously collected, allowed by the commissioner under the foregoing conditions, shall be a charge against the special fund. Any credit or refund of contributions erroneously collected, allowed by the commissioner under the foregoing conditions, shall be a charge against the unemployment insurance fund.

Nothing contained in this subdivision shall require or permit the refund or credit of any contributions due and payable under article eighteen of this chapter as in effect at the time such contributions were paid.

6. Agreement to contributions by employees void. No agreement by an employee to pay any portion of the payment made by his employer for the purpose of providing benefits required by this article shall be valid and no employer shall make a deduction for such purpose from the remuneration of any employee.

7. (a) In addition to amounts otherwise payable under this article, every employer liable for the payment of contributions shall pay contributions of three-tenths per centum on all wages paid by him during the calendar year nineteen hundred seventy-nine. Such contributions shall be credited to the employer's account pursuant to paragraph (d) of subdivision one of section five hundred eighty-one and shall be used only for the purpose set forth below in paragraphs (b) and (c) of this subdivision.

(b) If, on or before the tenth day of November, nineteen hundred seventy-nine, the commissioner determines that the outstanding balance of advances made to the state pursuant to title XII of the federal social security act 2 can be repaid in full to the treasury of the United States for credit to the federal unemployment account in the federal unemployment trust fund, and that after such repayment the state will not require further title XII advances during the remainder of nineteen hundred seventy-nine, he shall cause such repayment to be made.

(c) On or before the first day of July, nineteen hundred seventy-nine, pursuant to 20 CFR 601.5(f) the governor shall file with the secretary of labor an application for deferral of the tax credit reduction required by section 3302(c)(2) of the federal unemployment tax act. 3 If such deferral can be obtained by making the repayment to the treasury of the United States required by 20 CFR 601.5(f)(2)(ii) , the commissioner shall cause such repayment to be made. If such deferral cannot be so obtained, it shall be applied for pursuant to 20 CFR 601.5(f)(2)(i) and, in such event, the amount of such additional contributions due by the thirty-first day of January, nineteen hundred eighty, by reason of paragraph (a) of this subdivision, shall be paid as soon as received to the treasury of the United States to reduce the balance of outstanding title XII advances.

New York Consolidated Laws, Labor Law - LAB § 571. Assessment of contributions due

If an employer fails to file a quarterly combined withholding, wage reporting and unemployment insurance return as required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law for the purpose of determining the amount of contributions due or for the purpose of determining contribution rates under this article, or if such return when filed is incorrect or insufficient and the employer fails to file a corrected or sufficient return within thirty days after the commissioner requires the same by written notice, the commissioner shall determine the amount of contribution due from such employer and the amount of wages paid by such employer on the basis of such information as may be available and shall give written notice of such determination to the employer. Such determination shall finally and irrevocably fix the amount of contribution and the amount of wages paid for the purpose of computing contribution rates, unless the commissioner shall modify the amounts thereof, as provided under this article, subject, however, to the right to a hearing as hereinafter provided.

New York Consolidated Laws, Labor Law - LAB § 572. Notice of liability

Any employer who has become liable for contributions shall notify the commissioner of such fact immediately and shall give information concerning his operations and persons employed by him.

New York Consolidated Laws, Labor Law - LAB § 573. Collection of contributions in case of default

1. Civil actions. If an employer shall default in any payments required to be made by him to the fund, after due notice, the amount due from him shall be collected by civil action against him brought in the name of the commissioner, and the same, when collected, shall be paid into the fund. Such employer's compliance with the provisions of this article requiring payments to be made to the fund shall date from the time of the payment of said money so collected.

Civil actions brought in the name of the commissioner under this section to collect contributions, interest, or penalties from an employer shall be entitled to preference, conferred by law to actions brought by any state officer as such, upon the calendar of all courts.

2. Warrants. In addition and as an alternative to any other remedy provided by this article and provided that no appeal or other proceeding for review provided by title eight of this article shall then be pending and the time for the taking thereof shall have expired, the commissioner may issue a warrant under his official seal, directed to the sheriff of any county, commanding him to levy upon and sell the real and personal property which may be found within his county of an employer who has defaulted in the payment of any sum determined to be due from such employer for the payment of such sum together with interest, penalties, and the cost of executing the warrant, and to return such warrant to the commissioner and to pay into the fund the money collected by virtue thereof within sixty days after the receipt of such warrant. The sheriff shall within five days after the receipt of the warrant file with the clerk of his county a copy thereof, and thereupon such clerk shall enter in the judgment docket the name of the employer mentioned in the warrant and the amount of the contribution, interest, and penalties for which the warrant is issued and the date when such copy is filed. Thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property and chattels real of the employer against whom the warrant is issued in the same manner as a judgment duly docketed in the office of such clerk. The sheriff shall then proceed upon the warrant in the same manner, and with like effect, as that provided by law in respect to executions issued against property upon judgments of a court of record, and for his services in executing the warrant he shall be entitled to the same fees, which he may collect in the same manner.

In the discretion of the commissioner a warrant of like terms, force, and effect may be issued and directed to any officer or employee of the department of labor who may file a copy of such warrant with the clerk of any county in the state, and thereupon each such clerk shall docket it and it shall become a lien in the same manner and with the same force and effect as hereinbefore provided with respect to a warrant issued and directed to and filed by a sheriff; and in the execution thereof such officer or employee shall have all the powers conferred by law upon

sheriffs, but he shall be entitled to no fee or compensation in excess of the actual expenses paid in the performance of such duty.

If a warrant is returned not satisfied in full, the commissioner shall have the same remedies to enforce the amount thereof as if the commissioner had recovered judgment for the same.

New York Consolidated Laws, Labor Law - LAB § 574. Insolvency or bankruptcy

1. Priority of contributions. In the event of the dissolution, insolvency, composition, or assignment for benefit of creditors of any employer, contributions then and thereafter due from such employer under this article, together with any interest and penalties thereon, shall (1) be on a parity with taxes (other than real property taxes), together with any interest and penalties thereon, due the state of New York or any city thereof and (2) have priority over all other claims, except taxes due the United States and wages due for employment performed within the three months preceding such event. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, composition, or reorganization under the federal bankruptcy act, 1 contributions then and thereafter due under this article, together with any interest and penalties thereon, shall be entitled to such priority as is provided in such act.

2. Discharge in bankruptcy. If the commissioner was given due notice or had knowledge of the bankruptcy proceedings, the payment of contributions due, together with interest and penalties thereon, which accrued on or before the date of the petition for bankruptcy and which remain unpaid upon the discharge of the employer in bankruptcy by a court of competent jurisdiction, shall not be enforced unless civil action or warrant proceedings are begun not later than two years after the date of such discharge and their total amount is two thousand dollars or more.

New York Consolidated Laws, Labor Law - LAB § 575. Maintenance, audit, and report of remuneration and employment records

1. Requirements. Every employer shall keep a true and accurate record of each person employed by him, the name and social security account number, and the amount of remuneration paid to each, and such other records as are necessary under this article in the manner prescribed by regulations of the commissioner and shall furnish to the commissioner, upon demand, a sworn statement of the same. Such records, together with all other records reflecting or bearing upon them, shall be open to inspection at any time and as often as may be necessary to verify the number of employees, the periods of their employment, and the amount of their remuneration. Every employer shall report information from such records at such time and in such manner as the commissioner may by regulation prescribe. Any employer who shall violate any of the provisions of this section or who shall wilfully falsify any record which he is required to maintain or who shall wilfully file a false report shall be guilty of a misdemeanor.

2, 3. Repealed by L.2003, c. 413, § 2, eff. Aug. 26, 2003 .

4. Collection and disposition of penalties. Any penalty pursuant to the provisions of this section shall be assessed, collected, and paid into the fund in the same manner as if it were a deficiency, in accordance with the provisions of this title.

New York Consolidated Laws, Labor Law - LAB § 575-a. Penalties relating to wage information

In the case of a failure by an employer to provide complete and correct wage reporting information on a quarterly combined withholding, wage reporting and unemployment insurance return required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law , such employer shall, unless it is shown to the commissioner's satisfaction that there was good cause for such failure to comply, be liable as provided for in subdivisions one and two of this section.

1. When the non-compliance is discovered through an examination of an employer's records, the employer shall be liable for a penalty in the following amount for each employee who is not included in the return or for whom the required information is not reported accurately:

(a) for the first failure for any calendar quarter in any eight consecutive calendar quarters, one dollar for each employee, not to exceed one thousand dollars;

(b) for the second failure for any calendar quarter in any eight consecutive calendar quarters, five dollars for each employee, not to exceed two thousand dollars;

(c) for any subsequent failure in any calendar quarter in any eight consecutive calendar quarters, twenty-five dollars for each employee, not to exceed five thousand dollars.

2. In those instances where a failure to comply is discovered in relation to a specific claimant's claim for benefits, the penalty shall be twenty-five dollars for each such occurrence.

3. If such employer provides complete and correct wage reporting information within thirty days after the department sends notice of such failure to the employer, then the penalty provided for by subdivision one of this section shall be abated.

4. The penalties imposed and collected pursuant to this section shall be credited to the special fund established pursuant to section five hundred fifty-two of this article.

New York Consolidated Laws, Labor Law - LAB § 576. Time limitations

1. Determinations of liability for contributions. No determination of liability for contributions pursuant to section five hundred sixty of this article shall be made more than three years after the last day of the calendar year in which the wages on which such liability is based were paid, except as provided in subdivision three of this section.

2. Determinations of amount of contributions. No determination pursuant to section five hundred seventy-one of this article of the amount of contributions due shall be made more than

three years after the last day of the calendar year in which the wages on which such contributions are based were paid except as provided in subdivision three of this section.

3. Determinations of liability for and amount of contributions after contest. If an employer contests a determination of liability for contributions, a determination of liability for and the amount of contributions due for the contested period and subsequent periods may be made at any time prior to the latter of the following:

(a) three years after the last day of the calendar year in which the wages on which such contributions are based were paid; or

(b) two years after the last day of the calendar year in which such determination of liability for contributions became final and irrevocable.

4. Determinations of penalties. No determination of the amount of any penalty imposed for the failure of an employer to submit reports as required by section five hundred seventy-five of this article shall be made more than one year after the last day of the calendar year in which such reports were due.

5. Enforcement of payment of contributions. Payment of contributions due on the basis of wages reported by the employer, and payment of contributions due on the basis of a determination made pursuant to section five hundred seventy-one of this article within the time limit provided in subdivisions two and three of this section may be enforced by civil action or through warrant proceedings only if such action is begun or such warrant is filed within two years after the last day of the calendar year in which such report was received by the commissioner or in which such determination became final and irrevocable.

6. Enforcement of payment of penalties. Payment of penalties may be enforced by civil action or through warrant proceedings only if such action is begun or such warrant is filed within two years after the last day of the calendar year in which the determination of the amount of the penalty became final and irrevocable.

7. Enforcement of payment after extension agreement. If a deferred payment agreement has been entered into by the employer the payment which is the subject of the agreement may be enforced by civil action or through warrant proceedings if such action is begun or such warrant is filed within two years after the last day of the calendar year in which the final payment was due pursuant to such agreement.

8. Fraud. The provisions of this section shall not apply if the employer, with intent to defraud, fails to file prescribed contribution reports or files false reports.

9. Date of determination. For the purpose of this section no determination shall be deemed to have been made until the date upon which notice of such determination is mailed or delivered personally to the employer affected thereby.

New York Consolidated Laws, Labor Law - LAB § 577. General account; subsidiary contribution

1. General account. The general account within the fund shall be continued.

(a) This account shall be credited with

(1) all net earnings on moneys in the fund,

(2) moneys credited to this state pursuant to section nine hundred three of the federal social security act, 1

(3) account balances of employers who have ceased to be liable for contributions under this article and whose accounts are not subject to transfer in accordance with provisions of section five hundred eighty-one, subdivision four covering transfers of accounts,

(4) the proceeds of subsidiary contributions,

(5) all moneys improperly paid to claimants and recovered,

(6) contributions which are paid into the fund more than sixty days after the due date prescribed by regulation of the commissioner, excepting only contributions paid after such sixty days but prior to determination and demand by the commissioner, and

(7) benefits based on wages paid in another state and charged to an employer's account as provided in subdivision five of section five hundred eighty-one .

(8) monies pursuant to section five hundred eighty-one-b of this title.

(9) monies pursuant to section five hundred ninety-four of this title.

(b) This account shall be debited with

(1) moneys used by the commissioner upon an appropriation duly made by the legislature for the administration of the unemployment insurance law as provided in section five hundred fifty, subdivision three ,

(2) refunds of subsidiary contributions,

(3) the amounts of negative balances of employers' accounts, as provided in section five hundred eighty-one, subdivision one , paragraph (e),

(4) all moneys paid to claimants which should not have been charged or are not chargeable to any employer's account;

(5) balances set up as provided in subdivision five of section five hundred eighty-one ; and

(6) all moneys paid to claimants by reason of the application of paragraph (a) of subdivision twelve 2 of section five hundred ninety of this article which are not reimbursed to the fund by the federal government.

2. Subsidiary contributions. (i) Employers shall pay a subsidiary contribution based on their rate as specified in the subsidiary contribution schedule as applied to wages paid in the four calendar quarters immediately subsequent to the computation date. The rate of each employer's subsidiary contribution shall be the percentage shown in the column headed by the general account balance as of the computation date and on the same line designating the range of employer account percentages in which an individual employer's account is found. The subsidiary rate for employers who have not been liable for contributions during at least the five completed calendar quarters ending on the computation date shall be the highest percentage for those employers with a positive employer's account percentage. Such subsidiary contribution shall be paid in addition to any other amounts otherwise payable under this article, and shall be assessed and collected in the same manner as the contributions prescribed by section five hundred seventy of this title. The proceeds of the subsidiary contribution shall be deposited in the fund and credited to the general account.

(ii) The terms “employer account percentage”, “computation date” and “wages” shall have the meaning prescribed pursuant to article eighteen of this chapter.

Employer's Account Percentage (Dollar amounts in Millions)	Less than $0	$0 or more but less than $75	$75 or more but less than $150	$150 or more but less than $225	$225 or more but less than $300	$300 or more but less than $375	$375 or more but less than $450	$450 or more but less than $525	$525 or more but less than $600	$600 or more but less than $650	$650 or more
Less than +0.0%	.925%	.825%	.725%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%
0.0% or more but											

less than 5.5%	.625%	.625%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%
5.5% or more but less than 7.5%	.625%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%
7.5% or more but less than 9.0%	.625%	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%	.000%
9.0% or more	.525%	.425%	.325%	.225%	.125%	.025%	.000%	.000%	.000%	.000%	.000%

New York Consolidated Laws, Labor Law - LAB § 578. Non-liability for penalty and interest

1. Conditions. The provisions of this section shall apply to employers who failed to discharge obligations under this title because of the bona fide belief that all or some of their employees are covered under the unemployment insurance laws of other states or of the United States, provided they paid pursuant to such laws the contributions required thereunder on all wages of all such employees.

2. Extent. Failure to pay contributions under this title with respect to such employees shall not render any such employer liable for interest provided such contributions are paid within ninety days following the date on which a determination or decision establishing the employer's liability therefor has become final. If such contributions are not paid within ninety days following such date, interest shall be assessed only from such date to the date of payment.

New York Consolidated Laws, Labor Law - LAB § 581. Experience rating

1. Meaning of terms. As used in this section:

(a) “Computation date” means December thirty-first of any year.

(b) “Payroll year” means the period beginning on October first of a year and ending on September thirtieth of the next following year.

(c) “Qualified employer” means any employer whose account reflects his or her experience with respect to unemployment throughout not less than the four consecutive completed calendar quarters ending on the computation date and who has paid some remuneration in the payroll year preceding the computation date and filed all contribution returns prescribed by the commissioner for the three payroll years preceding the computation date on or before such date, or has had an amount of contributions due and/or an amount of wages paid determined by the commissioner pursuant to section five hundred seventy-one of this article. If an employer has ceased to be liable for contributions and the employer's account balance is not subject to transfer under the provisions of subdivision four of this section, such account balance shall be transferred to the general account on the computation date coinciding with or immediately following the date on which the employer's liability ceased and shall not thereafter be available to such employer in the event that the employer again becomes liable for contributions.

(d) “Employer's account” (1) means an account in the fund reflecting an employer's experience with respect to contribution payments and experience rating charges under this article. The commissioner shall maintain such an account for every employer liable for contributions under this article; but nothing in this article shall be construed to grant any employer or any of his employees prior claims or rights to the amount paid by him into the fund and credited to his employer's account, or to any other account, including the general account, either on his own behalf or on behalf of his employees. All moneys in such fund, from whatever source derived and to whatever account credited, shall be pooled and available to pay benefits to any individual entitled thereto under this article.

(2) Any contributions due but not paid within sixty days of the due date prescribed by regulation of the commissioner shall, when paid, not be credited to an employer's account, but shall be credited to the general account, unless such payment was made prior to determination and demand by the commissioner pursuant to section five hundred seventy-one of this article.

(3) Payments in lieu of contributions equal to benefits charged in the last three months of a calendar year shall be credited to the employer's account as of the computation date occurring in that year if paid within the time prescribed by the commissioner.

(4) Any employer may at any time make payments to his account in the fund in excess of the requirements of this article. Such payments made during the period from April first through March thirty-first of the following year shall be credited to the employer's account as of the computation date occurring within such period.

(5) For the purpose of determining the size of fund index, all payments in lieu of contributions and voluntary, excess contribution payments made by employers shall be included in the fund balance on the computation date next following the date of payments. Such excess contributions

shall be irrevocable and not subject to refund or credit after acceptance by the commissioner and deposit in the fund.

(e) “Experience rating charge” means a debit to an employer's account reflecting a payment of benefits.

(1) Whenever benefits are paid to a claimant, experience rating charges shall be debited to the appropriate account. The commissioner shall notify each employer not more frequently than monthly as to each experience rating charge which is being made to the employer's account. Such notice shall be a determination of the propriety of such charge and of the payment of benefits on which such charge was based.

(2) Benefits payable to any claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of the last employer prior to the filing of a valid original claim in an amount equal to seven times the claimant's benefit rate. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period except as provided below:

(i) In those instances where the claimant may not utilize wages paid to establish entitlement based upon subdivision ten of section five hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges for the first twenty-eight effective days of benefits paid as otherwise provided by this section. Under such circumstances, benefits paid shall be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision ten of section five hundred ninety of this article.

(ii) In those instances where the claimant may not utilize wages paid to establish entitlement based upon subdivision eleven of section five hundred ninety of this article and an educational institution is the claimant's last employer prior to the filing of the claim for benefits, or the claimant performed services in such educational institution in such capacity while employed by an educational service agency which is the claimant's last employer prior to the filing of the claim for benefits, such employer shall not be liable for benefit charges for the first twenty-eight effective days of benefits paid as otherwise provided by this section. Under such circumstances, benefits paid will be charged to the general account. In addition, wages paid during the base period by such educational institutions, or for services in such educational institutions for claimants employed by an educational service agency shall not be considered base period wages during periods that such wages may not be used to gain entitlement to benefits pursuant to subdivision eleven of section five hundred ninety of this article. However, in those instances

where a claimant was not afforded an opportunity to perform services for the educational institution for the next academic year or term after reasonable assurance was provided, such employer shall be liable for benefit charges as provided for in this paragraph for any retroactive payments made to the claimant.

(iii) In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and such employer is not a base-period employer, payments equaling the first twenty-eight effective days of benefits as otherwise prescribed by this section shall be charged to the general account. In those instances where the federal government is the claimant's last employer prior to the filing of the claim for benefits and a base-period employer, such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges for the first twenty-eight effective days of benefits other than those chargeable to the federal government as prescribed above shall be made to the general account.

(iv) In those instances where a combined wage claim is filed pursuant to interstate reciprocal agreements and the claimant's last employer prior to the filing of the claim is an out-of-state employer and such employer is not a base-period employer, benefit payments equaling the first twenty-eight effective days of benefits as otherwise prescribed by this section shall be charged to the general account. In those instances where the out-of-state employer is the last employer prior to the filing of the claim for benefits and a base-period employer such employer shall be liable for charges for all benefits paid on such claim in the same proportion that the remuneration paid by such employer during the base period bears to the remuneration paid by all employers during the base period. In addition, benefit payment charges for the twenty-eight effective days of benefits other than those chargeable to the out-of-state employer as prescribed above shall be made to the general account.

(v) In those instances where the last employer prior to the filing of a valid original claim has paid total remuneration to the claimant during the period from the start of the base period used to establish the benefit claim until the date of the claimant's filing of the valid original claim in an amount less than or equal to six times the claimant's benefit rate and the last employer has substantiated such amount to the satisfaction of the commissioner within ten days of the commissioner's original notice of potential charges to such last employer's account, benefits shall be charged as follows: benefits payable to the claimant with respect to the claimant's then current benefit year shall be charged, when paid, to the account of such last employer prior to the filing of a valid original claim in an amount equal to the lowest whole number (one, two, three, four, five, or six) times the claimant's benefit rate where the product of such lowest whole number times the claimant's benefit rate is equal to or greater than such total remuneration paid by such last employer to the claimant. Thereafter, such charges shall be made to the account of each employer in the base period used to establish the valid original claim in the same proportion that the remuneration paid by each employer to the claimant during that base period bears to the remuneration paid by all employers to the claimant during that base period. Notice of such

recalculation of potential charges shall be given to the last employer and each employer of the claimant in the base period used to establish the valid original claim.

(3) An employer's account shall not be charged, and the charges shall instead be made to the general account, for benefits paid to a claimant after the expiration of a period of disqualification from benefits following a final determination that the claimant lost employment with the employer through misconduct or voluntary separation of employment without good cause within the meaning of section five hundred ninety-three of this article and the charges are attributable to remuneration paid during the claimant's base period of employment with such employer prior to the claimant's loss of employment with such employer through misconduct or voluntary separation of employment without good cause, provided, however, that an employer shall not be relieved of charges pursuant to this subparagraph if an employer or its agent fails to submit information resulting in an overpayment pursuant to section five hundred ninety-seven of this article.

(4) An employer's account shall not be charged, and the charges shall instead be made to the general account, for benefits paid to a claimant based on base period employment while the claimant was an inmate of a correctional institution and enrolled in a work release program, provided that the employment was terminated solely because the inmate was required to relocate to another area as a condition of parole or the inmate voluntarily relocated to another area immediately upon being released or paroled from such correctional institution.

(5) If an employer who employed the claimant in the four weeks immediately preceding the filing of a valid original claim demonstrates that the employer has continuously employed the claimant without significant interruption and substantially to the same extent and in the same manner as during the weeks immediately preceding the filing of a valid original claim in which the claimant was employed by such employer, the account of such employer shall not be charged with benefits paid to such claimant for any weeks of such continuing employment, and such experience rating charges shall be made to the general account. The provisions set forth in the foregoing sentence shall apply with respect to an employer liable for payments in lieu of contributions, but if the secretary of labor of the United States finds that their application to such employer does not meet the requirements of the federal unemployment tax act, such provisions shall not thereafter apply to such employer, unless and until such finding has been set aside pursuant to a final decision issued in accordance with such judicial review proceedings as may be instituted and completed under the provisions of section thirty-three hundred ten of the federal unemployment tax act.

(6) An employer's account shall not be debited to the extent that the federal government reimburses the fund for benefits paid.

If on any computation date an employer's account registers a negative balance, an amount equivalent to the excess of the negative balance over twenty-one per centum of the employer's payroll in the payroll year preceding such date shall be transferred as a charge to the general account, except that this provision shall not apply to any negative balance, or that portion

thereof, which results from benefits charged with respect to which the employer is liable for payments in lieu of contributions.

(f) "Employer's account percentage" means the status of an employer's account on any computation date. It is the balance remaining in the account, after contributions have been credited and experience rating charges have been debited to it, stated as percentage of his average payroll for the last five payroll years preceding the computation date or for all quarters if the employer has been liable for contributions for fewer than twenty-one quarters. Such percentage shall be computed to two decimal places and the remaining fraction if any, disregarded. If, however, the number of consecutive completed calendar quarters ending on the computation date during which the employer has been liable for contributions hereunder is twenty-one or less the employer's account percentage, if it is positive, shall be multiplied by that figure assigned to the employer designated as "employer's benefit equalization factor" which is listed below on the same horizontal line on which the number of quarters of employer liability appears, and the product resulting therefrom shall constitute the employer's account percentage.

Number of quarters of employer liability	**Employer's benefit equalization factor**
5	3.00
6	2.50
7	2.05
8	1.75
9	1.55
10	1.40
11	1.25
12	1.12
13	1.04
14 through 21	1.00

(g) "Size of fund index" means the lesser of the following two percentages:

(1) the percentage obtained by dividing the moneys in the fund as of a computation date by the total of all payrolls for the payroll year preceding such date; or (2) the percentage obtained by dividing such moneys by the average of the totals of all payrolls for the five consecutive payroll

years preceding such date. Such percentage shall be computed to one decimal place and the remaining fraction, if any, disregarded.

(h) “Payroll” means all wages paid by an employer to his employees.

2. Rates of contribution.

(a) Each qualified employer's rate of contribution shall be the percentage shown in the column headed by the size of the fund index as of the computation date and on the same line with his or her negative or positive employer's account percentage, except that if within the three payroll years preceding the computation date any part of a negative balance has been transferred from any employer's account as a charge to the general account pursuant to the provisions of paragraph (e) of subdivision one of this section such employer's rate of contribution shall be the maximum contribution rate as shown in the column headed by the size of fund index;

Size of Fund Index

Employer's Account Percentage	Less Than 0%	0% but less than 0.5%	0.5% but less than 1.0%	1.0% but less than 1.5%	1.5% but less than 2.0%	2.0% but less than 2.5%	2.5% but less than 3.0%	3.0% but less than 3.5%	3.5% but less than 4.0%	4.0% but less than 4.5%	4.5% but less than 5.0%	5.0% or more
Negative 21.0% or more	8.90	8.70	8. 50	8.30	8.10	7.30	6.90	6.50	6.20	6.10	6.00	5.90
20.5% or more but less than 21.0%	8.80	8.60	8.40	8.20	8.00	7.20	6.80	6.40	6. 10	6.00	5.90	5.80
20.0% or more but less than 20.5%	8.70	8.50	8.30	8.10	7.90	7.10	6.70	6.30	6. 00	5.90	5.80	5.70
19.5% or more but	8.60	8.40	8.20	8.00	7.80	7.00	6.60	6.20	5. 90	5.80	5.70	5.60

less than 20.0%												
19.0% or more but less than 19.5%	8.50	8.30	8.10	7.90	7.70	6.90	6.50	6.10	5. 80	5.70	5.60	5.50
18.5% or more but less than 19.0%	8.40	8.20	8.00	7.80	7.60	6.80	6.40	6.00	5. 70	5.60	5.50	5.40
18.0% or more but less than 18.5%	8.30	8.10	7.90	7.70	7.50	6.70	6.30	5.90	5. 60	5.50	5.40	5.30
17.5% or more but less than 18.0%	8.20	8.00	7.80	7.60	7.40	6.60	6.20	5.80	5. 50	5.40	5.30	5.20
17.0% or more but less than 17.5%	8.10	7.90	7.70	7.50	7.30	6.50	6.10	5.70	5. 40	5.30	5.20	5.10
16.5% or more but less than 17.0%	8.00	7.80	7.60	7.40	7.20	6.40	6.00	5.60	5. 30	5.20	5.10	5.00
16.0% or more but less than 16.5%	7.90	7.70	7.50	7.30	7.10	6.30	5.90	5.50	5. 20	5.10	5.00	4.90
15.5% or more but less than 16.0%	7.80	7.60	7.40	7.20	7.00	6.20	5.80	5.40	5. 10	5.00	4.90	4.80
15.0% or more but	7.70	7.50	7.30	7.10	6.90	6.10	5.70	5.30	5. 00	4.90	4.80	4.70

less than 15.5%												
14.5% or more but less than 15.0%	7.60	7.40	7.20	7.00	6.80	6.00	5.60	5.20	4. 90	4.80	4.70	4.60
14.0% or more but less than 14.5%	7.50	7.30	7.10	6.90	6.70	5.90	5.50	5.10	4. 80	4.70	4.60	4.50
13.5% or more but less than 14.0%	7.40	7.20	7.00	6.80	6.60	5.80	5.40	5.00	4. 70	4.60	4.50	4.40
13.0% or more but less than 13.5%	7.30	7.10	6.90	6.70	6.50	5.70	5.30	4.90	4. 60	4.50	4.40	4.30
12.5% or more but less than 13.0%	7.20	7.00	6.80	6.60	6.40	5.60	5.20	4.80	4. 50	4.40	4.30	4.20
12.0% or more but less than 12.5%	7.10	6.90	6.70	6.50	6.30	5.50	5.10	4.70	4. 40	4.30	4.20	4.10
11.5% or more but less than 12.0%	7.00	6.80	6.60	6.40	6.20	5.40	5.00	4.60	4.30	4.20	4.10	4.00
11.0% or more but less than 11.5%	6.90	6.70	6.50	6.30	6.10	5.30	4.90	4.50	4. 20	4.10	4.00	3.90
10.5% or more but	6.80	6.60	6.40	6.20	6.00	5.20	4.80	4.40	4. 10	4.00	3.90	3.80

less than 11.0%												
10.0% or more but less than 10.5%	6.70	6.50	6.30	6.10	5.90	5.10	4.70	4.30	4. 00	3.90	3.80	3.70
9.5% or more but less than 10.0%	6. 60	6.40	6.20	6.00	5.80	5.00	4.60	4.20	3.90	3.80	3.70	3.60
9.0% or more but less than 9.5%	6.5 0	6.30	6.10	5.90	5.70	4.90	4.50	4.10	3.80	3.70	3.60	3.50
8.5% or more but less than 9.0%	6.4 0	6.20	6.00	5.80	5.60	4.80	4.40	4.00	3.70	3.60	3.50	3.40
8.0% or more but less than 8.5%	6.3 0	6.10	5.90	5.70	5.50	4.70	4.30	3.90	3.60	3.50	3.40	3.30
7.0% or more but less than 8.0%	6.2 0	6.00	5.80	5.60	5.40	4.60	4.20	3.80	3.50	3.40	3.30	3.20
6.0% or more but less than 7.0%	6.1 0	5.90	5.70	5.50	5.30	4.50	4.10	3.70	3.40	3.30	3.20	3.10
5.0% or more but less than 6.0%	6.0 0	5.80	5.60	5.40	5.20	4.40	4.00	3.60	3.30	3.20	3.10	3.00
4.0% or more but	5.9 0	5.70	5.50	5.30	5.10	4.30	3.90	3.50	3.20	3.10	3.00	2.90

less than 5.0%												
3.0% or more but less than 4.0%	5.6 0	5.40	5.20	5.00	4.80	4.20	3.80	3.40	3.10	3.00	2.90	2.80
2.0% or more but less than 3.0%	5.5 0	5.30	5.10	4.90	4.70	4.10	3.70	3.30	3.00	2.90	2.80	2.70
1.0% or more but less than 2.0%	5.4 0	5.20	5.00	4.80	4.60	4.00	3.60	3.20	2.90	2.80	2.70	2.60
Less than 1.0%	5.20	5.00	4.80	4.60	4.40	3.80	3.40	3.00	2.70	2.60	2. 50	2.40
Positive												
Less than 1.0%	4.10	3.90	3.70	3.50	3.30	2.90	2.50	2.10	1.90	1.80	1. 70	1.60
1.0% or more but less than 2.0%	4.0 0	3.80	3.60	3.40	3.20	2.80	2.40	2.00	1.80	1.70	1.60	1.50
2.0% or more but less than 3.0%	3.9 0	3.70	3.50	3.30	3.10	2.70	2.30	1.90	1.70	1.60	1.50	1.40
3.0% or more but less than 4.0%	3.8 0	3.60	3.40	3.20	3.00	2.60	2.20	1.80	1.60	1.50	1.40	1.30
4.0% or more but	3.7 0	3.50	3.30	3.10	2.90	2.50	2.10	1.70	1.50	1.40	1.30	1.20

less than 5.0%												
5.0% or more but less than 5.5%	3.6 0	3.40	3.20	3.00	2.80	2.40	2.00	1.60	1.40	1.30	1.20	1.10
5.5% or more but less than 5.75%	3. 50	3.30	3.10	2.90	2.70	2.30	1.90	1.50	1.30	1.20	1.10	1.00
5.75% or more but less than 6.0%	3. 40	3.20	3.00	2.80	2.60	2.20	1.80	1.40	1.20	1.10	1.00	0.90
6.0% or more but less than 6.25%	3. 30	3.10	2.90	2.70	2.50	2.10	1.70	1.30	1.10	1.00	0.90	0.80
6.25% or more but less than 6.5%	3. 20	3.00	2.80	2.60	2.40	2.00	1.60	1.20	1.00	0.90	0.80	0.70
6.5% or more but less than 6.75%	3. 10	2.90	2.70	2.50	2.30	1.90	1.50	1.10	0.90	0.80	0.70	0.60
6.75% or more but less than 7.0%	3. 00	2.80	2.60	2.40	2.20	1.80	1.40	1.00	0.80	0.70	0.60	0.50
7.0% or more but less than 7.25%	2. 90	2.70	2.50	2.30	2.10	1.70	1.30	0.90	0.70	0.60	0.50	0.40
7.25% or more but	2. 80	2.60	2.40	2.20	2.00	1.60	1.20	0.80	0.60	0.50	0.40	0.30

less than 7.5%												
7.5% or more but less than 7.75%	2. 70	2.50	2.30	2.10	1.90	1.50	1.10	0.70	0.50	0.40	0.30	0.20
7.75% or more but less than 8.0%	2. 60	2.40	2.20	2.00	1.80	1.40	1.00	0.60	0.40	0.30	0.20	0.10
8.0% or more but less than 8.25%	2. 50	2.30	2.10	1.90	1.70	1.30	0.90	0.50	0.30	0.20	0.10	0.00
8.25% or more but less than 8.5%	2. 40	2.20	2.00	1.80	1.60	1.20	0.80	0.40	0.20	0.10	0.00	0.00
8.5% or more but less than 8.75%	2.30	2.10	1.90	1.70	1.50	1.10	0.70	0.30	0. 10	0.00	0.00	0.00
8.75% or more but less than 9.0%	2. 20	2.00	1.80	1.60	1.40	1.00	0.60	0.20	0.00	0.00	0.00	0.00
9.0% or more but less than 9.25%	2. 10	1.90	1.70	1.50	1.30	0.90	0.50	0.10	0.00	0.00	0.00	0.00
9.25% or more but less than 9.5%	2. 00	1.80	1.60	1.40	1.20	0.80	0.40	0.00	0.00	0.00	0.00	0.00
9.5% or more but	1. 90	1.70	1.50	1.30	1.10	0.70	0.30	0.00	0.00	0.00	0.00	0.00

less than 9.75%												
9.75% or more but less than 10.0%	1.80	1.60	1.40	1.20	1.00	0.60	0.20	0.00	0. 00	0.00	0.00	0.00
10.0% or more but less than 10.25%	1.70	1.50	1.30	1.10	0.90	0.50	0.10	0.00	0.00	0.00	0.00	0.00
10.25% or more but less than 10.5%	1.60	1.40	1.20	1.00	0.80	0.40	0.00	0.00	0.00	0.00	0.00	0.00
10.5% or more	1.50	1.30	1.10	0.90	0.70	0.30	0. 00	0. 00	0.00	0.00	0.00	0.00

(aa) (i) If a qualified employer, with a minimum of seventeen quarters of liability, has an account percentage which is negative on any computation date and the total wages paid by such employer in the preceding payroll year, is greater than or equal to eighty percent of the previous three payroll year's average total wages paid by the employer, then such employer's account percentage for the subsequent year shall be improved by four percentage points for purposes of determining the employer's rate of contribution. However, in no event shall the resulting rate of contribution after such adjustment be less than 6.1 percent. Such adjustment to the employer's account percentage shall be applicable only to the employer's current rate of contribution and the application of such adjustment shall be redetermined annually.

(ii) The terms “qualified employer”, “employer's account percentage”, “computation date”, “wages”, “payroll year” and “rate of contribution” shall have the meaning prescribed pursuant to article eighteen of this chapter.

(b) Penalty for failure to file required returns. (1) In the case of a failure by an employer to file a quarterly combined withholding wage reporting and unemployment insurance return required by paragraph four of subsection (a) of section six hundred seventy-four of the tax law , there shall be imposed a penalty of five percent of the amount of contributions required to be shown on such return (including the amount of any assessment or modification made pursuant to this section) if the failure is for not more than one month with an additional five percent penalty for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate.

(2) The penalty provided for failure to file a return under this paragraph shall not be less than one hundred dollars for each occurrence.

(3) For purposes of this paragraph, the amount of contributions required to be shown on such return shall be reduced by the amount of any part of the contributions due which is paid on or before the date the return is required to be filed and by the amount of any credit to the contributions due which may be claimed upon such return.

(4) For other penalties relating to failure to file the quarterly combined withholding, wage reporting and unemployment insurance return, see paragraph one of subsection (v) of section six hundred eighty-five of the tax law .

(5) The penalties imposed and collected pursuant to this paragraph shall be credited to the unemployment insurance control fund established pursuant to section five hundred fifty-two-b of this article.

(c) The rate for any employer who has not qualified under the provisions of paragraph (c) of subdivision one of this section solely because he has not been liable for contributions during at least the five completed calendar quarters ending on the computation date, or because he has not paid any remuneration in the payroll year preceding the computation date, shall be equal to the rate which applies pursuant to paragraph (a) of this subdivision to an employer who has a positive account percentage of less than one percentum, except that the rate for such employer shall in no event exceed three and four-tenths per centum.

(d) The rates established in accordance with the provisions of this subdivision shall apply with respect to wages paid in the four consecutive calendar quarters immediately following the computation date.

(e), (f) Repealed by L.1998, c. 589. § 22, eff. Jan. 1, 1999 .

3. Joint accounts. Any two or more qualified employers engaged in the same or a related trade, occupation, profession or enterprise, or having a common financial interest may apply to the commissioner to establish a joint account or to merge their several individual accounts in a joint account. The commissioner shall prescribe rules and regulations for the establishment, maintenance and dissolution of joint accounts. A joint account shall be maintained as if it constituted a single employer's account. Rules established by the commissioner pursuant to the provisions of this subdivision shall be promulgated only after notice and public hearing.

4. Transfers of accounts. (a) Where an employer subsequent to July first, nineteen hundred fifty-one, transfers his or its organization, trade or business in whole or in part, the transferee shall take over and continue the employer's account, including its balance and all other aspects of its experience under this article, in proportion to the payroll or employees assignable to the transferred organization, trade or business determined for the purpose of this article by the commissioner. The account taken over by the transferee shall remain chargeable with respect to benefits based on employment in the transferred organization, trade or business, and all such employment shall be deemed employment performed for the transferee.

(b) The rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in the preceding calendar year, and such

rates shall apply from the date of the transfer to the end of the calendar year in which the transfer occurred. The rate of contribution applicable to the accounts of the transferee and the transferring employer with respect to the calendar year following the calendar year in which the transfer occurred shall be respectively determined or redetermined as of the computation date in the same calendar year. The commissioner shall allocate to the transferee's account for each period in question the proportion of the transferring employer's payroll, which the commissioner determines to be properly assignable to the organization, trade or business transferred.

(c) No transfer shall be deemed to have occurred if the commissioner on his own motion or on application of any interested party finds that all of the following conditions exist:

(1) the transferee has not assumed any of the transferring employer's obligations, and

(2) the transferee has not acquired any of the transferring employer's good will, and

(3) the transferee has not continued or resumed the business of the transferring employer either in the same establishment or elsewhere, and

(4) the transferee has not employed substantially the same employees as those the transferring employer had employed in connection with the organization, trade, business, or part thereof transferred.

(d) No transfer shall be deemed to have occurred unless either the transferring employer or the transferee has given notice of the transfer to the commissioner prior to the termination of the calendar year following the calendar year in which the transfer occurred.

5. Interstate transfer of experience. An employer who transfers all or a segregable part of his operations from another state to this state shall be deemed to be a qualified employer within the meaning of this section as of the computation date next following the transfer, provided:

(a) that he has paid wages subject to the federal unemployment tax act 1 for eighteen consecutive completed calendar quarters immediately preceding the computation date;

(b) that he notifies the commissioner of the transfer of operations prior to the computation date;

(c) that he certifies to the commissioner all information with respect to the transferred operations which the commissioner determines to be necessary; and

(d) that he certifies to the commissioner at such times as the commissioner prescribes all information which the commissioner determines to be necessary with respect to benefits paid subsequent to the transfer and prior to each computation date on the basis of wages paid in such other state.

Wages, remuneration, contributions and benefits resulting in experience rating charges in connection with the transferred operations shall be deemed to have been paid in this state for the purposes of this section.

In computing such employer's balance applicable to the transferred operations, the commissioner shall consider only the fourteen most recently elapsed calendar quarters prior to the computation

date. Any balance set up under this subdivision shall be debited to the general account; and benefits subsequently paid based on wages paid in such other state shall be charged to the employer's account and credited to the general account.

6. Corrections and modifications. Corrections or modifications of an employer's payroll, experience rating charges, or any other pertinent factor shall not be taken into account for the purpose of a determination or redetermination of the employer's contribution rate, unless such corrections or modifications were established on or before the computation date; except that they shall be taken into account whenever established if the employer filed false returns with intent to defraud or, with respect to payroll, failed to file returns prior to the computation date such that an amount of contributions due from such employer and/or an amount of wages paid by such employer was required to be determined by the commissioner pursuant to section five hundred seventy-one of this article and such corrections or modifications result in a rate higher than the contribution rate determined by the commissioner or, with respect to experience rating charges, if they result from a referee, appeal board, or court decision.

7. Certain transfers. Notwithstanding any other provision of law, the following shall apply regarding assignment of rates and transfers of experience:

(a)(1) If an employer transfers its organization, trade or business, or a portion thereof, to another employer and, at the time of the transfer, there is at least ten percent common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred organization, trade or business shall be transferred to the employer to whom such organization, trade or business is so transferred. In addition to the provisions of this subdivision, the transfer provisions of paragraphs (a), (b) and (d) of subdivision four of this section shall apply to such transfers. For purposes of this subdivision “organization, trade or business” shall include the employer's workforce.

(2) If, following a transfer of experience under subparagraph one of this paragraph, the commissioner determines that a substantial purpose of the transfer of the organization, trade or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate shall be assigned to such account.

(b) Whenever a person is not an employer liable for contributions under this article at the time it acquires the organization, trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the commissioner finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned a rate in accordance with paragraph (c) of subdivision two of this section. In determining whether the organization, trade or business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the commissioner shall evaluate factors that include, but are not limited to the following:

(1) the cost of acquiring the organization, trade or business;

(2) whether the person continued the business enterprise of the acquired business;

(3) how long such business enterprise was continued; or

(4) whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(c)(1) If a person knowingly violates or attempts to violate paragraphs (a) or (b) of this subdivision, then such person shall be liable for the greater penalty of ten percent of such person's total taxable wages in the last completed payroll year or ten thousand dollars. Any such penalty shall be deposited in the control fund established under section five hundred fifty-two-b of this article.

(2) If a person knowingly advises another person to violate or attempt to violate paragraph (a) or (b) of this subdivision, then such advisor shall be subject to a civil penalty of ten thousand dollars. Any such penalty shall be deposited in the control fund established under section five hundred fifty-two-b of this article.

(3) For purposes of this subdivision, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(4) For purposes of this subdivision, the term "violates or attempts to violate" includes, but is not limited to, intent to evade, misrepresentation or wilful nondisclosure.

(5) In addition to the penalties imposed by subparagraphs one and two of this paragraph, any violation of this subdivision shall be a class E felony and is punishable by a term of imprisonment as prescribed in section 70.00 of the penal law .

(d) The commissioner shall establish procedures to identify the transfer or acquisition of a business for purposes of this subdivision.

(e) For purposes of this subdivision the term "person" has the meaning given such term by section 7701 (a)(1) of the Internal Revenue Code of 1986 , 2 and shall also include an employer as defined in this article.

New York Consolidated Laws, Labor Law - LAB § 581-a. Rates of contributions to fund in emergency

1. Notwithstanding the provisions of section five hundred eighty-one of this chapter to the contrary, all employers whose employees received payments due to a layoff caused by flood conditions shall not have included in their experience rating charges the amounts so paid to the employees from the fund for the period of from June twenty-third, nineteen hundred seventy-two through June twenty-third, nineteen hundred seventy-three. Application for permission to exclude such payments shall be made to the commissioner on or before the first day of October, nineteen hundred seventy-three, and the provisions of subdivision six of section five hundred eighty-one of this chapter shall not apply hereto.

2. Notwithstanding the provisions of section five hundred eighty-one of this chapter to the contrary, all employers whose employees received payments due to the waiver of the waiting

period pursuant to the provisions of subdivision nine of section five hundred ninety of this chapter shall not have included in their experience rating charges the amounts so paid to the employees from the fund for such waived waiting period during the snow and energy emergency of January and February, nineteen hundred seventy-seven. Application for permission 1 to exclude such payments shall be made to the commissioner 1 on or before the first day of October, nineteen hundred seventy-seven, and the provisions of subdivision six of section five hundred eighty-one of this chapter shall not apply hereto.

3. The provisions of this section shall apply to an employer liable for payments in lieu of contributions, but if the secretary of labor of the United States finds that their application to such employer does not meet the requirements of the Federal Unemployment Tax Act, 2 such provisions shall be inoperative with respect to such employer, unless and until such finding has been set aside pursuant to a final decision issued in accordance with such judicial review proceedings as may be instituted and completed under the provisions of section thirty-three hundred ten of the Federal Unemployment Tax Act. 3

New York Consolidated Laws, Labor Law - LAB § 581-b. Contributions to the re-employment service fund

Each eligible employer that is liable for contributions under this article shall each calendar quarter make an additional contribution to the re-employment service fund in an amount equal to seventy-five one-thousandths of a percent (0.075%) of its quarterly taxable payroll. In any particular calendar year when contributions paid into the re-employment service fund by all eligible employers equals thirty-five million dollars, any further contributions for the remainder of such year shall be credited to the general account pursuant to section five hundred seventy-seven of this title.

New York Consolidated Laws, Labor Law - LAB § 581-c. Amnesty program

1. Notwithstanding the provisions of any other law to the contrary, there is hereby established a three month amnesty program as described in this section, to be administered by the commissioner, to be effective for the period commencing October first, nineteen hundred ninety-eight and ending December thirty-first, nineteen hundred ninety-eight, for all eligible employers as described in this section, owing any contribution imposed by section five hundred seventy-seven or five hundred eighty-one of this title.

2. Such amnesty shall apply to contribution liabilities for the contributions set forth in subdivision one of this section ("designated contributions") for contribution periods ending or transactions or uses occurring on or before December thirty-first, nineteen hundred ninety-five.

3. For purposes of this section an "eligible employer" shall mean any individual, partnership, corporation, limited liability company, joint stock company or any other company, society, association or business or any other person as described in this chapter, who or which has

contribution liability with regard to one or more of the designated contributions for the period of time described in subdivision two of this section.

4. The amnesty program established in this section shall provide that upon application by an eligible employer, and upon payment, which shall either accompany such application or be made within the time stated on a bill issued by the commissioner to such employer, of the amount of a contribution liability under one or more of the designated contributions with respect to which amnesty is sought, plus related interest, and the commissioner shall waive any applicable penalties. In addition, no civil, administrative or criminal action or proceeding shall be brought against such an eligible employer relating to the contribution liability covered by such waiver. Failure to pay, all such contributions, plus related interest, shall invalidate an amnesty granted pursuant to this section.

5. An otherwise eligible employer, who or which certifies on an application for amnesty, that making payment of the full amount of the liability for which amnesty is sought at the time such application is made would create a severe financial hardship for such employer, shall retain eligibility for amnesty if, (a) fifty percent or more of the amount due as computed by such employer is paid with such application or within the time stated on a bill issued by the commissioner, and (b) the balance due, including interest, is paid, in no more than two installments on or before May fifteenth, nineteen hundred ninety-eight or the date prescribed therefor on a bill issued by the commissioner.

6. Amnesty shall not be granted to any contributor who is a party to any criminal investigation being conducted by an agency of the state or any political subdivision thereof or is a party to any civil or criminal litigation which is pending on the date of the employer's application in any court of this state or the United States relating to any action or failure to act which is the basis for the penalty with respect to which amnesty is sought. A civil litigation shall be deemed not to be pending on the date of the application if the employer withdraws from such litigation prior to the granting of amnesty.

7. Amnesty contribution return forms shall be in a form prescribed by the commissioner and shall provide for specifications by the applicant of the contribution liability with the respect to which amnesty is sought. The applicant shall also provide such additional information as required by the commissioner. Amnesty shall be granted only with respect to contribution liabilities specified by the employer on such forms. Any return or report filed under the amnesty program established in this section is subject to verification and assessment as provided by law. If the applicant files a false or fraudulent contribution return or report, or attempts in any manner to defeat or evade a contribution under the amnesty program, amnesty may be denied or rescinded.

8. No refund shall be granted or credit allowed with respect to any penalty paid prior to the time the employer applies for amnesty pursuant to subdivision four of this section.

9. Unless the commissioner on his or her own motion redetermines the amount of contribution due, including applicable interest, no refund shall be granted or credit allowed with respect to any contributions, including applicable interest paid under this program.

10. The commissioner may promulgate regulations, issue forms and instructions and take any and all other actions necessary to implement this section. The commissioner shall publicize the amnesty program provided for in this section so as to maximize public awareness of and participation in such program.

11. For purposes of this section, the amnesty contribution return forms and other documents filed by employers shall be deemed to be reports and returns subject to the disclosure prohibitions of section five hundred thirty-seven of this article.

12. Where an employer against whom or which a penalty is assessed, was eligible for a waiver thereof under the amnesty program provided for pursuant to this section but did not make timely application for such waiver, such penalty shall be augmented by an amount equal to five percent of the amount of such penalty.

13. For purposes of accounting for moneys and revenues received under the amnesty program established pursuant to this section, the commissioner shall report the gross revenue collected under each contribution pursuant to the amnesty program. Such report shall be on a monthly basis, commencing the first day of the month after the amnesty program is established and ending on the last day of the month immediately prior to the issuance of the final report required pursuant to subdivision fourteen of this section. Such reports shall include information concerning the gross revenue collected under each contribution and the year or other applicable period for or during which the liability was incurred.

14. On or before January thirty-first, two thousand the commissioner shall submit a report to the chairman of the assembly ways and means committee, the ranking minority member of the assembly ways and means committee, the chairman of the senate finance committee, the ranking minority member of the senate finance committee and the director of the division of the budget regarding the amnesty program established pursuant to this section. The report shall contain the following information:

(a) the number of cases in which requests for penalty and interest penalty waivers were made;

(b) the number of cases in which requests for penalty plus interest waivers were approved;

(c) the amount of contribution and interest due in all approved and unapproved cases;

(d) the amount of penalty and interest penalty waived in all approved cases;

(e) the gross revenue collected and the year or other applicable period for or during which the liability incurred;

(f) the amount of money spent on advertising, notification and out-reach activities, by each activity;

(g) the amount paid by the department for services and expenses related to the establishment of the amnesty program;

(h) an estimate of the amount of revenue foregone as a result of diverting staff of the department from regular work responsibilities to work on the amnesty program;

(i) an estimate of the amount of revenue received during the period of amnesty program provided for in this section which would have otherwise been received at a later date; and

(j) an estimate of the set revenue generated from the amnesty program.

New York Consolidated Laws, Labor Law - LAB § 581-d. Contributions to the interest assessment surcharge fund

1. Each employer that is liable for contributions under this article shall pay an assessment to the commissioner at a rate established annually by the commissioner sufficient to pay interest due on advances from the federal unemployment account under Title XII of the Social Security Act (42 U.S. Code Sections 1321 to 1324) during any period that such interest will accrue. The rate shall be applied to wages as defined in section five hundred eighteen of this article effective as of the beginning of the first calendar quarter of the year such interest becomes due. The commissioner shall establish the necessary procedures for payment of such assessments. The amounts received by the commissioner based on such assessments shall be paid over and credited to the interest assessment surcharge fund. At such time that the commissioner determines that this assessment is no longer necessary, any amount remaining from such assessments, after all such federal interest charges have been paid, shall be deposited into the unemployment insurance trust fund and credited to employer accounts. Such credits shall be determined based on the percentage of each employer's wages to the total statewide wages of the payroll year and credited to each employer's account as of the computation date of the year prior to which such assessment shall no longer be levied. The provisions of law applicable to the collection of contributions shall apply to the collection of such assessments.

2. The commissioner shall notify the chairpersons of the senate finance committee and the assembly ways and means committee of the amount being assessed on employers and the procedures for payment of such assessments no later than thirty days prior to the application of the interest assessment surcharge. On a quarterly basis the commissioner shall provide the chairpersons of the senate finance committee and the assembly ways and means committee the assessment rate that shall be applied to wages as well as the amount of any previous advances and the estimated amount of future monthly advances from the federal unemployment account under Title XII of the Social Security Act (42 U.S. Code Sections 1321 to 1324) for the calendar year, the amount of interest due and the amount of interest paid for the calendar year.

Title 7. Benefits and Claims

New York Consolidated Laws, Labor Law - LAB § 590. Rights to benefits

1. Entitlement to benefits. A claimant shall be entitled to accumulate effective days for the purpose of benefit rights only if he has complied with the provisions of this article regarding the filing of his claim, including the filing of a valid original claim, registered as totally unemployed,

reported his subsequent employment and unemployment, and reported for work or otherwise given notice of the continuance of his unemployment.

2. Repealed by L.1998, c. 589, § 24, eff. April 1, 1999 .

3. Compensable periods. Benefits shall be paid for each accumulation of effective days within a week.

4. Duration. Benefits shall not be paid for more than one hundred and four effective days in any benefit year, except as provided in section six hundred one and subdivision two of section five hundred ninety-nine of this chapter.

5. Benefit rate. (a) A claimant's weekly benefit amount shall be one twenty-sixth of the remuneration paid during the highest calendar quarter of the base period by employers, liable for contributions or payments in lieu of contributions under this article, provided the claimant has remuneration paid in all four calendar quarters during his or her base period or alternate base period. However, for any claimant who has remuneration paid in all four calendar quarters during his or her base period or alternate base period and whose high calendar quarter remuneration during the base period is three thousand five hundred seventy-five dollars or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period by employers liable for contributions or payments in lieu of contributions under this article. A claimant's weekly benefit shall be one twenty-sixth of the average remuneration paid in the two highest quarters paid during the base period or alternate base period by employers liable for contributions or payments in lieu of contributions under this article when the claimant has remuneration paid in two or three calendar quarters provided however, that a claimant whose high calendar quarter is four thousand dollars or less but greater than three thousand five hundred seventy-five dollars shall have a weekly benefit amount of one twenty-sixth of such high calendar quarter. However, for any claimant who has remuneration paid in two or three calendar quarters during his or her base period or alternate base period and whose high calendar quarter remuneration during the base period is three thousand five hundred seventy-five dollars or less, the benefit amount shall be one twenty-fifth of the remuneration paid during the highest calendar quarter of the base period by employers liable for contributions or payments in lieu of contributions under this article. Any claimant whose high calendar quarter remuneration during the base period is more than three thousand five hundred seventy-five dollars shall not have a weekly benefit amount less than one hundred forty-three dollars. The weekly benefit amount, so computed, that is not a multiple of one dollar shall be lowered to the next multiple of one dollar. On the first Monday of September, nineteen hundred ninety-eight the weekly benefit amount shall not exceed three hundred sixty-five dollars nor be less than forty dollars, until the first Monday of September, two thousand, at which time the maximum benefit payable pursuant to this subdivision shall equal one-half of the state average weekly wage for covered employment as calculated by the department no sooner than July first, two thousand and no later than August first, two thousand, rounded down to the lowest dollar. On and after the first Monday of October, two thousand fourteen, the weekly benefit shall not be less than one hundred dollars, nor shall it exceed four hundred twenty dollars until the first Monday of October, two thousand fifteen when the maximum benefit amount shall be four hundred twenty-

five dollars, until the first Monday of October, two thousand sixteen when the maximum benefit amount shall be four hundred thirty dollars, until the first Monday of October, two thousand seventeen when the maximum benefit amount shall be four hundred thirty-five dollars, until the first Monday of October, two thousand eighteen when the maximum benefit amount shall be four hundred fifty dollars, until the first Monday of October, two thousand nineteen when the maximum benefit amount shall be thirty-six percent of the average weekly wage until the first Monday of October, two thousand twenty when the maximum benefit amount shall be thirty-eight percent of the average weekly wage, until the first Monday of October 1 two thousand twenty-one when the maximum benefit amount shall be forty percent of the average weekly wage, until the first Monday of October, two thousand twenty-two when the maximum benefit amount shall be forty-two percent of the average weekly wage, until the first Monday of October, two thousand twenty-three when the maximum benefit amount shall be forty-four percent of the average weekly wage, until the first Monday of October, two thousand twenty-four when the maximum benefit amount shall be forty-six percent of the average weekly wage, until the first Monday of October, two thousand twenty-five when the maximum benefit amount shall be forty-eight percent of the average weekly wage, until the first Monday of October, two thousand twenty-six and each year thereafter on the first Monday of October when the maximum benefit amount shall be fifty percent of the average weekly wage provided, however, that in no event shall the maximum benefit amount be reduced from the previous year.

(b) [Eff. until Jan. 1, 2019. See, also, par. (b) below.] Notwithstanding the foregoing, the maximum benefit amount shall not be increased in accordance with the schedule set forth in paragraph (a) of this subdivision in any year in which the balance of the fund on the thirty-first day of May of the same year is less than an amount of the funds projected to be needed to pay for the increase in benefits as determined by the commissioner. If fund revenues are determined by the commissioner to be sufficient to pay for the increase in benefits in years subsequent to such suspension of an increase in the maximum benefit amount, then the maximum benefit amount shall increase to the amount for the year previously scheduled to be established pursuant to paragraph (a) of this subdivision had the increase not been suspended and increased annually thereafter in accordance with the schedule set forth in paragraph (a) of this subdivision. In no case shall such suspension result in a reduction of the maximum benefit amount to less than the amount provided in the most recent year.

(b) [Eff. Jan. 1, 2019. See, also, par. (b) above.] Notwithstanding the foregoing, the maximum benefit amount shall not be increased in accordance with the schedule set forth in paragraph (a) of this subdivision in any year in which the balance of the fund is determined by the commissioner to not have reached or exceeded thirty percent of the average high cost multiple, as defined in 20 CFR Part 606 as the standard for receipt of interest-free federal loans, on at least one day between April first and June thirtieth of the same calendar year as the increase shall take effect. If, following such suspension of an increase in the maximum benefit amount, the commissioner shall determine, on at least one day between April first and June thirtieth that the balance of the fund is greater than such thirty percent average high cost multiple, then the maximum benefit amount shall increase to the percentage for the year previously scheduled to be established pursuant to paragraph (a) of this subdivision had the increase not been suspended and

increased annually thereafter in accordance with the schedule set forth in paragraph (a) of this subdivision. In no case shall such suspension result in a reduction of the maximum benefit amount to less than the amount provided in the most recent year.

6. Notification requirement. No effective day shall be counted for any purposes except effective days as to which notification has been given in a manner prescribed by the commissioner.

7. Waiting period. A claimant shall not be entitled to accumulate effective days for the purpose of benefit payments until he has accumulated a waiting period of four effective days either wholly within the week in which he established his valid original claim or partly within such week and partly within his benefit year initiated by such claim.

8. Benefit payments to professional athletes. If substantially all of a claimant's employment during his base period is as a participant in sports or athletic events or in training or preparing to so participate, no benefits shall be payable for any week commencing during the period between two successive sports seasons or similar periods, provided there is a reasonable assurance that the claimant will perform services in such capacity for both of such seasons or similar periods.

For the purposes of this subdivision, “reasonable assurance” shall mean a written contract that the claimant will perform services in the same capacity during the ensuing sports season or similar period or a claimant's offering of services in the successive season or similar period and an interest by an employer in employing him.

9. Benefits based on employment performed by illegal aliens. (a) Remuneration received by a claimant who was an alien at the time such remuneration was paid shall not be taken into consideration for the purpose of establishing rights to benefits under this article unless the claimant was then lawfully admitted for permanent residence in the United States, was then lawfully present for purposes of performing such services or was then permanently residing in the United States under color of law, including a claimant lawfully present pursuant to section 207 or 208 of the federal immigration and nationality act 2.

(b) A determination that benefits are not payable to a claimant because of the claimant's alien status shall be made only upon a preponderance of the evidence, and shall be effective only if it is in conformity with section 3304(a)(14) of the federal unemployment tax act. 3

(c) Any data or information required of a claimant to determine whether benefits are not payable to him because of his alien status shall be uniformly required from all claimants.

(d) An alien who is not eligible under 8 USC 1621(a) shall be eligible for benefits, provided such alien is eligible for benefits under the provisions of this article and section 3304 (a) (14) of the federal unemployment tax act.

10. Benefits based on professional employment with educational institutions, including the state university of New York, the city university of New York and any public community colleges. If a claimant was employed in an instructional, research, or principal administrative capacity by an institution of education, including the state university of New York, the city

university of New York and any public community colleges, or performed services in such an institution in such capacity while employed by an educational service agency, the following shall apply to any week commencing during the period between two successive academic years or terms, or during a similar period between two regular but not successive terms when the contract provides therefor instead, provided the claimant has a contract to perform, or there is a reasonable assurance that the claimant will perform, services in such capacity for any such institution or institutions for both of such academic years or such terms, and to any week commencing during an established and customary vacation period or holiday recess, not between such academic terms or years, provided the claimant performed services for such institution immediately before such vacation period or holiday recess and there is a reasonable assurance that the claimant will perform any services described in this subdivision or subdivision eleven of this section in the period immediately following such vacation period or holiday recess:

(a) In the case of a claimant who has no current benefit year, whether the claimant meets the conditions of section five hundred twenty-seven in any such week shall be determined by disregarding the remuneration paid for such employment.

(b) In the case of a claimant who does have a current benefit year, no benefits shall be payable with respect to any such week provided the claimant would not have met the conditions of section five hundred twenty-seven in the week in which the claimant filed a valid original claim if the remuneration paid for such employment is disregarded.

(c) The benefit rate of a claimant with respect to any such week shall be determined or redetermined by disregarding the remuneration paid for such employment.

“Educational service agency” means a governmental agency or governmental entity or Indian tribal entity which is established and operated exclusively for the purpose of providing to one or more educational institutions services mentioned under this subdivision or subdivision eleven of this section.

For purposes of this subdivision or subdivision eleven of this section, “educational institution” shall include any not-for-profit community art school which is chartered as a school by the board of regents of the university of state of New York.

11. Benefits based on non-professional employment with certain educational institutions. If a claimant was employed in other than an instructional, research or principal administrative capacity by an educational institution, or performed services in such an institution in such capacity while employed by an educational service agency, the following shall apply to any week commencing during the period between two successive academic years or terms provided there is a reasonable assurance that the claimant will perform services in such capacity for any such institution or institutions for both of such academic years or terms, and to any week commencing during an established and customary vacation period or holiday recess, not between such academic terms or years, provided the claimant performed services for such institution immediately before such vacation period or holiday recess and there is a reasonable assurance that the claimant will perform any services described in this subdivision or subdivision ten of this section in the period immediately following such vacation period or holiday recess:

(a) In the case of a claimant who has no current benefit year, whether the claimant meets the conditions of section five hundred twenty-seven in any such week shall be determined by disregarding the remuneration paid for such employment.

(b) In the case of a claimant who does have a current benefit year, no benefits shall be payable with respect to any such week provided the claimant would not have met the conditions of section five hundred twenty-seven in the week in which the claimant filed a valid original claim if the remuneration paid for such employment is disregarded.

(c) The benefit rate of a claimant with respect to any such week shall be determined or redetermined by disregarding the remuneration paid for such employment.

(d) Notwithstanding the foregoing provisions of this subdivision, a claimant who was not offered an opportunity to perform services for the educational institution for the second of such academic years or terms shall be entitled to be paid benefits retroactively for each week for which the claimant filed a timely claim for benefits and for which benefits were denied solely by reason of this subdivision.

"Educational service agency" means a governmental agency or governmental entity or Indian tribal entity which is established and operated exclusively for the purpose of providing to one or more educational institutions services mentioned under this subdivision or subdivision ten of this section.

12.   An individual claimant who has received a determination of entitlement pursuant to section five hundred twenty-seven of this article may request the commissioner to reconsider the benefit rate to which such claimant is entitled under the following circumstances:

(a)(1) the claimant filed a valid original claim pursuant to subdivision one or two of section five hundred twenty-seven of this article or, in the event the claimant exercised his or her right to apply to the commissioner to determine his or her benefits pursuant to paragraph (b) of subdivision two of such section, the claimant selected the base period to be utilized; and

(2) after the establishment of the base period to utilize pursuant to subparagraph one of this paragraph, and within ten days of the date of the mailing of the determination of the benefit rate to which the claimant is entitled for such base period by the commissioner, the claimant produces proof satisfactory to the commissioner and consistent with wage data contained in the statewide wage reporting system maintained by the department of taxation and finance or, in the commissioner's sole discretion, sufficient to warrant its use in the event that it is inconsistent with such wage data, that he or she has at least twenty weeks of employment, as defined in section five hundred twenty-four of this chapter, in such established base period.   Such proof shall include paycheck stubs, payroll envelopes, or cancelled checks.

(b) in the event that a claimant submits a request for reconsideration of the benefit rate to the commissioner pursuant to paragraph (a) of this subdivision, and one-half of the average weekly wage of all wages paid for all weeks of employment for which proof satisfactory to the commissioner was submitted pursuant to subparagraph two of paragraph (a) of this subdivision during the established base period referenced in such paragraph is at least five dollars more than

the weekly benefit amount calculated pursuant to subdivision five of this section, the commissioner shall determine the claimant's benefit rate to be such amount, but in no event shall such amount be more than the maximum benefit rate in effect pursuant to subdivision five of this section.

New York Consolidated Laws, Labor Law - LAB § 591. Eligibility for benefits

1. [Eff. until Dec. 7, 2019, pursuant to L.2003, c. 413, § 10 . See, also, subd. 1, below.] Unemployment. Benefits, except as provided in section five hundred ninety-one-a of this title, shall be paid only to a claimant who is totally unemployed and who is unable to engage in his usual employment or in any other for which he is reasonably fitted by training and experience. A claimant who is receiving benefits under this article shall not be denied such benefits pursuant to this subdivision or to subdivision two of this section because of such claimant's service on a grand or petit jury of any state or of the United States.

1. [Eff. Dec. 7, 2019, pursuant to L.2003, c. 413, § 10 . See, also, subd. 1, above.] Unemployment. Benefits shall be paid only to a claimant who is totally unemployed and who is unable to engage in his usual employment or in any other for which he is reasonably fitted by training and experience. A claimant who is receiving benefits under this article shall not be denied such benefits pursuant to this subdivision or to subdivision two of this section because of such claimant's service on a grand or petit jury of any state or of the United States.

2. [Eff. until Dec. 7, 2019, pursuant to L.2003, c. 413, § 10 . See, also, subd. 2, below.] Availability and capability. Except as provided in section five hundred ninety-one-a of this title, no benefits shall be payable to any claimant who is not capable of work or who is not ready, willing and able to work in his usual employment or in any other for which he is reasonably fitted by training and experience.

2. [Eff. Dec. 7, 2019, pursuant to L.2003, c. 413, § 10 . See, also, subd. 2, above.] Availability, capability, and work search. No benefits shall be payable to any claimant who is not capable of work or who is not ready, willing and able to work in his or her usual employment or in any other for which he or she is reasonably fitted by training and experience and who is not actively seeking work. In order to be actively seeking work a claimant must be engaged in systematic and sustained efforts to find work. The commissioner shall promulgate regulations defining systematic and sustained efforts to find work and setting standards for the proof of work search efforts.

3. Vacation period or holiday.

(a) No benefits shall be payable to a claimant for any day during a paid vacation period, or for a paid holiday, nor shall any such day be considered a day of total unemployment under section five hundred twenty-two of this article.

(b) The term “vacation period”, as used in this subdivision, means the time designated for vacation purposes in accordance with the collective bargaining agreement or the employment

contract or by the employer and the claimant, his union, or his representative. If either the collective bargaining agreement or the employment contract is silent as to such time, or if there be no collective bargaining agreement or employment contract, then the time so designated in writing and announced to the employees in advance by the employer is to be considered such vacation period.

(c) A paid vacation period or a paid holiday is a vacation period or a holiday for which a claimant is given a payment or allowance not later than thirty days thereafter, directly by his employer or through a fund, trustee, custodian or like medium provided the amount thereof has been contributed solely by the employer on behalf of the claimant and the amount so contributed by the employer is paid over in full to the claimant without any deductions other than those required by law, even if such payment or allowance be deemed to be rumuneration [1] for prior services rendered as an accrued contractual right, and irrespective of whether the employment has or has not been terminated.

(d) Any agreement expressed or implied by a claimant or by his union or other representative to a plant or department shut down for vacation purposes is not of itself to be considered either a withdrawal by such employee from the labor market during the time of such vacation shut down or to render him unavailable for employment during the time of such vacation shut down.

4. (a) An unemployed individual shall be eligible to receive benefits with respect to any week only if such individual participates in reemployment services, such as job search assistance services, available under any state or federal law, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the commissioner, unless the commissioner determines that:

(i) the individual has completed such services; or

(ii) there is justifiable cause for the claimant's failure to participate in such services.

(b) Such profiling system shall be established pursuant to a plan of the department which shall include, but not be limited to:

(i) specification of the profiling methodology, including factors used to determine a claimant's required participation in reemployment services and the statistical relationship of such factors to the exhaustion of benefits by certain claimants;

(ii) standards to be used to insure that all claimants are uniformly evaluated against the profiling criteria;

(iii) a description of criteria to be used to make assignments to basic reemployment services offered;

(iv) procedures for notification of the right of appeal and for appeal by a claimant of the profiling assessment and referral of the department;

(v) an evaluation of the extent to which reemployment services are available throughout the state and accessible to claimants;

(vi) a demonstration of efforts by the department to coordinate with the local providers offering reemployment services, to avoid duplication of services among providers offering similar reemployment services to the same participant group;

(vii) policies and procedures for referrals to reemployment services, including referrals to providers other than the department; and

(viii) guidelines governing the extent to which education and skills or occupational training shall be offered.

(c) The department shall, at a time and in a manner consistent with federal requirements, submit a report to the temporary president of the senate and the speaker of the assembly on the profiling system authorized herein except that such report:

(i) shall be submitted to the temporary president of the senate and the speaker of the assembly no later than September first, nineteen hundred ninety-five and annually thereafter, and

(ii) shall include data on the number of individuals profiled and the number of profiled individuals exhausting benefits as well as a description of the service or services provided to profiled individuals and the number of individuals referred for reemployment services during the program year ending the preceding June thirtieth.

5. Maximum combined payments. If a claimant is receiving benefits pursuant to subdivision six of section fifteen of the workers' compensation law , the unemployment benefits to which a claimant may be entitled pursuant to this article shall be limited to the difference between the amount of workers' compensation benefits and one hundred percent of the claimant's average weekly wage.

6. Dismissal pay. (a) No benefits shall be payable to a claimant for any week during a dismissal period for which a claimant receives dismissal pay, nor shall any day within such week be considered a day of total unemployment under section five hundred twenty-two of this article, if such weekly dismissal pay exceeds the maximum weekly benefit rate.

(b) The term “dismissal pay”, as used in this subdivision, means one or more payments made by an employer to an employee due to his or her separation from service of the employer regardless of whether the employer is legally bound by contract, statute or otherwise to make such payments. The term does not include payments for pension, retirement, accrued leave, and health insurance or payments for supplemental unemployment benefits.

(c) The term “dismissal period”, as used in this subdivision, means the time designated for weeks of dismissal pay attributable to the claimant's weekly earnings in accordance with the collective bargaining agreement, employment contract, employer's dismissal policy, dismissal agreement with the employer or other such agreement. If no such agreement, contract or policy designates a dismissal period, then the dismissal period shall be the time designated in writing in advance by the employer to be considered the dismissal period. If no time period is designated, the dismissal period shall commence on the day after the claimant's last day of employment. If the dismissal payment is in a lump sum amount or for an indefinite period, dismissal payments

shall be allocated on a weekly basis from the day after the claimant's last day of employment and the claimant shall not be eligible for benefits for any week for which it is determined that the claimant receives dismissal pay. The amount of dismissal pay shall be allocated based on the claimant's actual weekly remuneration paid by the employer during his or her employment or, if such amount cannot be determined, the amount of the claimant's average weekly wage for the highest calendar quarter.

(d) Notwithstanding the foregoing, the provisions of this subdivision shall not apply during any weeks in which the initial payment of dismissal pay is made more than thirty days from the last day of the claimant's employment.

New York Consolidated Laws, Labor Law - LAB § 591-a. Self-employment assistance program

<[Expires and is deemed repealed Dec. 7, 2019, pursuant to L.2003, c. 413, § 10 .]>

1. The department is hereby authorized and empowered to establish and operate a self-employment assistance program as authorized pursuant to subsection (t) of section 3306 of the internal revenue code . 1

2. For the purposes of this section, the term "self-employment assistance program" means a program under which:

(a) individuals who meet the requirements described in paragraph (c) of this subdivision are eligible to receive an allowance in lieu of regular unemployment benefits for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(b) the allowance payable to individuals pursuant to paragraph (a) of this subdivision is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment benefits and the sum of any allowance paid under this section and regular benefits, as defined in this section, paid for any benefit year shall not exceed the maximum amount of benefits payable under this article, except:

(i) requirements relating to total unemployment, as defined in section five hundred twenty-two of this article, availability for work and search for work, as set forth in subdivision two of section five hundred ninety-one of this title and refusal to accept work, as set forth in subdivision two of section five hundred ninety-three of this title, are not applicable to such individuals;

(ii) requirements relating to disqualifying income, as set forth in section five hundred twenty-three of this article, are not applicable to income earned from self-employment entered into by such individuals as a result of their participation in self-employment assistance programs as defined in this section; and

(iii) such individuals are considered to be unemployed for the purposes of laws applicable to unemployment benefits, as long as such individuals meet the requirements applicable under this subdivision;

(c) individuals may receive the allowance described in paragraph (a) of this subdivision if such individuals:

(i) are eligible to receive regular unemployment benefits or would be eligible to receive such benefits except for the requirements set forth in subparagraphs (i) and (ii) of paragraph (b) of this subdivision. For purposes of this section, regular unemployment benefits means benefits payable under this article, including benefits payable to federal civilian employees and to ex-servicemen and servicewomen pursuant to 5 USC Chapter 85, and benefits authorized to be used for the self-employment assistance program pursuant to the Federal-State Extended Unemployment Compensation Act of 1970 2 but excluding additional benefits;

(ii) are identified pursuant to a worker profiling system as individuals likely to exhaust regular unemployment benefits;

(iii) are participating in self-employment assistance activities approved by the department and by the department of economic development which include but need not be limited to entrepreneurial training, business counseling, and technical assistance, including financing assistance for qualified individuals as appropriate, offered by entrepreneurship assistance centers established pursuant to section two hundred eleven of the economic development law , state university of New York small business development centers, programs offered by community-based organizations, local development corporations, and boards of cooperative educational services (BOCES) as established pursuant to section one thousand nine hundred fifty of the education law ; and, unless otherwise required by federal law or regulation, no individual shall be prohibited from or disqualified from eligibility for the program if prior to applying for the program, an individual has printed business cards or has a website that is designed but not active, and neither are being used to solicit or conduct business;

(iv) are actively engaged on a full-time basis in activities, which may include training, relating to the establishment of a business and becoming self-employed;

(v) are not individuals who have previously participated in self-employment assistance programs pursuant to this section; and

(d) the aggregate number of individuals receiving the allowance under the program does not at any time exceed five percent of the number of individuals receiving regular unemployment benefits at such time.

3. Each self-employment assistance program applicant shall provide at a minimum, in such form and at such time as the commissioner may prescribe, the following information:

(a) a description of the proposed self-employment;

(b) a description of such applicant's knowledge of experience in self-employment or such applicant's knowledge of and experience with the particular product to be manufactured, produced, processed, distributed or sold or service to be provided;

(c) the names and addresses of such applicant's previous employers during the two years immediately preceding the date of applying for regular unemployment insurance benefits; and a 3

(d) a description of each applicant's work activity and the applicant's previous employer's activity at the work locations to which the applicant was assigned during said two year period.

4. Among individuals seeking participation in a self-employment assistance program, the department shall give preference to those individuals who propose businesses not likely to compete directly with the business of any base period employer of the individual.

New York Consolidated Laws, Labor Law - LAB § 592. Suspension of accumulation of benefit rights

1. Industrial controversy. (a) The accumulation of benefit rights by a claimant shall be suspended during a period of seven consecutive weeks beginning with the day after such claimant lost his or her employment because of a strike or other industrial controversy except for lockouts, including concerted activity not authorized or sanctioned by the recognized or certified bargaining agent of the claimant, and other concerted activity conducted in violation of any existing collective bargaining agreement, in the establishment in which he or she was employed, except that benefit rights may be accumulated before the expiration of such seven weeks beginning with the day after such strike or other industrial controversy was terminated.

(b) Benefits shall not be suspended under this section if:

(i) The employer hires a permanent replacement worker for the employee's position. A replacement worker shall be presumed to be permanent unless the employer certifies in writing that the employee will be able to return to his or her prior position upon conclusion of the strike, in the event the strike terminates prior to the conclusion of the employee's eligibility for benefit rights under this chapter. In the event the employer does not permit such return after such certification, the employee shall be entitled to recover any benefits lost as a result of the seven week suspension of benefits, and the department may impose a penalty upon the employer of up to seven hundred fifty dollars per employee per week of benefits lost. The penalty collected shall be paid into the unemployment insurance control fund established pursuant to section five hundred fifty-two-b of this article; or

(ii) The commissioner determines that the claimant:

(A) is not employed by an employer that is involved in the industrial controversy that caused his or her unemployment and is not participating in the industrial controversy; or

(B) is not in a bargaining unit involved in the industrial controversy that caused his or her unemployment and is not participating in the industrial controversy.

2. Concurrent payments prohibited. No days of total unemployment shall be deemed to occur in any week with respect to which or a part of which a claimant has received or is seeking

unemployment benefits under an unemployment compensation law of any other state or of the United States, provided that this provision shall not apply if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits.

3. Terms of suspension. No waiting period may be served during a suspension period.

The suspension of accumulation of benefit rights shall not be terminated by subsequent employment of the claimant irrespective of when the claim is filed except as provided in subdivision one and shall not be confined to a single benefit year.

A "week" as used in subdivision one of this section means any seven consecutive calendar days.

New York Consolidated Laws, Labor Law - LAB § 593. Disqualification for benefits

1. Voluntary separation; separation for a compelling family reason. (a) No days of total unemployment shall be deemed to occur after a claimant's voluntary separation without good cause from employment until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate. In addition to other circumstances that may be found to constitute good cause, including a compelling family reason as set forth in paragraph (b) of this subdivision, voluntary separation from employment shall not in itself disqualify a claimant if circumstances have developed in the course of such employment that would have justified the claimant in refusing such employment in the first instance under the terms of subdivision two of this section or if the claimant, pursuant to an option provided under a collective bargaining agreement or written employer plan which permits waiver of his or her right to retain the employment when there is a temporary layoff because of lack of work, has elected to be separated for a temporary period and the employer has consented thereto.

(b) A claimant shall not be disqualified from receiving benefits for separation from employment due to any compelling family reason. For purposes of this paragraph, the term "compelling family reason" shall include, but not be limited to, separations related to any of the following:

(i) domestic violence, verified by reasonable and confidential documentation which causes the individual reasonably to believe that such individual's continued employment would jeopardize his or her safety or the safety of any member of his or her immediate family.

(ii) the illness or disability of a member of the individual's immediate family. For the purposes of this subparagraph:

(A) The term "illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise).

(B) The term "disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise). "Disability" encompasses all types of disability, including: (1) mental and physical disability; (2) permanent and temporary disabilities; and (3) partial and total disabilities.

(iii) the need for the individual to accompany such individual's spouse (A) to a place from which it is impractical for such individual to commute and (B) due to a change in location of the spouse's employment.

(c) A disqualification as provided in this subdivision shall also apply after a claimant's voluntary separation from employment if such voluntary separation was due to claimant's marriage.

2. Refusal of employment. No days of total unemployment shall be deemed to occur beginning with the day on which a claimant, without good cause, refuses to accept an offer of employment for which he or she is reasonably fitted by training and experience, including employment not subject to this article, until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate. Except that claimants who are not subject to a recall date or who do not obtain employment through a union hiring hall and who are still unemployed after receiving ten weeks of benefits shall be required to accept any employment proffered that such claimants are capable of performing, provided that such employment would result in a wage not less than eighty percent of such claimant's high calendar quarter wages received in the base period and not substantially less than the prevailing wage for similar work in the locality as provided for in paragraph (d) of this subdivision. No refusal to accept employment shall be deemed without good cause nor shall it disqualify any claimant otherwise eligible to receive benefits if:

(a) a refusal to accept employment which would interfere with a claimant's right to join or retain membership in any labor organization or otherwise interfere with or violate the terms of a collective bargaining agreement shall be with good cause;

(b) there is a strike, lockout, or other industrial controversy in the establishment in which the employment is offered; or

(c) the employment is at an unreasonable distance from his residence, or travel to and from the place of employment involves expense substantially greater than that required in his former employment unless the expense be provided for; or

(d) the wages or compensation or hours or conditions offered are substantially less favorable to the claimant than those prevailing for similar work in the locality, or are such as tend to depress wages or working conditions; or

(e) the claimant is seeking part-time work as provided in subdivision five of section five hundred ninety-six of this title and the offer of employment is not comparable to his or her part-time work as defined in such subdivision.

3. Misconduct. No days of total unemployment shall be deemed to occur after a claimant lost employment through misconduct in connection with his or her employment until he or she has subsequently worked in employment and earned remuneration at least equal to ten times his or her weekly benefit rate.

4. Criminal acts. No days of total unemployment shall be deemed to occur during a period of twelve months after a claimant loses employment as a result of an act constituting a felony in

connection with such employment, provided the claimant is duly convicted thereof or has signed a statement admitting that he or she has committed such an act. Determinations regarding a benefit claim may be reviewed at any time. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith. In addition, remuneration paid to the claimant by the affected employer prior to the claimant's loss of employment due to such criminal act may not be utilized for the purpose of establishing entitlement to a subsequent, valid original claim. The provisions of this subdivision shall apply even if the employment lost as a result of such act is not the claimant's last employment prior to the filing of his or her claim.

5. Terms of disqualification. A disqualification pursuant to the provisions of this section shall not be confined to a single benefit year.

6. Determinations and hearings. The commissioner shall issue a determination for any protest that is filed by any base period employer within the time specified in the notification of potential charges based on voluntary separations or misconduct. An employer or claimant may request a hearing of such determination pursuant to section six hundred twenty of this article.

New York Consolidated Laws, Labor Law - LAB § 594. Reduction and recovery of benefits and penalties for wilful false statement

New York Consolidated Laws, Labor Law - LAB § 594. Reduction and recovery of benefits and penalties for wilful false statement

(1) A claimant who has wilfully made a false statement or representation to obtain any benefit under the provisions of this article shall forfeit benefits for at least the first four but not more than the first eighty effective days following discovery of such offense for which he or she otherwise would have been entitled to receive benefits. Such penalty shall apply only once with respect to each such offense.

(2) For the purpose of subdivision four of section five hundred ninety of this article, the claimant shall be deemed to have received benefits for such forfeited effective days.

(3) The penalty provided in this section shall not be confined to a single benefit year but shall no longer apply in whole or in part after the expiration of two years from the date of the final determination. Such two-year period shall be tolled during the time period a claimant has an appeal pending.

(4) A claimant shall refund all moneys received because of such false statement or representation and pay a civil penalty in an amount equal to the greater of one hundred dollars or fifteen percent of the total overpaid benefits determined pursuant to this section. The penalties collected hereunder shall be deposited in the fund. The penalties assessed under this subdivision shall apply and be assessed for any benefits paid under federal unemployment and extended unemployment programs administered by the department in the same manner as provided in this article. The penalties in this section shall be in addition to any penalties imposed under this

chapter or any state or federal criminal statute. No penalties or interest assessed pursuant to this section may be deducted or withheld from benefits.

(5)(a) Upon a determination based upon a willful false statement or representation becoming final through exhaustion of appeal rights or failure to exhaust hearing rights, the commissioner may recover the amount found to be due by commencing a civil action, or by filing with the county clerk of the county where the claimant resides the final determination of the commissioner or the final decision by an administrative law judge, the appeal board, or a court containing the amount found to be due including interest and civil penalty. The commissioner may only make such a filing with the county clerk when:

(i) The claimant has responded to requests for information prior to a determination and such requests for information notified the claimant of his or her rights to a fair hearing as well as the potential consequences of an investigation and final determination under this section including the notice required by subparagraph (iii) of paragraph (b) of this subdivision. Additionally if the claimant requested a fair hearing or appeal subsequent to a determination, that the claimant was present either in person or through electronic means at such hearing, or subsequent appeal from which a final determination was rendered;

(ii) The commissioner has made efforts to collect on such final determination; and

(iii) The commissioner has sent a notice, in accordance with paragraph (b) of this subdivision, of intent to docket such final determination by first class or certified mail, return receipt requested, ten days prior to the docketing of such determination.

(b) The notice required in subparagraph (iii) of paragraph (a) of this subdivision shall include the following:

(i) That the commissioner intends to docket a final determination against such claimant as a judgment;

(ii) The total amount to be docketed; and

(iii) Conspicuous language that reads as follows: “Once entered, a judgment is good and can be used against you for twenty years, and your money, including a portion of your paycheck and/or bank account, may be taken. Also, a judgment will hurt your credit score and can affect your ability to rent a home, find a job, or take out a loan.”

New York Consolidated Laws, Labor Law - LAB § 595. Benefit right inalienable

1. Waiver agreement void. No agreement by an employee to waive his rights under this article shall be valid.

2. Assignment of benefits void. Benefits shall not be assigned, pledged, encumbered, released, or commuted and shall be exempt from all claims of creditors and from levy, execution, and attachment, or other remedy for recovery or collection of a debt. This exemption may not be waived.

New York Consolidated Laws, Labor Law - LAB § 596. Claim filing, registration, and reporting

1. Claim filing and certification to unemployment. A claimant shall file a claim for benefits at the local state employment office serving the area in which he was last employed or in which he resides within such time and in such manner as the commissioner shall prescribe. He shall disclose whether he owes child support obligations, as hereafter defined. If a claimant making such disclosure is eligible for benefits, the commissioner shall notify the state or local child support enforcement agency, as hereafter defined, that the claimant is eligible.

A claimant shall correctly report any days of employment and any compensation he received for such employment, including employments not subject to this article, and the days on which he was totally unemployed and shall make such reports in accordance with such regulations as the commissioner shall prescribe.

2. Child support obligations. (a) The term “child support obligations” means obligations enforced pursuant to an approved plan under section four hundred fifty-four of the federal social security act. 1 The term “state or local child support enforcement agency” means any agency of the state or a political subdivision thereof operating pursuant to such a plan.

(b) Notwithstanding the provisions of section five hundred ninety-five of this article, the commissioner shall deduct and withhold child support obligations from benefits payable to a claimant (including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment) in the amount specified by the claimant, the amount determined pursuant to an agreement between the claimant and the state or local child support enforcement agency submitted to the commissioner, or the amount required to be deducted and withheld through legal process, whichever amount is the greatest. Such amount shall be paid to the appropriate state or local child support enforcement agency, and shall be treated for all purposes as if paid to the claimant as benefits and paid by the claimant to such agency in satisfaction of the claimant's child support obligations. Each such agency shall reimburse the commissioner for the administrative costs attributable to child support obligations being enforced by the commissioner.

3. Uncollected overissuance of food stamps. (a) The term “uncollected overissuance of food stamps” has the meaning prescribed in section thirteen (c)(1) of the federal food stamp act of 1977. The term “appropriate state food stamp agency” means any agency of the state or a political subdivision thereof enforcing the collection of such overissuance.

(b) Notwithstanding the provisions of section five hundred ninety-five of this article, the commissioner shall deduct and withhold uncollected over issuances 2 of food stamps from benefits payable to a claimant pursuant to section thirteen (c)(3) of the federal food stamp act of 1977; provided, however, that no agreement pursuant to this section shall reduce benefits by an amount in excess of the greater of ten percent of the weekly benefit amount or ten dollars, unless claimant specifically requests, in writing, to reduce benefits by a greater amount. Any amount deducted and withheld under this subdivision shall be paid to the appropriate state food stamp

agency, and shall be treated for all purposes as if paid to the claimant as benefits and as if paid by the claimant to such agency in satisfaction of claimant's over issuance 3 of food stamps coupons. To the extent permitted by federal law, the procedures for correcting overpayments shall be designed to minimize adverse impact on the claimant, and to the extent possible, avoid undue hardship.

(c) Each such agency shall reimburse the commissioner for the administrative costs incurred under this subdivision in a manner consistent with a memorandum of understanding as approved by the director of the division of the budget. Such reimbursement shall be consistent with federal law and regulations.

4. Registration and reporting for work. A claimant shall register as totally unemployed at a local state employment office serving the area in which he was last employed or in which he resides in accordance with such regulations as the commissioner shall prescribe. After so registering, such claimant shall report for work at the same local state employment office or otherwise give notice of the continuance of his unemployment as often and in such manner as the commissioner shall prescribe.

5. Part time work. Notwithstanding any other provisions of this article, a claimant who for reasons personal to himself or herself is unable or unwilling to work full time and who customarily worked less than the full time prevailing in his or her place of employment for a majority of the weeks worked during the applicable base period, shall not be denied unemployment insurance solely because the claimant is only seeking part time work. For purposes of this subdivision, “seeking part time work” shall mean the claimant is willing to work for a number of hours per week that are comparable to the claimant's part time work during the majority of time in the base period.

6. An individual filing a new claim for unemployment benefits shall, at the time of filing such claim, be advised that:

(a)(1) Unemployment benefits are subject to federal, state and local income tax;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal and/or state income tax deducted and withheld from the individual's payment of unemployment benefits at the amount specified under the federal internal revenue code (26 U.S.C.A. 3402(p)(2)) and/or the state income tax withholding tax schedules as specified under the tax law and relevant regulations; and

(4) The individual shall be permitted to change a previously elected withholding status.

(b) Notwithstanding the provisions of section five hundred ninety-five of this article, the commissioner shall deduct and withhold federal and/or state income tax from benefits payable to an individual if such individual elects such withholding. Amounts deducted and withheld from unemployment benefits shall remain in the unemployment trust fund until transferred to the appropriate taxing authority as a payment of income tax.

(c) The commissioner shall follow all procedures specified by the United States department of labor, the federal internal revenue service, the state department of labor and the state department of taxation and finance pertaining to the deducting and withholding of income tax authorized under this subdivision.

(d) Amounts shall be deducted and withheld under this subdivision only after amounts are deducted and withheld for any overpayment of unemployment benefits, child support obligations, food stamp over issuances or any other amounts required to be deducted and withheld under this article.

7. Notwithstanding the provisions of section five hundred ninety-five of this title, the commissioner shall deduct and withhold any overpayments established under this article or under any state or federal unemployment compensation program from benefits payable to an individual. No penalties or interest assessed pursuant to section five hundred ninety-four of this title may be deducted or withheld from benefits.

New York Consolidated Laws, Labor Law - LAB § 597. Initial determination

1. Issuance. The validity of the claim and the amount of benefits payable to the claimant shall be determined in accordance with the regulations and procedure established by the commissioner and, when such determination is issued by the commissioner, it shall be deemed the initial determination of the claim.

2. Obtaining information necessary for determinations. (a) When filing an original claim, each claimant shall furnish to the commissioner all information which the commissioner shall require concerning his or her prior employment.

(b) Whenever a claimant's base period includes a completed calendar quarter for which a wage data report is not due or has not been received and the claimant provides information as required by the commissioner, the commissioner shall determine such claimant's entitlement and benefit rate using the information the claimant provided for such quarter. However, in those instances where the claimant is unable to provide such information to the commissioner's satisfaction, the commissioner may request the employer to provide the amount of remuneration paid to such individual. The commissioner shall notify each base period employer upon the establishment of a valid original claim, of such claim. If an employer provides new or corrected information in response to the initial notice of monetary entitlement, adjustments to the claimant's benefit rate and adjustments to the employer's experience rating account shall be prospective as of the date such information was received by the department.

(c) Notwithstanding paragraph (b) of this subdivision, adjustments to the claimant's benefit rate and adjustment to the experience rating charges to the employers' accounts will be retroactive to the beginning of the benefit claim in the following circumstances:

(i) the new or corrected information results in a higher benefit rate, or

(ii) the new or corrected information results in the claimant's failure to establish a valid original claim, or

(ii) 1 the amount of the previously established benefit rate was based upon the claimant's willful false statement or representation.

(d) Notwithstanding any provisions of this article, unless a commissioner's error is shown or the failure is the direct result of a disaster emergency declared by the governor or president, an employer's account shall not be relieved of charges resulting in an overpayment of benefits when the commissioner determines that the overpayment was made because the employer or the agent of the employer failed to timely or adequately respond to a request for information in the notice of potential charges or other such notice requesting information in relation to a claim under this article, provided, however, that the commissioner shall relieve the employer of charges the first time that the employer fails to provide timely or adequate information, if the employer provides good cause for such failure as determined by the commissioner.

“Timely” shall mean a response is provided in the time period specified in the notice as prescribed by the commissioner.

The term “adequately” shall mean that the employer or its agent submitted information sufficient to render a correct determination.

This prohibition for relief of charges shall apply to all employers under this article including employers electing payment in lieu of contributions.

3. Limitation on review of determinations. Any determination regarding a benefit claim may, in the absence of fraud or wilful misrepresentation, be reviewed only within one year from the date it is issued because of new or corrected information, or, if the review is based thereon, within six months from a retroactive payment of remuneration, provided that no decision on the merits of the case has been made upon hearing or appeal. Such review shall be conducted and a new determination issued in accordance with the provisions of this article and regulations and procedure prescribed thereunder with respect to the adjudication and payment of claims, including the right of appeal.

4. Effect of review. Whenever a new determination in accordance with the preceding subdivision or a decision by a referee, the appeal board, or a court results in a decrease or denial of benefits previously allowed, such new determination or decision, unless it shall be based upon a retroactive payment of remuneration, shall not affect the rights to any benefits already paid under the authority of the prior determination or decision provided they were accepted by the claimant in good faith and the claimant did not make any false statement or representation and did not wilfully conceal any pertinent fact in connection with his or her claim for benefits.

New York Consolidated Laws, Labor Law - LAB § 598. Effect of payments for failure to provide notice of a facility closure

Payments to an employee under article twenty-five-a of this chapter 1 by an employer who has failed to provide the advance notice of a facility closure required by such article or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. Sec. 1201 et seq.) or amendments thereto, shall not be construed as remuneration under this article. Unemployment insurance benefits may not be denied or reduced because of the receipt of payments related to an employer's violation of article twenty-five-a of this chapter or the federal Worker Adjustment and Retraining Notification Act.

New York Consolidated Laws, Labor Law - LAB § 599. Career and related training; preservation of eligibility

1. Notwithstanding any other provision of this article, a claimant shall not become ineligible for benefits because of the claimant's regular attendance in a program of training which the commissioner has approved. The commissioner shall give due consideration to existing and prospective conditions of the labor market in the state, taking into account present and anticipated supply and demand regarding the occupation or skill to which the training relates, and to any other relevant factor. However, in no event shall the commissioner approve such training for a claimant unless:

(a)(1) the training will upgrade the claimant's existing skill or train the claimant for an occupation likely to lead to more regular long term employment; or

(2) employment opportunities for the claimant are or may be substantially impaired because of:

(i) existing or prospective conditions of the labor market in the locality or in the state or reduced opportunities for employment in the claimant's occupation or skill; or

(ii) technological change, plant closing or plant removal, discontinuance of specific plant operations, or similar reasons; or

(iii) limited opportunities for employment throughout the year due to the seasonal nature of the industry in which the claimant is customarily employed; or

(iv) the claimant's personal traits such as physical or mental handicap; and

(b) the training relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable employment opportunities in the state; and

(c) the training is offered by a competent and reliable agency and does not require more than twenty-four months to complete; and

(d) the claimant has the required qualifications and aptitudes to complete the training successfully.

2. (a) Notwithstanding any other provision of this chapter, a claimant attending an approved training course or program under this section may receive additional benefits of up to one hundred four effective days following exhaustion of regular and, if in effect, any other extended

benefits, provided that entitlement to a new benefit claim cannot be established. Certification of continued satisfactory participation and progress in such training course or program must be submitted to the commissioner prior to the payment of any such benefits. The duration of such additional benefits shall in no case exceed twice the number of effective days of regular benefits to which the claimant is entitled at the time the claimant is accepted in, or demonstrates application for appropriate training.

(b) No more than twenty million dollars of benefits per year shall be made available for payment to claimants participating in such courses or programs.

(c) Participation in such training course or program shall not be limited to any selected areas or localities of the state but subject to the availability of funds, shall be available to any claimant otherwise eligible to participate in training courses or programs pursuant to this section.

(d) The additional benefits paid to a claimant shall be charged to the general account.

3. Notwithstanding any other provision of this article, a claimant who is in training approved under the federal trade act of nineteen hundred seventy-four 1 shall not be disqualified or become ineligible for benefits because he is in such training or because he left employment which is not suitable employment to enter such training. For purposes hereof, “suitable employment” means work of a substantially equal or higher skill level than the claimant's past adversely affected employment and for which the remuneration is not less than eighty percent of the claimant's average weekly wage.

New York Consolidated Laws, Labor Law - LAB § 600. Effect of retirement payments

1. Reduction of benefit rate. (a) The benefit rate of a claimant who is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on his previous work, shall be reduced as hereinafter provided, if such payment is made under a plan maintained or contributed to by his base period employer and, except for payments made under the social security act 1 or the railroad retirement act of 1974, 2 the claimant's employment with, or remuneration from, such employer after the beginning of the base period affected his eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity, or other similar periodic payment.

(b) The claimant's benefit rate shall be reduced by the largest number of whole dollars which is not more than the pro-rated weekly amount of such payment. If the claimant was the sole contributor for the pension, retirement or retired pay, annuity, or other similar periodic payment, no reduction shall apply.

(c) If, at the time benefits are payable, it has not been established that the claimant will be receiving such pension, retirement or retired pay, annuity or other payment, benefits due shall be paid without a reduction, subject to review within the period and under the conditions as provided in subdivisions three and four of section five hundred ninety-seven with respect to retroactive payment of remuneration.

(d) For the purposes of this section, the terms “pension or retirement payment” and “governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on previous work” shall not include payments made from a qualified trust to an eligible retirement plan under the terms and conditions specified in section four hundred two of the internal revenue code 3 for federal income tax purposes, such payments commonly known as eligible rollover distributions.

New York Consolidated Laws, Labor Law - LAB § 601. Extended benefits

1. Definitions. For the purposes of this section:

(a)(1) There shall be a “state ‘on’ indicator” for a week if, as determined by the commissioner in accordance with the regulations of the secretary of labor of the United States, the rate of insured unemployment for the period consisting of such week and the preceding twelve weeks

(i) equaled or exceeded five per centum and

(ii) equaled or exceeded one hundred and twenty per centum of the average of such rates for the corresponding thirteen-week periods ending in each of the preceding two calendar years; or

(iii) for weeks of unemployment beginning on or after February first, two thousand nine until the week ending three weeks prior to the last week for which one hundred percent federal sharing is authorized by section 2005(a) of Public Law 111-5 , 2 or for weeks of unemployment ending three weeks prior to the last week for which Congress, pursuant to any future amendment of the Federal State Extended Compensation Act of 1970, 2 has authorized one hundred percent federal sharing, which meet the following:

(A) the average rate of total unemployment (seasonably adjusted), as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent, and

(B) the average rate of total unemployment in the state (seasonably adjusted), as determined by the United States secretary of labor, for the three-month period referred to in item (A) of this clause, equals or exceeds one hundred ten percent of the average for either or both of the corresponding three-month periods ending in the two preceding calendar years; or

(iv) for any period of high unemployment which shall otherwise meet all of the provisions of clause (iii) of this subparagraph, except that “eight percent” is substituted for “six and one-half percent” in item (A) of clause (iii) of this subparagraph.

(2) There shall be a “state ‘off’ indicator” for a week only, if for the period consisting of such week and the immediately preceding twelve weeks, none of the options specified in subparagraph one of this paragraph result in an “on” indicator. Notwithstanding any provision of this article, there shall be a “state ‘off’ indicator” with respect to clauses (iii) and (iv) of subparagraph one of this paragraph for the week ending three weeks prior to the last week for

which one hundred percent federal sharing is authorized by section 2005(a) of Public Law 111-5 2 or for the week ending three weeks prior to the last week for which Congress, pursuant to any future amendment of the Federal State Extended Compensation Act of 1970, 2 has authorized one hundred percent federal sharing.

(3) "Rate of insured unemployment" means for the purposes of this paragraph the percentage obtained upon dividing the average weekly number of persons filing claims for regular benefits in this state for unemployment with respect to the most recent thirteen consecutive week period, as determined by the commissioner on the basis of his or her reports to the secretary of labor of the United States, by the average monthly employment subject to this article for the first four of the last six calendar quarters ending before the end of such period. Computations required hereunder shall be made in accordance with regulations prescribed by the secretary of labor of the United States.

(4) "Rate of total unemployment" means, for the purposes of this paragraph, the average percentage obtained by dividing the total number of unemployed residents of the state for the most recent three consecutive months, as determined by the United States Bureau of Labor Statistics, by the total civilian labor force of the state for the same three-month period, also as determined by the United States Bureau of Labor Statistics. Computations required hereunder shall be made in accordance with regulations prescribed by the secretary of labor of the United States.

(5) Notwithstanding the provisions of subparagraphs one and two of this paragraph, with respect to compensation for weeks of unemployment beginning after January thirty-first, two thousand eleven, and ending on or before the expiration dates set forth in Public Law 111-312 :

There shall be a "state 'on' indicator" for a week if, as determined by the commissioner in accordance with the regulations of the secretary of labor of the United States, the rate of insured unemployment for the period consisting of such week and the preceding twelve weeks

(i) equaled or exceeded five percentum and

(ii) equaled or exceeded one hundred twenty per centum of the average of such rates for the corresponding thirteen-week periods ending in each of the preceding three calendar years; or

(iii) for weeks of unemployment beginning on or after February first, two thousand nine until the week ending three weeks prior to the last week for which one hundred percent federal sharing is authorized by section 2005(a) of Public Law 111-5 , or for weeks of unemployment ending three weeks prior to the last week for which Congress, pursuant to any future amendment of the Federal State Extended Compensation Act of 1970, has authorized one hundred percent federal sharing, which meet the following:

(A) the average rate of total unemployment (seasonably adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent, and

(B) the average rate of total unemployment in the state (seasonably adjusted), as determined by the United States secretary of labor, for the three-month period referred to in item (A) of this clause, equals or exceeds one hundred ten percent of the average for any or all of the corresponding three-months [1] periods ending in the three preceding calendar years.

(b) "Extended benefit period" means a period

(1) beginning with the third week after the first week for which there is a state "on" indicator, except that it may not begin before the fourteenth week after the end of a prior extended benefit period, and

(2) ending with the third week after the first week for which there is a state "off" indicator, except that the duration of such period shall in no event be less than thirteen weeks.

(c) "Eligibility period" of a claimant means the period consisting of the weeks in his or her benefit year which begin in an extended benefit period and, if his or her benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. Notwithstanding any provision of this article, a claimant's eligibility period shall include any alternative eligibility period provided for in section 2005(b) of Public Law 111-5 [2] or other federal law.

(d) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to a claimant under the provisions of this section for unemployment in his or her eligibility period.

(e) "Regular benefits" means benefits payable to a claimant under this article or under any other State unemployment insurance law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

2. Eligibility conditions. Extended benefits shall be payable to a claimant for effective days occurring in any week within an eligibility period, provided the claimant

(a) has exhausted his or her rights to regular benefits under this article in his or her current benefit year or, his or her benefit year having expired prior to such week, he or she does not have the required weeks of employment or earnings to establish a new benefit year, and he or she has no rights to benefits under the unemployment insurance law of any other state;

(b) has no rights to unemployment benefits or allowances under the railroad unemployment insurance act, [3] the trade expansion act of nineteen hundred sixty-two, [4] the automotive products trade act of nineteen hundred sixty-five, [5] or such other federal laws as are specified in regulations issued by the secretary of labor of the United States;

(c) has not received and is not seeking unemployment benefits under the unemployment compensation law of the Virgin Islands or of Canada unless, if he or she is seeking such benefits, the appropriate agency finally determines that he or she is not entitled to benefits under such law;

(d) has satisfied the conditions of this article, required to render a claimant eligible for regular benefits, which are applicable to extended benefits, including not being subject to a

disqualification or suspension, or has satisfied the conditions of this article required to render a claimant eligible to participate in the self-employment assistance program pursuant to section five hundred ninety-one-a of this title and the Federal-State Extended Unemployment Compensation Act of 1970; 2

(e) is not claiming benefits pursuant to an interstate claim filed under the interstate benefit payment plan in a state where an extended benefit period is not in effect, except that this condition shall not apply with respect to the first eight effective days for which extended benefits shall otherwise be payable pursuant to an interstate claim filed under the interstate benefit payment plan; and

(f) in his or her base period has remuneration of one and one-half times the high calendar quarter earnings in accordance with section five hundred twenty-seven of this article.

3. Extended benefit amounts; rate and duration. Extended benefits shall be paid to a claimant

(a) at a rate equal to his or her rate for regular benefits during his or her applicable benefit year but

(b) for not more than fifty-two effective days with respect to his or her applicable benefit year, with a total maximum amount equal to fifty percentum of the total maximum amount of regular benefits payable in such benefit year, and

(c) if a claimant's benefit year ends within an extended benefit period, the remaining balance of extended benefits to which he or she would be entitled, if any, shall be reduced by the number of effective days for which he or she was entitled to receive trade readjustment allowances under the federal trade act of nineteen hundred seventy-four 6 during such benefit year, and

(d) for periods of high unemployment for not more than eighty effective days with respect to the applicable benefit year with a total maximum amount equal to eighty percent of the total maximum amount of regular benefits payable in such benefit year.

4. Charging of extended benefits. The provisions of paragraph (e) of subdivision one of section five hundred eighty-one of this article shall apply to benefits paid pursuant to the provisions of this section, and if they were paid for effective days occurring in weeks following the end of a benefit year, they shall be deemed paid with respect to that benefit year. However, except for governmental entities as defined in section five hundred sixty-five and Indian tribes as defined in section five hundred sixty-six of this article, only one-half of the amount of such benefits shall be debited to the employers' account; the remainder thereof shall be debited to the general account, and such account shall be credited with the amount of payments received in the fund pursuant to the provisions of the federal-state extended unemployment compensation act. 2 Notwithstanding the foregoing, where the state has entered an extended benefit period triggered pursuant to subparagraph one of paragraph (a) of subdivision one of this section for which federal law provides for one hundred percent federal sharing of the costs of benefits, all charges shall be debited to the general account and such account shall be credited with the amount of payments received in the fund pursuant to the provisions of the federal-state extended

unemployment compensation act or other federal law providing for one hundred percent federal sharing for the cost of such benefits.

5. Applicability of other provisions. (a) Unless inconsistent with the provisions of this section, all provisions of this article shall apply to extended benefits in the same manner as they apply to regular benefits.

(b) No days of total unemployment shall be deemed to occur in any week within an eligibility period during which a claimant fails to accept any offer of suitable work or fails to apply for suitable work to which he or she was referred by the commissioner, who shall make such referral if such work is available, or during which he or she fails to engage actively in seeking work by making a systematic and sustained effort to obtain work and providing tangible evidence of such effort, and until he or she has worked in employment during at least four subsequent weeks and earned remuneration of at least four times his or her benefit rate.

(c) For purposes of this subdivision, “suitable work” means any employment which is within the claimant's capabilities, but if he or she furnishes evidence that his or her prospects for obtaining work in his or her customary occupation within a reasonably short period are good, the provisions of subdivision two of section five hundred ninety-three of this article shall apply instead of the provisions hereof.

(d) Notwithstanding the foregoing, a claimant shall not be disqualified for a failure to accept an offer of or apply for suitable work if

(i) the gross average weekly remuneration payable for the employment does not exceed the claimant's benefit rate plus the amount of any supplemental unemployment compensation benefits (as defined in section five hundred one (c) (17) (D) of the internal revenue code of nineteen hundred fifty-four) 7 payable to the claimant for such week; or

(ii) the employment was not offered to the claimant in writing and was not listed with the department; or

(iii) such failure would not result in denial of regular benefits, to the extent that the provisions of this article for payment of regular benefits are not inconsistent with the provisions of this subdivision; or

(iv) the employment pays wages less than the higher of the minimum wage provided by section six (a) (1) of the fair labor standards act of nineteen hundred thirty-eight, 8 without regard to any exemption, or the minimum wage provided under this chapter; or

(v) the claimant is in approved training pursuant to section five hundred ninety-nine of this title.

(e) No days of total unemployment shall be deemed to occur in any week within an eligibility period under section five hundred ninety-three of this article, until he or she has subsequently worked in employment in accordance with the requirements set forth in section five hundred ninety-three of this article.

6. Suspension of condition for state indicators. The governor, by executive order, upon advice by the commissioner and the commissioner of economic development may for a period specified in the order suspend the applicability of the provisions of clause (ii) of subparagraph one of paragraph (a) of subdivision one of this section, or of the reference to such subparagraph one in subparagraph two of such paragraph, or of both, if he or she finds that such suspension is required in order to assure adequate payment of benefits to unemployed workers in the state who are experiencing unemployment for an extended duration, provided the rate of insured unemployment for the applicable period equals or exceeds six per centum and such suspension is not in conflict with the provisions of the federal-state extended unemployment compensation act. 2 The governor may at any time prolong or shorten the period specified in such order.

Title 7-A. Shared Work Programs

New York Consolidated Laws, Labor Law - LAB § 602. Application

This title shall apply to a claimant employed by an employer whose application to participate in a shared work program has been approved by the commissioner. The provisions of subdivision four of section five hundred twenty-seven , subdivisions three and seven of section five hundred ninety and subdivision four of section five hundred ninety-six of this article shall not be applicable to such claimant and he or she shall not be required to be available for work with any other employer nor shall he or she be required to search for work in accordance with subdivision two of section five hundred ninety-one of this article if he or she is available for his or her usual hours of work with his or her employer that has been accepted to participate in the shared work program. The other provisions of this article shall apply to such claimants and their employers to the extent that they are not inconsistent with the provisions of this title.

New York Consolidated Laws, Labor Law - LAB § 603. Definitions

For purposes of this title: "Total unemployment" shall mean the total lack of any employment on any day, other than with an employer applying for a shared work program. "Work force" shall mean the total work force, a clearly identifiable unit or units thereof, or a particular shift or shifts. The work force subject to reduction shall consist of no less than two employees.

New York Consolidated Laws, Labor Law - LAB § 604. Eligibility conditions

A claimant shall be eligible for benefits under this title if he or she works less than his or her normal hours in a week for his customary employer, and that employer has reduced or restricted the claimant's weekly hours of work, or has rehired a claimant previously laid off and reduced his or her weekly hours of work from those previously worked, as the result of a plan by the employer to stabilize the work force by a program of sharing the work remaining after a

reduction in total hours of work and a corresponding reduction in wages, provided the program requires not less than a twenty percent nor more than a sixty percent reduction in hours and wages among the work force. A claimant receiving supplemental unemployment compensation benefits, as defined in section five hundred one (c) (17) (D) of the internal revenue code of nineteen hundred fifty-four , 1 shall not be eligible hereunder. Any employee who was otherwise eligible for benefits under this title but was denied benefits during the period beginning October first, two thousand one and ending on December first, two thousand one because more than five percent of his or her wages were derived from piece work, shall be entitled to make a retroactive claim for such benefits provided such claim is filed within sixty days of the effective date of this sentence.

New York Consolidated Laws, Labor Law - LAB § 605. Qualified employers; application

An employer who has at least two full time employees may apply to participate in a shared work program. The written application shall be made according to such forms and procedures as the commissioner may specify and shall include such information as the commissioner may require, including such other information that the United States Secretary of Labor determines to be appropriate for purposes of a shared work program. The commissioner shall not approve such application unless the employer (1) certifies that for the duration of the program it will not eliminate or diminish health insurance, medical insurance, retirement benefits or any other fringe benefits provided to employees immediately prior to the application unless such benefits provided to employees that do not participate in the shared work program are reduced or diminished to the same extent as those employees that participate in the shared work program; (2) certifies that the collective bargaining agent for the employees, if any, has agreed to participate in the program; (3) certifies that if not for the shared work program to be initiated the employer would reduce or would have reduced its work force to a degree equivalent to the total number of working hours proposed to be reduced or restricted for all included employees; (4) certifies that it will not hire additional part time or full time employees for the affected work force while the program is in operation; (5) agrees that no participant of the program shall receive, in the aggregate, more than twenty-six weeks of benefits exclusive of the waiting week; (6) provides a description of how workers in the work force will be notified of the shared work program in advance of it taking effect, if feasible, and if such notice is not feasible, provides an explanation of why such notice is not feasible; (7) provides an estimate of the number of workers who would be laid off if the employer could not participate in the shared work program; and (8) certifies that the terms of the employer's written plan and implementation shall be consistent with employer obligations under applicable federal and state laws.

New York Consolidated Laws, Labor Law - LAB § 606. Revocation of approval

For good cause shown, the commissioner may, in his discretion, revoke approval of an employer's application previously granted. Good cause may include, but shall not be limited to, failure to comply with the assurances and certifications required under section six hundred

five hereof, failure to supply information requested relative to the operation of a shared work program, unreasonable revision of productivity standards for the work force, or other conduct or occurrences tending to defeat the purposes, intent and effective operation of a shared work program.

New York Consolidated Laws, Labor Law - LAB § 607. Benefits

1. Amount. An eligible claimant shall be paid benefits for any week equal to his or her benefit rate multiplied by the percentage of reduction of his or her wages resulting from reduced hours of work, but only if such percentage is no less than twenty percent. The weekly benefit amount shall be rounded off to the nearest dollar. A claimant shall not be paid such benefits in excess of twenty-six weeks during a benefit year.

2. Waiting period. A claimant shall not be entitled to benefits for the first week of unemployment under a shared work program unless he or she has served a waiting period in his or her benefit year pursuant to subdivision seven of section five hundred ninety of this article.

New York Consolidated Laws, Labor Law - LAB § 608. Maximum payments

In no event shall total benefits paid in any benefit year, either under this title, the other titles of this article, or both, exceed the maximum amount for which a claimant would be eligible under the other titles of this article alone.

New York Consolidated Laws, Labor Law - LAB § 609. Training

Eligible employees may participate, as appropriate, in training to enhance job skills if such program has been approved by the commissioner. Such training may include employer-sponsored training or worker training funded under the Workforce Investment Act of 1998.

New York Consolidated Laws, Labor Law - LAB § 610. Commencement

A shared work program and payment of benefits to claimants thereunder shall begin with the first week following approval of an application by the commissioner or the first week specified by the employer, whichever is later.

New York Consolidated Laws, Labor Law - LAB § 611. Charging of benefits

Benefits paid to a claimant shall be charged to the employers' accounts as provided in paragraph (e) of subdivision one of section five hundred eighty-one of this article.

New York Consolidated Laws, Labor Law - LAB § 612. Severability

If any amendment contained in a clause, sentence, paragraph, section or part of this title shall be adjudged by the United States Department of Labor to violate requirements for maintaining benefit standards required of the state in order to be eligible for any financial benefit offered through federal law or regulation including, but not limited to, the waiver of interest on advances or the waiver of obligations to repay such advances to the state unemployment insurance fund, such amendments shall be severed from this act and shall not affect, impair or invalidate the remainder thereof.

Title 8. Hearings and Appeals

New York Consolidated Laws, Labor Law - LAB § 620. Referees' hearings

1. Disputed claims for benefits. (a) A claimant who is dissatisfied with an initial determination of his or her claim for benefits or any other party, including any employer whose employer account percentage might be affected by such determination may, within thirty days after the mailing or personal delivery of notice of such determination, request a hearing. The referee may extend the time fixed for requesting a hearing, upon evidence that the physical condition or mental incapacity of the claimant prevented the claimant from filing an appeal within thirty days of the initial determination. Any employer whose employer account percentage might be affected by such determination, irrespective of whether or not such employer was a party to a hearing brought hereunder, shall have access to all records of any hearing brought hereunder by any party relating to such determination, provided, however, that those records shall be subject to redaction or shall be withheld in accordance with applicable federal or state statutory and regulatory requirements governing information confidentiality and personal privacy, including, but not limited to, article six and article six-A of the public officers law.

(b) When the initial determination of a claim for benefits, upon which a hearing has been requested, involves the question whether any person is or was an employer within the meaning of this article and is or was liable for the payment of contributions under this article, or the question whether an employer has fully complied with the obligations imposed by this article, written notice of the hearing shall be given to such persons or employer, either personally or by mail, and thereupon he, she or such employer shall be deemed a party to the proceeding, entitled to be heard. Upon such notice having been given, the referee may then decide such question or questions and any other issue related thereto, and his or her decision shall not be deemed limited in its effect to the immediate claimant making the claim for benefits but shall be deemed a general determination of such questions with respect to all those employed by such person or employer for all the purposes of this article, and such decision shall be conclusive and binding upon the claimant and such person or employer, subject, however, to the right to appeal hereinafter provided.

2. Contested determinations, rules, or orders. Any employer who claims to be aggrieved by the commissioner's determination of the amount of the employer's contributions or by any other rule or order of the commissioner under any provision of this article may apply to the commissioner for a hearing within thirty days after mailing or personal delivery of notice of such determination, rule, or order.

3. Decisions. Every hearing as herein provided for shall be held by a referee who shall render his or her decision within five days after the hearing is concluded. Written notice of the referee's decision, containing the reasons therefor, shall be promptly given to the claimant or employer, to the commissioner, and to any party affected thereby who appeared at the hearing. Publication of a referee's decision or of any appeal board decision shall be subject to redaction or shall be withheld in accordance with applicable federal or state statutory and regulatory requirements governing information confidentiality and personal privacy, including, but not limited to, article six and article six-A of the public officers law.

The decision of a referee shall be deemed the decision of the appeal board from the date of the filing thereof in the department, unless an appeal is taken from such decision to the board in accordance with the provisions of this article or unless the board on its own motion or on application duly made to it modify or rescind such decision.

4. Whenever any deaf person is a party to a hearing conducted before a referee, or a witness thereon, the referee shall in all instances, appoint a qualified interpreter who is certified by a recognized national or New York state credentialing authority to interpret the proceedings to and the testimony of such deaf person. The commissioner shall determine a reasonable fee for all such interpreting services, the cost of which shall constitute expenses under this article.

New York Consolidated Laws, Labor Law - LAB § 621. Appeals to appeal board

1. Disputed claims for benefits. Within twenty days after the mailing or personal delivery of notice of the decision of a referee on contested benefit claims, the claimant and the employer, provided he appeared at the hearing, may appeal to the appeal board by filing a notice of appeal in the local state employment office in accordance with such rules as the appeal board shall prescribe. Within the same period of time and in the same manner, the commissioner may also appeal to the appeal board, regardless of whether or not he appeared or was represented at the hearing before the referee.

2. Contested determinations, rules, or orders. Within twenty days after the mailing or personal delivery of notice of the decision after a hearing on contested determinations, rules or orders by the commissioner, the employer may take an appeal to the appeal board, provided he appeared at the hearing, by filing a notice of appeal with the commissioner, and the commissioner may likewise within such period take an appeal to the board by giving written notice thereof to the employer, regardless of whether or not the commissioner appeared or was represented at the hearing before the referee.

3. Conduct of appeals. The appeal board may decide any case appealed to it under any provision of this article on the basis of the record and of evidence previously submitted in such case, or it may in its discretion hear argument or hold a further hearing, or remand such case to a referee for such purposes as it may direct. If a further hearing is to be held or argument had, the board shall fix a time therefor and shall notify the commissioner, regardless of whether or not he had appeared or been represented at the hearing before the referee, and any other party affected, provided such other party appeared at the hearing before the referee. The board may affirm or reverse, wholly or in part, or may modify the decision appealed from and shall render its decision promptly and shall thereupon send written notice thereof together with the reasons therefor to the commissioner and any other party affected thereby who appeared at the hearing before the referee.

New York Consolidated Laws, Labor Law - LAB § 622. Rules governing hearings and appeals

1. Rules and regulations. The manner in which disputes and appeals shall be presented before referees and the appeal board, respectively, and the conduct of hearings before referees and the board shall be governed by suitable rules and regulations established by the board.

2. Evidence and procedure. At any hearing held as herein provided, evidence may be offered to support a determination, rule, or order or to prove that it is incorrect. The appeal board and the referees, in hearings and appeals under any provision of this article, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties. Hearings governed by this article may be closed and hearing transcripts may be redacted in accordance with applicable federal or state statutory and regulatory requirements governing information confidentiality and personal privacy, including, but not limited to, article six and article six-A of the public officers law.

New York Consolidated Laws, Labor Law - LAB § 623. Decisions final

1. A decision of a referee, if not appealed from, shall be final on all questions of fact and law. A decision of the appeal board shall be final on all questions of fact and, unless appealed from, shall be final on all questions of law.

2. No finding of fact or law contained in a decision rendered pursuant to this article by a referee, the appeal board or a court shall preclude the litigation of any issue of fact or law in any subsequent action or proceeding; provided, however, that this subdivision shall not apply to causes of action which (i) arise under this article, (ii) seek to collect or challenge liability for unemployment insurance contributions, (iii) seek to recover overpayments of unemployment insurance benefits, or (iv) allege that a claimant or employer was denied constitutional rights in connection with the administrative processing, hearing, determination or decision of a claim for benefits or assessment of liability for unemployment insurance contributions.

New York Consolidated Laws, Labor Law - LAB § 624. Appeals to courts

Within thirty days after the mailing or personal delivery of notice of a decision by the appeal board, the commissioner or any other party affected thereby who appeared at the appeal before the board may appeal questions of law involved in such decision to the appellate division of the supreme court, third department. The board may also, in its discretion, certify to such court questions of law involved in its decisions. Such appeals and the questions so certified shall be heard in a summary manner and shall have precedence over all other civil cases in such court except cases arising under the workmen's compensation law. 1 The commissioner shall be represented in court by the attorney-general without additional compensation. An appeal may be taken from the decision of such court to the court of appeals in the same manner and subject to the same limitations, not inconsistent herewith, as is provided for in civil action. It shall not be necessary to file exception to the rulings of the appeal board. No bond shall be required to be filed upon an appeal to the appellate division or to the court of appeals, except as hereinafter provided. Upon final determination of an appeal, the appeal board shall enter an order in accordance with such determination.

New York Consolidated Laws, Labor Law - LAB § 625. Undertaking on appeal

No appeal shall be taken by an employer from a decision of the appeal board determining a sum to be due from such employer unless the amount involved, with interest and penalties thereon, if any, shall be first deposited with the commissioner and an undertaking filed with the commissioner, in such amount and with such sureties as a justice of the supreme court shall approve, to the effect that the employer will pay all costs and charges which may be adjudged against him in the prosecution of such appeal. At the option of the employer, such undertaking may be in a sum sufficient to cover the said amount, interest, penalties, costs, and charges as aforesaid, in which event the employer shall not be required to deposit such amount, with the interest and penalties, as a condition precedent to the taking of an appeal.

New York Consolidated Laws, Labor Law - LAB § 626. Exclusive procedure

The procedure herein provided for hearings before referees with respect to any determination, rule, or order of the commissioner, and for decisions thereon and for appeals therefrom, first to the appeal board and thereafter to the courts, shall be the sole and exclusive procedure notwithstanding any other provision of law.

Title 9. Penalties FN1 And Misdemeanors

New York Consolidated Laws, Labor Law - LAB § 630. Penalties

Any misdemeanor defined in this title shall be punishable by a fine of not more than five hundred dollars or imprisonment for not more than one year, or both.

The penalties and misdemeanors imposed by this title are in addition to those otherwise prescribed in this entire article.

New York Consolidated Laws, Labor Law - LAB § 631. Corporation officers' liability

If a corporation is convicted of any violation under this title, the president, secretary, treasurer, or officers exercising corresponding functions shall each be guilty of a misdemeanor.

New York Consolidated Laws, Labor Law - LAB § 632. False statements or representations

1. Benefits and contributions. Any person shall be guilty of a misdemeanor who wilfully makes a false statement or representation

(a) with the effect of obtaining, either for himself or for any other person, any benefit or payment under the provision of this article or of any similar law of another state or the United States in regard to which this state acted as agent pursuant to an arrangement authorized by this article, or

(b) in order to reduce the amount of contributions to the fund.

2. Sale price of commodities. Any person who, in connection with the sale or offer for sale of any commodity or service, or for the purpose of making such sale, makes any statement, written or oral, ascribing a particular part of the price of such commodity or service to a contribution imposed under this article knowing that such statement is false or that the contribution is not so great as the portion of such price ascribed to such contribution, shall be guilty of a misdemeanor.

New York Consolidated Laws, Labor Law - LAB § 633. Wilful failure to pay contributions

Any person who wilfully refuses or fails to pay a contribution to the fund shall be guilty of a misdemeanor.

New York Consolidated Laws, Labor Law - LAB § 634. Refusal to permit inspections of records

Any person who refuses to allow the commissioner or his authorized representative to inspect his payroll or other records or documents relative to the enforcement of this article shall be guilty of a misdemeanor.

New York Consolidated Laws, Labor Law - LAB § 635. Deductions from wages

Any employer who shall make a deduction from the remuneration of any employee to pay any portion of the contribution which the employer is required to make shall be guilty of a misdemeanor.

New York Consolidated Laws, Labor Law - LAB § 636. No fees to be charged for services rendered by free public employment bureaus

A person connected with or employed in a free public employment bureau, who shall charge or receive directly or indirectly any fee or compensation from any person applying to such bureau for help or employment, is guilty of a misdemeanor.

Title 10. General and Miscellaneous Provisions

New York Consolidated Laws, Labor Law - LAB § 640. Prosecution and litigation

The failure by any person to do any act required by or under the provisions of this article shall be deemed an act committed in part at the office of the industrial commissioner in Albany and committed in part in the place where the person resides or has a place for the regular transaction of business. The certificate of the industrial commissioner or deputy industrial commissioner to the effect that contribution has not been paid, that a report has not been filed, or that information has not been supplied, as required by or under the provisions of this article, shall be prima-facie evidence that such contribution has not been paid, that such report has not been filed, or that such information has not been supplied.

New York Consolidated Laws, Labor Law - LAB § 642. Separability of provisions

If any provision of this article or the application thereof to any person or circumstance is held invalid, the remainder of the article and the application of such provision to other persons or circumstances shall not be affected thereby.

New York Consolidated Laws, Labor Law - LAB § 643. Saving clause

The legislature reserves the right to amend, alter, or repeal any provision of this article; and no person shall be or be deemed to be vested with any property or other right by virtue of the enactment or operation of this article.