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October, 2013

Illinois Unemployment Insurance Law Handbook

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ABOUT THIS *HANDBOOK*...

The Illinois Department of Employment Security (IDES) developed the *Illinois Unemployment Insurance Law Handbook* in response to a need for a single, comprehensive, and updated publication. The *Handbook* provides interested parties with the Illinois Unemployment Insurance statutes, rules, interpretive guides, and selected precedent decisions of the Board of Review (the final administrative appeals tribunal) and the Illinois appellate courts. The *Handbook* is available as hardcopy in a binder or on CD-ROM. Additionally, this publication includes selected facsimiles of forms used in the Department's administration of the Illinois Unemployment Insurance Act.

The *Handbook* contains detailed information pertaining to unemployment insurance needed by employers, claimants, entrepreneurs, lawyers and accountants, employer and labor organizations as well as government agencies and non-profit organizations. Information in the *Handbook* provides answers to questions such as employer contributions, covered and exempt wages, independent contractors, labor disputes, purchase and sale of a business, tax calculations and liability of employers, government entities and non-profit organizations and their responsibilities under the Illinois Unemployment Insurance Act. The *Handbook* also includes information about appeals procedures and benefit eligibility.

For easy access to the desired information in the hardcopy version, two copies of the Tables of Contents are included. One set is at the front of the book and another is placed in front of each section of the *Handbook*. In the CD-ROM version of the *Handbook*, the Table of Contents will be linked directly to the related text. A users' comment form is included with both versions of this *Handbook*. We encourage you to let us know how we can improve this publication.

The hardcopy version of the *Handbook* is updated periodically with new information. Both subscribers of the CD-ROM and the hardcopy version of this *Handbook* can access summaries of recent updates on the IDES Web site (www.ides.state.il.us). Hardcopy information updates will be mailed to all subscribers of the hardcopy version of the *Handbook*.

To order either version of the *Handbook*, complete the following form and mail to the address shown along with your remittance (payable to the Illinois Department of Employment Security - Title III). For subscribers of the hardcopy version, this payment will cover the cost of the *Handbook* and any updates sent to you during this calendar year. As a subscriber, you will be notified of the annual subscription cost (currently $45.00).

Users who have questions about information or issues covered in the *Handbook* or other questions pertaining to the Illinois Unemployment Insurance Act should call the appropriate telephone number:

Appeals Division (800) 821-3550
Claimant Services (800) 244-5631
Employer Assistance (312) 793-4880 or (800) 247-4984
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ILLINOIS UNEMPLOYMENT INSURANCE LAW HANDBOOK
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ILLINOIS UNEMPLOYMENT INSURANCE LAW HANDBOOK

GUIDE TO THE UNEMPLOYMENT INSURANCE ACT

IDES

ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY

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GUIDE TO THE ILLINOIS UNEMPLOYMENT INSURANCE ACT

I. INTRODUCTION

The Illinois Unemployment Insurance Act was enacted to provide partial protection to workers against the loss of wages when they are out of work due to a lack of opportunities. For this reason, contributions and payments in lieu of contributions are required from certain employers to maintain the fund used to pay benefits to the unemployed workers who meet the eligibility requirements of the law.

Unemployment benefits are not "hand-outs" or "relief" and are not available just for the asking. They are insurance, bought and paid for by their employers, and paid only to job seekers who are unemployed through no fault of their own and who are ready, willing and able to accept suitable employment.

Unemployment insurance is a joint State-Federal endeavor. The programs involving the payment of benefits, the collection of contributions and payments in lieu of contributions and employment service are the responsibility of the State. The federal government pays the cost of administration.

The overall tax liability of an employer in relation to unemployment insurance is determined by both federal and State law. An employer that is subject to one is usually subject to both. The major exceptions are certain types of nonprofit organizations, local governmental entities and the State of Illinois that are subject to only Illinois law.

Employers subject to both the Federal Unemployment Tax Act and the Illinois Unemployment Insurance Act do not have to make the full payments required by the federal Act IF they make the proper payments to the State FIRST.

This Guide has been prepared in order to inform employers of their rights and responsibilities under the Illinois Unemployment Insurance Act. It describes the conditions under which an employer is liable for the payment of contributions or for making payments in lieu of contributions, the reports that must be filed by all employers, the varying rates at which contributions are paid, the circumstances under which unemployed workers are eligible for benefits and, in general, the highlights of Illinois unemployment insurance law.

Reading the entire Guide will give an employer a broad picture of the unemployment insurance program as administered by the Department of Employment Security.

The Guide should be kept and used as a reference for the explanation of particular issues that may arise from time to time. Employers having questions not answered by this Guide should contact:

Illinois Department of Employment Security
Employer Hot Line
33 South State Street
Chicago, Illinois 60603
(800)247-4984

*** IMPORTANT ***

THIS GUIDE DOES NOT HAVE THE EFFECT OF LAW, RULINGS OR REGULATIONS. IT IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND IT IS NOT INTENDED TO PROVIDE, OFFER OR BE A SUBSTITUTE FOR COMPETENT LEGAL ADVICE.

II. EMPLOYER'S RESPONSIBILITIES TO WORKERS

A. Information Required to Be Given to Workers

All employers subject to the Illinois Unemployment Insurance Act are required to inform workers about their rights to unemployment insurance benefits. There are two requirements.

First, the employer is required to post notices and signs sent to it for that purpose by the Department of Employment Security. By law and regulation, the employer must post these notices in conspicuous places in its establishment where they may be seen by employees. (56 Ill. Adm. Code 2760.1)

Second, when a worker quits, is discharged, or is laid off for an expected duration of seven days or more, the employer is required to give the worker a copy of "What Every Worker Should Know About Unemployment Insurance," which can be obtained at the local unemployment insurance office. (56 Ill. Adm. Code 2720.100) English and Spanish versions of this publication are also available on the Department's website.

This pamphlet gives the worker information about the conditions he must meet to be eligible for unemployment insurance benefits. If delivery in person is impossible or impractical, a copy should be mailed within five calendar days following the separation to the worker's last known address. (56 Ill. Adm. Code 2720.100)

The employer should enter the company's name and address in the box provided on the first page of this form.

B. Notice to Partially Unemployed Workers

A worker is "partially unemployed" if he works regularly for an employer and in a calendar week works less than full-time due to a lack of work and earns less than his weekly benefit amount. (Section 239 and 56 Ill. Adm. Code 2720.1)

If otherwise eligible for unemployment insurance benefits, this worker is entitled to benefits equal to his weekly benefit amount less that part of his wages which are in excess of 50 percent of his weekly benefit amount. (Section 402 and 56 Ill. Adm. Code 2920.15)

In order for the Department to determine the amount of unemployment insurance benefits payable to such an individual, the Department must know what his earnings were in such a week.

If requested by the worker, an employer is required to furnish any worker who is partially unemployed with what is known as "valid evidence" of such partial unemployment. This information is furnished by issuing a Low Earnings Report to an employee whenever he earns less than the maximum weekly benefit amount allowed by law in a week of less than full-time work.

If the employer has learned from any notice received from the Department what the worker's actual weekly benefit amount is, it shall issue the Low Earnings Report when the worker's earnings in a calendar week of less than full-time work are less than this actual benefit amount.

The employer may either fill out the Department form or may attach a blank copy of this form to a check stub, pay envelope or voucher containing the following information:

1. The name of the worker;

2. Social Security number of the worker;

3. Ending date of the calendar week;

4. Actual amount earned during the calendar week;

5. A statement that the earnings were for a week of less than full-time work during which the earnings were reduced due to a lack of work;

6. Name and address of the employer;

7. The date the "valid evidence" is issued to the worker; and

8. A signature (actual or facsimile) or other positive identification of the employer supplying the information (e.g., imprinting of the employer's name and address on the stub or pay envelope).

The Low Earnings Report or its equivalent must be issued not later than the pay day for the last day of the calendar week. (56 Ill. Adm. Code 2720.107)

There are times when the Department may find it necessary to request from an employer a Low Earnings Report for a worker to determine whether he is entitled to benefits. When an employer receives such a form, it must fill in the information requested and return the form to the address given on the form within 5 business days of receiving it, or the Department will accept the worker's statement of his earnings. (56 Ill. Adm. Code 2720.107)

If a worker's failure to work on a holiday occurs in a week in which the worker is partially unemployed, a Low Earnings Report should NOT be given to the worker with respect to such week. If a Request For Low Earnings Report is received by the employer under such circumstances, such report should include a statement that the worker did not work on a specific date because of a holiday.

III. EMPLOYER LIABILITY UNDER THE UNEMPLOYMENT INSURANCE ACT

A. Employers of "One or More in Twenty Weeks" or with $1,500 Quarterly Payroll

An employing unit, except certain types of nonprofit organizations or local governmental entities, that has one or more persons in employment in Illinois on any one day within each of 20 or more calendar weeks in any calendar year is required to pay contributions for that calendar year and for at least the following calendar year, even though it did not or does not have one or more employees in as many as 20 weeks in that second year. (Section 205)

An employing unit that does not meet the "one or more" test but pays or paid wages for services in employment of $1,500 or more during any calendar quarter of a calendar year is required to pay contributions for that calendar year and for at least the following calendar year.

When any employing unit reaches the twentieth week of one or more employees, or pays wages of at least $1,500 in any calendar quarter, it becomes liable for contributions on its taxable payroll for the entire year.

EXAMPLE: Even if the twentieth week in which one or more persons were employed falls in the last part of December, 2013 or $1,500 in wages are paid for the first time in the fourth quarter of 2013, the employing unit is liable for contributions on its taxable payroll for the year of 2013 and also for 2014. It must file its first report in January, 2014 and pay contributions based on its taxable payroll for 2013, and it must file a report for each quarter in which it had paid employees.

It must also pay contributions quarterly thereafter. Once having had one or more persons in employment on any one day within each of 20 or more calendar weeks in any calendar year, or once having paid $1,500 or more in wages in any calendar quarter for services in employment, an employing unit will have to pay **CONTRIBUTIONS FOR THAT YEAR AND FOR EVERY YEAR THEREAFTER** unless it has a year with less than "twenty weeks of one employee" **AND** all the quarterly taxable payrolls in that year are less than $1,500; **AND** it asks the Director of Employment Security **IN WRITING** to be relieved from the requirement of paying contributions; **AND** such request is granted.

There is a TIME LIMIT for filing such a request. For the termination of coverage to be effective as of January of any calendar year, the request must be filed prior to February 1 of such year.

However, an employer that no longer has services being performed for it and ceases to pay wages for services in employment in Illinois can request termination immediately if it files an application with the Director within five days after the date that its next wage report is due.

However, if the employer again has individuals providing services to it during that calendar year or the following calendar year, the termination shall be rescinded as of the date that the termination was originally granted. Additionally, if the Director determines that the employing unit has permanently ceased to pay wages for services in employment and permanently ceased to have any individual performing services for it, he may terminate that employing unit on his own initiative. (Section 301)

For an employing unit to have in employment one or more individuals within each of 20 or more calendar weeks does not mean that an employing unit must necessarily have a staff of one or more regular, full-time workers for 20 weeks in a row, or that the same individual is employed in each such week. A part-time worker, who works for only a half hour one day a week, counts just as much in each week as one regular, full-time worker.

A rather extreme example, involving an employing unit having one part-time worker, will serve to illustrate this point. If the employing unit hired a different part-time worker each week for 20 calendar weeks, it would have to pay contributions for that year and for at least the next calendar year.

The week to be used in determining liability is a CALENDAR WEEK, which may not necessarily be the employer's payroll week. An employer's payroll week could end on any day of the week. However, a CALENDAR WEEK begins at 12:01 A.M. on Sunday and ends at midnight on the following Saturday. If a worker works a few hours on Saturday and a few hours on Sunday in the same weekend, he is working in two different calendar weeks.

All individuals performing services for an employing unit are counted in determining the number of workers or in determining the quarterly taxable wages EXCEPT the following:

1. The owner or owners (partners) of an employing unit. (Section 206) Officers of a corporation, even if they are the sole stockholders, are not considered the owners of the business of a corporation. They usually are in employment and must be counted.

2. Directors of a corporation acting in the capacity of a Director or on a committee provided for by law or by the charter or the bylaws of the corporation. The services on the committee must be as a Director dealing with broad matters of policy, and not those ordinarily performed by an officer or other employee of a corporation. (Section 232) This Section does not apply to certain nonprofit organizations.

3. The owner's father, mother, spouse, and the owner's child under the age of 18. A person working for a corporation is counted even though the owner of all the stock is the worker's son, daughter, spouse or parent. (Section 218)

4. Persons who do not perform any of their services in the State of Illinois. However, after 1971, if such person is not covered by any other state or Canada, his services are considered to be Illinois employment if the place from which the services are directed or controlled is in Illinois.

   Also, services of a citizen of the United States performed outside the United States for an American employer are considered Illinois employment if the principal place of business of the employer is located in Illinois or, if there is no place of business in the United States, the owner or partners reside in Illinois, or the corporation is organized under the laws of Illinois if the employer is a corporation. (Sections 207, 208, 208.1 and 208.2)

5. Persons free from the employer's control and direction who are engaged in an independent trade, occupation, business or profession and who perform services that are outside the course of the employer's business or performed outside the place of business. (Section 212)

   This provision is much narrower than what is commonly known as an "independent contractor". See 56 Ill. Adm. Code 2732.200 for some of the factors considered in the application of this exception.

6. Agricultural and aquacultural workers. Only certain specified types of these workers are counted in employment. The worker should be counted if the employing unit paid cash wages of $20,000 or more in any calendar quarter either in the current or preceding year to workers employed in agricultural or aquacultural labor OR the employing unit employed 10 or more such workers in each of 20 or more weeks in either the current or preceding year. (Sections 214 and 211.4)

7. Domestic workers in private homes, local college clubs and local chapters of college fraternities or sororities unless their employer had paid cash wages of $1,000 or more in any calendar quarter in either the current or preceding calendar year to an individual or individuals employed in such domestic service. (Sections 215 and 211.5)

8. Officers or members of the crew of a vessel that is not an American vessel or that is directed or maintained from an operating office outside this State. This includes persons whose services are performed outside this State. This includes persons whose services are performed on or in connection with an aircraft, which is not an American aircraft, if the person is employed on or in connection with such aircraft when outside the United States. (Section 216)

9. Real estate salesmen under certain conditions. (Section 217)

10. Persons under the age of 18 who deliver newspapers or shopping news and any persons who deliver newspapers or shopping news to the ultimate consumer, if substantially all of their remuneration is on a "per piece" or output rather than an hourly basis, and they work under written contracts that indicate they are not to be treated as employees for federal tax purposes.

    Freelance editorial and photographic work for newspapers is also exempt. (Section 225)

11. Insurance agents who are paid solely by commission. (Section 228)

12. Persons who perform services in another state as well as in Illinois if the Director of Employment Security has agreed to consider all of their services performed in another state. (Section 2700)

13. Certain persons performing services for nonprofit organizations. (See the section on nonprofit organizations for a complete explanation.)

14. Certain persons who perform services for governmental entities. (See the section on governmental entities for a complete explanation.)

15. Direct sellers of consumer goods outside of a retail establishment if the remuneration for such service is directly related to sales, rather than hours worked, and the services are performed pursuant to a written contract that provides that the person shall not be treated as an employee for federal tax purposes. (Section 217)

16. Owner-operators of their own trucks but only under certain specified circumstances as provided in the Act. (Section 212.1 and 56 Ill. Adm. Code 2732.205)

17. Real estate closing agents when their contract with the title insurance company specifies that they are not employees and they are paid on a per-closing basis. (Section 217.1)

18. Real estate appraisers whose written employment contract provides that they are paid on a fee-per-appraisal basis and that they are free to accept or reject appraisal requests from that entity or from other entities. (Section 217.2)

19 Golf caddies if they are full-time students under the age of 22 and are paid directly by a golf club member or by the golf club on behalf of a member. (Section 232.1)

20. Full-time students in the employ of an organized camp under certain specified conditions. (Section 232.2)

21. An election official or election worker for certain governmental entities if the remuneration received by the individual for such services in any year is less than $1,000. (Section 220)

22. Effective January 1, 2011, an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act (Section 211.4)

Furthermore, any individual's services will be considered "employment" for Illinois Unemployment Insurance purposes if such services constitute "employment" under the provisions of the Federal Unemployment Tax Act (FUTA). Such services will also be considered "employment" if FUTA deems such service to be "employment" to enable Illinois employers to receive the full FUTA tax credit for the contributions paid. (Section 245B)

In most situations, the services of actors, actresses, singers, musicians, models and other "talent" constitute employment under the Act. However, a talent or modeling agency that is licensed under the Private Employment Agency Act is not the employing unit with respect to the performance of services for which an individual has been referred by the agency. (Section 204)

Under certain conditions, an employee leasing company that contracts with a client to supply or assume responsibility for workers that perform services for the client on an on-going, rather than temporary basis, may be considered to be the employer. The employees must be paid directly from the employee leasing company's account, the employee leasing company must retain the right to hire or terminate the worker, either exclusively or in conjunction with the client, and the client's unemployment insurance contribution rate must be equal to or lower than the new employer rate. If the client's rate is higher, the difference between the client's rate and the employee leasing company's rate must not exceed 1.5 percent. (Section 206.1) See part X, Section A, for reporting requirements.

In deciding whether wages for agricultural workers should be reported for unemployment purposes, a crew leader can be considered an employing unit. (Section 211B)

Any individual who is a member of a crew furnished by a crew leader to perform agricultural services for any other employing unit shall be treated as employed by the crew leader if the leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963 or substantially all of the members of such a crew operate or maintain tractors, mechanized harvesting or crop dusting equipment or any other mechanized equipment provided by the crew leader.

Furthermore, any individual furnished by a crew leader for service in agricultural labor for an employing unit who does not fall within the employ of a crew leader will be treated as performing services in the employ of the other employing unit. Such employing unit will be treated as paying cash wages equal to the amount paid by the crew leader. (Section 211.4)

Under Section 214 of the Act, "agricultural labor" means all services performed as follows:

a. 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;

b. 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;

c. In connection with the ginning of cotton, or the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

d. In the employ of the operator of a farm, or a group of operators of farms (or a cooperative organization of which such operators are members), 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, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

The definition of "agricultural labor" shall not include services 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. (Section 214)

The term "farm" as used in this Section includes stock, dairy, poultry, fruit, furbearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards. (Section 214)

The term "aquacultural labor" means all services per-formed in connection with the production of aquatic products as defined in the Aquacultural Development Act

If you are in doubt as to whether you are required to count an individual in a specific situation, consult your local unemployment insurance office or write to:

Department of Employment Security
Employer Hot Line
33 South State Street
Chicago, Illinois 60603

If you have a more complex legal question, such as one about "employee leasing" (additional information on this subject can be found on the IDES website), contact the Office of Legal Counsel, 9th Floor, Department of Employment Security, in Chicago.

B. Employer Liability by Succession

An entity which purchases or otherwise acquires an organization, trade or business owned or operated by another, which is at the time of the transfer required to pay contributions must, in turn, pay contributions for the remainder of the year in which the transfer takes place, and indefinitely after that, until there is a year of less than "twenty weeks of one employee" AND all the quarters' taxable payrolls in that year are less than $1,500; AND the entity requests in writing that its liability be ended; AND such request is granted. (Section 205C)

EXAMPLE: Kramer, a grocer, has one person working for him on one day in each of 25 weeks in 2013. He sells his store as a going business to Green on February 1, 2014. Kramer must pay contributions based on his payroll for the month of January, 2014. Green must pay contributions for the month of February and for the remainder of 2014 (and for January also, if he paid workers in January) and for each year thereafter until his liability ceases.

Any person or firm purchasing or otherwise acquiring the business or a portion of a business of another or the business assets of another should request the seller to produce a certificate from the Director of Employment Security stating that it owes no contributions, interest, or penalties; otherwise, the purchaser or transferee will become PERSONALLY LIABLE for the payment of contributions, interest or penalties owed by the seller, or the transferor (up to the value of the property acquired), unless it withholds enough of the purchase price to pay to the Director the amount owed by the seller. (Section 2600)

Caution: Compliance with the Illinois Bulk Sales Act is insufficient.

Similarly, an employing unit that buys the assets or a portion of the assets of another business that is outside the purchaser's usual course of business and either assumes a substantial amount of the seller's debts or obtains a substantial amount of its goodwill, or continues in the same business at the same place of business must pay contributions if the seller was required to do so. (Section 205)

C. Employer Liability by Tacking

Whenever one acquires the business assets or business of another during a calendar year and continues in that business, the number of weeks in which the purchaser has one or more employees during the rest of the year will be added to the number of such weeks which the seller had during the first part of the year and if the total makes 20 or more weeks, the purchaser will be required to pay contributions on its own payroll for that year and for at least the following year.

Similarly, if the acquisition occurs during a calendar quarter, the buyer's taxable payroll for the remainder of the calendar quarter is added to the seller's payroll for that quarter. If the total is $1,500, or more, the buyer will be required to pay contributions on its own payroll for that year and for at least the following year.

D. Employer Liability by Election

Employing units, except State and local governmental entities, that do not have to pay contributions for any of the foregoing reasons or because the worker's services do not constitute employment (Section 206) may desire to have its workers insured against the risk of unemployment.

They may request permission to pay contributions. If the Director approves the request, the employer must pay contributions for at least two full calendar years and comply with the requirements to which all other employers are subject. (Section 302)

E. Employer Liability Under the Federal Unemployment Tax Act

Any employing unit, except for certain types of nonprofit organizations and local governmental entities, that must pay a tax under the Federal Unemployment Tax Act because the employing unit has employed one or more persons on some day within each of 20 or more weeks in a calendar year throughout the United States (and in some instances, outside the United States), must pay contributions based on wages paid to those working for the employing unit in Illinois.

EXAMPLE: An employer having one or more persons in employment on some day within each of 20 or more calendar weeks in 2013 in the United States with two workers in Illinois for less than 20 weeks (with a quarterly payroll in Illinois of less than $1,500) and two in Iowa for 20 weeks or more, must pay contributions to Illinois based on the wages that it pays its Illinois workers. The employer receives credit against the Federal tax for the contributions so paid.

EXAMPLE: An employer with a sales organization in the State of New York which employs 10 persons in the New York office at all times and employs a salesman in Chicago for less than 20 weeks and whose wages for a calendar quarter are less than $1,500 must pay contributions under the Illinois Unemployment Insurance Act on the Illinois salesman's wages or commissions. The employer will receive a credit against the Federal tax for the contributions so paid.

An employer that must pay contributions to Illinois for any year, solely because of its tax liability for that year under the Federal Unemployment Tax Act, must continue to pay contributions to Illinois, based on wages it pays its Illinois workers, for each subsequent year (even though, for any such subsequent year, it does not incur any tax liability under the Federal Act), until the employer requests in writing that its State liability be ended and its request is granted.

For complete information about the Federal tax, consult the Internal Revenue Service.

F. Termination of Liability

Once an employing unit is determined liable and receives an account number, whether because of its own employment experience, by voluntary election, through succession, or because of liability under the Federal Unemployment Tax Act, it remains liable from year to year thereafter until officially terminated by the Director.

To end liability, an employing unit must file an application for termination of coverage with the Director of Employment Security. This application must be filed by January 31 of the year for which the employer seeks to terminate liability, and the employer must show that its employment experience in the preceding year was such as to make it eligible to terminate liability.

In other words, most employers must show that in the preceding calendar year they did not have one or more persons in employment within 20 or more calendar weeks, and that there was no calendar quarter in that year in which the taxable payroll equaled or exceeded $1,500. (Section 301 and 56 Ill. Adm. Code 2760.110)

EXAMPLE: If an employer had "one employee in each of 20 weeks" in 2013 or a taxable payroll in a calendar quarter in 2013 of $1,500 or more, but does not have such experience in 2014, it is nevertheless liable for contributions for 2014 and continues to be liable for 2015, unless it files an application for termination of coverage on or before January 31, 2015 and the application is approved by the Director. If it is so approved, the employer's liability ceases as of January 1, 2015.

An employer that no longer has services being performed for it and ceases to pay wages for services in employment in Illinois can request termination immediately if it files an application with the Director within five days of the date that wage reports are due for the quarter. Such termination would become effective as of the last day of that quarter.

However, if the employer again has individuals providing services to it during that calendar year or the following calendar year, the termination shall be rescinded as of the date that the termination was originally granted.

EXAMPLE: Ma and Pa wish to close their business and retire. As of September 15, 2013, they no longer have services being performed for their business in Illinois. Their next wage report is due October 31, 2013. If they file a notice of termination with the Director by November 5, 2013, their account will be immediately terminated, effective October 1, 2013, and it will not be necessary for them to file wage reports showing no employment for the remainder of 2013 and for all of 2014.

However, if Ma and Pa later have services performed for the business in the state during either the remainder of 2013 or during 2014, the approval of their termination will be rescinded as of the date that the termination was originally granted.

Additionally, if the Director determines that the employing unit has permanently ceased to pay wages for services in employment and permanently ceased to have any individual performing services for it, he may terminate that employing unit on his own initiative. (Section 301)

Certain nonprofit organizations subject to the Act because they have four or more workers may similarly terminate liability if the number of workers drops below four or the number of weeks in which at least four are employed drops below 20. (See the section on Non-profit Organizations)

It is again emphasized that liability extends from year to year regardless of the number of persons employed or the amount of wages paid, unless an application for termination of coverage is filed on time or unless the Director terminates on his own initiative. Liability is terminated on the basis of the information submitted, but it may be subject to an investigation at a later date.

If it is subsequently found that termination should not have been granted, the employer's account is reinstated, and it is required to file quarterly reports and to pay contributions, interest and penalties, as provided by the Act. This includes payment for those quarters in which no reports were filed and no contributions were paid.

G. Offset Credit Against the Federal Unemployment Tax

The requirement that the employer of "one or more in 20 weeks" pay contributions under the Illinois Unemployment Insurance Act coincides with the provisions of the Federal Unemployment Tax Act (See Section 3306(a)).

Under that Act, any employer of one or more persons throughout the United States on any one day within each of 20 or more calendar weeks in a calendar year must pay to the federal government a tax on its taxable payroll.

Likewise, if it pays total insured wages to persons throughout the United States (and in some instances, outside the United States), of at least $1,500 in a calendar quarter, it is liable for federal unemployment taxes. This provision does not apply to certain types of nonprofit organizations and to local governmental entities.

Beginning July 1, 2011, the FUTA tax rate became 6.0% on the wages paid after June 30, 2011. For 2014, the FUTA tax rate is still 6.0%.

If Illinois did not have a certified unemployment insurance law, Illinois employers would be required to pay the full tax to the federal government. For the Illinois law to be certified by the U.S. Secretary of Labor, the Illinois law must meet certain federal guidelines.

Because Illinois does have a certified unemployment insurance law, employers which pay contributions on time receive an offset credit against the federal unemployment tax. An employer is also entitled to an additional credit against the federal tax equal to the difference between the amount of contributions actually paid and the amount it would have been required to pay if it did not have a reduced rate based on its experience.

The maximum credit that may be granted against the federal tax is limited to 90 percent of that tax at a "deemed" rate of 6 percent. This means that the maximum credit allowed is 5.4 percent. Further information can be found at the Internal Revenue Service website http://www.irs.gov/uac/Form940.

It should be noted that an employer which is delinquent in the payment of contributions to the State may be required to pay the federal tax in full in addition to contributions to the State, plus interest and penalties.

EXAMPLE: Employer Z is liable both under the Federal Unemployment Tax Act and the Illinois Unemployment Insurance Act for 2014. In 2014, it paid its workers taxable wages of $10,000. Its tax at 6.0 percent of its payroll under the Federal Unemployment Tax Act is $600.00. It has an Illinois rate of 5.5 percent and as a result pays $550.00 in State contributions. If Employer Z pays contributions to Illinois in full on or before January 31, 2015, it may report its federal tax payable as follows:

1.	Taxable wages paid	$10,000.00
2.	Federal Tax at 6.0 percent	600.00
3.	Credit for Contributions paid to Illinois (Cannot exceed the maximum credit offset, which is 5.4 percent)	-540.00
4.	Net federal Tax Due	60.00

IV. WAGES

This Section applies to all employers, including non-profit organizations and governmental entities that elect to reimburse benefits in lieu of paying contributions.

A. Wages Defined

In general, "wages" means every form of remuneration for personal services, including salaries, commission, bonuses and the reasonable money value of all remuneration in any medium other than cash.

The reasonable money value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Director. Such rules shall be based on the reasonable past experience of the workers and the employing units. (Section 234)

B. Meals and Lodging as Wages

Board, lodging, meals or other payment in kind received by a worker from his employer in addition to or in lieu of (rather than a deduction from) money wages shall be considered remuneration paid by the employer.

The Director shall determine or approve the cash value of such payments. This cash value shall be used in determining the wages paid to the worker and in computing the contributions due under the Act.

Where a money value for board or lodging or both furnished a worker is agreed upon in an employment contract, the amount agreed upon shall be considered the cash value of such board and lodging. (56 Ill. Adm. Code 2730.100) However, meals given for the convenience of the employer are not remuneration for services and do not constitute wages. (56 Ill. Adm. Code 2730.100)

C. Tips as Wages

Employers that have individuals in their employ who customarily receive tips in the course of their work are required by law and regulation to post notices advising such workers of their duty to report the amount of tips they receive. (56 Ill. Adm. Code 2730.105 and Section 234)

Employers should request copies of the required posters and forms from Employer Hot Line, Department of Employment Security, 33 South State Street, Chicago, Illinois 60603, (800) 247-4984.

Detailed rules with respect to the reporting of tips as "wages" can also be obtained from the Office of Legal Counsel, 9th Floor, Department of Employment Security, in Chicago.

D. Remuneration Not Considered Wages

There are several classes of remuneration which are NOT considered "wages", which need NOT be reported, and on which contributions are NOT required. (Section 235)

The exemptions from the definition of "wages" are also available to nonprofit organizations and local governmental entities that elect to reimburse benefits in lieu of paying contributions.

The exemptions to the definition of "wages" include:

1. Payments to a worker for actual expenses incurred for the employer in the course of his employment, for which the employee is required to submit a current and itemized account to his employer.

2. Payments under a plan or into a fund (including accident insurance premiums) on behalf of workers or their dependents on account of sickness or accident disability, medical or hospital expenses for sickness or accident disability, or death;

PROVIDED that these payments are made under a plan applying generally to the employer's workers and their dependents and not to a specific individual.

The sickness or accident disability exemption is limited to those advance payments made under a plan or into a fund for sickness or accident disability. Payments actually made to the individual or his dependents on account of sickness or accident disability are not exempt.

3. Payments to an employee in connection with sickness or accident disability or related medical and hospital expenses, made by the employer more than six months after the employee last performed service for the employer.

4. Payments made to, or on behalf of, an employee or his beneficiary that would be excluded from "wages" by subparagraphs (A), (B), (C), (D), (E), (F) or (G) of Section 3306(b)(5) of the Federal Internal Revenue Code of 1954, in effect on January 1, 1985.

5. Remuneration to an individual employed in agricultural labor, as defined by Section 214 of the Act, which is made in a medium other than cash.

6. Payments that are not taxable for federal income tax purposes as part of a cafeteria plan established under Section 125 of the Internal Revenue Code of 1986 are not included in "wages", to the extent that (1) the benefit chosen under the plan is specifically excluded under Section 235 of the Act and (2) under Section 245(c) of the Act, the benefit is not includable in the terms "wages" subject to the payment of taxes under FUTA. (56 Ill. Adm. Code 2730.150)

EXAMPLE: Payments made under a plan established by an employer generally for individuals in its employ to provide for the payment of medical insurance premiums, which would not be includable in gross income for federal income tax purposes under Section 125 of the Internal Revenue Code of 1986, are not includable as wages because there is a specific exclusion in the Act for payments on account of medical or hospitalization expenses in connection with sickness or accident disability and such payments are not subject to the payment of taxes under FUTA.

EXAMPLE: Payments made under a plan established by an employer generally for individuals in its employ to provide for the payment of dependent care assistance, which would not be includable in gross income for federal income tax purposes under Section 125 of the Internal Revenue Code of 1986, are includable as wages because there is no specific exclusion in the Act for payments on account of dependent care assistance even though they are not subject to the payment of taxes under FUTA.

7. Payments that are not taxable for income tax purposes under Section 401(k) of the Internal Revenue Code of 1986 are included in "wages," as defined in Section 234 of the Act. Amounts deducted from an individual's taxable income pursuant to salary reduction arrangements, as well as employer contributions, are also "wages." (56 Ill. Adm. Code 2730.155)

E. Wage Limitations

For the calendar year 2014, only the first $12,960 of wages paid to a worker during that calendar year were subject to the payment of contributions. (Section 235)

Total wages in excess of these amounts for all workers in the quarter must be reported, but contributions on such excess are not paid.

In general, only the wages paid by the employer itself or tips can be considered in applying the particular wage limitation. However, there are situations in which an employer may take into account wages paid by another employer.

One such situation is where both employing units are owned or controlled by the same interests. In the other instance, an employer which succeeds to the business or substantially all of the assets of another employer or distinct severable portion thereof is treated as a single unit with its predecessor for the purpose of the wage limitation in the year in which the succession occurs, provided that the predecessor was also liable for the payment of contributions. (Section 235)

EXAMPLE: On April 1, 2014, Jones buys from Brown an established drug store already liable for the payment of contributions. Brown had already paid a pharmacist wages of $5,000 in the period January 1 through March 31 and had paid contributions on those wages. Jones hires the same pharmacist and pays him wages of $34,500 in the period from April 1 to December 31. Jones is required to pay contributions on only $7,960 of the $34,500 which he paid the pharmacist.

In computing the wage limitation for any calendar year, an Illinois employer may count the wages paid by it to a worker on which it has to pay contributions to another state or states.

EXAMPLE: Taylor, a building contractor, hires a carpenter to work on a project in Wisconsin in the Spring of 2014 and pays him $8,000 for such work. Since all the work is performed in Wisconsin, he pays contributions on the $8,000 to the State of Wisconsin. In the Fall of 2014, Taylor hires the same carpenter to work on a project in Chicago. He pays him wages of $8,000. Taylor is required to pay contributions to Illinois on only $4,960 of the $8,000 paid for work in Illinois.

V. RATE OF CONTRIBUTION

The entry level contribution rate for employers, except nonprofit organizations and governmental entities that elect to reimburse benefits in lieu of paying contributions is the GREATEST of the following four rates:

1. 2.7 percent;

2. 2.7 percent times the adjusted state experience factor;

3. The rate determined by the employer's Economic Sector in the North American Industry Classification System (NAICS), which is based on the average contribution rate for all experience rated employers in that specific Economic Sector (or a similar system sanctioned by the U.S. Secretary of Labor and established by rule); or

4. A rate determined in accordance with the experience rating provisions of Sections 1501 through 1507 of the Act, but only if the employer has had at least 13 consecutive months experience with the "risk of unemployment."

As used in Section 1500 of the Act, the "risk of unemployment" means the possibility that the wages paid by an employer could become base period wages for an individual.

EXAMPLE: A sole proprietor begins business on February 1, 2014. On April 1, 2014, the proprietor hires his first employee who begins work on that date. Assuming the proprietorship becomes liable for the payment of contributions for calendar year 2014, April, 2014 is the first month in which the proprietorship faces the risk of unemployment since it is the first month that the proprietor paid wages that could become base period wages.

The greatest of these entry level rates is applicable to those employers that have not qualified for a variable contribution rate determined on the basis of their previous experience with the risk of unemployment because they have less than three years of liability under the Act.

A. Payment of Contributions

Except for certain employers of only household workers (See 56 Ill. Adm. Code 2760.128 and Section 1400.2), contributions are payable and wage reports must be filed quarterly - on or before April 30, July 31, October 31, and January 31, respectively - for the preceding quarter, but may be accelerated by the Director. An employing unit that becomes newly liable under the law must file its first wage report and pay its first contributions on or before the end of the month following that quarter in which it became liable.

Liability is always for the ENTIRE calendar year once the employing unit becomes liable, and contributions are due on the entire taxable payroll since the preceding January 1.

The amount of wages upon which the employer is liable for payment of contributions may vary from year to year according to the different amount set by law. The principle of liability expressed in the two following examples remains valid despite statutory changes to the wage base.

EXAMPLE: An employer which has previously not been liable for the payment of contributions and has one or more workers in employment within each of five calendar weeks in the first quarter of 2014 (January, February and March), within each of five calendar weeks in the second quarter (April, May and June) and within each of ten calendar weeks in the third quarter (July, August and September) must file its first report and pay contributions by October 31, 2014.

The employer must report by quarter all wages paid by it in 2014 from January 1 to September 30, and pay contributions on all such wages up to the taxable wage limit of $12,960 applicable to 2014 for each worker, whether part-time or full-time, steady or extra.

The employer makes its next report and payment in January 2015 covering wages paid in October, November and December 2014, but pays contributions only on wages paid to each worker not in excess of the first $12,960 paid to such worker in 2014.

EXAMPLE: An employer, not previously liable for the payment of contributions, which pays $1,500 or more in wages to its worker or workers within the second quarter of 2014 (April, May and June) must file its first report and pay contributions by July 31, 2014. It must report by quarter all wages paid by it in 2014 from January 1 to June 30, and pay contributions on all such wages up to $12,960 for each worker.

The employer makes its next report and payment by October 31, 2014, covering wages paid in July, August and September 2014, but pays contributions only on wages paid to each worker not in excess of the first $12,960 paid each worker in 2014. The employer makes its fourth quarter report and payment by January 31, 2015, paying contributions only on wages paid to each worker not in excess of the first $12,960 paid to such worker in 2014.

The fact that the Director has not sent a newly liable employer a contribution report or notice that it is liable is NOT an excuse for late payment. THE DUTY OF REGISTERING AND COMPLYING WITH THE LAW RESTS UPON THE EMPLOYER.

If a newly liable employer does not have enough time to get the proper forms and still file them on time, it should compute the amount of contributions it owes the Director and mail its check or money order, with an explanatory letter and a list of its employees' names, social security numbers and the amount of wages paid to each employee during each quarter involved.

B. Penalties For Failure To File Reports

An employer that fails to file a timely quarterly wage and contribution report must pay a penalty for each month or part of a month that the report was late. **The Department accepts a post mark by the U.S. Postal Service as the date of filing a report or making a payment. If a private delivery service is used, however, the date of filing or payment is the date that the report is actually delivered to the Department unless the private delivery service is one recognized by the Internal Revenue Service pursuant to 26 USC 7502(f). The names of recognized delivery services can be found in IRS Notice 2004-83 or its later revision.** (56 Ill. Adm. Code 2725.11)

The penalty for failing to file a timely wage and contribution report is $5 for each $10,000 or fraction thereof of the total wages for insured work paid by it during the period or $2,500 per month, whichever is less. The maximum penalty is $10 for each $10,000 or fraction thereof of the total wages for insured work paid during the period or $5,000, whichever is less.

Pursuant to rule, all employers with 25 or more employees (not necessarily all 25 at the same time) during the preceding calendar year must file their quarterly wage and contribution reports electronically. An electronic filer that files on paper is still subject to the imposition of the penalty.

While there is a phase in period, by July 1, 2014, all employers with 25 or more employees in the preceding calendar year will be required to file monthly wage reports.

THE PENALTY FOR LATE FILING CAN IN NO INSTANCE BE LESS THAN $50.

The penalty for failure to timely file these forms accrues even though the contributions or payments in lieu of contributions due were paid on time. An employer that has paid wages in a calendar quarter (or month, if applicable), all of which wages are in excess of the particular taxable wage base applicable to each worker in the particular calendar year, must also file its quarterly (or monthly) report on time, even though no contributions are due. Failure to do so will also result in the imposition of a penalty. (Section 1402). An employer that has paid no wages during a calendar quarter (or month, if applicable) must file a "zero" wage report or face the imposition of a penalty.

Employers that willfully fail to pay contributions or to make payments in lieu of contributions when due, with intent to defraud, may be subject to a penalty equal to 60 percent of the amounts due. In no instance can this penalty be less than $400. (Section 1402)

If, for any reason, an employer is not able to make a timely payment, it should complete the wage and contribution report and return it by the due date. In this way, the employer avoids having to pay a penalty. The employer must, however, pay interest on the unpaid contributions or reimbursement.

C. Waiver of Interest and Penalties

The Director of Employment Security is authorized to waive the payment of all or part of any interest and penalty upon proper application and showing of good cause. (Sections 1401 and 1402)

Good cause has been defined by Department rule to consist of any or all of the following:

1. Where the delay was caused by the death or serious illness of the employer or a member of his immediate family, or by the death, or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.

2. Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.

3. Where the Department, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account, affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.

4. For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director pursuant to Section 2600 of the Act and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was in error.

Interest can also be waived according to Department rule whenever the employer can demonstrate extreme financial hardship and files with the Director a repayment agreement. However, the waiver in this instance only applies to additional interest that would have accrued during the period of the repayment agreement. (56 Ill. Adm. Code Section 2765.65)

The Director will waive interest for a nonprofit organization or for a local governmental entity, if:

a. The organization or entity had never filed any of the reports or forms required of it under the Act; and

b. It had not been determined to be the "chargeable employer" as result of the filing of an unemployment insurance claim; and

c. Its chief operating officer files an affidavit with the Director in which he states that, upon learning of the organization or entity's liability under the Act, he took immediate action to bring the organization or entity into compliance. (56 Ill. Adm. Code 2765.70)

The Director can grant a waiver of interest to certain nonprofit hospitals that have sustained large operating losses and that enter into deferred payment agreements with the Director. (56 Ill. Adm. Code 2765.73)

The Director will also waive any interest accruing due to a delay that is the fault of the Department of more than 180 days in the issuance of a decision on a protested Determination and Assessment. (56 Ill. Adm. Code 2765.71)

The Director shall also waive the penalty if:

a. The contributions due for the delinquent quarter are less than $500, except for an employer which has elected to make payments in lieu of contributions and, therefore, pays no contributions;

b. The employer files its request for waiver within 30 working days of the mailing of a notice that its report is delinquent; and

c. The employer has not been delinquent in the filing of reports for the 20 prior consecutive calendar quarters or, in the case of a monthly filer, 20 prior consecutive reporting periods (months and/or quarters). (Section 1402 and 56 Ill. Adm. Code 2765.68)

In order to allow for the annual filing of wage reports and the annual payment of contributions by certain employers of only household workers (See 56 Ill. Adm. Code 2765.61 and Section 1400.2), the statute has extended the time to file such reports and pay any contributions due to April 15 of the year following the quarters for which such reports and payments would otherwise have been due.

D. Filing Reports Under Protest

If an employer disputes its liability, it should fill out the wage and contribution report marking it "under protest" and mail it to the Department pending a final decision concerning its liability.

Nevertheless, if an assessment for unpaid contributions is made, it must still file a protest to the assessment in order to get a hearing and to prevent the assessment from becoming legally final. Payment of contributions at the time the combined form is filed or the payment of a reimbursement bill when due under protest will avoid the accrual of interest if the employer is ultimately determined to be liable for the payment of such contributions or reimbursement.

E. Overpayments And Underpayments

In the event that an employer overpays the amount due in one quarter, it may obtain an adjustment of payment in some subsequent quarter if it makes proper application not later than three years after the date on which the payments were erroneously paid. (Section 2201)

For refunds of overpaid contributions, penalties or interest, interest shall be paid by the Director, if such refund is not mailed within 90 days of the date of the claim for the refund. This interest is computed at the rate of 1.5 percent per month. (Section 2201.1)

In the event of an underpayment of the amounts due, outstanding amounts should be paid as promptly as possible, inasmuch as interest accrues on all late payments and credit for FUTA purposes might also be adversely affected. (56 Ill. Adm. Code 2765.63)

The Department will send employers a statement of account. However, the employer should not wait for this statement to pay deficiencies.

In preparing the quarterly wage and contribution report, the employer should be sure that the report is completely and accurately filled out. It is of the utmost importance that the name, social security number and the full amount of wages paid to each worker during the quarter be accurately listed. This same care needs to be made by employers that are required to file monthly reports.

If the Department finds an error in a wage report, it may notify the employer to file a corrected report. If the employer fails to file a corrected and sufficient report within 30 days from the date the request for the correction was mailed to it, it must pay, in addition to interest, the penalty for each month or part of a month (BUT NOT LESS THAN $50) on the total wages for the quarter in question. (Section 1402)

If an employer finds an error in its wage reports, it should notify the Department.

VI. EXPERIENCE RATING

A. Introduction

"Experience rating" is designed to perform three functions:

1. Replenish the unemployment trust fund for the amount of benefits paid from it in a recent period.

2. Control the size of the unemployment trust fund to prevent it from falling to dangerously low levels or rising to unduly high levels.

3. Allocate the cost of fund replenishment among employers on the basis of their experience with unemployment.

These functions are accomplished through a variation in the contribution rate of each employer which has incurred liability for the payment of contributions at the current new employer rate for the required number of years. This contribution rate is based on the employer's experience with the risk of unemployment.

In addition to considering the individual unemployment experience of each employer, the State also takes into consideration the unemployment experience of the entire State in setting rates under the experience rating system. The unemployment experience of the State is measured by a formula set by statute and adjusted depending on the financial condition of the State's trust fund. This percentage is known as the adjusted state experience factor.

A "fund building" surcharge of 0.55 is added to each employer's computed contribution rate for 2014. (Section 1506.3) The "fund building" surcharge provides for additional funds for the payment of benefits and, in times when the trust is depleted, provides a source for the repayment of loans or bonds which might be issued to replenish the depleted fund.

The experience rating provisions of the Unemployment Insurance Act and this chapter do not apply to nonprofit organizations or local governmental entities for any period during which they have elected to reimburse benefits, in lieu of paying contributions. Such employers should refer to the chapters on nonprofit and governmental entities.

For the first three consecutive calendar years in which liability for the payment of contributions is incurred, an employer that first becomes subject to the Illinois Unemployment Insurance Act pays contributions on its taxable payroll at a rate equal to the greatest of: (Section 1500)

1. 2.7 percent;

2. 2.7 percent multiplied by the current adjusted state experience factor;

3. The rate determined by the employer's Economic Sector in the North American Industry Classification System (NAICS), which is based on the average contribution rate for all experience rated employers in that specific Economic Sector (or a similar system sanctioned by the U.S. Secretary of Labor and established by rule) (Section 1500); or

4. A rate determined in accordance with the experience rating provisions of Sections 1501 through 1507 of the Act, but only if the employer has had at least 13 consecutive months experience with the "risk of unemployment."

For each calendar year thereafter, so long as the employer's liability continues, it earns a variable contribution rate. However, if in any subsequent calendar year the employer pays NO WAGES, it will lose its variable rate and will be subject to the above provisions for three additional years.

The experience rating system in Illinois has four essential features:

1. It rests on the principle that the fund from which benefits are paid to eligible claimants within a given period should be replenished in a subsequent year or years.

2. It provides that the rate of contribution for an individual employer shall be determined not only by its own experience, but also by the benefit payment experience of the entire State. Thus, favorable experience in the State will tend to lower the rates of employers generally, while unfavorable experience will tend to raise the rates for employers generally. (Sections 1504 and 1505)

3. It provides that, should the fund become too large, the state experience factor will be adjusted so as to scale contribution rates downward. On the other hand, should the fund become too small, the state experience factor will be adjusted so as to scale contribution rates upward. (Sections 1504 and 1505)

4. The amount of benefits paid to workers become the employer's benefit charges (one of the factors governing the rate of contributions for an individual employer) only when such workers or former workers have drawn benefits in any benefit year. (Sections 1502 and 1502.1)

The following discussion and illustrations show how these four factors operate in determining the contribution rate applicable to an employer.

B. Employer's Benefit Ratio

The actual amount of benefits paid to each former worker is the numerator of the fraction which is known as the employer's benefit ratio.

The numerator of this fraction consists of what are called benefit charges. A benefit charge is equal to the actual amount of benefits (including dependents' allowances) paid to the former worker. Benefit charges are assessed only to the last employer which employed the individual for at least 30 days from the beginning of his base period to the week for which a benefit charge is being made.

Because there are several exceptions to this provision, it will be necessary to examine the statute to determine whether the facts of each situation are such as to make one the chargeable employer. (Section 1502.1 and 56 Ill. Adm. Code 2765.325 *et seq.)*

Because benefits are charged to the single chargeable employer of the individual instead of to multiple base period employers, in order to minimize the effect on the state experience factor, an employer's benefit charges are multiplied by a "benefit conversion factor" to determine the numerator of its benefit ratio. (Section 1502.2)

1.	Total benefits paid to former employees for whom the employer is the chargeable employer 7/1/10 - 6/30/13	$90,000
2.	Total wages subject to the payment of contributions 7/1/10 - 6/30/13	$3,000,000
3.	Inserting the above amounts into the formula (for 1993 and each calendar year thereafter, the Benefit Conversion Factor is 138.4 percent) yields the following:	

$$\frac{\textit{Total Benefit Charges X Benefit Conversion Factor}}{\textit{Total Wages Subject to the Payment of Contributions}} = \frac{\$124{,}560}{\$3{,}000{,}000} = 4.1520 \text{ percent (Employer's Benefit Ratio)}$$

C. The State Experience Factor

The second factor in establishing the contribution rate of an individual employer is the state experience factor. (Section 1504) The state experience factor is the sum of all regular benefits paid during the three-year period ending on June 30 of the year immediately preceding the year for which a contribution rate is being determined plus the applicable "benefit reserve for fund building" divided by the "net revenue" for the three-year period ending on September 30 of the year immediately preceding the year for which a contribution rate is being determined. Each of these terms is defined in the Act.

Even though the Illinois experience formula is designed to replenish the fund reserved for benefit payments, there is always a possibility that the fund might diminish to a danger point.

Similarly, it is possible that, in a period of low benefit payments in relation to contributions receipts, the fund might accumulate a greater amount of money than may be considered reasonable.

To safeguard the fund against either depletion or excessive accumulation, the Unemployment Insurance Act provides that the state experience factor be increased when the fund is dangerously low and decreased when it is excessively high. (Section 1505)

EXAMPLE:

1.	The sum of all regular benefits paid plus the applicable "benefit reserve for funding building" for the applicable 3-year period	$3,600,000,000
2.	"Net Revenue" for the applicable 3-year period (accrued (not received) during the same 3-year period as above).	$2,900,000,000
3.	Inserting the above amount into the formula yields the following:	

Sum of all regular benefits paid plus the applicable "benefit reserve for fund building" for the applicable 3 - year period ***$3,600,000,000***

=

"Net revenue" for the applicable 3 - year period ***$2,900,000,000***

= 124 percent State Experience Factor

For every $50,000,000, or fraction thereof, by which the amount in the fund on June 30 preceding the calendar year for which contribution rates are being computed falls below the "target balance" in the fund, the state experience factor for the year for which contribution rates are being computed is to be increased by one full percentage point absolute. (Section 1505C)

On the other hand, for every $50,000,000, or fraction thereof, by which the fund, on that June 30, exceeds the "target balance", the state experience factor for the rate year is to be decreased by one full percentage point absolute. For 2005 and each calendar year thereafter, the "target balance" is $1,000,000,000. (Section 1505C)

As an example, if the unadjusted state experience factor was 95 percent, and the fund on the June 30, 2002 was $115,000,000, the state experience factor for that year would be adjusted upward to 108 percent for 2003. If the amount in the fund was $785,000,000, the state experience factor would be adjusted downward to 94 percent for 2003.

The Department of Employment Security announces the adjusted state experience factor each year, usually in the month of October, for the following rate year. The adjusted state experience factor is 125 percent for 2014. (Section 1505D)

D. Fund Building Rate

In order to build up adequate reserves in the trust fund, for years prior to 2004, there is added to each employer's contribution rate a fund building rate, equal to 0.4 percent. For 2004, the "fund building" rate was 0.7 percent; for 2005, it was 0.9 percent; for 2006 and 2007, 0.8 percent; for 2008, 0.6 percent; for 2009, 0.4 percent; for 2010, 0.45 percent; for 2011, 0.5 percent; and for 2012, 2013 and 2014, 0.55 percent. This rate applies to all employers subject to the Act. The increase in the "fund building" rate for 2004 and thereafter serves the dual purpose of providing adequate reserves in the trust fund and also provides a source for the repayment of any bonds which might be issued by the Department when the trust balance becomes so low that issuing bonds is the only alternative to borrowing the needed funds from the federal government. Bonding is a preferred alternative to borrowing because the federal government usually charges a higher interest rate on such borrowing than the interest rate available on bonds.

However, for employers whose total wages for insured work for a quarter are less than $50,000, that employer's contribution rate, including the fund building rate, shall not exceed 5.4 percent.

This limitation does not apply to a newly liable employer which has its contribution rate determined by the average rate of employers within its Economic Sector in the North American Industry Classification System (NAICS). (Section 1506.3)

E. Computation of the Contribution Rate

The contribution rate of an employer is the product obtained by multiplying the employer's benefit ratio for that calendar year by the adjusted state experience factor for that same year. (Section 1506.1)

The maximum contribution rate is limited to the greater of 6.4 percent or 6.4 percent multiplied by the adjusted state experience factor. In addition to the employer's regular contribution rate, there will be a permanent "fund building" rate.

Because the adjusted state experience factor is 125 percent for 2014, the maximum contribution rate for 2014 is 8.55 percent (this figure includes the 0.55 percent fund building rate).

Employers whose total payroll in a calendar quarter is less than $50,000 will have a maximum rate of 5.4 percent.

The minimum contribution rate for all employers that qualify for a variable rate is the greater of 0.2 percent or the product obtained by multiplying 0.2 percent times the adjusted state experience factor, except that, for 2012 through 2019, the minimum rate shall be 0.0 percent. For 2014, the minimum rate is 0.55 percent (which included the 0.55 percent fund building rate for 20141).

An employer which has qualified for a variable contribution rate, has benefit charges but did not report wages for insured work for the applicable period, shall pay at the maximum contribution rate applicable to employers for that year, plus the fund building rate. An employer that had no benefit charges during the computation period applicable to that year, and that did not report wages for insured work for the applicable period, shall pay at the rate applied to new employers for that year, plus the applicable funding building rate. (Section 1506.1)

Variable contribution rates are assigned automatically. No application for a rate is necessary except where an employer has purchased a separate part of another's business.

When an employer sells or otherwise transfers a part of its business, there are certain conditions under which its prior experience rating record may be transferred to the purchaser.

F. Total Transfer Of Experience Rating Record

Whenever an employer transfers substantially all of its business to another, the successor is assigned the entire experience rating record of the predecessor. (Section 1507)

This record includes all years during which liability for the payment of contributions was incurred by the predecessor, all benefit charges, and all wages for insured work on which the contributions were paid by the predecessor.

If the purchasing employer previously had a contribution rate assigned to it for the calendar year in which the purchase occurs, such rate will be continued for it for the balance of the year. If no rate had previously been determined for the successor employer, the predecessor's contribution rate will be assigned to it for the calendar year in which the purchase occurs.

In subsequent years, the consolidated experience rating records of both employers will be the basis for computing the successor's contribution rate.

G. Partial Transfer of Experience Rating Record

Provision is made in the law for the partial transfer of an experience rating record under certain conditions. (Section 1507B)
Such provision applies to the employer that has transferred substantially all of its business to another, but retains a distinct severable portion.

Likewise, the provision permits the purchaser of less than substantially all of another's business to acquire a portion of the predecessor's experience rating record, if the purchaser has succeeded to a distinct severable portion.

The conditions that must be met before partial transfer of an experience rating record is permitted are:

1. The portion of the business retained or transferred must be distinct and severable. Only under such conditions can the experience rating record of the portion be identified and segregated.

2. Unlike total transfers of experience rating records, partial transfers are not mandatory. Accordingly, a partial transfer cannot be put into effect unless it is preceded by a joint application for such transfer by all parties whose interest would be affected by it.

3. Since a partial transfer can possibly be used as a device to shift poor experience with unemployment risk by the reorganization of an employing unit or by splitting it into two or more employing units, the Act provides that if the parties to a reorganization are owned or controlled by the same interest, and if a partial transfer is approved, they are to be treated, while so affiliated, as a single unit for the purpose of determining their contribution rates.

The law provides time limits for the filing of an application for partial transfer.

The application must be filed prior to whichever of the following is the LATEST:

1. One year after the date of the transfer of the business;

2. The date the contribution rate determination of the applicant became final for the year following the year in which the transfer of the business occurred.

Employers that contemplate filing applications for a partial transfer of experience rating records are urged to examine carefully all implications of such action.

THE FILING OF A TIMELY APPLICATION CANNOT AFFECT ANY CONTRIBUTION RATE DETERMINATION THAT HAS BECOME FINAL.

The contribution rates of both the predecessor and the successor may be affected either favorably or unfavorably depending on the nature of the benefit experience to be transferred. Under the law, once an application for partial transfer has been approved, it becomes final as to all parties to the application.

H. Revision of the Statement of Benefit Charges

The Department of Employment Security mails to each employer liable for the payment of contributions, a quarterly Statement of Benefit Charges that have been entered on its experience rating record. An employer has 45 days from the date of mailing of the Statement of Benefit Charges within which to file an application for its revision. (Section 1508)

In the absence of such application for revision, the statement is final and conclusive.

Upon receipt of a sufficient and timely application for revision, the Director rules thereon, denying or allowing it on the merits of the allegations presented in support of revision.

If the application is denied, the Director shall issue an order to that effect, which becomes final and conclusive at the expiration of 20 days from the mailing date of the order. However, within the 20-day period, the employer may file a written protest and petition for hearing specifying its objections to the order.

Upon receipt of a sufficient petition, that is, one which states a legal or factual basis for relief, either relief will be granted or a hearing will be scheduled before a representative of the Director. This hearing is conducted in a manner similar to hearings on Assessments and Claims For Refunds.

An employer does not have the right to object to benefit charges shown on the Statement of Benefit Charges unless it can show that such benefit charges arose as a result of benefits paid to a worker in accordance with a finding, determination or a Referee's decision, to which such employer was a party entitled to notice thereof, and that it was not notified as required by the appropriate provisions of the Act.

However, in no case is an employer precluded from alleging at the hearing that the statement of benefit charges is incorrect by reason of clerical error made by the Director or any Department employees.

Benefit charges shall be canceled if the employer proves that the Department failed to give notice of any of the following:

1. A notice of claim to the last employing unit,

2. A nonmonetary determination or a Referee's remanded decision,

3. A reconsidered finding or a determination,

4. A Referee's decision allowing benefits, or,

5. A decision of the Director or the report of the Director's representative involving a labor dispute.

For a charge to be canceled, notice must not have been given within 180 days of the relevant date prescribed by the Act, and the failure to give notice must have directly resulted in the payment of benefits and hence have caused the benefit charges to accrue to the employer's experience rating record. (Section 1508.1)

I. Review of a Notice of Contribution Rate

Each employer, except nonprofit and local governmental entities that have elected to reimburse benefits in lieu of contributions, is notified each year of its contribution rate for such year. (Section 1509)

This notice is usually mailed at the end of November of the year prior to the one for which it applies. A contribution rate is final and conclusive upon the employer unless, within 15 days after the date of mailing of the notice of such rate, the employer files an application for its review. Such application must state the employer's reasons for its belief that the assigned contribution rate is incorrect.

Upon receipt of a sufficient application for contribution rate review (56 Ill. Adm. Code 2725.105), if the application is allowed, the contribution rate will be corrected and, if the rate changes, notice of the correction mailed to the employer.

In the event the application is denied, the Director will issue an order to that effect. Such order is final and conclusive at the expiration of 10 days from the date of mailing of such order, unless, within the 10-day period, the employer files a written protest and petition for hearing, specifying its objections to the order. These objections must state a legal and factual basis for relief.

Upon receipt of a sufficient protest and petition for hearing, either relief will be granted or a hearing will be scheduled before a representative of the Director. The hearing is conducted in a manner similar to that provided by the Act for determination and assessment hearings. At this hearing, the employer may present witnesses and exhibits to establish its contentions. (56 Ill. Adm. Code 2725.250)

Upon conclusion of the hearing, the Director's Representative submits to the Director a report and recommendation for disposition of the matter. A copy of this report is mailed to the employer.

The employer has the right to file specific objections to the representative's report within 20 days after the report's mailing date. (56 Ill. Adm. Code 2725.275)

If no objections are filed within the time allowed, the recommendation of the Director's Representative becomes the Director's Decision without further action by the Director.

Upon receipt of the objections to the report, the Director issues a decision and gives notice by mail of such decision to the employer. (56 Ill. Adm. Code 2725.280)

This decision is final and conclusive unless review is requested in the courts under the Administrative Review Act.

J. SUTA Dumping

If an individual or entity transfers all or a portion of its trade or business and there is any substantial common ownership, management or control of the transferor and transferee, the experience rating records of the transferor and transferee shall be combined for the purpose of determining their contribution rate, except that, if the transferor or transferee had a contribution rate applicable to it for the calendar year in which the transfer occurred, it shall continue with that contribution rate for the remainder of the calendar year and, and if the transferee had no contribution rate applicable to it for the calendar year in which the transfer occurred, the contribution rate of the transferee shall be the same as the contribution rate of the transferor for the remainder of the calendar year. Additionally, if an individual or entity that is not an employer under the Act acquires the trade or business of any employing unit, the experience rating record of the acquired business shall not be transferred to the individual or entity if the Director finds that the individual or entity acquired the business solely or primarily to obtain a lower contribution rate. Violations of this provision carry substantial penalties. An individual or entity that knowingly advises another in a way that results in a violation of this provision can be found guilty of a Class B misdemeanor and be subject to an administrative penalty of $10,000 per violation. (Section 1507.1).

VII. PROTESTS AND HEARINGS ON ASSESSMENTS AND REFUNDS

A. Protests

When an employer fails to pay contributions or to reimburse benefits as required by the law, the Director makes an assessment which includes the amounts due, interest, and if the employer has failed to file wage reports on time, penalties. (Section 2200)

An employer that disagrees with an assessment by the Director must file a protest and petition for hearing. This protest must be in writing, set forth the specific reasons why the employer contends that the assessment is incorrect and must include a legal and factual basis for relief. (56 Ill. Adm. Code 2725.110)

The written protest must be filed with the Department within 20 days after a notice of the assessment is mailed to the employer. This protest must be either delivered in person or postmarked within the 20-day period. While the law does not require it, it is advisable to send such a protest by certified mail and obtain a receipt, since the employer bears the risk of nondelivery.

If a timely protest is not filed, the assessment will become final, and the employer will have lost its right to deny liability for the amounts allegedly due.

An employer that disagrees with an assessment by the Director may avoid the possible further accumulation of interest by paying the contributions or making the reimbursement due, together with the accrued interest to date, and filing a claim for refund of such payment. (Section 2201)

If the claim for a refund is denied, the employer may petition within 20 days after the notice of the denial is mailed. This will serve the same purpose as a protest to an assessment, and the payment prevents the further accumulation of interest. **However, the employer must not let the assessment become final, or it will lose its right to question its liability for the contributions assessed.**

In the event the employer does not wish to pay the contributions or the reimbursement amount and file a claim for refund, but does wish to avoid the filing of a lien against its property by the Director, it may furnish a bond supplied by an authorized bonding company in the amount of 125 percent of the sum of the contributions or the reimbursement amount, interest and penalties allegedly due. (Section 2401D)

An employer that believes it has paid contributions or amounts in reimbursement of benefits, interest or penalties in error may file with the Director a claim for adjustment or refund within three years after the date on which such payments were made, provided that the payments were not made pursuant to an assessment that became final.

The claim for adjustment or refund form can be obtained on-line or from:

Illinois Dept. of Employment Security
Employer Hot Line
33 South State Street
Chicago, Illinois 60603
(800)247-4984

After an investigation has been made, an order is entered either allowing or denying the claim in whole or in part. If the claim is denied either in whole or in part, a notice of such denial is mailed to the employer.

The denial becomes final and cannot be contested unless the employer files a written protest and petition for hearing within 20 days from the date of mailing of the notice of denial.

All or any part of any penalty or interest may be waived by the Director for good cause shown. (Sections 1401, 1402, and 56 Ill. Adm. Code Section 2765.65)

An employer has 30 days from the date that the late payment or delayed report became due or from the date of mailing of the notice that such payment or report was untimely, whichever is later, to file a sworn written application for waiver of the interest and/or penalty.

An application is not complete unless it contains the name and address of the employer, the UI account number, the period involved and the reasons for the waiver. The Director will issue an order granting or denying the waiver. An employer has 20 days from the date the order is mailed in which to file an appeal to such order.

B. Hearings

Telephone or in-person hearings on assessments or denials of a claim for refund are held by hearing officers as representatives of the Director. (56 Ill. Adm. Code 2725.220) **For each fiscal year since July 1, 1996, the General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to "small employers" (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on decisions, orders, etc., the appeals of which are covered by this program.**

After hearing the evidence, the Director's Representative files a report with the Director, summarizing the evidence and making a recommendation to the Director that the assessment be either affirmed, modified, canceled, or that the claim for refund be allowed, denied or allowed in part.

A copy of this report is sent to the employer, which may file specific objections to it within 20 days after the date of mailing of such report. A 10 day extension can be granted if requested in writing within 10 days of the date of mailing of the report and recommended decision.

If no objections are properly filed or if the Director does not modify or cancel the assessment on his own motion within the 20-day period, the recommended decision becomes the final decision of the Director.

If objections are filed, the Director will issue a decision that may either adopt the report of the Director's Representative or modify it in accordance with the evidence and the law.

If the Director issues a decision after the hearing either affirming an assessment in whole or in part, the employer may obtain judicial review of the decision under the Administrative Review Act by filing a complaint in the Circuit Court of the County in which the hearing was held. This complaint must be filed within 35 days from the date the decision was mailed.

VIII. STATE OF ILLINOIS AND LOCAL GOVERNMENTAL ENTITIES

In 1972, the Unemployment Insurance Act was amended to extend its coverage to the State and each of its instrumentalities.

In 1978, coverage under the Illinois Unemployment Insurance system was extended to workers employed by local governmental entities. Although these entities continue to be exempt from the taxing provisions of the Federal Unemployment Tax Act, they are required to pay contributions under Illinois law. (Section 1405)

However, they may elect, instead, in lieu of paying contributions, to reimburse the State for the actual amount of any benefits paid to their former workers. (Section 1405)[1]

Local governmental entities electing to reimburse benefits, like all other employers, are required to file quarterly Wage Reports listing the name and social security number of each worker and the total wages paid to each worker for employment during the calendar quarter. (Section 1400)

Consequently, employees of the State and its instrumentalities and of local governmental entities, unless their services are specifically excluded from coverage, can qualify for benefits on the basis of the wages paid them by their employers, if they meet the eligibility requirements set forth in the law. The rights and responsibilities of governmental employees with respect to unemployment benefits do not differ from those of other workers.

A. Definition of Local Government Entities

The law defines a local governmental entity as any political subdivision or municipal corporation of this State or any of its instrumentalities, or an instrumentality of more than one of the foregoing, or any instrumentality of any of the foregoing and one or more other states or political subdivisions. (Section 211.1)

Local governmental entities are “employers” subject to the Act REGARDLESS of their past or current employment experience, the number of workers providing services for them, the size of their payroll or the fact that the governmental unit is exempt from the Federal Unemployment Tax Act pursuant to Section 3306 (c)(7) of that Act.

All local governmental entities are subject to the Unemployment Insurance Act. However, the law excludes from coverage as “employment” certain services performed in the employ of such entities. No taxes are assessed and no benefits become payable with respect to the excluded services.

B. Services Excluded from Employment

Individuals who provide services for a governmental unit are in the insured employment of that employing unit regardless of whether they are full time, part time, or temporary workers, or whether they receive wages in cash or in any other form of remuneration.

However, certain services are excluded from insured employment pursuant to specific exemptions under the law. (Section 220)

When services are excluded, individuals performing such services are not considered in insured employment.

An individual’s service for a governmental entity is excluded if it falls within any of the following exceptions[2]:

[1] Sections 205, 211.1, 220 and 1405 of the Act were amended and Section 205.1 was added by Public Act 92-0555.These changes were made to comply with the Federal Unemployment Tax Act as amended by the Consolidated Appropriations Act. These Sections were amended to consider service performed in the employ of an Indian tribe as employment. In addition, the amendment to Section 1405 allows Indian tribes to elect to make payments instead of contributions.

[2] Exclusions similar to 1, 2, 4, 5, 6, 7 and 8 apply to service in the employ of an Indian tribe. (Section 220)

1. As an elected official; (Section 220)

2. As a member of a legislative body, or a member of the judiciary of this State or a political subdivision or municipal corporation; (Section 220)

3. As a member of the Illinois National Guard or Air National Guard; (Section 220)

4. As a worker serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency; (Section 220)

5. In a position that, under or pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or as a policymaking position the performance of the duties of which ordinarily does not require more than eight hours a week; (Section 220)

6. As a part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or agency of this State, or a political subdivision or municipal corporation, by an individual receiving such work relief or work training; (Section 220)

7. In a facility, in a program conducted for the purpose of the rehabilitation of individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or a program providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work; (Section 220)

8. By an inmate of a custodial or penal institution; (Section 220)

9. In the employ of a school, college or university, by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if the spouse is advised, at the time the spouse commences to perform such services, that:

   a. the employment of the spouse to perform such services is provided under a program to provide financial assistance to the student by the school, college or university, and

   b. such employment will not be covered by any program of unemployment insurance; (Section 224)

10. By an individual 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 the exemption shall not apply to service performed in a program established for or on behalf of an employer or group of employers; (Section 227)

11. In the employ of a hospital, if such service is performed by a patient of the hospital; (Section 230)

12. As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school approved pursuant to the Illinois Nursing Act; (Section 230)

13. As an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to State law. (Section 230)

14. As an election judge or election official if the individual's remuneration for such service is less than $1,000 during the calendar year.

C. Financing Benefits Paid to State Employees

Benefits paid to State employees on the basis of wages paid to them by the State or any of its instrumentalities are financed by appropriations to the Illinois Department of Employment Security. (Section 1403)

Quarterly wage reports, listing the social security account numbers and names of State employees and the wages paid to each of them during each calendar quarter, will be filed with the Revenue Division of the Department of Employment Security by the Auditor of Public Accounts and the State universities.

Whenever an individual who has worked for the State of Illinois files a claim for benefits, notice of the filing of the claim will be mailed to the Department, institution, agency or instrumentality where he worked.

Whenever the recipient of the notice has information that may raise a question as to the individual's eligibility for benefits, it should transmit the information to the Department of Employment Security at the address and within the time limit shown on the notice.

D. Tax Rates and Experience Rating

Unless a local governmental entity elected to become a self-insurer by reimbursing the State for any benefits paid, the local governmental entity is required to pay contributions on the same basis as a non-governmental employer.

A governmental entity that has elected to be a reimbursable employer that continues to provide less than full time work to an individual who has applied for benefits due to a separation from other employment will not be subject to payments in lieu of contributions if the employer requests to have the charge removed.

This continued part time employment must continue after the end of the individual's base period and during the applicable benefit year on the same basis as prior to the individual's separation. (Sections 1405B and 1501F)

E. Benefit Reimbursement Option

Each local governmental entity has the right to elect to be reimbursable by agreeing, in lieu of paying contributions, to reimburse the State for the actual amount of regular benefits and 100 percent of the extended benefits paid to its former workers if it was both the last employer and a base period employer of a worker and to reimburse 50 percent of these amounts if the entity was the last employer but not a base period employer of a worker. (Section 1405)

If a local governmental entity elects reimbursable status, the amount that it will have to pay cannot be readily predicted because the local governmental entity must reimburse for the actual benefits paid its former workers. The amount of such reimbursement will depend upon the number of the entity's workers who become unemployed, the duration of their unemployment, the number of such workers who file claims for benefits and the amount of total benefits paid to them.

Each local governmental entity before electing to be reimbursable should examine its experience with labor turnover and the average duration of unemployment of its separated workers before they find other work.

Because the amount of benefits depends on the amount of wages the individual was paid during the individual's base period (Section 237), and upon whether or not he has certain specified dependents, it might be helpful to the entity to determine the average weekly wage and the average number of dependents of its workers.

F. Time Limits for Electing Reimbursement

A newly created governmental entity is allowed 30 days immediately following the end of the calendar quarter in which it first becomes subject to the Act to file its written election to make payments in lieu of contributions. (Section 1405B2)

Newly-created local governmental entities or entities that have previously not incurred liability for at least two calendar years may elect reimbursement for one year. All others must elect for a minimum of two years.

G. Changing From Contribution to Reimbursement

A local governmental entity that has incurred liability for the payment of contributions for at least two calendar years and is not delinquent in the payment of such contributions or in the payment of any interest or penalties that may have accrued may elect to reimburse benefits in lieu of paying contributions beginning with January 1 of any calendar year.

The written election to change to the reimbursement basis must be filed before that January 1. The new election cannot be for a period of less than two years. Such an organization remains liable for any contributions due for any calendar quarter prior to the

effective date of the election. (Section 1405B3 and 1405B4)

H. Changing from Reimbursement to Contributions

A local governmental entity that elected to reimburse benefits may terminate its election with respect to any year after the required minimum period (see "Time Limits for Electing Reimbursement" in this Section) provided it files a written notice to that effect before January 1 of the year for which it wishes to terminate its election.

A local governmental entity that changes from reimbursement to contributions will be required to pay contributions quarterly commencing with the first calendar quarter of the year for which the change is effective.

The entity will continue to be liable for reimbursement of any benefits paid to its former workers on and after the effective date of the change if the organization was the individual's "last employer." (Sections 1405B 5 and 1404A 5)

I. Allocation of Reimbursement Costs

When an unemployed worker first files a claim for benefits, he establishes his own "benefit year." (Section 242)

His eligibility for benefits and the amount of benefits payable to him during this one year period depends on the amount of wages for employment he was paid during his "base period" by employers subject to the law. (Section 237)

A worker's base period consists of the first 4 of the last 5 completed calendar quarters preceding the first day of his benefit year, except, if an individual does not qualify for the maximum weekly benefit amount due to his receipt of either workers' compensation or occupational disability payments during the base period determined above, he would be eligible to have his benefits calculated in accordance with an alternative base period. A worker's base period can also consist of the last four completed calendar quarters preceding the first day of his benefit year if he does not qualify for benefits based on the "standard" base period above. (Section 237)

When an individual has worked during his base period for a reimbursement employer and the reimbursement employer is also the individual's chargeable employer, the reimbursement employer will be liable for 100 percent of the cost of the benefits paid to the individual (including dependents' allowance).

If the reimbursing employer is the chargeable employer but not a base period employer, then it will be liable for only 50% of the cost of the benefits paid to the individual (including dependents' allowance). (Sections 1404A and 1405B)

EXAMPLE: The individual is a substitute teacher for a school district, a local governmental entity that has elected to make payments in lieu of contributions. She did not, however, work for the school district during her base period.

If she now files a claim for benefits and the school district is her chargeable employer, it will be liable for 50 percent of any payments in lieu of contributions which would result if she would be paid benefits. This is because the school district is the last employer for at least 30 days prior to the beginning of her claim. The employer is only liable for 50 percent of the amount of the benefits paid because the individual performed no services for this employer during her base period.

J. Reimbursement of Benefits Erroneously Paid

A local governmental entity that has elected to reimburse benefits is required to reimburse the State for ALL benefits paid to its former workers, INCLUDING ANY BENEFITS ERRONEOUSLY PAID. If the erroneous payment has been recovered by the State after the local governmental entity has made reimbursement of the amount so paid, an adjustment or refund will be made to the entity. (Section 1404B5)

K. Payment of Reimbursement

As soon as possible, following the close of each calendar quarter, a local governmental entity that has elected to reimburse benefits will receive a Statement of the amount due from it for the benefits paid to its former workers during the calendar quarter.

The Statement will contain the name of each person to whom payments have been made as well as the amount of benefits paid to him that is chargeable to the local governmental entity. (Section 1405C)

The local governmental entity has the right to apply to the Director for a revision of a Statement within 20 days. If it is not satisfied with the disposition of its request for revisions, it may petition within 20 days for a hearing before a representative of the Director. (Sections 1508, 1404B and 1405C)

The local governmental entity has 30 days from the mailing date of the Statement to pay the amount due. (Section 1508)

A failure to pay any amount due within 30 days from the date of mailing of the Statement will result in an interest charge on the sums due at the rate of 2 percent per month. (Section 1401) All remedies available to the Director for collecting contributions due to the State are available for the collection of reimbursement payments. (Sections 2206, 2206.1, 2200, 2207, 2401, 2404, 2600 and 2800)

L. Group Accounts

Two or more local governmental entities that have elected to reimburse benefits may file a joint application for the establishment of a group account effective January 1 of any calendar year, for the purpose of sharing the cost of benefits paid on the basis of the wages paid by such organizations. (Sections 1405D and 1404E)

A joint application for a group account must meet the following criteria:

1. The application must be filed prior to that January

2. The application must designate a group representative to act as the group's agent for this purpose.

3. The group account must remain in effect for a minimum of two calendar years.

4. The group will be liable for reimbursement due from all of its members.

5. The amount due from any member of the group if a delinquency occurs with respect to any calendar quarter will be the same ratio to the total amount due as the total wages for insured work paid by the member in the same calendar quarter bears to the total wages for insured work paid in the quarter by all members of the group.

IX. NONPROFIT ORGANIZATION

Prior to 1972, nonprofit organizations established and operated exclusively for religious, charitable, scientific, literary or educational purposes were exempt from compulsory coverage under the Illinois Unemployment Insurance Act. However, these organizations could provide coverage for their employees on a voluntary basis.

The Federal Employment Security Amendments of 1970 contained a requirement that each state extend the coverage of its unemployment insurance system to these organizations. The Illinois Unemployment Insurance Act was amended accordingly, effective January 1, 1972.

Although these nonprofit organizations continue to be exempt from the taxing provisions of the Federal Unemployment Tax Act, they are required to pay contributions under the Illinois law. However, these organizations may elect, instead, to reimburse the State for the benefits paid to any of their workers.

A. Definition of Nonprofit Organization

The Unemployment Insurance Act sets forth a definition of a "nonprofit organization". A nonprofit organization that does not meet the elements of this definition is subject to the Act as an "ordinary" employer. Others may remain exempt from its coverage. It is important that each element of the definition be carefully analyzed.

The law defines a "nonprofit organization" as a corporation, community chest, fund or foundation (Section 211.2):

1. which has or had in employment four or more workers within each of 20 or more calendar weeks within either the current or preceding calendar year; AND

2. which is defined as a "nonprofit organization" under Section 501(c)(3) of the Internal Revenue Code of 1986 as exempt from federal income tax under Section 501(a) of that Code; PROVIDED

3. that the services performed for the organization are excluded from the definition of "employment" under the provisions of Section 3306(c)(8) of the Federal Unemployment Tax Act.

Services excluded from the definition of "employment" under Section 3306(c)(8) of the Federal Unemployment Tax Act are those performed for organizations listed in Section 501(c)(3) of the Internal Revenue Code as exempt from federal income tax.

A nonprofit organization exempt from federal income tax under a paragraph of the Internal Revenue Code other than 501(c)(3) cannot meet the definition of "nonprofit organization" and is treated as an "ordinary" employer under the Illinois law.

The material that follows is directed only to those organizations that meet the conditions of paragraphs 2 and 3 above. If your organization does not meet these conditions, it is an "ordinary" employer, and not a "nonprofit organization."

B. Employment Of "Four Or More Workers Within Twenty Weeks"

Each "nonprofit organization" that meets the conditions set forth in paragraphs 2 and 3 above, and that has had four or more workers in employment within each of 20 or more calendar weeks within either the current or preceding calendar year is subject to the law. (Section 211.2)

A nonprofit organization that is not subject to the law because it has not had in employment at least four workers in 20 weeks in a calendar year may elect coverage for a minimum of 2 calendar years.

If the election is approved by the Director, the organization is entitled to the same options available to those employers mandatorily covered by the law. (Section 302)

There are other circumstances under which an exempt organization may become subject to the law.

An organization that purchases or acquires the organization, trade or business of an employer already subject to the law becomes also subject at the time of such acquisition. (Section 205D)

Whenever a nonprofit organization acquires the assets or business establishment of another employing unit and continues its activities, the number of weeks in which the purchasing organization has had four or more workers will be added to the number of weeks in which the former organization had 4 or more workers.

If the total makes 20 or more weeks in the calendar year, the purchasing organization will be subject to the law for that year (from the date of acquisition) and for at least the following year.

C. Exclusions From Employment

To determine whether a nonprofit organization has had four or more workers in at least 20 weeks, the organization must count all fulltime, part-time and temporary workers, regardless of whether they received cash wages or other forms of remuneration. All individuals who performed services for the organization must be counted, unless such services are specifically excluded under the law.

Individuals performing the following services need not be counted to determine liability:

1. In the employ of a church or convention or association of churches, or an organization or school that is not an institution of higher education, operated primarily for religious purposes and that is operated, supervised, controlled or principally supported by a church or convention or association of churches. (Section 211.3A)

2. By a duly ordained, commissioned, or licensed minister of a church in the exercise of duties required by such order. (Section 211.3B)

3. 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 providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work.

4. As part of an unemployment work relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a State or political subdivision or municipal corporation thereof, by an individual receiving such work relief or work-training. (Section 211.3E)

5. By an inmate of a custodial or penal institution. (Section 211.3F)

6. In the employ of a school, college or university, by a student who is enrolled and is regularly attending classes at such school, college or university or by the spouse of such a student if the spouse is advised, at the time the spouse commences to perform such service:

   a. the employment of the spouse to perform such service is provided under a program to provide financial assistance to the student by the school, college or university, and

   b. such employment will not be covered by any program of unemployment insurance. (Section 224)

7. In the employ of a hospital, if such services are performed by a patient of the hospital. (Section 230)

8. As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school approved pursuant to the Illinois Nursing Act. (Section 230)

9. As an intern in the employ of a hospital by an individual who has completed a 4 year course in a medical school chartered or approved pursuant to State law. A "resident" is not an intern. (Section 230)

10. In any calendar quarter in the employ of any organization exempt from income tax under Section 501(a) of the Federal Internal Revenue Code (other than an organization described in Section 401(a) of the Internal Revenue Code), or under Section 521 of the Internal Revenue Code, if the remuneration for such service is less than $50 for the calendar quarter. (Section 223)

D. Tax Liability

A nonprofit organization that does not elect to reimburse the State for the actual amount of benefits paid to its former workers is required to pay contributions on its taxable payroll. (Section 1404) All newly liable employers, including nonprofit organizations, are required to pay contributions at a fixed rate for the first three calendar years of coverage (see V. RATE OF CONTRIBUTION). The taxable payroll is limited to a maximum amount of wages paid to each worker by each employer in a calendar year. (Section 235)

For years prior to 1988, due to a depletion in the Illinois unemployment trust fund (which necessitated borrowing from the federal government), an emergency surcharge was enacted by the Illinois legislature. (Section 1506.2)

Though all borrowings were repaid, in order to avoid future borrowing for years after 1987, a permanent "fund building" surcharge was enacted, and the emergency surcharge was repealed. Because the trust fund was again depleted in 2003, effective with the contributions due for the fourth quarter of 2003, the "fund building" surcharge can be used to repay bonds issued by the Department to avoid the need to borrow from the federal government.

After the third calendar year of coverage, an employer pays contributions at rates determined for each year under the experience rating provisions of the Act. These provisions set forth a formula giving consideration to the employer's experience with the risk of unemployment of his workers.

E. Benefit Reimbursement Option

Each nonprofit organization subject to the Act has the right to elect to be a reimbursable employer by agreeing, in lieu of paying contributions, to reimburse the State for the actual amount of regular benefits and one-half the amount of extended benefits paid to its former workers who meet the eligibility requirements of the law. (Section 1404A)

If a nonprofit organization elects to be a reimbursable employer, the amount that it will be required to pay to the State cannot be readily predicted.

Since the nonprofit organization would have to reimburse the State for the actual benefits paid to the organization's former workers, the amount of such reimbursement would depend upon the number of the organization's workers who become unemployed, the duration of their unemployment, the number of such workers who file a claim for benefits, and the amount of the weekly and total benefits paid to them.

Before electing to be a reimbursable employer, the nonprofit organization should examine its experience with labor turnover.

F. Time Limits For Electing Reimbursement

A nonprofit organization that becomes subject to the Act is allowed 30 days immediately following the end of the calendar quarter in which it first becomes subject to the Act to file its written election to make payments in lieu of contributions. (Section 1404A2)

EXAMPLE: Z private Secondary School was in existence and had at least four workers in each of 20 weeks or more in 2013 during which time the school was liable as a "regular" employer.

Effective January 1, 2014, the school receives a Section 501(c)(3) tax exemption from the Internal Revenue Service. It has until 30 days following the end of the quarter in which it becomes a nonprofit employer, as defined by the Act, to elect reimbursement, i.e. the quarter in which it first has at least four workers in each of 20 weeks for the year.

Election of reimbursement of benefits for a minimum of one calendar year is permissible only for newly created nonprofit organizations. In all other instances, an election of reimbursement of benefits must be for a minimum of two calendar years. (Section 1404A 1)

G. Filing of Quarterly Wage Reports

Nonprofit organizations electing to reimburse benefits, like other employers, are required to file quarterly and, if they had 25 or more employees during the preceding calendar year, monthly Wage Reports listing the name and social security number of each worker and the total wages paid to him for employment during the calendar month or quarter. (Section 1400) An employer who fails to file a monthly or quarterly Wage Report by the due date (the last day of the month following the calendar month or quarter) is subject to a penalty. (Section 1402)

H. Changing From Contributions To Reimbursement

A nonprofit organization that has incurred liability for the payment of contributions for at least two calendar years and is not delinquent in the payments of such contributions or in the payment of any interest or penalties which may have accrued, may elect to reimburse benefits in lieu of paying contributions beginning with January 1 of any calendar year. A nonprofit organization that has entered into a repayment agreement is DELINQUENT in the payment of contributions until the amounts due are paid in full. Such organization is not eligible to elect reimbursement.

The written election to change to the reimbursement basis must be filed before such January 1. The new election cannot be for a period of less than two years. Such an organization remains liable for any contributions due for any calendar quarter prior to the effective date of the election. (Section 1404)

A nonprofit organization that has elected to reimburse benefits and continues to provide less than full-time work to an individual who has applied for benefits due to a separation from other employment will not be subject to payments in lieu of contributions if the employer has so requested.

This continued part-time employment must continue after the end of the individual's base period and during the applicable benefit year on the same basis as prior to the individual's separation. (Section 1404B 7)

A similar provision applies to payments made with respect to benefit years beginning on or after July 1, 1989. (Section 1404B 7)

I. Changing From Reimbursement To Contributions

A nonprofit organization that elected to reimburse benefits may terminate its election with respect to any year after the expiration of the minimum period of election (See "Time Limits for Electing Reimbursement" in this Section), provided it files a written notice to that effect before January 1 of the year for which it wishes to terminate its election. (Section 1404A 5)

A nonprofit organization that changes from reimbursement to contributions will be required to pay contributions quarterly commencing with the first calendar quarter of the year for which the change is effective.

The organization will continue to be liable for reimbursement of any benefits paid to its former workers, on and after the effective date of the change if the organization was the individual's "last employer." (Section 1404C)

J. Allocation Of Reimbursement Cost

When an unemployed worker first files a claim for benefits, he establishes his own "benefit year." (Section 242)

His eligibility for benefits and the amount of benefits payable to him during this one year period depend on the amount of wages for employment he was paid during his "base period" by employers subject to the law. (Section 237)

A worker's base period consists of the first 4 of the last 5 completed calendar quarters preceding the first day of his benefit year (See "Allocation of Reimbursement Costs" in VIII. STATE OF ILLINOIS AND LOCAL GOVERNMENTAL ENTITIES).

Whenever a nonprofit organization on the reimbursement method is the individual's "last employer" and it is also a base period employer, it will be liable for 100 percent of the benefits paid to the individual. If it is the "last employer" but not a base period employer, it will be liable for 50 percent of the payments paid to the individual. (Section 1404A)

In some instances, a nonprofit organization may be both a contributions employer and a reimbursement employer during a worker's base period. This can occur when the base period covers quarters in two calendar years and the organization has elected to change its method of payment at the close of the earlier calendar year. In such case, it would be liable for either payments in lieu of contributions or benefit charges depending on its status at the time that the claim was filed.

K. Reimbursement Of Benefits Erroneously Paid

A nonprofit organization that has elected to reimburse benefits is required to reimburse the State for all benefits paid to its former workers, INCLUDING ANY BENEFITS ERRONEOUSLY PAID, unless the erroneous payment has been recovered by the State.
If the erroneously paid benefits are recovered by the State after the nonprofit organization has made reimbursement of the amount so paid, an adjustment or refund will be made to the organization. (Section 1404B 5)

L. Payment Of Reimbursement Due

As soon as possible following the close of each calendar quarter, a nonprofit organization that has elected to reimburse benefits will receive a Statement of the amount due from it for the benefits paid to its former workers during the calendar quarter. The Statement will contain the name of each person to whom payments have been made, and the amount of benefits paid to him that is chargeable to the nonprofit organization. (Sections 1404 and 1508)

The nonprofit organization has the right to apply for a revision of the Statement within 20 days. If it is not satisfied with the disposition of its request for revision, it may request a hearing before a representative of the Director. (Section 1508) The nonprofit organization has 30 days from the mailing date of the Statement to pay the amount due. (Section 1508).

Although the employer may have a question concerning the Statement, it should pay the amount indicated so as not to incur interest charges and then request a refund.

A nonprofit organization that fails to pay the amount due within these 30 days will be charged interest on the sum due at the rate of 2 percent for each month, computed at the rate of 12/365 of 2 percent per day. Payments received more than 30 days after such payments became due shall be deemed to have been received on the last day of the month preceding the month in which they became due.

All remedies available to the Director for collecting contributions due to the State are available for collection of reimbursement payments. (Sections 2206 and 2207).

M. Group Accounts

Two or more nonprofit organizations that have elected to reimburse benefits may file a joint application for the establishment of a group account effective January 1 of any calendar year, for the purpose of sharing the cost of benefits paid on the basis of the wages paid by such organizations. (Section 1404E)

The joint account must meet the following criteria:

1. The application must be filed prior to that January

2. The application must designate a group representative to act as the group's agent for this purpose.

3. The group account must remain in effect for a minimum of two calendar years.

4. The group will be liable for reimbursement due from all of its members.

5. The amount due from any member of the group if a delinquency occurs with respect to any calendar quarter will be the same ratio to the total amount due as the total wages for insured work paid by the member in the same calendar quarter bears to the total wages for insured work paid in the quarter by all members of the group.

X. FORMS AND REPORTS REQUIRED

All forms received from the Department of Employment Security should be read thoroughly and the instructions followed carefully.

Some forms are sent out by the Department solely for the information of the employing unit and require no further action.

Most forms, however, require prompt action if the employing unit is not to lose rights or incur penalties. IDES forms are self explanatory or are accompanied by instructions.

If these instructions are not clear to you, contact the Employer Hot Line, (800) 247-4984, of the Department of Employment Security in Chicago.

Commonly used forms can be obtained by downloading from the Department's website at www.ides.illinois.gov.

Each report or form submitted to the Department of Employment Security must be signed and certified as to its accuracy and contain the employer's account number. The title of the individual signing the report or form must be shown on the report or form.

A. Form To Determine Liability For the Payment of Contributions

Every employing unit that has not paid contributions or has not filed a report of its employment experience must obtain Form UI 1 (Report to Determine Liability Under the Unemployment Insurance Act) from the Revenue Division of the Department of Employment Security. This report must be completed and filed with the Revenue Division. A newly created employing unit must file this report within 30 days after it begins business. (56 Ill. Adm. Code 2760.105)

An employee leasing company which meets the requirements for reporting under its own account number the wages paid to workers performing services for its clients must report each client to the Department of Employment Security within 30 days of the effective date of the contract or by the end of the quarter in which the contract takes effect, whichever is later. If the report of the client relationship is untimely, the report will go into effect with the next quarter for which the report may be considered timely. (56 Ill. Adm. Code 2732.306).

Under Section 2600, any employing unit, including those not liable for the payment of contributions, which goes out of business, or transfers or sells substantially all of its business assets or its business, or is involved in any change must submit Form UI 50A (Notice of Change) to the Department of Employment Security within 10 days of such change. This report also must be filed if a business sells a separate part of its business or the assets of such separate part. (56 Ill. Adm. Code 2760.110)

All employers determined to be liable for the payment of contributions must file Form UI 3/40 (Contribution and Wage Report) quarterly. These same forms must be filed by nonprofit organizations and local governmental entities that elect to reimburse benefits in lieu of paying contributions.

B. Forms For Reporting Wages And Paying Contributions

The wages of the workers for a calendar quarter are reported on Contribution and Wage Report (Form UI 3/40). Before mailing the UI 3/40 to the employer, the Department of Employment Security imprints on it the employer's name, address, account number, its employees' names and social security numbers (from the prior quarter's report) (up to twenty-five) and the rate at which contributions are to be computed. The UI 3/40 should be completed and promptly returned with a check or money order covering the contributions due.

The check should be made payable to

The Director of Employment Security

and mailed with the Report and Payment Coupon to the designated address. These forms should be mailed using the envelope provided (56 Ill. Adm. Code 2760.135). Subject to the payment of a convenience fee, employers may also make payments by credit or debit card. All monthly reports MUST be made electronically.

As an alternative to filing its wage and contribution report on paper, employers are encouraged to use a free service known as **Illinois TaxNet**. Information on this service can be found on the Department's website at www.ides.illinois.gov. This service allows an employer to reduce data entry time by automatically generating a list of employees from its previous report and merely updating this information. It also calculates taxable wages automatically and is available any time day or night. This secure and confidential service may also be used to obtain certain information about the employer's account.

The Wage and Contribution Report (UI-3/40) must be filed by the use of electronic media which has been approved by the Director if the employer reasonably expects to have 25 or more workers in its employ during that year or had 25 or more workers in its employ during the previous year. Failure to comply with this requirement will result in penalties to the employer. Waiver of this requirement is allowed only where the employer has been granted a waiver of the similar federal electronic reporting requirement. Therefore, it is of utmost importance that employers subject to this rule take immediate action to insure compliance. (56 Ill. Adm. Code 2760.140) **If an employer is required to file its monthly and quarterly wage report electronically but instead files on paper, the penalty for failing to properly file its monthly or quarterly report will still be imposed.**

An employer that maintains its payroll records on data processing equipment and that is not subject to the requirement explained in the previous paragraph, may submit its individual workers' wages on electronic media. (56 Ill. Adm. Code 2760.140) Information and detailed instructions for reporting may be obtained by writing to:

Illinois Department of Employment Security
Revenue Division
Attn: Document Control
33 South State Street
Chicago, IL 60603

In certain instances, employers engaged in more than one type of industry or operating in more than one geographical area within the State of Illinois are required to submit Form BLS 3020 with the quarterly Form UI 3/40. On Form BLS 3020, the amount of wages and the number of workers shown on Form BLS 3020 are broken down by type of industry or by geographical area.

An employer that continues to be liable for the payment of contributions but which has paid no wages in a calendar month or quarter because of temporary inactivity must file a monthly or quarterly report showing "no wages paid". "Telefiling" allows the employer to file such wage and contribution information using a touch tone telephone. The number to call is **(800) 793-6860.** If the employer terminates business, it should file a final report showing the wages paid in the last quarter of business and should also file a Form UI 50A (Notice of Change). (56 Ill. Adm. Code 2760.110)

C. Employer Records

All individuals or firms that employ one or more workers must maintain and preserve payroll records that show (56 III. Adm. Code 2760.115):

1. Each worker's name (including temporary and part-time workers).

2. Each worker's social security account number.

3. The city or county in which each worker is employed.

4. The dates upon which each worker performed services.

5. The date on which each worker was hired, the date on which each worker was laid off, discharged or quit, and the date of rehiring after temporary layoffs.

6. The monthly, weekly, daily or hourly rate of pay, or the piecework rate if the worker is paid on a piecework basis.

7. The number of hours worked by each worker paid at an hourly or piecework rate.

8. The customary or scheduled full-time hours for each worker paid on an hourly or piecework basis in the employment in which he is engaged.

9. The dates covered by the employer's pay period, the wages paid each worker for each pay period and the total wages for each pay period.

The record of wages paid must include:

1. Money wages paid, such as wages, salary and commissions.

2. Reasonable cash value of remuneration other than cash such as board, room, laundry, etc., except where a meal is provided for the benefit of the employer. (56 Ill. Adm. Code 2730.100)

3. Special payments, such as bonuses, gifts, prizes, dismissal pay, vacation pay or pay in the nature of vacation pay, wages in lieu of notice, and the period of time these special payments cover.

4. The amount of tips and gratuities, where these are customarily received by workers from persons other than the employer and are reported to the employer by the worker.

All payroll records must be kept in such a way that quarterly wages of each worker and the weeks in which the workers performed their services may be easily determined.

Payroll records are used to determine:

1. whether an employing unit is liable for the payment of contributions,

2. the total contributions an employer must pay, and

3 the benefit rights of unemployed or partially unemployed workers.

All records must be kept accurately and be up to date.

The records of employing units must be preserved for at least five years, or until a determination and assessment of contributions, interest, or penalties or an action for the collection of contributions, interest or penalties has become final or is canceled and withdrawn. (Section 1801)

Such records must be open to inspection by representatives of the Director of Employment Security at all reasonable times. Under Section 1900, these records will be held confidential.

Willful failure to furnish reports, audits or other information required for the proper administration of the Illinois Unemployment Insurance Act is punishable by fine and imprisonment. (Section 2800)

D. Notice Of Claim

As soon as possible after a claim is filed for benefits, a Notice of Claim to Last Employing Unit and Last Employer or Other Interested Party is sent to the claimant's last employing unit, the employer whose experience rating will be chargeable if benefits are paid to the individual and to any other individual or organization for which the individual provided services subsequent to the beginning of his benefit year. The same notice is sent when an additional claim or a claim for Extended Benefits is first filed.

An employer that receives the above Notice and which believes that the claimant may be ineligible for benefits for any reason, must AT THAT TIME file a letter or a Notice of Possible Ineligibility (Form ADJ030F) (return copy) if it wishes to be a party to the claims adjudicator's determination. Unless the employer is a party to a determination, it does not have the right to appeal an adverse determination. This Notice must be mailed to the local office designated on the form, and by the designated **"REPLY DUE DATE"** (within 10 days from the **NOTICE OF CLAIM)**. As mentioned above, if the Notice is not sent by the employer within the time period required, the employer loses its appeal rights except with regard to the issues of availability, disqualifying income, refusal of work or "not unemployed" for subsequent weeks. (Section 702 and 56 Ill. Adm. Code 2720.130)

Pursuant to 56 III. Adm. Code 2720.132, if an employing unit discharges an individual for an alleged felony or theft connected with his work, the employing unit must notify:

Illinois Dept. of Employment Security
Attn: Labor Dispute Unit
33 South State St.
Chicago, IL 60603

The notification must be sent within 10 days of the date that the individual files his next claim for benefits. This notice must meet the sufficiency requirements of Section 602B of the Act. It is advisable that the employing unit mail this notice to the Department as soon as possible after the separation of the individual from the employing unit.

E. Notice Of Possible Ineligibility Form ADJ030F (Return copy)

A Notice of Possible Ineligibility (Form ADJ030F) or a letter containing the equivalent information should be mailed or faxed to the designated local office within 10 days of the date of the notice of claim.

Failure to file a Notice within 10 days will result in a loss of party status and appeal rights. (Section 702 and 56 Ill. Adm. Code 2720.130)

Information contained on the Notice should include the names, addresses and telephone numbers of persons having personal knowledge of the facts and circumstances supporting the allegations.

The Notice must also meet the sufficiency requirements of 56 Ill. Adm. Code 2720.130(c) as follows:

1. A separate Notice should be sent for each claimant.

2. The allegations must be supported by material reasons or facts, rather than conclusions of law. (Section 702)

3. If the employer alleges that the claimant is ineligible for benefits because of vacation pay, the employer must state the amount paid and must also designate the period to which such pay is allocated. (Section 610 and 56 Ill. Adm. Code 2920.30)

4. If the employer alleges that the claimant is not eligible for benefits because of a labor dispute, the employer must provide the Department with the name and social security number of each worker involved in the dispute within five days of the start of the period of the work stoppage due to such labor dispute. (Section 604)

If the Department determines that the Notice has not met the sufficiency requirements, the Notice will be returned with a description of the needed information.

If the requested information is mailed back within 10 days of the date the Department returned the Notice to the employer, the Notice will be considered filed on the date that the Department originally received it. (56 Ill. Adm. Code 2720.130(e))

The Department will not return the Notice more than once. A determination that a Notice is insufficient may be appealed.

It is of the utmost importance that each allegation on the Notice of Possible Ineligibility be supported by as detailed a statement of the facts as possible. The claims adjudicator can make a correct determination only to the extent that the facts and circumstances relevant to the claim are known to him. A mere allegation that a worker has been discharged for misconduct connected with the work is inadequate. An allegation should be supported by a summary of the events which led to the worker's discharge. Similarly, an allegation that the worker is not available for work should be supported by a statement of the facts that led the employer to believe that the worker is unavailable.

F. Claims Adjudicator's Determination As to Eligibility

For each week for which a claim for benefits is made, a claims adjudicator makes a determination as to the claimant's eligibility. (Section 702 and 56 Ill. Adm. Code 2720.140)

An employer that has filed a sufficient Notice of Possible Ineligibility within the 10-day time limit is a party to such determination and is entitled to a notice of the determination and has the right to appeal it. **For each fiscal year since July 1, 1996, the General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to "small employers" (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on determinations, decisions, etc., the appeals of which are covered by this program.**

If no Notice of Possible Ineligibility or letter has been filed within the time limit, the employing unit is not a party to the determination.

Even though an employer does not send a Notice within the proper time limit, the claims adjudicator will consider the information disclosed on the late Notice in making his determination or in reconsidering a determination already made. An employer should send a Notice if it believes the claimant to be ineligible, even though the 10-day period has expired. A late Notice does not make the employer a party to the determination and cannot be made the basis of an appeal except with respect to the issues of availability, disqualifying income, refusal of work or "not unemployed," for subsequent weeks. However, the non-party employer will receive a copy of the determination for its information only. (56 Ill. Adm. Code 2720.140)

An employer that has filed a sufficient and timely Notice of Possible Ineligibility alleging an issue of availability, disqualifying income, refusal of work or "not unemployed" becomes a party to any determination made with respect to the week for which the Notice is received. Such employer will have appeal rights to the determination.

Any employer that does not receive a Notice of Claim but which has knowledge of facts indicating the possible ineligibility of the claimant may mail a Notice of Possible Ineligibility or a letter containing the information to Claimant Services, Department of Employment Security or to the local office.

G. Report of Workers Affected By A Labor Dispute

An employer that wishes to contest a worker's eligibility for benefits on the grounds that his unemployment is due to a stoppage of work because of a labor dispute must, within five days after the worker's unemployment begins, mail or fax to:

Illinois Dept. of Employment Security Labor
Dispute & Determination Section
33 South State St.
Chicago, Illinois 60603

A Report of Workers Affected by Labor Dispute (Form ADJ027FE) or a letter setting forth the names and social security numbers of the workers involved and the establishment affected by the labor dispute.

Upon receipt of the employer's list, a Labor Dispute Questionnaire (Form ADJ032FE) is sent to the employer and to either the union or to the designated representative of the employees involved in the labor dispute.

This questionnaire must be returned within 10 days or the adjudicator will issue his determination based on the information that is included in the record at that time. Form ADJ027FE pertains only to possible ineligibility resulting from a labor dispute and does not operate as a Notice of Possible Ineligibility with respect to any other issue. If any other issue exists, Form ADJ030F should be used. (Section 604 and 56 Ill. Adm. Code 2720.130(d)(3))

H. Notice of Determination

If a sufficient and timely Notice of Possible Ineligibility (Form ADJ030F) is filed by an employer, the employer will be sent a Notice of the Claims Adjudicator's Determination (Form ADJ004L).

In the case of a labor dispute, if an employer files a timely Report of Workers Affected by Labor Dispute (Form ADJ027FE), the employer will be sent a Notice of the Claims Adjudicator's Determination accompanied by Form ADJ004L..

In either case, if the employer believes that the determination is not correct, it must file its appeal with the claims adjudicator at the unemployment insurance local office where the claim was filed within 30 days of the mailing date of the notice of the determination. If such an appeal is filed in time, a hearing will be scheduled and the parties will be notified of the time and place of such hearing. **For each fiscal year since July 1, 1996, The General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to "small employers" (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on determinations, decisions, etc., the appeals of which are covered by this program.**

I. Back Pay Awards

The statute requires that, whenever an individual has received "wages" in the form of a back pay award, any unemployment insurance benefits paid during the period covered by the back pay award must be repaid to the Department. To implement this requirement, the employer MUST make the check for the ENTIRE back pay award payable jointly to the Director and the individual. The Director will then deduct the amount of unemployment insurance benefits previously paid and return the difference to the individual. There is no legal authority for the employer to merely offset any unemployment insurance benefits from the back pay award. (Section 900D)

XI. CLAIMANT BENEFITS

The unemployment insurance program is an insurance system designed to protect workers against the risk of involuntary unemployment. (Section 100) The benefits that a worker receives from the system partially replace the wages lost by him when he experiences such unemployment. To receive these benefits, a worker must meet non monetary, as well as monetary, eligibility requirements set forth in the Illinois Unemployment Insurance Act.

A claimant who has worked in Illinois but lives outside Illinois may apply for benefits under the Illinois Unemployment Insurance Act by filing a claim at the unemployment insurance office in the state or territory in which he resides. He also has the option of filing his claim on line directly with Illinois. (56 Ill. Adm. Code 2720.155)

A. Base Period Wages and Benefit Year

To be monetarily eligible for any benefits, a worker must have been paid wages of $1,600 or more in his base period by employers subject to the UI Act. At least $440 of these wages must have been paid to him outside the calendar quarter in which he was paid the highest amount of wages. (Section 500E)

In addition, to qualify for extended benefits an individual's total base period earnings must be at least 1.5 times his high quarter wages. (Section 409B)

A worker's base period consists of the first four of the last five completed calendar quarters immediately preceding the month in which the benefit year begins.

An alternative base period is available to workers who do not qualify for the maximum benefit amount because they were receiving either workers' compensation or occupational disability during the above base period.

Another alternative base period consisting of the last four completed calendar quarters immediately preceding the month in which the benefit year begins is available where the worker is completely ineligible using the "standard" base period. (Section 237)

The benefit year is the one-year period beginning with the Sunday of the week in which the worker first files a valid claim for benefits. (Section 242)

An individual who was paid benefits in his first benefit year is ineligible for benefits for any week in a second benefit year even if he has sufficient base period wages unless, subsequent to the beginning of the immediately preceding benefit year, he performed bona fide work and earned remuneration for such work equal to at least 3 times his current weekly benefit amount. (Section 607B)

B. Weekly Benefit Amount

The claimant's weekly benefit amount depends on the amount of wages he was paid during the two highest quarters of his base period by employers subject to the Act. (Section 401)

The total wages paid to an individual in the two highest quarters of his base period shall be divided by 26 to determine the Prior Average Weekly Wage for the claimant. With respect to benefit years beginning on or after January 6, 2008, 47 percent of the claimant's Prior Average Weekly Wage equals his weekly benefit amount.

However, in no case can this amount be more than 47 percent of the Statewide Average Weekly Wage nor less than $51.

The Statewide Average Weekly Wage is computed twice per year for use in determining benefits under the Workers' Compensation Act.

However, a separate formula for unemployment insurance purposes was added to the statute in 1990. Using this formula, the Statewide Average Weekly Wage for use in 2013 was $877.19. (Section 401B)

A claimant is given an additional benefit allowance for dependents. For a non-working spouse, an additional amount, determined by statute, is added to the weekly benefit amount, not to exceed a maximum of the Statewide Average Weekly Wage set by statute.

For a dependent child or children, an additional amount set by statute is added to the weekly benefit amount, not to exceed a maximum of the Statewide Average Weekly Wage also set by statute.

Except for benefit years beginning in 2012, most claimants are eligible to receive 26 times their weekly benefit amount during their benefit year. Any dependents' allowance payable to a claimant is in addition to the weekly benefit amount.

The total amount of benefits and dependents' allowance payable to an eligible claimant cannot exceed the total amount of wages for insured work paid to the claimant during his base period. (Section 403)

When a claims adjudicator makes a finding, determination, or a reconsideration of a finding or a determination that the claimant is eligible for benefits, benefits are promptly paid on the basis of such determination, without regard to any appeal. Such payments continue unless and until an appellate body decides that the claimant is ineligible for benefits. (Sections 703 and 706)

C. Disqualifying Income

An individual is ineligible for benefits for any week for which he receives disqualifying income in an amount equal to or greater than his weekly benefit amount. If such disqualifying income is less than the claimant's weekly benefit amount, he is entitled to partial benefits if he is "unemployed" during that week. (Sections 239 and 402)

The following are examples of disqualifying income:

1. Wages from part time employment that are less than the claimant's weekly benefit amount. With respect to any such week, the claimant shall receive an amount equal to his weekly benefit amount, (plus dependents' allowance) less that part of such wages in excess of 50 percent of his weekly benefit amount. (Sections 239 and 402 and 56 Ill. Adm. Code 2920.15)

2. The entire amount of retirement pay from a former employer who has paid all of the cost of such retirement pay and 50 percent of the retirement pay from a former employer who has paid some but not all of the cost of such retirement pay.

   One half of any social security benefits is disqualifying income to the claimant if he is the individual who earned the entitlement.

   To be disqualifying income, the retirement pay must be paid by an individual or organization for which the individual provided services in his base period or for an employer which is chargeable under Section 1502.1 for any benefits paid to the individual. (Section 611)

3. Vacation pay, vacation pay allowance, or standby pay that an employer pays, becomes obligated or holds itself ready to pay during an announced period of shutdown for inventory or vacation is wages for the portion of the shutdown period covered by the payment. (56 Ill. Adm. Code 2920.25)

   However, if the vacation pay is connected with a separation, the employer MUST file a Notice of Possible Ineligibility with the Department within 10 days after the employer has been notified that the claimant has filed a claim, designate the period for which the payment has been made and indicate the amount of vacation pay to be allocated. (Section 610 and 56 Ill. Adm. Code 2920.30)

4. Workers' Compensation paid for temporary disability arising out of or in connection with the claimant's employment under the laws of Illinois, another state or of the United States. (Section 606)

5. Wages in lieu of notice are considered disqualifying income while severance pay is not. This distinction must be decided on an individual, case-by-case, basis. (56 Ill. Adm. Code 2920.40)

Employers with questions concerning these payments should contact the local unemployment office or:

Illinois Department of Employment Security
Office of Legal Counsel
33 South State Street
Chicago, Illinois 60603

D. Extended Benefits

During periods of abnormally high unemployment, extended benefits are payable to claimants who have exhausted the total amount of regular benefits available to them and who meet the specific eligibility requirements pertaining to the extended benefit program. If a claimant fails to accept or apply for suitable work or fails to engage in a systematic and sustained search for work, the claimant will not be eligible for extended benefits unless he has been subsequently employed for four weeks and earned 4 times his weekly benefit amount. (Section 409)

The weekly benefit amount for extended benefits is the same as the claimant's weekly benefit amount established for his latest regular benefit year. The total amount of extended benefits available to a claimant cannot exceed the lesser of 50 percent of the total amount of his regular benefits or 13 times his weekly benefit amount.

However, an individual eligible for benefits in Illinois, but who is absent from this State and filing his claim from another state, shall be eligible for a maximum of only two weeks of extended benefits unless an extended benefit period also exists in the other state in which he files his claim.

The payment of extended benefits, which are financed on a 50/50 basis by the State's employers and the federal government, is triggered on in Illinois if the State insured unemployment rate (the ratio which the number of persons who claim regular benefits in Illinois bears to all workers covered by the Illinois law) reaches a specified statutory figure.

The Director of Employment Security publicly announces the beginning and ending dates of any period during which extended benefits are payable.

E. Claimant Non-Monetary Eligibility

When an unemployed worker files a claim for benefits, a claims adjudicator issues a Finding, which is a statement of the amount of wages for insured work paid to the claimant during each quarter of his base period. This wage information usually is derived from the employer's quarterly report of wages (UI 40).

The claimant's weekly benefit amount, the maximum amount of regular benefits payable to him for his benefit year and the dependents' allowance are computed. The claimant is notified of these amounts. (Section 701) Benefits are payable for CALENDAR weeks (Sunday through Saturday). To be eligible for benefits for a week, the claimant must have been unemployed in that week.

A claimant is unemployed in any week in which he is paid no wages and performs no services, or in any week of less than full time work for which the wages payable to him are less than his weekly benefit amount.

An unemployed individual is eligible for benefits for a week only if:

1. He has registered for work and reports at regular intervals in person, by mail or by telephone at an Illinois Department of Employment Security office as required by the Director. (Section 500A and 56 Ill. Adm. Code 2865.125(a)(1))

2. He has made a claim for benefits either on line or at the local Department of Employment Security office serving the area in which he lives. (Section 500B and 56 Ill. Adm. Code 2720.100)

3. During the week, he is able to work, available for work and actively seeking work. (Section 500C and 56 Ill. Adm. Code 2865.125)

   An individual is presumed to be unavailable for work if:

   a. After his separation from his most recent work, he has moved to and remains in a locality where job opportunities for him are substantially less favorable than those in the locality he has left. (Section 500C3)

   b. His principal occupation is that of a student in attendance at, or on vacation from, a public or private school.

   However, an individual enrolled in and attending a Department approved training course may, under specified conditions, be considered available for work. Such an individual will not be required to seek work and will not be disqualified under Section 603 for work refusal.(Sections 500C4 and 5)

4. During the week, he has participated in reemployment services to which he has been referred, including but not limited to job search assistance services.

5. He has served a non-compensable waiting period of one week in which he has met all the eligibility requirements. (Section 500D)

6. He is not disqualified under any of the disqualifying provisions of the Act.

A local unemployment insurance office may instruct a claimant that he is exempt from registering with the employment service office for one of the following reasons (56 Ill. Adm. Code 2865.100):

1. The claimant's unemployment is due to a labor dispute even if the claimant is not involved in the dispute.

2. The claimant's unemployment is due to a temporary layoff that does not exceed 10 weeks in duration.

3. The claimant is a member of a labor union whose hiring hall provides substantially all of the job placements. The hiring hall must be certified by the Department. The procedures for union certification are found at 56 Ill. Adm. Code 2865.60.

4. The claimant is still attached to a regular job but he is only partially employed due to a temporary reduction in his hours.

5. The Department determines that, based on local labor market information, registration with the Illinois Employment Service would not increase the likelihood of the claimant's return to work.

   A claimant is required, when requested, to keep and to provide the local office with records to indicate that he is conducting a thorough, active and reasonable search for work. He should keep records of the names and addresses of employers contacted, the dates and method of contact, the result of such contact, the type of work he has been seeking, and other relevant information concerning the work search. (56 Ill. Adm. Code 2865.125)

The Department shall consider the following in evaluating the adequacy of an individual's work search (56 III. Adm. Code 2865.125):

1. The individual's physical and mental abilities.

2. The individual's training and experience.

3. The employment opportunities in the area.

4. The length of the claimant's unemployment.

5. The nature and number of the claimant's work search efforts.

6. The customary means of seeking employment in the occupation(s) in which the claimant seeks employment.

7. Any other information that would affect the claimant's work search.

F. Voluntary Leaving Disqualification

An individual will be ineligible to receive benefits if he has left work voluntarily without good cause attributable to his employer.

The disqualification continues until the individual has become reemployed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks which are either for services in employment, or have been or will be reported pursuant to the provisions of FICA. (Section 601)

There are seven exceptions that exempt the worker from disqualification even though he has left work voluntarily without good cause attributable to the employer:

1. When the worker is deemed physically unable to perform his work by a licensed and practicing physician, or where the worker leaves work upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for his spouse, child, or parent who is in poor physical health, and such assistance will not allow him to perform the usual and customary duties of his employment.

   In either instance, the worker must notify his employer of the reason for leaving before the exception will apply. (Section 601B1)

2. Where the worker has left work with one employer in order to accept bona fide work with another employer, and after such acceptance, works for at least two weeks for the new employer, or earns wages equal to at least two times his current weekly benefit amount. (Section 601B2)

3. Where a worker refuses to accept a transfer to other work offered by his employer under the terms of a collective bargaining agreement, or established employer plan, when such transfer would result in the separation of another worker currently performing this work. (Section 601B3)

4. Where the sole reason for leaving work was the sexual harassment of the worker, and the employer knew or should have known of the harassment prior to the leaving and failed to take timely and appropriate action. (Section 601B4)

   The Act defines sexual harassment as follows:

   a. Unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication that is made a term or condition of the employment; or

   b. The employee's submission to or rejection of such conduct or communication that is the basis for decisions affecting employment; and

   c. When such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate actions to correct the problem.

5. Where the work accepted after the worker's separation would be deemed unsuitable for him under the provisions of Section 603 of the Act. (Section 601B5) For further information concerning this exception see the discussion of Refusal of Work Disqualifications.

6. Where the worker leaves because he/she is a victim of domestic violence, has made a reasonable effort to preserve the employment relationship and has provided the employing unit with written notice of this fact and has provided the Department with certain documentation specified in the Act.

7. Where the worker leaves to accompany his/her spouse on a military reassignment or where the worker leaves to accompany his or her spouse who has relocated because of a change in employment to a place where it is impractical to commute.

G. Misconduct Disqualification

An individual who is discharged for misconduct connected with his work is ineligible for benefits for the week in which he was discharged for misconduct and thereafter until he has become re-employed and has had earnings equal to or in excess of his weekly benefit amount in each of four calendar weeks.

These earnings must be for services in "employment" as defined in the Act, or must be for services in which the earnings have been or will be reported under the Federal Insurance Contributions Act by the employing unit.

The Act defines "misconduct" as the "deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit."

Additionally, the requalification requirements of this subsection will be deemed to have been served if, subsequent to a discharge for misconduct connected with his work, the worker is reinstated by the employer. (Section 602A)

H. Felony and Theft Disqualification

No benefit rights shall accrue to an individual based upon wages from any employer for services performed prior to the day upon which the individual was discharged due to the commission of a felony or theft committed in connection with his work.

For this disqualification to apply, the employer must in no way be responsible for the felony and must have notified the Director of such possible ineligibility within 10 days of the date of the individual's next claim for benefits.

Furthermore, the individual must also have admitted his commission of the felony or theft to a representative of the Director or he must have signed a written admission of such act and such written admission has been presented to the representative of the Director, or such act has resulted in a conviction, or order of supervision by a court. (Section 602B)

I. Refusal of Work Disqualification

An individual will be ineligible for benefits if he has failed, without good cause, to do any of the following (Section 603):

1. To apply for available, suitable work when so directed by the Department of Employment Security office or the Director.

2. To accept suitable work when offered him by the Department of Employment Security office or an employing unit.

3. To return to his customary self employment (if any) when so directed by the Department of Employment Security office or the Director.

This ineligibility shall commence in the week in which such failure occurred and, thereafter, until he has become reemployed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks that are either for services in employment or have been or will be reported for FICA purposes by each employing unit.

In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

No work shall be deemed suitable and benefits shall not be denied to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

1. If the position offered is vacant due directly to a strike, lockout or other labor dispute;

2. If the wages, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

3. If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

4. If the position offered is a transfer to other work offered to the individual by the employing unit under the terms of a collective bargaining agreement or pursuant to an established employer plan, program or policy, when the acceptance of such other work by the individual would require the separation from that work of another individual currently performing it.

J. Labor Dispute Disqualification

An individual is ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work that exists because of a labor dispute at the factory, establishment or other premises at which he is or was last employed.

The term "labor dispute" does not include an individual's refusal to work because of his employer's failure to pay accrued earned wages within 10 days from the date due. (Section 604)

Even though the individual's unemployment is due to a stoppage of work, the individual may be eligible for benefits if he can show that he is not directly interested in, nor participating in, nor helping to finance the labor dispute and does not belong to a grade or class of workers so involved in the dispute.

A lockout by the employer is not, in itself, considered to be participation in the dispute by the worker and a worker's failure to cross a picket line shall not, in itself, be considered to be participation.

The term "labor dispute" does not include a lockout by an employer unless:

1. the workers' representative refuses to meet with the employer under reasonable conditions to discuss the issues giving rise to the lockout, or

2. there is a final adjudication by the National Labor Relations Board that the workers' representative has failed to bargain in good faith with the employer over the issues that gave rise to the lockout, or

3. the lockout is the direct consequence of the violation of the terms of an existing collective bargaining agreement by the workers' representative.

A worker who was laid off in anticipation of a labor dispute will not be ineligible for benefits until the date of the actual stoppage of work. (Section 604)

K. School Personnel Disqualification

An individual is ineligible for benefits on the basis of wages for services in employment in any capacity performed for a nonprofit or public educational institution, including an institution of higher learning or educational service agency, for any week during a holiday or vacation period.

Educational personnel are also ineligible during a period between two successive academic years, or during a period between two regular terms whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract where the individual performed service in the first of such academic years (or terms), and there is a contract or reasonable assurance that the individual will perform service in any capacity for the same type of educational institution or educational service agency in the second of such academic years (or terms). (Section 612 and 56 Ill. Adm. Code 2915.5 through 2915.35)

The term "educational service agency" means a governmental agency or governmental entity established and operated exclusively for the purpose of providing such services to one or more educational institutions. (Section 612)

However, if an individual employed in a capacity other than instructional, research, or principal administrative by either an educational institution or by an educational service agency in an educational institution is denied benefits and is not offered a bona fide opportunity to provide service for the second year or term, he shall be entitled to a retroactive payment of benefits if he is otherwise eligible. (Section 612)

Where an individual performs services in the employ of an educational institution or an educational service agency in one capacity during an academic year or term, and there is a reasonable assurance that the individual will cross over to perform services in a different capacity in the employ of any educational institution or any educational service agency for a subsequent academic year or term, the individual is not ineligible for benefits during the period between the two academic years or terms.

L. Athlete Disqualification

If 90 percent of an individual's total wages is for employment as a participant in sports or athletic events or training or preparing to participate or as an ancillary participant, he will be ineligible for benefits for any week during the period between two successive sport seasons (or similar periods).

However, the individual must have performed such services in the first of such seasons (or similar periods) and have a reasonable assurance that he will perform such services in the subsequent season (or similar period). (Section 613 and 56 Ill. Adm. Code 2910.1)

For the purpose of this section, the following terms shall be defined as (56 III. Adm. Code 2910.5):

1. "Sport" or "athletics" is an activity involving an individual or group of individuals who participate in any competitive play, game or contest that requires either physical or mental ability or both.

2. "Participate" shall mean taking part in sports or athletic events as an individual competitor or as a member of a team, or as a participant in the training or preparing to so participate.

3. "Sports season" is that part of the calendar year when, according to the established practice or tradition of a particular sport or game, the team players or individual competitors are actively involved in participating in sports or athletic events or in training or preparing to so participate.

4. "Professional athlete" is a claimant whose occupation is participating in athletic or sporting events as:

   a. A regular player or team member; or

   b. An alternate player or team member; or

   c. An individual in training to become a regular player or team member; or

   d. An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

5. A semi-professional athlete is within the scope of the term "professional athlete" if he is paid for participating in sports or athletic events.

6. "Ancillary personnel" is a claimant who, without being a professional athlete, participates, or trains or prepares to so participate in sporting or athletic events. It includes coaches, trainers and referees.

A reasonable assurance that the claimant will perform services in sports or athletic events in a subsequent season is presumed to exist if (56 III. Adm. Code 2910.10):

1. He has an expressed or implied multi-year contract that extends into the subsequent sport season; or

2. He is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season, and

   a. There is a reason to believe that one or more employers of participants in athletic events are considering or would be desirous of employing the claimant in an athletic capacity in the subsequent sport season, and

   b. He is not clearly and affirmatively withdrawn from participating in remunerative and competitive sports and athletic events.

When the "reasonable assurance" fails to materialize, the denial of benefits to the professional athlete or ancillary personnel is still effective until the date when it is established that the assurance no longer exists. Following this date, benefits will be paid if the individual is otherwise eligible. (56 Ill. Adm. Code 2910.15)

The beginning and ending dates of any sports season and the beginning and ending dates of the intervening time period between two successive sports seasons shall be determined by the Director after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending a season and any other information bearing upon such determination. (56 Ill. Adm. Code 2905.15)

M. Alien Disqualification

An alien is ineligible for benefits for any week on the basis of services performed, unless at the time such services were performed, the alien was:

1. lawfully admitted for permanent residence, or

2. otherwise permanently residing in the United States under color of law. (Section 614 and 56 Ill. Adm. Code 2905.1)

An alien is considered lawfully admitted for permanent residence in the United States if he is given the status of an immigrant.

However, Canadians and Mexicans who are allowed to enter the United States for daily or seasonal work shall likewise be considered as lawfully admitted for permanent residence. (56 Ill. Adm. Code 2905.10)

An immigrant is an alien who has been accorded by the United States the privilege of entering the country for permanent residence and of becoming a citizen of the United States under the conditions provided in the Immigration and Nationality Act. (56 Ill. Adm. Code 2905.5)

An alien is defined as any person not a citizen or national of the United States as provided in Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101). (56 Ill. Adm. Code 2905.5)

An alien is considered permanently residing in the United States under color of law if his presence in this country is presumptively legal because:

1. He has entered the United States prior to June 30, 1906; or

2. He has been admitted under an erroneous name or due to other error; or

3. He has been given "conditional entry" status by the United States Attorney General; or

4. He has been given parole into the United States by the United States Attorney General. (56 Illinois Administrative Code 2905.15)

A claimant who indicates in his claim for benefits that he is an alien must produce evidence that he is not ineligible for such benefits. The presentation of a valid U.S. INS Form I 151, commonly known as the "green card," or other similar documents issued by the Immigration and Naturalization Service, will be sufficient for a finding that the alien is eligible under Section 614 of the Act. (56 Ill. Adm. Code 2905.20)

N. Appeals And Hearings On Claimant Eligibility For Benefits

An employer or claimant who files a timely appeal from a finding or determination is entitled to and will receive a hearing. An appeal to a finding or a determination is timely if it is filed within 30 days after the delivery or mailing of the finding or determination. (Section 800). **For each fiscal year since July 1, 1996, the General Assembly, with the approval of the Governor, has allocated one million dollars to provide free legal assistance to "small employers" (less than 20 employees during two of the four quarters preceding the request for free assistance) at Departmental hearings. To implement this provision, the Department contracted with a private law firm to provide this assistance. A contact telephone number is printed on determinations, decisions, etc., the appeals of which are covered by this program.**

Such hearing, other than those involving labor dispute issues, is held by a Referee, also known as an Administrative Law Judge, who is a civil service employee. Hearings arising from determinations involving labor dispute issues are heard by representatives designated by the Director. (Sections 604 and 800)

At any hearing, the record of the claimant's registration for work, or the claimant's certification that he was able, available and actively seeking work, or any documents submitted by the parties to the Department, shall be a part of the record, and shall be competent evidence. (56 Ill. Adm. Code 2865.125, 2720.250 and 2720.265)

The failure of the claimant or other party to appear at a hearing, unless he is the appellant, shall not preclude a decision in his favor if he is entitled to such decision on the basis of all the information in the record. (56 Ill. Adm. Code 2720.255(b))

A party may appeal an adverse Referee's decision to the Board of Review. This appeal must be filed within 30 days from the date the Referee's decision is mailed. (Section 801 and 56 Ill. Adm. Code 2720.300) For more information on the appeal hearing process, see the IDES pamphlet called "Preparing For Your Appeal Hearing" available at www.ides.illinois.gov.

A party may appeal a Board of Review decision or a decision of the Director made as the result of a hearing involving a labor dispute to a court. Such appeals are heard by the Circuit Court serving the county in which the appellant resides or in which his principal place of business is located.

The appellant must file the necessary legal documents with the Clerk of the Court within 35 days from the date of the decision of the Board of Review or the Director is mailed. (Sections 801, 803 and 804)

XII. POLICING THE UNEMPLOYMENT INSURANCE PROGRAM

A. Benefit Payment Control

As a necessary adjunct to both collecting taxes and paying benefits, the Benefit Payment Control Division of the Department of Employment Security monitors the unemployment insurance system to insure integrity and honesty by both employers and claimants.

It accomplishes this goal by investigating liable employers to insure that no fictitious entities are being established; it verifies changes of address by claimants; it audits requests for dependency allowances, reported return to work dates and work search contacts; and, most importantly, it runs a quarterly crossmatch program.

This program is an audit device that matches the employer's quarterly wage report against the Department's claimant benefit payment records for the same quarter. This crossmatch produces a listing of cases that may indicate possible fraud for follow up.

The Department then sends a Form SI 5 to the employers of the selected workers in order to obtain a breakdown of the workers' wages on a weekly basis. This information is necessary because unemployment insurance benefit payments are made on a calendar week (Sunday to Saturday) basis.

When an overpayment is determined, if fraudulent, the worker is subject to administrative penalties, in addition to being required to repay the benefits received. Also, in many cases, the Office of the Attorney General seeks criminal sanctions, which might include imprisonment.

B. Random Audit

Random Audit is another system designed to identify the types and cause of improper payment of unemployment insurance benefits. This information is used by State and Federal program managers to modify payment procedures in order to better detect, eliminate and prevent improper payments of unemployment insurance benefits.

Each week a sample of claims made by claimants receiving unemployment insurance payments is randomly selected for audit. Each claimant whose claim has been selected is interviewed. His availability and search for work are checked and his employer's wage records are verified.

Based on the information obtained during this audit, the amount of benefits paid to the claimant is determined to be either proper or improper. If paid improperly, the auditor will determine whether the claimant, the Department, or the employer caused the payment to be improper. The reason for such improper payment will be documented. This information will be used to form a statistical analysis and to compile management information on the types and causes of improper unemployment insurance benefit payments.

A Quality Control Team from the Department of Employment Security may visit employers to obtain information for this audit. These Team members will present identification. Cooperation from employers can enhance the success of the Quality Control program.

The purpose of the Quality Control Team visit is to verify the wage record of the claimant selected for audit, to verify that the claimant made a reasonable effort to find work, and to verify the reason for the claimant's separation or reduction in hours.

This information is needed because the right to collect benefits and the amount and duration of those benefits is based on previous and, if any, current wages. Work search contacts with employers are verified because the claimant must be seeking work in order to qualify for benefits.

The cause of separation or reduction in work hours may be needed to verify that the claimant became unemployed or was working reduced hours through no fault of his own, which is a requirement for the receipt of benefits.

C. Field Audits

The Department of Employment Security maintains a field audit program to monitor the accuracy of the employer's wage reports and assist in the collection of employer contributions. An audit may result in the collection of additional contributions or, in some cases, may result in a refund to the employer if it has overpaid its contributions.

During a field audit, a Department representative will visit the employer and examine the payroll records to verify the accuracy of the wage reports filed with the Department or the accuracy of claimant information pertaining to the alleged receipt of wages.

By statute, the employer is required to maintain wage records for five years or until a determination and assessment of contributions, interest, penalties or an action for the collection of contributions, interest or penalties has become final or is canceled and withdrawn, and to allow a representative of the Director to examine these records.

An employer that has failed to report or pay contributions will be subject to the payment of interest and penalties for such non-payment or non-reporting. (Sections 1401 and 1402)

In addition, the Attorney General may take court action to enforce a lien on the employer's assets to collect the unpaid amounts. (Section 2400)

Better detection and prevention of improper payment of benefits and non-payment of contributions will result in decreased payments and increased contributions. Generally, this will directly decrease employer unemployment insurance contributions required.

If you become aware of a suspected case of fraud, either by a claimant or employer, contact the Benefit Payment Control Division of the Department at (312) 793-3200. The information you supply will be kept in confidence, but you must identify yourself.

D. Personal Liability of Officers or Employees

Any officer or employee of an employer who has the control, supervision, or responsibility of filing wage or contribution reports and making payment of contributions or payments in lieu of contributions who willfully attempts to evade or defeat liability, shall be personally liable for a penalty equal to the total amount due. The same process available to the Department of Revenue pursuant to Section 3-7 of the Uniform Penalty and Interest Act shall be available to the Director and Department of Employment Security. (Section 2405)

XIII. THE DIRECTORY OF NEW HIRES

A. Who is Affected?

All Illinois employers, including private firms, labor unions, nonprofit and religious organizations, and governmental entities are required to comply with the requirements for the Directory of New Hires. (Section 1801.1)

B. What is this Program?

The Directory of New Hires law requires employers (subject to withholding for federal income tax purposes) to report all new employees within 20 calendar days of their start date, including full-time, part-time, temporary and recalled (persons who had been off the payroll for 180 or more days) workers.

Employers must report the worker's name, address and social security number along with the employer's name, address and federal employer identification number (FEIN). Employers are also required to report the worker's starting date of employment. An employer may also provide an address where income withholding orders for child support should be sent, if different from the address already provided.

C. Why was it Enacted?

This program is part of the federal welfare reform legislation and is intended to assist child support officials to track down absentee parents in order to collect child support payments. The information will also be used to reduce fraud and abuse of unemployment insurance, food stamps, temporary welfare assistance and Medicaid.

D. How does it Operate?

Employers have the option of submitting information via (a) the New Hires Reporting form provided by the Department of Employment security; (b) copies of the employee's W-4 form, with all information completed legibly, including the employer information; (c) a separate listing of new employees, with required data; or (d) electronic or magnetic submission of data, reported twice monthly. Reports may be sent via first class mail or facsimile transmission to the Department of Employment Security. Mail data via first class:

Illinois New Hire Directory
P.O. Box 19473
Springfield, IL 62794-9473

Fax data to:
1-217-557-1947
(24-hour, never-busy fax line)

E. Where do I go for Information?

For information on the file format for reporting via magnetic tape, cartridge or diskette, call
(312) 793-1137

For other questions, call
1-800-327-HIRE (4473)

or visit the IDES website at:
http://www.ides.illinois.gov

ILLINOIS UNEMPLOYMENT INSURANCE LAW HANDBOOK

ILLINOIS UNEMPLOYMENT INSURANCE ACT
820 ILCS 405/100-3200

HEALTH CARE WORKER BACKGROUND CHECK ACT
225 ILCS 46/25, 40, 55, 60

NEW HIRE REPORTING ACT
20 ILCS 1020/30, 40

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IDES
ILLINOIS DEPARTMENT OF EMPLOYMENT SECURITY

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THE UNEMPLOYMENT INSURANCE ACT
(820 ILCS 405/100-3200)

An Act in relation to a system of unemployment insurance.

Be it enacted by the People of the State of Illinois, represented in the General Assembly.

Sec. 100. Declaration of public policy

As a guide to the interpretation and application of this Act the public policy of the State is declared as follows: Economic insecurity due to involuntary unemployment has become a serious menace to the health, safety, morals and welfare of the people of the State of Illinois. 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. Poverty, distress and suffering have prevailed throughout the State because funds have not been accumulated in times of plentiful opportunities for employment for the support of unemployed workers and their families during periods of unemployment, and the taxpayers have been unfairly burdened with the cost of supporting able-bodied workers who are unable to secure employment. Farmers and rural communities particularly are unjustly burdened with increased taxation for the support of industrial workers at the very time when agricultural incomes are reduced by lack of purchasing power in the urban markets. It is the considered judgment of the General Assembly that in order to lessen the menace to the health, safety and morals of the people of Illinois, and to encourage stabilization of employment, compulsory unemployment insurance upon a statewide scale providing for the setting aside of reserves during periods of employment to be used to pay benefits during periods of unemployment, is necessary.

(Source: P.A. 79-98.)

Sec. 200. Definitions

Unless the context indicates otherwise, the terms used in this Act have the meaning ascribed to them in Sections 201 to 247, inclusive.

(Source: P.A. 77-1443.)

Sec. 201. “Director” and “Department” defined

“Director” means the Director of the Department of Employment Security, and “Department” means the Department of Employment Security.

(Source: P.A. 83-1503.)

Sec. 202. “Benefits” defined

“Benefits” means the money payments payable to an individual as provided in this Act, with respect to his unemployment.

(Source: Laws 1951, p. 32.)

Sec. 203. “Employment office” defined

“Employment office” means a free public employment office or branch thereof operated by this State or any other State as a part of a State controlled system of public employment offices or by a Federal agency or any agency of a foreign government charged with the administration of an unemployment compensation program or free public employment offices.

(Source: Laws 1951, p. 32.)

Sec. 204. "Employing unit" defined

"Employing unit" means any individual or type of organization, including the State of Illinois, each of its political subdivisions and municipal corporations, and each instrumentality of any one or more of the foregoing; and any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all purposes of this Act.

A talent or modeling agency that is licensed under the Private Employment Agency Act is not the employing unit with respect to the performance of services for which an individual has been referred by the agency.

(Source: P.A. 89-649, eff. 8-9-96.)

Sec. 205. "Employer" defined

"Employer" means:

A. With respect to the years 1937, 1938, and 1939, any employing unit which has or had in employment eight or more individuals on some portion of a day, but not necessarily simultaneously, and irrespective of whether the same individuals are or were employed on each such day within each of twenty or more calendar weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year;

B. 1. With respect to the years 1940 through 1955, inclusive, any employing unit which has or had in employment six or more individuals within each of twenty or more calendar weeks (but not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), whether or not such weeks are or were consecutive, within either the current or preceding calendar year;

2. With respect to the years 1956 through 1971, inclusive, any employing unit which has or had in employment four or more individuals within each of twenty or more calendar weeks (but not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), whether or not such weeks are or were consecutive, within either the current or preceding calendar year;

3. With respect to the years 1972 and thereafter, except as provided in subsection K and in Section 301, any employing unit which (1) pays or paid, for services in employment, wages of at least $1500 within any calendar quarter in either the current or preceding calendar year; or (2) has or had in employment at least one individual on some portion of a day, irrespective of whether the same individual is or was employed on each such day, within each of twenty or more calendar weeks, whether or not such weeks are or were consecutive, within either the current or preceding calendar year;

4. With respect to the years 1972 and thereafter, any nonprofit organization as defined in Section 211.2, except as provided in subsection K and in Section 301;

5. With respect to the years 1972 and thereafter, the State of Illinois and each of its instrumentalities; and with respect to the years 1978 and thereafter, each governmental entity referred to in clause (B) of Section 211.1, except as provided in Section 301;

6. With respect to the years 1978 and thereafter, any employing unit for which service in agricultural labor is performed in employment as defined in Section 211.4, except as provided in subsection K and in Section 301;

7. With respect to the years 1978 and thereafter, any employing unit for which domestic service is performed in employment as defined in Section 211.5, except as provided in subsection K and in Section 301;

C. Any individual or employing unit which succeeded to the organization, trade, or business of another employing unit which at the time of such succession was an employer, and any individual or employing unit which succeeded to the organization, trade, or business of any distinct severable portion of another employing unit, which portion, if treated as a separate employing unit, would have been, at the time of the succession, an employer under subsections A or B of this Section;

D. Any individual or employing unit which succeeded to any of the assets of an employer or to any of the assets of a distinct severable portion thereof, if such portion, when treated as a separate employing unit would be an employer under subsections A or B of this Section, by any means whatever, otherwise than in the ordinary course of business, unless and until it is proven in any proceeding where such issue is involved that all of the following exist:

1. The successor unit has not assumed a substantial amount of the predecessor unit's obligations; and
2. The successor unit has not acquired a substantial amount of the predecessor unit's good will; and
3. The successor unit has not continued or resumed a substantial part of the business of the predecessor unit in the same establishment;

E. Any individual or employing unit which succeeded to the organization, trade, or business, or to any of the assets of a predecessor unit (unless and until it is proven in any proceeding where such issue is involved that all the conditions enumerated in subsection D of this Section exist), if the experience of the successor unit subsequent to such succession plus the experience of the predecessor unit prior to such succession, both within the same calendar year, would equal the experience necessary to constitute an employing unit an employer under subsections A or B of this Section;

For the purposes of this subsection, the term “predecessor unit” shall include any distinct severable portion of an employing unit.

F. With respect to the years 1937 through 1955, inclusive, any employing unit which together with one or more other employing units is owned or controlled, directly or indirectly, by legally enforceable means or otherwise, by the same interests, or which owns or controls one or more other employing units directly or indirectly, by legally enforceable means or otherwise, and which if treated as a single unit with such other employing units or interests or both would be an employer under subsections A or B of this Section;

G. Any employing unit which, having become an employer under subsections A, B, C, D, E, or F of this Section, has not, under Section 301, ceased to be an employer;

H. For the effective period of its election pursuant to Section 302, any other employing unit which has elected to become fully subject to this Act;

I. Any employing unit which is an employer under Section 245;

J. Any employing unit which, having become an employer under Section 245, has not, with respect to the year 1960 or thereafter, ceased to be an employer under Section 301; or

J-1. On and after December 21, 2000, any Indian tribe for which service in "employment" as defined under this Act is performed.

K. In determining whether or not an employing unit for which service other than domestic service is also performed is an employer under paragraphs 3, 4, or 6 of subsection B, the domestic service of an individual and the wages paid therefor shall not be taken into account. In determining whether or not an employing unit for which service other than agricultural labor is also performed is an employer under paragraphs 4 or 7 of subsection B, the service of an individual in agricultural labor and the wages paid therefor shall not be taken into account. An employing unit which is an employer under paragraph 6 of subsection B is an employer under paragraph 3 of subsection B.

(Source: P.A.. 92-555; eff. 6-24-02)

Sec. 205.1. Indian tribe.

"Indian tribe" has the meaning given to that term by Section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

(Source: P.A.. 92-555; eff. 6-24-02)

Sec. 206. "Employment" defined

Subject to the provisions of Sections 207 to 233, inclusive, and of subsection B of Section 245, "employment" means any service performed prior to July 1, 1940, which was employment as defined in this Act prior to that date, and any service after June 30, 1940, performed by an individual for an employing unit, including service in interstate commerce and service on land which is owned, held or possessed by the United States, and including all services performed by an officer of a business corporation, without regard to whether such services are executive, managerial, or manual in nature, and without regard to whether such officer is or is not a stockholder or a member of the board of directors of the corporation.

(Source: Laws 1951, p. 32.)

Sec. 206.1. Employment; employee leasing company

A. For purposes of this Section:

1. "Client" means an individual or entity which has contracted with an employee leasing company to supply it with or assume responsibility for personnel management of one or more workers to perform services on an on-going basis rather than under a temporary help arrangement, as defined in Section 15 of the Employee Leasing Company Act.

2. "Employee leasing company" means an individual or entity which contracts with a client to supply or assume responsibility for personnel management of one or more workers to perform services for the client on an on-going basis rather than under a temporary help arrangement, as defined in Section 15 of the Employee Leasing Company Act.

B. Subject to subsection C, services performed by an individual under a contract between an employee leasing company and client, including but not limited to services performed in the capacity of a corporate officer of the client, are services in "employment" of the employee leasing company and are not services in "employment" of the client if all of the following conditions are met:

1. The employee leasing company pays the individual for the services directly from its own accounts; and

2. The employee leasing company, exclusively or in conjunction with the client, retains the right to direct and control the individual in the performance of the services; and

3. The employee leasing company, exclusively or in conjunction with the client, retains the right to hire and terminate the individual; and

4. The employee leasing company reports each client in the manner the Director prescribes by regulation.

C. Notwithstanding subsection B, services performed by an individual under a contract between an employee leasing company and client, including but not limited to services performed in the capacity of a corporate officer of the client, are services in "employment" of the client and are not services in "employment" of the employee leasing company if:

1. The contribution rate, or, where applicable, the amended contribution rate, of the client is greater than the sum of the fund building rate established for the year pursuant to Section 1506.3 of this Act plus the greater of 2.7% or 2.7% times the adjusted state experience factor for the year; and

2. The contribution rate, or, where applicable, the amended contribution rate, of the employee leasing company is less than the contribution rate, or, where applicable, the amended contribution rate of the client by more than 1.5% absolute.

D. Except as provided in this Section and notwithstanding any other provision of this Act to the contrary, services performed by an individual under a contract between an employee leasing company and client, including but not limited to services performed in the capacity of a corporate officer of the client, are services in "employment" of the client and are not services in "employment" of the employee leasing company.

E. Nothing in this Section shall be construed or used to effect the existence of an employment relationship other than for purposes of this Act.

(Source: P.A. 91-890, eff. 7-6-00.)

Sec. 207. Employment-Service included

The term "employment" shall include an individual's entire service, within or both within and without this State, if

A. The service is localized in this State; or

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

C. The service is not localized in any State but, after 1961, is performed by an individual employed on or in connection with an American aircraft, if

1. The contract of service is entered into within this State, or

2. The contract of service is not entered into within this State or within any other State and, during the performance of the contract of service and while the individual is employed on the aircraft, it touches at an air field in this State; provided, however, that the Director may enter into arrangements with other States, pursuant to Section 2700, with respect to such aircraft which touch at an air field in more than one State;

Provided, that the individual is employed on or in connection with such American aircraft when outside the United States. The term "American aircraft" means an aircraft registered under the laws of the United States.

(Source: Laws 1961, p. 1784.)

Sec. 208. Service deemed localized, when

Service shall be deemed to be localized within a State if-

A. The service is performed entirely within such State; or

B. The service is performed both within and without such State, but the service performed without such State is incidental to the individual's service within the State.

(Source: Laws 1951, p. 32.)

Sec. 208.1. Service performed by citizen outside United States -Definitions

A. The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States after December 31, 1971, (except in Canada, and in the case of the Virgin Islands after December 31, 1971, and prior to January 1 of the year following the year in which the United States Secretary of Labor approves the unemployment compensation law of the Virgin Islands under Section 3304(a) of the Internal Revenue Code of 1954), in the employ of an American employer (other than service which is defined as "employment" under the provisions of Sections 207 and 208 or the parallel provisions of the unemployment compensation law of another State), if:

1. The employer's principal place of business in the United States is located in this State; or

2. The employer has no place of business in the United States, but (a) the employer is an individual who is a resident of this State; or (b) the employer is a corporation which is organized under the laws of this State; or (c) the employer is 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 paragraphs 1 and 2 is met but the employer has elected coverage under this Act pursuant to Section 302 or, the employer having failed to elect coverage under the unemployment compensation law of any State, the individual has made a claim for benefits under this Act, based on wages for such service.

B. When used in this Section:

"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 of any State.

"United States" includes the States of the United States of America, the District of Columbia, Puerto Rico, and the Virgin Islands.

(Source: P.A. 80-2dSS-1.)

Sec. 208.2. Service performed in any state or Canada where contributions not required-Service directed or controlled in Illinois

Notwithstanding the provisions of Section 207, the term “employment” includes an individual's service, whenever performed within any State or Canada, if (A) contributions are not required with respect to any part of such service under an unemployment compensation law of any other State or Canada, and (B) the place from which the service is directed or controlled is in this State.

(Source: P.A. 77-1443.)

Sec. 209. Service entirely without the State

Services not covered under Section 207 and performed entirely without this State, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other State or of the Federal Government, shall be deemed to be employment if the Director approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment.

(Source: Laws 1951, p. 32.)

Sec. 210. Services covered by arrangement whereby all services performed for employing unit are deemed performed within State

Services covered by an arrangement pursuant to Section 2700 between the Director and the agency charged with the administration of any other State or Federal unemployment compensation law, or the unemployment compensation law of Canada, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this State, shall be deemed to be employment.

(Source: P.A. 77-1443.)

Sec. 211. Service performed by officer or member of crew of American vessel

Notwithstanding any other provisions of this Act, the term “employment” shall include all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that the operating office, from which the operations of such vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, is within this State.

(Source: Laws 1951, p. 32.)

Sec. 211.1. Service in employ of State or instrumentalities

Except as provided in Section 220, the term "employment" shall include (A) service performed after December 31, 1971, by an individual in the employ of this State or any of its instrumentalities (and by an individual in the employ of this State or any of its instrumentalities and one or more other States or their instrumentalities for a hospital or institution of higher education located in this State), provided that such service is excluded from the definition of "employment" in the Federal Unemployment Tax Act solely by reason of Section 3306(c)(7) of that Act; and (B) service performed after December 31, 1977 by an individual in the employ of this State or any of its instrumentalities, or any political subdivision or municipal corporation thereof or any of their instrumentalities, or any instrumentality of more than one of the foregoing, or any instrumentality of any of the foregoing and one or more other States or political subdivisions, provided that such service is excluded from the definition of "employment" in the Federal Unemployment Tax Act by Section 3306(c)(7) of that Act; and (C) service performed after December 20, 2000, by an individual in the employ of an Indian tribe.

(Source: P.A. 92-555, eff. 6-24-02)

Sec. 211.2. Service in employ of nonprofit organization

Except as provided in Section 211.3, the term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a nonprofit organization. As used in this Act, the term "nonprofit organization" means a religious, charitable, educational, or other nonprofit organization defined in Section 501 (c) (3) of the Internal Revenue Code of 1986 which is exempt from income tax under Section 501 (a) of that Code, and which has or had in employment 4 or more individuals within each of 20 or more calendar weeks (but not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), whether or not such weeks are or were consecutive, within either the current or preceding calendar year (or which has elected, pursuant to Section 302, to be an employer); provided, that services performed for the organization are excluded from the definition of "employment" in the Federal Unemployment Tax Act solely by reason of Section 3306 (c) (8) of that Act. An employing unit cannot be a nonprofit organization prior to 1972.

(Source: P.A. 86-3.)

Sec. 211.3. Service not included for purposes of section 211.2

For the purpose of Section 211.2, the term "employment" shall not include services performed

A. In the employ of (1) a church or convention or association of churches, or (2) an organization or school which is not an institution of higher education, which is operated primarily for religious purposes and which is operated, supervised, controlled or principally supported by a church or convention or association of churches;

B. By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

C. Prior to January 1, 1978, in the employ of a school which is not an institution of higher education;

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

E. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision or municipal corporation thereof, by an individual receiving such work-relief or work-training; or

F. After December 31, 1977, by an inmate of a custodial or penal institution.

(Source: P.A. 80-2dSS-1.)

Sec. 211.4. Service performed by individual in agricultural labor

A. Notwithstanding any other provision of this Act, the term "employment" shall include service performed after December 31, 1977, by an individual in agricultural labor as defined in Section 214 when:

1. Such service is performed for an employing unit which (a) paid cash wages of $20,000 or more during any calendar quarter in either the current or preceding calendar year to an individual or individuals employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in paragraph 2); or (b) employed in agricultural labor (not taking into account service in agricultural labor performed before January 1, 1980, by an alien referred to in paragraph 2) 10 or more individuals within each of 20 or more calendar weeks (but not necessarily simultaneously and irrespective of whether the same individuals are or were employed in each such week), whether or not such weeks are or were consecutive, within either the current or preceding calendar year.

2. Such service is not performed in agricultural labor if performed before January 1, 1980 or on or after the effective date of this amendatory Act of the 96th General Assembly, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to Sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act

B. For the purposes of this Section, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other employing unit shall be treated as performing service in the employ of such crew leader if (1) the leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, which is provided by the crew leader; and (2) the service of such individual is not in employment for such other employing unit within the meaning of subsections A and C of Section 212, and of Section 213.

C. For the purposes of this Section, any individual who is furnished by a crew leader to perform service in agricultural labor for any other employing unit, and who is not treated as performing service in the employ of such crew leader under subsection B, shall be treated as performing service in the employ of such other employing unit, and such employing unit shall be treated as having paid cash wages to such individual in an amount equal to the amount of cash wages paid to the individual by the crew leader (either on his own behalf or on behalf of such other employing unit) for the service in agricultural labor performed for such other employing unit.

D. For the purposes of this Section, the term "crew leader" means an individual who (1) furnishes individuals to perform service in agricultural labor for any other employing unit; (2) pays (either on his own behalf or on behalf of such other employing unit) the individuals so furnished by him for the service in agricultural labor performed by them; and (3) has not entered into a written agreement with such other employing unit under which an individual so furnished by him is designated as performing services in the employ of such other employing unit.

(Source: P.A. 80-2dSS-1, P.A. 096-1208, eff. 7-22-10)

Sec. 211.5. Domestic service

The term "employment" shall include domestic service after December 31, 1977, in a private home, local college club or local chapter of a college fraternity or sorority performed for an employing unit which paid cash wages of $1,000 or more in any calendar quarter in either the current or preceding calendar year to an individual or individuals employed in such domestic service.

(Source: P.A. 80-2dSS-1.)

Sec. 212. Independent contractors

Service performed by an individual for an employing unit, whether or not such individual employs others in connection with the performance of such services, shall be deemed to be employment unless and until it is proven in any proceeding where such issue is involved that--

A. Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and

B. Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

C. Such individual is engaged in an independently established trade, occupation, profession, or business.

(Source: Laws 1951, p. 32.)

Sec. 212.1. Truck Owner-Operator

(a) The term "employment" shall not include services performed by an individual as an operator of a truck, truck-tractor, or tractor, provided the person or entity to which the individual is contracted for service shows that the individual:

(1) Is either:

(i) Registered or licensed as a motor carrier of real or personal property by the Illinois Commerce Commission, the Interstate Commerce Commission, or any successor agencies, or

(ii) Operating the equipment under an owner-operator lease contract with the person or entity, when the person or entity is registered, licensed, or both, as a motor carrier of real or personal property licensed by the Illinois Commerce Commission, the Interstate Commerce Commission, or any successor agencies; and

(2) Has the right to terminate the lease contract and thereafter has the right to perform the same or similar services, on whatever basis and whenever he or she chooses, for persons or entities other than the person or entity to which the individual is contracted for services;

(3) Is not required by the person or entity to which the individual is contracted for services to perform services, or be available to perform services, at specific times or according to a schedule or for a number of hours specified by the person or entity, provided that pickup or delivery times specified by a shipper or receiver shall not be deemed specified by the person or entity;

(4) Either leases the equipment or holds title to the equipment, provided that the individual or entity from which the equipment is leased, or which holds any security or other interest in the equipment, is not:

(i) The person or entity to which the individual is contracted for service, or

(ii) Owned, controlled, or operated by or in common with, to any extent, whether directly or indirectly, the person or entity to which the individual is contracted for services or a family member of a shareholder, owner, or partner of the person or entity;

(5) Pays all costs of licensing and operating the equipment (except when federal or State law or regulation requires the carrier to pay), and the costs are not separately reimbursed by any other individual or entity; and

(6) Maintains a separate business identity, offering or advertising his or her services to the public, by displaying its name and address on the equipment or otherwise.

(b) Subsection (a) shall not apply:

(1) If, as a condition for retaining the individual's services, the person or entity to which the individual is contracted specifies the person or entity from which the equipment is to be leased or purchased; or

(2) To any services that are required to be covered as a condition of approval of this Act by the United States Secretary of Labor under Section 3304(a)(6)(A) of the Federal Unemployment Tax Act.

(c) Nothing in this Section shall be construed or used to effect the existence or non-existence of an employment relationship other than for purposes of this Act.

(d) For purposes of this Section:

(1) “Family member” means any parent, sibling, child, sibling of a parent, or any of the foregoing relations by marriage.

(2) “Ownership”, “control”, or “operation” may be through any one or more natural persons or proxies, powers of attorney, nominees, proprietorships, partnerships, associations, corporations, trusts, joint stock companies, or other entities or devices, or any combination thereof.

(3) “Person or entity” means a sole proprietorship, partnership, association, corporation, or any other legal entity.

(Source: P.A. 89-252, eff. 8-8-95.)

Sec. 213. Employment by employing unit

Each individual performing services for, or assisting in performing the work of, any person in the employment of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this Act, whether such services were procured or were paid for directly by such employing unit or by such person, provided the employing unit had actual or constructive knowledge of the work.

(Source: Laws 1951, p. 32.)

Sec. 214. Agricultural labor not included-"Farm" defined

The term "employment" does not include agricultural or aquacultural labor, except as provided in Section 211.4. With respect to the period prior to January 1, 1972, the term "agricultural labor" means the services included within the term by this Act as amended and in effect on September 15, 1969. On and after January 1, 1972, the term "agricultural labor" means all services performed:

A. 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 live stock, bees, poultry, and fur-bearing animals and wildlife;

B. 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;

C. In connection with the ginning of cotton, or the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

D. In the employ of the operator of a farm, or of a group of operators of farms (or a cooperative organization of which such operators are members), 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, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed. The provisions of this subsection shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this Section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

The term "aquacultural labor" means all services performed in connection with the production of aquatic products as defined in the Aquaculture Development Act.

(Source: P.A. 85-856.)

Sec. 215. Domestic Service not included

Except as provided in Section 211.5, the term "employment" shall not include domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

(Source: P.A. 80-2dSS-1.)

Sec. 216. Services on or in connection with vessel or aircraft

A. The term "employment" shall not include service performed as an officer or member of a crew on or in connection with a vessel which is not an American vessel; and service performed as an officer or member of a crew of an American vessel on or in connection with such vessel, if the operating office, from which the operations of the vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, is without this State. The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

B. The term "employment" shall not include service performed by an individual on or in connection with an aircraft which is not an American aircraft, if the individual is employed on or in connection with such aircraft when outside the United States. The term "American aircraft" means an aircraft registered under the laws of the United States.

(Source: Laws 1961, p. 1784.)

Sec. 217. Real estate salesmen-Sellers of consumer products

(a) The term "employment" shall not include services performed as a real estate salesman to the extent that such services are compensated for by commission.

(b) After December 31, 1986, the term "employment" shall not include services performed as a direct seller engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis in the home or in an establishment other than a permanent retail establishment, if:

(1) Substantially all the remuneration, whether or not paid in cash, for the performance of such services is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(2) 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 the person will not be treated as an employee with respect to such services for federal tax purposes.

(Source: P.A. 85-956.)

Sec. 217.1. Real estate transaction closing agents

Real estate transaction closing agents.

(a) The term "employment" does not include services performed by an individual as a real estate transaction closing agent when the individual has entered into a contract that specifies the relationship of the individual to the title insurance company to be that of an independent contractor and not that of an employee and is compensated on a per closing basis. For purposes of this Section, a "real estate transaction closing agent" is an individual assigned by a title insurance company solely to ensure that the execution of documents related to the closing of a real estate sale or the refinancing of a real estate loan and the disbursement of closing funds are in conformity with the instructions of the entity financing the transaction, or in a cash transaction, to assure proper disbursement of funds as directed by parties having an interest in the transaction.

(b) Subsection (a) shall not apply to any services that are required to be covered as a condition of approval of this Act by the United States Secretary of Labor under Section 3304(a)(6)(A) of the Federal Unemployment Tax Act.

(Source: P.A. 89-649, eff. 8-9-96.)

Sec. 217.2. Real estate appraisers

(a) The term "employment" does not include services performed by an individual as a real estate appraiser under a written independent contractor agreement if the agreement provides that:

(1) The individual shall be compensated on a fee per appraisal basis; and

(2) The individual is free to accept or reject appraisal requests made by the person for whom the services are being performed, or the individual is not prohibited from contracting to perform those services for a person other than the person for whom the services are being performed, or both.

(b) Subsection (a) shall not apply to any services that are required to be covered as a condition of approval of this Act by the United States Secretary of Labor under Section 3304(a)(6)(A) of the Federal Unemployment Tax Act.

(Source: P.A. 89-649, eff. 8-9-96.)

Sec. 218. Parent, child or spouse, service performed for

The term "employment" shall not include service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 18 in the employ of his father or mother.

(Source: P.A. 79-817.)

Sec. 219. United States Government or another state, services performed for

The term "employment" shall not include service performed in the employ of any other State or its political subdivisions, or of the United States Government, or of an instrumentality of any other State or States or their political subdivisions or of the United States except that, in the event that the Congress of the United States shall permit States to require any instrumentalities of the United States to make payments of contributions under a State Unemployment Compensation Act (and to comply with State regulations thereunder), then, to the extent permitted by Congress, and from and after the date as of which such permission becomes effective, all of the provisions of this Act shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided, that if this State shall not be certified for any year by the Secretary of Labor of the United States of America or other appropriate Federal agency under Section 3304 of the Federal Internal Revenue Code of 1954, then the payments required of such instrumentalities with respect to such year shall be refunded by the Director in accordance with the provisions of Section 2201.

(Source: Laws 1955, p. 744.)

Sec. 220. State or subdivisions, service performed for

A. The term "employment" shall not include service performed prior to 1972 in the employ of this State, or of any political subdivision thereof, or of any wholly owned instrumentality of this State or its political subdivisions.

B. The term "employment" shall not include service, performed after 1971 and before 1978, in the employ of this State or any of its instrumentalities:

1. In an elective position;
2. Of a professional or consulting nature, compensated on a per diem or retainer basis;
3. For a State prison or other State correctional institution, by an inmate of the prison or correctional institution;
4. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of this State, by an individual receiving such work-relief or work-training;
5. In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;
6. Directly for the Illinois State Fair during its active duration (including the week immediately preceding and the week immediately following the Fair);
7. Directly and solely in connection with an emergency, in fire-fighting, snow removal, flood control, control of the effects of wind or flood, and the like, by an individual hired solely for the period of such emergency;
8. In the Illinois National Guard, directly and solely in connection with its summer training camps or during emergencies, by an individual called to duty solely for such purposes.

C. Except as provided in Section 302, the term "employment" shall not include service performed in the employ of a political subdivision or a municipal corporation, or an instrumentality of one or more of the foregoing or of this State and one or more of the foregoing. This subsection shall not apply to service performed after December 31, 1977.

D. The term "employment" shall not include service performed after December 31, 1977:

1. In the employ of a governmental entity referred to in clause (B) of Section 211.1 if such service is performed in the exercise of duties
   a. As an elected official;
   b. As a member of a legislative body, or a member of the judiciary, of this State or a political subdivision or municipal corporation;
   c. As a member of the Illinois National Guard or Air National Guard;
   d. As a worker serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

e. In a position which, under or pursuant to the laws of this State, is designated as a major nontenured policymaking or advisory position, or as a policymaking position the performance of the duties of which ordinarily does not require more than 8 hours per week.

2. As part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of this State, or a political subdivision or municipal corporation, by an individual receiving such work-relief or work-training.

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

4. By an inmate of a custodial or penal institution.

E. The term “employment” shall not include service performed on or after January 1, 2002 in the employ of a governmental entity referred to in clause (B) of Section 211.1 if the service is performed in the exercise of duties as an election official or election worker and the amount of remuneration received by the individual during the calendar year for service as an election official or election worker is less than $1,000.

F. The term "employment" shall not include service performed in the employ of an Indian tribe if such service is performed in the exercise of duties:

1. as an elected official;

2. as a member of a legislative body, or a member of the judiciary, of that Indian tribe;

3. as a worker serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

4. in a position which, under or pursuant to tribal law, is designated as a major nontenured policymaking or advisory position, or as a policymaking position the performance of the duties of which ordinarily does not require more than 8 hours per week;

5. as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of this State, or a political subdivision or municipal corporation, or an Indian tribe, by an individual receiving such work-relief or work training;

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

7. by an inmate of a custodial or penal institution.

(Source: P.A. 92-441, eff. 1-1-02, P.A. 92-555, eff. 6-24-02)

Sec. 221. Religious, charitable. scientific, literary, or educational corporations, services performed for

The term “employment” does not include service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation. On and after January 1, 1972, the provisions of this Section do not apply to services performed in the employ of a nonprofit organization as defined in Section 211.2.

(Source: P.A. 77-1443.)

Sec. 222. Federal unemployment compensation system, service with respect to which unemployment compensation is payable under

The term "employment" shall not include service with respect to which unemployment compensation is payable under an unemployment compensation system established by an Act of Congress; provided that the Director is hereby authorized to enter into agreements with the proper agencies under such Act of Congress, which shall become effective ten days after the date of such agreement, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this Act, acquired rights to unemployment compensation under such Act of Congress or who have, after acquiring potential rights to unemployment compensation under such Act of Congress, acquired rights to benefits under this Act.

(Source: Laws 1951, p. 32.)

Sec. 223. Services performed for organizations exempt from federal income tax

The term "employment" shall not include service performed in any calendar quarter in the employ of any organization exempt from income tax under Section 501 (a) of the Federal Internal Revenue Code of 1954 (other than an organization described in Section 401(a) of the Internal Revenue Code of 1954) or under Section 521 of the Internal Revenue Code of 1954 if the remuneration for such service is less than $50.

(Source: P.A. 77-1443.)

Sec. 224. Service for school, college or university by spouse of student

The term "employment" shall not include service performed in the employ of a school, college, or university, (A) by a student who is enrolled and is regularly attending classes at such school, college or university, or (B) by the spouse of such student if the spouse is advised, at the time the spouse commences to perform such service, that (1) the employment of the spouse to perform such service is provided under a program to provide financial assistance to the student by the school, college, or university, and (2) such employment will not be covered by any program of unemployment compensation.

(Source: P.A. 81-1130.)

Sec. 225. Service performed delivering newspapers or shopping news; performed of freelance editorial or photographic work

(A) The term "employment" shall not include services performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news.

(B) The term "employment" does not include the performance of freelance editorial or photographic work for a newspaper.

(C) The term "employment" does not include the delivery or distribution of newspapers or shopping news to the ultimate consumer if:

(1) substantially all of the remuneration for the performance of the services is directly related to sales, "per piece" fees, or other output, rather than to the number of hours worked; and

(2) the services are performed under a written contract between the individual and the person or firm for whom the services are performed, and the contract provides that the individual will not be treated as an employee for federal tax purposes.

(3) Delivery or distribution to the ultimate consumer does not include:

(i) delivery or distribution for sale or resale, including, but not limited to, distribution to a newsrack or newsbox, salesperson, newsstand or retail establishment;

(ii) distribution for further distribution, regardless of subsequent sale or resale.

(D) Subsection (C) shall not apply in the case of any individual who provides delivery or distribution services for a newspaper pursuant to the terms of a collective bargaining agreement and shall not be construed to alter or amend the application or interpretation of any existing collective bargaining agreement. Further, subsection (C) shall not be construed as evidence of the existence or non-existence of an employment relationship under any other Sections of this Act or other existing laws.

(E) Subsections (B) and (C) shall not apply to services that are required to be covered as a condition of approval of this Act by the United States Secretary of Labor under Section 3304 (a)(6)(A) of the Federal Unemployment Tax Act.

(Source: P.A. 87-1178.)

Sec. 226. Bets or wagers - Selling of pools – Lotteries - Services in connection with

The term "employment" shall not include services performed in connection with the illegal recording or making of bets or wagers or the selling of pools upon any contest or race; or in connection with the playing of or betting in any game of chance involving the losing or winning of money or any other thing of value; or in connection with the illegal operation of any lottery whether by dice, lot, numbers, game, hazard, or other gambling device.

(Source: Laws 1951, p. 32.)

Sec. 227. Services by full-time student in work experience program

The term "employment" shall not include service performed after 1971 by an individual 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 Section shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(Source: P.A. 83-71.)

Sec. 228. Insurance agent or solicitor on commission basis

The term "employment" shall not include services performed by an individual as an insurance agent or insurance solicitor, if all such services performed by such individual are performed for remuneration solely by way of commission.

(Source: Laws 1951, p. 32.)

Sec. 229. Services deemed performed entirely outside State by reciprocal arrangement

The term "employment" shall not include services covered by an arrangement pursuant to Section 2700 whereby all services performed by an individual for an employing unit are deemed to be performed entirely outside of this State.

(Source: Laws 1951, p. 32.)

Sec. 230. Service to hospital by patient, student nurse and intern not included

The term "employment" shall not include service performed after 1971:

(A) In the employ of a hospital, if such service is performed by a patient of the hospital.

(B) As a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school approved pursuant to the Nurse Act.

(C) As an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law.

(Source: P.A. 095-0639, eff. 10-5-07.)

Sec. 231. Services for employing unit subject to Act solely because of Section 245

The term "employment" shall not include services performed for an employing unit which is subject to this Act solely because of subsection A of Section 245, if and while such employing unit, with written approval of the Director, duly covers under the unemployment compensation law of another State all services for it which would otherwise be covered under this Act, provided that those individuals whose services are hereby excluded shall be counted in determining whether such employing unit is an employer under Section 205. Such approval may be withdrawn by the Director upon written notice to such employing unit, addressed to its last known address and, in the event of such withdrawal, such services shall again be deemed employment subject to this Act as of the date such services ceased or could have ceased to be employment, by the reasonably prompt filing of an application for termination of coverage, under the unemployment compensation law of such other state.

(Source: Laws 1951, p. 32.)

Sec. 232. Employment, when director's services not included

The term "employment" shall not include services performed by a director of a corporation while acting in the capacity of a director on or for a committee provided for by law, or by charter or by by-laws of the corporation. This Section shall not apply to the services described in Section 211.2.

(Source: P.A. 77-1443.)

Sec. 232.1 Caddie

The term employment shall not include services performed by an individual under the age of 22 who is a full-time student and acting as a caddie in assisting a golf player during a round of golf primarily by handling the player's clubs when paid directly by the club member or indirectly by the club acting as agent for the member.

(Source: P.A. 86-1015.)

Sec. 232.2. Students; organized camps

A. The term "employment" does not include service performed by a full-time student in the employ of an organized camp if:
   1. the camp:
      (a) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or
      (b) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33 1/3% of its average gross receipts for the other 6 months in the preceding calendar year; and
   2. the full-time student performs services in the employ of the camp for less than 13 calendar weeks in the calendar year.

B. For the purposes 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:
      (a) the individual was enrolled as a full-time student at an educational institution for the immediately preceding academic year or term; and
      (b) 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 (a) of this subdivision 2.

(Source: P.A. 92-433, eff. 1-1-02.)

Sec. 233. Services during one-half or more of pay period determines whether they are deemed employment

"Included and excluded services." If the services performed during one-half or more of any pay period by an individual for an employing unit constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an individual for an employing unit do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this Section the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to an individual in the employ of an employing unit. This Section shall not be applicable with respect to services performed in a pay period by an individual in the employ of an employing unit where any of such service is excepted by Section 222.

(Source: Laws 1951, p. 32.)

Sec. 234. "Wages" defined

Subject to the provisions of Sections 235 and 245 C, "wages" means every form of remuneration for personal services, including salaries, commissions, bonuses, and the reasonable money value of all remuneration in any medium other than cash. The reasonable money value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the Director. Such rules shall be based upon the reasonable past experience of the workers and the employing units concerned therewith.

Where gratuities are customarily received by an individual in the course of his work from persons other than his employer, such gratuities shall, subject to the provisions of this paragraph, be treated as wages received from his employer. Each such employer shall notify each such individual of his duty to report currently the amount of such gratuities to such employer and the Director shall, by regulation, prescribe the manner of notification and of reporting. The amount of gratuities so reported shall constitute a conclusive determination of the amount received unless the employer, within the time prescribed by regulation, notifies the Director of his disagreement therewith. Gratuities not so reported to the employer in the manner prescribed by such regulations of the Director shall not be wages for any of the purposes of this Act.

(Source: P.A. 84-1390.)

Sec. 235. Wages not to include certain remuneration

The term "wages" does not include:

A. With respect to calendar years prior to calendar year 2004, the maximum amount includable as "wages" shall be determined pursuant to this Section as in effect on January 1, 2006.

With respect to the calendar year 2004, the term "wages" shall include only the remuneration paid to an individual by an employer during that period with respect to employment which does not exceed $9,800. With respect to the calendar years 2005 through 2009, the term "wages" shall include only the remuneration paid to an individual by an employer during that period with respect to employment which does not exceed the following amounts: $10,500 with respect to the calendar year 2005; $11,000 with respect to the calendar year 2006; $11,500 with respect to the calendar year 2007; $12,000 with respect to the calendar year 2008; and $12,300 with respect to the calendar year 2009.

With respect to the calendar years 2010, 2011, 2020, and each calendar year thereafter, the term "wages" shall include only the remuneration paid to an individual by an employer during that period with respect to employment which does not exceed the sum of the wage base adjustment applicable to that year pursuant to Section 1400.1, plus the maximum amount includable as "wages" pursuant to this subsection with respect to the immediately preceding calendar year. With respect to calendar year 2012, to offset the loss of revenue to the State's account in the unemployment trust fund with respect to the first quarter of calendar year 2011 as a result of Section 1506.5 and the changes made by this amendatory Act of the 97th General Assembly to Section 1506.3, the term "wages" shall include only the remuneration paid to an individual by an employer during that period with respect to employment which does not exceed $13,560. Except as otherwise provided in subsection A-1, with respect to calendar year 2013, the term "wages" shall include only the remuneration paid to an individual by an employer during that period with respect to employment which does not exceed $12,900. With respect to the calendar years 2014 through 2019, the term "wages" shall include only the remuneration paid to an individual by an employer during that period with respect to employment which does not exceed $12,960. Notwithstanding any provision to the contrary, the maximum amount includable as "wages" pursuant to this Section shall not be less than $12,300 or greater than

$12,960 with respect to any calendar year after calendar year 2009 except calendar year 2012 and except as otherwise provided in subsection A-1.

The remuneration paid to an individual by an employer with respect to employment in another State or States, upon which contributions were required of such employer under an unemployment compensation law of such other State or States, shall be included as a part of the remuneration herein referred to. For the purposes of this subsection, any employing unit which succeeds to the organization, trade, or business, or to substantially all of the assets of another employing unit, or to the organization, trade, or business, or to substantially all of the assets of a distinct severable portion of another employing unit, shall be treated as a single unit with its predecessor for the calendar year in which such succession occurs; any employing unit which is owned or controlled by the same interests which own or control another employing unit shall be treated as a single unit with the unit so owned or controlled by such interests for any calendar year throughout which such ownership or control exists; and, with respect to any trade or business transfer subject to subsection A of Section 1507.1, a transferee, as defined in subsection G of Section 1507.1, shall be treated as a single unit with the transferor, as defined in subsection G of Section 1507.1, for the calendar year in which the transfer occurs. This subsection applies only to Sections 1400, 1405A, and 1500.

A-1. If, by March 1, 2013, the payments attributable to the changes to subsection A by this or any subsequent amendatory Act of the 97th General Assembly do not equal or exceed the loss to this State's account in the unemployment trust fund as a result of Section 1506.5 and the changes made to Section 1506.3 by this or any subsequent amendatory Act of the 97th General Assembly, including unrealized interest, then, with respect to calendar year 2013, the term "wages" shall include only the remuneration paid to an individual by an employer during that period with respect to employment which does not exceed $13,560.

B. The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), made to, or on behalf of, an individual or any of his dependents under a plan or system established by an employer which makes provision generally for individuals performing services for him (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents), on account of (1) sickness or accident disability (except those sickness or accident disability payments which would be includable as "wages" in Section 3306(b)(2)(A) of the Federal Internal Revenue Code of 1954, in effect on January 1, 1985, such includable payments to be attributable in such manner as provided by Section 3306(b) of the Federal Internal Revenue Code of 1954, in effect on January 1, 1985), or (2) medical or hospitalization expenses in connection with sickness or accident disability, or (3) death.

C. Any payment made to, or on behalf of, an employee or his beneficiary which would be excluded from "wages" by subparagraph (A), (B), (C), (D), (E), (F) or (G), of Section 3306(b)(5) of the Federal Internal Revenue Code of 1954, in effect on January 1, 1985.

D. The amount of 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 individual performing services for him after the expiration of six calendar months following the last calendar month in which the individual performed services for such employer.

E. Remuneration paid in any medium other than cash by an employing unit to an individual for service in agricultural labor as defined in Section 214.

F. The amount of any supplemental payment made by an employer to an individual performing services for him, other than remuneration for services performed, under a shared work plan approved by the Director pursuant to Section 407.1.

(Source: P.A. 93-634, eff. 1-1-04; 93-676, eff. 6-22-04; 94-301, eff. 1-1-06, P.A. 97-0001, eff. 3-31-11, P.A. 97-621, eff. 11-18-11)

Sec. 236. “Insured work” defined

“Insured work” means services performed in employment for employers.

(Source: Laws 1951, p. 32.)

Sec. 237. “Base period” defined

A. "Base period" means the first four of the last five completed calendar quarters immediately preceding the benefit year. Further, any wages which had previously been used to establish a valid claim pursuant to Section 242 and with respect to which benefits have been paid shall not be included in the base period provided for in this subsection.

B. Notwithstanding subsection A, an individual, who has been awarded temporary total disability under any workers' compensation act or any occupational diseases act and does not qualify for the maximum weekly benefit amount under Section 401 because he was unemployed and awarded temporary total disability during the base period determined in accordance with subsection A, shall have his weekly benefit amount, if it is greater than the weekly benefit amount determined in accordance with subsection A, determined by the base period of a benefit year which began on the date of the beginning of the first week for which he was awarded temporary total disability under any workers' compensation act or occupational diseases act, provided, however, that such base period shall not begin more than one year prior to the individual's base period as determined under subsection A. Further, any wages which had previously been used to establish a valid claim pursuant to Section 242 and with respect to which benefits have been paid shall not be included in the base period provided for in this subsection.

C. With respect to an individual who is ineligible to receive benefits under this Act by reason of the provisions of Section 500E during the base periods determined in accordance with subsections A and B, "base period" means the last 4 completed calendar quarters immediately preceding the benefit year. This subsection shall not apply to establish any benefit year beginning prior to January 1, 2008.

D. Notwithstanding the foregoing provisions of this Section, "base period" means the base period as defined in the unemployment compensation law of any State under which benefits are payable to an individual on the basis of a combination of his wages pursuant to an arrangement described in Section 2700 F.

(Source: P.A. 93-0634, eff. 12-26-03.)

Sec. 238. “Calendar quarter” defined

“Calendar quarter” means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the Director may by regulation prescribe.

(Source: Laws 1951, p. 32.)

Sec. 239. “Unemployed individual”

“Unemployed individual”. An individual shall be deemed unemployed in any week with respect to which no wages are payable to him and during which he performs no services or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The Director shall prescribe regulations applicable to unemployed individuals making such distinctions in the procedures as to total unemployment, part-total unemployment, partial unemployment of individuals, and other forms of short-time work as the Director deems necessary.

An individual's week of unemployment shall be deemed to commence only after his registration at an employment office, except as the Director may by regulation otherwise prescribe if he finds that the foregoing requirement with respect to registration would be inequitable or administratively impracticable.

(Source: P.A. 77-1443.)

Sec. 240. “Contributions”

“Contributions” means the money payments required from employers for the purpose of paying benefits.

(Source: Laws 1951, p. 32.)

Sec. 240.1. "Fund Building Receipts"

"Fund Building Receipts" means amounts directed for deposit into the Master Bond Fund pursuant to Section 1506.3.

(Source: P.A. 93-0634, eff. 12-26-03.)

Sec. 241. "Week" defined

Prior to September 27, 1959, "week" means such period of seven consecutive days as the Director may by regulation prescribe. On and after September 27, 1959, "week" means

A. Calendar week, or

B. Any seven consecutive day period with respect to which no wages are payable to an individual and during which he performs no services, which occurs within two calendar weeks in each of which he is not unemployed; or

C. Any seven consecutive day period which ends after September 26, 1959, and before October 3, 1959.

The Director may by regulation prescribe that a week shall be deemed to be "in," "within," or "during" any benefit year which includes the greater part of such week.

(Source: Laws 1959, p. 2169.)

Sec. 242. "Benefit year" defined

"Benefit year" with respect to any individual means the one-year period beginning with the first day of the week with respect to which the individual first files a valid claim for benefits and, thereafter, the one-year period beginning with the first day of the week with respect to which such individual again files a valid claim after the termination of his last preceding benefit year or, in the case of an individual all of whose benefit rights or any remaining portion thereof have been canceled pursuant to the provisions of Section 602B, the one-year period beginning with the first day of the week with respect to which such individual again files a valid claim. Any claim for benefits made in accordance with the provisions of Section 700 shall be deemed to be a "valid claim" for the purposes of this paragraph if the individual has met the requirements of Section 500 E.

Notwithstanding the foregoing provisions of this Section, "benefit year" means the benefit year as defined in the unemployment compensation law of any State under which benefits are payable to an individual on the basis of a combination of his wages pursuant to an arrangement described in Section 2700 F.

(Source: P.A. 82-22.)

Sec. 243. "Board of Review" defined

"Board of Review" means the Board of Review created by Section 5-125 of the Departments of State Government Law (20 ILCS 5/5-125).

(Source: P.A. 91-239, eff. 1-1-00.)

Sec. 244. "State" defined .

"State" includes, in addition to the States of the United States of America, the District of Columbia, Puerto Rico, and the Virgin Islands of the United States.

(Source: P.A. 76-1063.)

Sec. 245. Coordination with Federal Unemployment Tax Act

Notwithstanding any provisions of this Act to the contrary, excepting the exemptions from the definition of employment contained in Sections 212.1, 217.1, 217.2, 226, and 231 and subsections B and C of Section 225:

A. The term "employer" includes any employing unit which is an "employer" under the provisions of the Federal Unemployment Tax Act, or which is required, pursuant to such Act, to be an "employer" under this Act as a condition for the Federal approval of this Act requisite to the full tax credit, against the tax imposed by the Federal Act, for contributions paid by employers pursuant to this Act.

B. The term "employment" includes any services performed within the State which constitute "employment" under the provisions of the Federal Unemployment Tax Act, or which are required, pursuant to such Act, to be "employment" under this Act as a condition for the Federal approval of this Act requisite to the full tax credit, against the tax imposed by the Federal Act, for contributions paid by employers pursuant to this Act.

C. The term "wages" includes any remuneration for services performed within this State which is subject to the payment of taxes under the provisions of the Federal Unemployment Tax Act.

(Source: P.A. 89-252, eff. 8-8-95; 89-649, eff. 8-9-96.)

Sec. 246. "Institution of higher education" defined

"Institution of higher education" means an educational institution which

A. Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate; and

B. Is legally authorized in this State to provide a program of education beyond high school; and

C. Provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

D. Is a public institution or a nonprofit organization.

(Source: P.A. 77-1443.)

Sec. 247. "Hospital" defined

"Hospital" means any institution for the conduct, operation or maintenance of which a license is required by the Hospital Licensing Act; or an institution (or a facility within an institution) maintained and operated by this State, or by any of its political subdivisions or municipal corporations, or by an instrumentality of one or more of the foregoing, primarily engaged in providing medical care to individuals, including diagnostic, therapeutic, psychiatric, or obstetrical services.

(Source: P.A. 77-1443.)

Sec. 300. Duration of coverage

Except as is provided in Sections 301 and 302, any employing unit which is or becomes an employer within any calendar year shall be subject to this Act during the whole of such calendar year.

(Source: P.A. 87-1178.)

Sec. 301. Termination of coverage

A. An employing unit shall cease to be an employer as of the first day of January of any calendar year, only if it files with the Director, prior to the 1st day of February of such year, a written application for termination of coverage, and the Director finds that the employment experience of such employer within the preceding calendar year was not sufficient to render an employing unit an employer under the provisions of subsections A or B of Section 205. For the purposes of this Section, the two or more employing units mentioned in subsections C, D, E, or F of Section 205 shall be treated as a single employing unit.

B. Notwithstanding the provisions of Section 205 and subsection A of this Section, an employing unit shall cease to be an employer as of the last day of a calendar quarter in which it ceases to pay wages for services in employment and ceases to have any individual performing services for it, provided that either it files with the Director, within 5 days after the date on which wage reports are due for the calendar quarter, a written application for termination of coverage and the Director approves the application, or the Director has determined on his or her own initiative, pursuant to standards established under duly promulgated rules, that the employing unit has permanently ceased to pay wages for services in employment and permanently ceased to have any individual performing services for it. If an employing unit's coverage is terminated under this subsection B, the termination of coverage shall be rescinded as of the date that the employing unit begins, later in the same calendar year or in the succeeding calendar year, to have any individual perform services for it on any part of any day.

(Source: P.A. 90-554, eff. 12-12-97.)

Sec. 302. Election of coverage

A. An employing unit not otherwise subject to this Act, which files with the Director its written election to become an employer for not less than two calendar years, shall, with the written approval of the election by the Director, become an employer to the same extent as all other employers, as of the date stated in the approval, and shall cease to be subject to this Act as of January 1 of any calendar year subsequent to such two calendar years, only if prior to February 1 of that year it has filed with the Director a written notice to that effect. The Director shall approve any election so filed if he finds that the employment record of the applicant has not been or is not likely to be such as will unduly threaten the full payment of benefits when due under this Act.

B. Any employing unit for which services that do not constitute employment are performed may file with the Director a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this Act for not less than two calendar years. Upon the written approval of the election by the Director, the services shall be deemed to constitute employment from and after the date stated in the approval. The services shall cease to be deemed employment as of January 1 of any calendar year subsequent to such two calendar years, only if prior to February 1 of that year the employing unit has filed with the Director a written notice to that effect. The basis for the approval by the Director of the election under this subsection shall be the same as that provided under subsection A of this Section.

C. Subsections A and B shall not apply to a political subdivision or a municipal corporation, or an instrumentality of one or more of the foregoing or of this State and one or more of the foregoing, and subsection B shall not apply to this State or any of its instrumentalities, except that a political subdivision or municipal corporation of this State may file with the Director a written election that it be an employer with respect to the services (except any services enumerated in Section 211.3) performed prior to January 1, 1978, by individuals in its employ in all of the hospitals and institutions of higher education operated by it and that such services be employment for all the purposes of this Act for not less than two calendar years. The effective date of the written election shall be any date after December 31, 1971, designated by the employing unit, provided that the date shall not be prior to January 1 of the calendar year in which the written election has been filed. The services described in this subsection shall cease to be employment and the employing unit shall cease to be an employer as of January 1 of any calendar year subsequent to the two calendar years hereinabove mentioned only if, prior to February 1 of that year, it files with the Director a written notice to that effect.

1. With respect to the effective period of its election to be an employer, the political subdivision or municipal corporation (unless it elects to make payments under the provisions of paragraph 2) shall make payments in lieu of contributions the amounts of which shall be determined, in accordance with the provisions of Sections 1400 and 1500, in the same manner and on the same basis as the amounts are determined for employers who incur liability for the payment of contributions. All of the provisions of this Act applicable to employers who incur liability for the payment of contributions shall apply to a political subdivision or municipal corporation which becomes subject to the making of payments in lieu of contributions under this paragraph.

2. In lieu of the payments required by paragraph 1, a political subdivision or municipal corporation which has elected to be an employer may elect to make payments in lieu of contributions: with respect to benefit years beginning prior to July 1, 1989, in amounts equal to the amounts of regular benefits and one-half the extended benefits (defined in Section 409) paid to individuals for any weeks which begin on or after the effective date of the election to make such payments, on the basis of wages for insured work paid to them by the political subdivision or municipal corporation during their respective base periods; and, with respect to benefit years beginning on or after July 1, 1989, in amounts equal to the amounts specified in the third and fourth sentences of subsection B of Section 1405 paid to individuals where such political subdivision or municipal corporation was the last employer of the individual as provided in Section 1502.1 with respect to a benefit year beginning during the effective period of the election. An election to make payments pursuant to this paragraph shall be made in accordance with and subject to the provisions of subsection A of Section 1404, applicable to elections by nonprofit organizations. All of the provisions of Section 1404 (except subsection E), applicable to payments in lieu of contributions by nonprofit organizations, shall be applicable to payments in lieu of contributions by a political subdivision or municipal corporation pursuant to this paragraph. For the purposes of this paragraph, the term “contributions” (relating to payments determined pursuant to Sections 1400 and 1500) which appears in Section 1404 means the payments in lieu of contributions required by paragraph 1 of this subsection; and the term “incurred liability” for the payment of contributions, or any variant thereof, which appears in Section 1404 means “became liable” for the payments in lieu of contributions required by paragraph 1 of this subsection, or a like variant thereof, as the case may be.

(Source: P.A. 85-956.)

Sec. 400. Payment of benefits

All benefits shall be paid through employment offices, as hereinafter provided, in accordance with such regulations as the Director may prescribe.

(Source: Laws 1951, p. 32.)

Sec. 401. Weekly Benefit Amount - Dependents' Allowances

(Before 2013)

A. With respect to any week beginning prior to April 24, 1983, an individual's weekly benefit amount shall be an amount equal to the weekly benefit amount as defined in this Act as in effect on November 30, 1982.

B. 1. With respect to any week beginning on or after April 24, 1983 and before January 3, 1988, an individual's weekly benefit amount shall be 48% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount, and cannot be less than 15% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar. However, the weekly benefit amount for an individual who has established a benefit year beginning before April 24, 1983, shall be determined, for weeks beginning on or after April 24, 1983 claimed with respect to that benefit year, as provided under this Act as in effect on November 30, 1982. With respect to any week beginning on or after January 3, 1988 and before January 1, 1993, an individual's weekly benefit amount shall be 49% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount, and cannot be less than $51. With respect to any week beginning on or after January 3, 1993 and during a benefit year beginning before January 4, 2004, an individual's weekly benefit amount shall be 49.5% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51. With respect to any benefit year beginning on or after January 4, 2004 and before January 6, 2008, an individual's weekly benefit amount shall be 48% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51. Except as otherwise provided in this Section, with respect to any benefit year beginning on or after January 6, 2008, an individual's weekly benefit amount shall be 47% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51. With respect to any benefit year beginning in calendar year 2016, an individual's weekly benefit amount shall be 42.8% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51. With respect to any benefit year beginning in calendar year 2018, an individual's weekly benefit amount shall be 42.9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51.

2. For the purposes of this subsection:

With respect to any week beginning on or after April 24, 1983, an individual's "prior average weekly wage" means the total wages for insured work paid to that individual during the 2 calendar quarters of his base period in which such total wages were highest, divided by 26. If the quotient is not already a multiple of one dollar, it shall be rounded to the nearest dollar; however if the quotient is equally near 2 multiples of one dollar, it shall be rounded to the higher multiple of one dollar.

"Determination date" means June 1, 1982, December 1, 1982 and December 1 of each succeeding calendar year thereafter. However, if as of June 30, 1982, or any June 30 thereafter, the net amount standing to the credit of this State's account in the unemployment trust fund (less all outstanding advances to that account, including advances pursuant to Title XII of the federal Social Security Act) is greater than $100,000,000, "determination date" shall mean December 1 of that year and June 1 of the succeeding year. Notwithstanding the preceding sentence, for the purposes of this Act only, there shall be no June 1 determination date in any year after 1986.

"Determination period" means, with respect to each June 1 determination date, the 12 consecutive calendar months ending on the immediately preceding December 31 and, with respect to each December 1 determination date, the 12 consecutive calendar months ending on the immediately preceding June 30.

"Benefit period" means the 12 consecutive calendar month period beginning on the first day of the first calendar month immediately following a determination date, except that, with respect to any calendar year in which there is a June 1 determination date, "benefit period" shall mean the 6 consecutive calendar month period beginning on the first day of the first calendar month immediately following the preceding December 1 determination date and the 6 consecutive calendar month period beginning on the first day of the first calendar month immediately following the June 1 determination date. Notwithstanding the foregoing sentence, the 6 calendar months beginning January 1, 1982 and ending June 30, 1982 shall be deemed a benefit period with respect to which the determination date shall be June 1, 1981.

"Gross wages" means all the wages paid to individuals during the determination period immediately preceding a determination date for insured work, and reported to the Director by employers prior to the first day of the third calendar month preceding that date.

"Covered employment" for any calendar month means the total number of individuals, as determined by the Director, engaged in insured work at mid-month.

"Average monthly covered employment" means one-twelfth of the sum of the covered employment for the 12 months of a determination period.

"Statewide average annual wage" means the quotient, obtained by dividing gross wages by average monthly covered employment for the same determination period, rounded (if not already a multiple of one cent) to the nearest cent.

"Statewide average weekly wage" means the quotient, obtained by dividing the statewide average annual wage by 52, rounded (if not already a multiple of one cent) to the nearest cent. Notwithstanding any provisions of this Section to the contrary, the statewide average weekly wage for the benefit period beginning July 1, 1982 and ending December 31, 1982 shall be the statewide average weekly wage in effect for the immediately preceding benefit period plus one-half of the result obtained by subtracting the statewide average weekly wage for the immediately preceding benefit period from the statewide average weekly wage for the benefit period beginning July 1, 1982 and ending December 31, 1982 as such statewide average weekly wage would have been determined but for the provisions of this paragraph. Notwithstanding any provisions of this Section to the contrary, the statewide average weekly wage for the benefit period beginning April 24, 1983 and ending January 31, 1984 shall be $321 and for the benefit period beginning February 1, 1984 and ending December 31, 1986 shall be $335, and for the benefit period beginning January 1, 1987, and ending December 31, 1987, shall be $350, except that for an individual who has established a benefit year beginning before April 24, 1983, the statewide average weekly wage used in determining benefits, for any week beginning on or after April 24, 1983, claimed with respect to that benefit year, shall be $334.80, except that, for the purpose of determining the minimum weekly benefit amount under subsection B(1) for the benefit period beginning January 1, 1987, and ending December 31, 1987, the statewide average weekly wage shall be $335; for the benefit periods January 1, 1988 through December 31, 1988, January 1, 1989 through December 31, 1989, and January 1, 1990 through December 31, 1990, the statewide average weekly wage shall be $359, $381, and $406, respectively. Notwithstanding the preceding sentences of this paragraph, for the benefit period of calendar year 1991, the statewide average weekly wage shall be $406 plus (or minus) an amount equal to the percentage change in the statewide average weekly wage, as computed in accordance with the preceding sentences of this paragraph, between the benefit periods of calendar years 1989 and 1990, multiplied by $406; and, for the benefit periods of calendar years 1992 through 2003 and calendar year 2005 and each calendar year thereafter, the statewide average weekly wage, shall be the statewide average weekly wage, as determined in accordance with this sentence, for the immediately preceding benefit period plus (or minus) an amount equal to the percentage change in the statewide average weekly wage, as computed in accordance with the preceding sentences of this paragraph, between the 2 immediately preceding benefit periods, multiplied by the statewide average weekly wage, as determined in accordance with this sentence, for the immediately preceding benefit period. However, for purposes of the Workers' Compensation Act, the statewide average weekly wage will be computed using June 1 and December 1 determination dates of each calendar year and such determination shall not be subject to the limitation of $321, $335, $350, $359, $381, $406 or the statewide average weekly wage as computed in accordance with the preceding sentence of this paragraph.

With respect to any week beginning on or after April 24, 1983 and before January 3, 1988, "maximum weekly benefit amount" means 48% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the nearest dollar, provided however, that the maximum weekly benefit amount for an individual who has established a benefit year beginning before April 24, 1983, shall be determined, for weeks beginning on or after April 24, 1983 claimed with respect to that benefit year, as provided under this Act as amended and in effect on November 30, 1982, except that the statewide average weekly wage used in such determination shall be $334.80.

With respect to any week beginning after January 2, 1988 and before January 1, 1993, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 49% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any week beginning on or after January 3, 1993 and during a benefit year beginning before January 4, 2004, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 49.5% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning on or after January 4, 2004 and before January 6, 2008, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 48% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

Except as otherwise provided in this Section, with respect to any benefit year beginning on or after January 6, 2008, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 47% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2016, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 42.8% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2018, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 42.9% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

C. With respect to any week beginning on or after April 24, 1983 and before January 3, 1988, an individual to whom benefits are payable with respect to any week shall, in addition to such benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 7% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the higher dollar; provided, that the total amount payable to the individual with respect to a week shall not exceed 55% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the nearest dollar; and in the case of an individual with a dependent child or dependent children, 14.4% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the higher dollar; provided, that the total amount payable to the individual with respect to a week shall not exceed 62.4% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar with respect to the benefit period beginning January 1, 1987 and ending December 31, 1987, and otherwise to the nearest dollar. However, for an individual with a nonworking spouse or with a dependent child or children who has established a benefit year beginning before April 24, 1983, the amount of additional benefits payable on account of the nonworking spouse or dependent child or children shall be determined, for weeks beginning on or after April 24, 1983 claimed with respect to that benefit year, as provided under this Act as in effect on November 30, 1982, except that the statewide average weekly wage used in such determination shall be $334.80.

With respect to any week beginning on or after January 2, 1988 and before January 1, 1991 and any week beginning on or after January 1, 1992, and before January 1, 1993, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 8% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided, that the total amount payable to the individual with respect to a week shall not exceed 57% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, 15% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed 64% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any week beginning on or after January 1, 1991 and before January 1, 1992, an individual to whom benefits are payable with respect to any week shall, in addition to the benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 8.3% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided, that the total amount payable to the individual with respect to a week shall not exceed 57.3% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, 15.3% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed 64.3% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any week beginning on or after January 3, 1993, during a benefit year beginning before January 4, 2004, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 9% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided, that the total amount payable to the individual with respect to a week shall not exceed 58.5% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, 16% of his prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed 65.5% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning on or after January 4, 2004 and before January 6, 2008, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided, that the total amount payable to the individual with respect to a week shall not exceed 57% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, 17.2% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed 65.2% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning on or after January 6, 2008 and before January 1, 2010, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided, that the total amount payable to the individual with respect to a week shall not exceed 56% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, 18.2% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed 65.2% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

The additional amount paid pursuant to this subsection in the case of an individual with a dependent child or dependent children shall be referred to as the "dependent child allowance", and the percentage rate by which an individual's prior average weekly wage is multiplied pursuant to this subsection to calculate the dependent child allowance shall be referred to as the "dependent child allowance rate".

Except as otherwise provided in this Section, with respect to any benefit year beginning on or after January 1, 2010, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, the greater of (i) 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) $15, provided that the total amount payable to the individual with respect to a week shall not exceed 56% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, the greater of (i) the product of the dependent child allowance rate multiplied by his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) the lesser of $50 or 50% of his or her weekly benefit amount, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual

with respect to a week shall not exceed the product of the statewide average weekly wage multiplied by the sum of 47% plus the dependent child allowance rate, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2016, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, the greater of (i) 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) $15, provided that the total amount payable to the individual with respect to a week shall not exceed 51.8% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, the greater of (i) the product of the dependent child allowance rate multiplied by his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) the lesser of $50 or 50% of his or her weekly benefit amount, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed the product of the statewide average weekly wage multiplied by the sum of 42.8% plus the dependent child allowance rate, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2018, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, the greater of (i) 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) $15, provided that the total amount payable to the individual with respect to a week shall not exceed 51.9% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, the greater of (i) the product of the dependent child allowance rate multiplied by his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) the lesser of $50 or 50% of his or her weekly benefit amount, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed the product of the statewide average weekly wage multiplied by the sum of 42.9% plus the dependent child allowance rate, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to each benefit year beginning after calendar year 2009, the dependent child allowance rate shall be the sum of the allowance adjustment applicable pursuant to Section 1400.1 to the calendar year in which the benefit year begins, plus the dependent child allowance rate with respect to each benefit year beginning in the immediately preceding calendar year, except as otherwise provided in this subsection. The dependent child allowance rate with respect to each benefit year beginning in calendar year 2010 shall not be greater than 18.2%. The dependent child allowance rate with respect to each benefit year beginning in calendar year 2011 shall be reduced by 0.2% absolute below the rate it would otherwise have been pursuant to this subsection and, with respect to each benefit year beginning after calendar year 2010, except as otherwise provided, shall not be less than 17.1% or greater than 18.0%. Unless, as a result of this sentence, the agreement between the Federal Government and State regarding the Federal Additional Compensation program established under Section 2002 of the American Recovery and Reinvestment Act, or a successor program, would not apply or would cease to apply, the dependent child allowance rate with respect to each benefit year beginning in calendar year 2012 shall be reduced by 0.1% absolute below the rate it would otherwise have been pursuant to this subsection and, with respect to each benefit year beginning after calendar year 2011, shall not be less than 17.0% or greater than 17.9%.

For the purposes of this subsection:

"Dependent" means a child or a nonworking spouse.

"Child" means a natural child, stepchild, or adopted child of an individual claiming benefits under this Act or a child who is in the custody of any such individual by court order, for whom the individual is supplying and, for at least 90 consecutive days (or for the duration of the parental relationship if it has existed for less than 90 days) immediately preceding any week with respect to which the individual has filed a claim, has supplied more than one-half the cost of support, or has supplied at least 1/4 of the cost of support if the individual and the other parent, together, are supplying and, during the aforesaid period, have supplied more than one-half the cost of support, and are, and were during the aforesaid period, members of the same household; and who, on the first day of such week (a) is under 18 years of age, or (b) is, and has been during the immediately preceding 90 days, unable to work because of illness or other disability: provided, that no person who has been determined to be a child of an individual who has been allowed benefits with respect to a week in the individual's benefit year shall be deemed to be a child of the other parent, and no other person shall be determined to be a child of such other parent, during the remainder of that benefit year.

"Nonworking spouse" means the lawful husband or wife of an individual claiming benefits under this Act, for whom more than one-half the cost of support has been supplied by the individual for at least 90 consecutive days (or for the duration of the marital relationship if it has existed for less than 90 days) immediately preceding any week with respect to which the individual has filed a claim, but only if the nonworking spouse is currently ineligible to receive benefits under this Act by reason of the provisions of Section 500E.

An individual who was obligated by law to provide for the support of a child or of a nonworking spouse for the aforesaid period of 90 consecutive days, but was prevented by illness or injury from doing so, shall be deemed to have provided more than one-half the cost of supporting the child or nonworking spouse for that period.

(Source: P.A. 93-0634, eff. 12-26-03; P.A. 96-30, eff. 6-30-09, P.A. 97-621, eff. 11-18-11)

(After 2012)

A. With respect to any week beginning in a benefit year beginning prior to January 4, 2004, an individual's weekly benefit amount shall be an amount equal to the weekly benefit amount as defined in the provisions of this Act as amended and in effect on November 18, 2011.

B. 1. With respect to any benefit year beginning on or after January 4, 2004 and before January 6, 2008, an individual's weekly benefit amount shall be 48% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51. Except as otherwise provided in this Section, with respect to any benefit year beginning on or after January 6, 2008, an individual's weekly benefit amount shall be 47% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51.

With respect to any benefit year beginning in calendar year 2016, an individual's weekly benefit amount shall be 42.8% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51. With respect to any benefit year beginning in calendar year 2018, an individual's weekly benefit amount shall be 42.9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; provided, however, that the weekly benefit amount cannot exceed the maximum weekly benefit amount and cannot be less than $51.

2. For the purposes of this subsection:

An individual's "prior average weekly wage" means the total wages for insured work paid to that individual during the 2 calendar quarters of his base period in which such total wages were highest, divided by 26. If the quotient is not already a multiple of one dollar, it shall be rounded to the nearest dollar; however if the quotient is equally near 2 multiples of one dollar, it shall be rounded to the higher multiple of one dollar.

"Determination date" means June 1 and December 1of each calendar year except that, for the purposes of this Act only, there shall be no June 1 determination date in any year.

"Determination period" means, with respect to each June 1 determination date, the 12 consecutive calendar months ending on the immediately preceding December 31 and, with respect to each December 1 determination date, the 12 consecutive calendar months ending on the immediately preceding June 30.

"Benefit period" means the 12 consecutive calendar month period beginning on the first day of the first calendar month immediately following a determination date, except that, with respect to any calendar year in which there is a June 1 determination date, "benefit period" shall mean the 6 consecutive calendar month period beginning on the first day of the first calendar month immediately following the preceding December 1 determination date and the 6 consecutive calendar month period beginning on the first day of the first calendar month immediately following the June 1 determination date.

"Gross wages" means all the wages paid to individuals during the determination period immediately preceding a determination date for insured work, and reported to the Director by employers prior to the first day of the third calendar month preceding that date.

"Covered employment" for any calendar month means the total number of individuals, as determined by the Director, engaged in insured work at mid-month.

"Average monthly covered employment" means one-twelfth of the sum of the covered employment for the 12 months of a determination period.

"Statewide average annual wage" means the quotient, obtained by dividing gross wages by average monthly covered employment for the same determination period, rounded (if not already a multiple of one cent) to the nearest cent.

"Statewide average weekly wage" means the quotient, obtained by dividing the statewide average annual wage by 52, rounded (if not already a multiple of one cent) to the nearest cent. Notwithstanding any provision of this Section to the contrary, the statewide average weekly wage for any benefit period prior to calendar year 2012 shall be as determined by the provisions of this Act as amended and in effect on November 18, 2011. Notwithstanding any provisions of this Section to the contrary, the statewide average weekly wage for the benefit period of calendar year 2012 shall be $856.55 and for each calendar year thereafter, the statewide average weekly wage, shall be the statewide average weekly wage, as determined in accordance with this sentence, for the immediately preceding benefit period plus (or minus) an amount equal to the percentage change in the statewide average weekly wage, as computed in accordance with the first sentence of this paragraph, between the 2 immediately preceding benefit periods, multiplied by the statewide average weekly wage, as determined in accordance with this sentence, for the immediately preceding benefit period.

However, for purposes of the Workers' Compensation Act, the statewide average weekly wage will be computed using June 1 and December 1 determination dates of each calendar year and such determination shall not be subject to the limitation of the statewide average weekly wage as computed in accordance with the preceding sentence of this paragraph.

With respect to any week beginning in a benefit year beginning prior to January 4, 2004, "maximum weekly benefit amount" with respect to each week beginning within a benefit period shall be as defined in the provisions of this Act as amended and in effect on November 18, 2011.

With respect to any benefit year beginning on or after January 4, 2004 and before January 6, 2008, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 48% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

Except as otherwise provided in this Section, with respect to any benefit year beginning on or after January 6, 2008, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 47% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2016, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 42.8% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2018, "maximum weekly benefit amount" with respect to each week beginning within a benefit period means 42.9% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

C. With respect to any week beginning in a benefit year beginning prior to January 4, 2004, an individual's eligibility for a dependent allowance with respect to a nonworking spouse or one or more dependent children shall be as defined by the provisions of this Act as amended and in effect on November 18, 2011.

With respect to any benefit year beginning on or after January 4, 2004 and before January 6, 2008, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided, that the total amount payable to the individual with respect to a week shall not exceed 57% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, 17.2% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed 65.2% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning on or after January 6, 2008 and before January 1, 2010, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided, that the total amount payable to the individual with respect to a week shall not exceed 56% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, 18.2% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed 65.2% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar.

The additional amount paid pursuant to this subsection in the case of an individual with a dependent child or dependent children shall be referred to as the "dependent child allowance", and the percentage rate by which an individual's prior average weekly wage is multiplied pursuant to this subsection to calculate the dependent child allowance shall be referred to as the "dependent child allowance rate".

Except as otherwise provided in this Section, with respect to any benefit year beginning on or after January 1, 2010, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, the greater of (i) 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) $15, provided that the total amount payable to the individual with respect to a week shall not exceed 56% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, the greater of (i) the product of the dependent child allowance rate multiplied by his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) the lesser of $50 or 50% of his or her weekly benefit amount, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed the product of the statewide average weekly wage multiplied by the sum of 47% plus the dependent child allowance rate, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2016, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, the greater of (i) 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) $15, provided that the total amount payable to the individual with respect to a week shall not exceed 51.8% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or dependent children, the greater of (i) the product of the dependent child allowance rate multiplied by his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) the lesser of $50 or 50% of his or her weekly benefit amount, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed the product of the statewide average weekly wage multiplied by the sum of 42.8% plus the dependent child allowance rate, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to any benefit year beginning in calendar year 2018, an individual to whom benefits are payable with respect to any week shall, in addition to those benefits, be paid, with respect to such week, as follows: in the case of an individual with a nonworking spouse, the greater of (i) 9% of his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) $15, provided that the total amount payable to the individual with respect to a week shall not exceed 51.9% of the statewide average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar; and in the case of an individual with a dependent child or

dependent children, the greater of (i) the product of the dependent child allowance rate multiplied by his or her prior average weekly wage, rounded (if not already a multiple of one dollar) to the next higher dollar, or (ii) the lesser of $50 or 50% of his or her weekly benefit amount, rounded (if not already a multiple of one dollar) to the next higher dollar, provided that the total amount payable to the individual with respect to a week shall not exceed the product of the statewide average weekly wage multiplied by the sum of 42.9% plus the dependent child allowance rate, rounded (if not already a multiple of one dollar) to the next higher dollar.

With respect to each benefit year beginning after calendar year 2012, the dependent child allowance rate shall be the sum of the allowance adjustment applicable pursuant to Section 1400.1 to the calendar year in which the benefit year begins, plus the dependent child allowance rate with respect to each benefit year beginning in the immediately preceding calendar year, except as otherwise provided in this subsection. The dependent child allowance rate with respect to each benefit year beginning in calendar year 2010 shall be 17.9%. The dependent child allowance rate with respect to each benefit year beginning in calendar year 2011 shall be 17.4%. The dependent child allowance rate with respect to each benefit year beginning in calendar year 2012 shall be 17.0% and, with respect to each benefit year beginning after calendar year 2012, shall not be less than 17.0% or greater than 17.9%.

For the purposes of this subsection:

"Dependent" means a child or a nonworking spouse.

"Child" means a natural child, stepchild, or adopted child of an individual claiming benefits under this Act or a child who is in the custody of any such individual by court order, for whom the individual is supplying and, for at least 90 consecutive days (or for the duration of the parental relationship if it has existed for less than 90 days) immediately preceding any week with respect to which the individual has filed a claim, has supplied more than one-half the cost of support, or has supplied at least 1/4 of the cost of support if the individual and the other parent, together, are supplying and, during the aforesaid period, have supplied more than one-half the cost of support, and are, and were during the aforesaid period, members of the same household; and who, on the first day of such week (a) is under 18 years of age, or (b) is, and has been during the immediately preceding 90 days, unable to work because of illness or other disability: provided, that no person who has been determined to be a child of an individual who has been allowed benefits with respect to a week in the individual's benefit year shall be deemed to be a child of the other parent, and no other person shall be determined to be a child of such other parent, during the remainder of that benefit year.

"Nonworking spouse" means the lawful husband or wife of an individual claiming benefits under this Act, for whom more than one-half the cost of support has been supplied by the individual for at least 90 consecutive days (or for the duration of the marital relationship if it has existed for less than 90 days) immediately preceding any week with respect to which the individual has filed a claim, but only if the nonworking spouse is currently ineligible to receive benefits under this Act by reason of the provisions of Section 500E.

An individual who was obligated by law to provide for the support of a child or of a nonworking spouse for the aforesaid period of 90 consecutive days, but was prevented by illness or injury from doing so, shall be deemed to have provided more than one-half the cost of supporting the child or nonworking spouse for that period.

(Source: P.A. 96-30, eff. 6-30-09; P.A. 97-621, eff. 11-18-11; P.A. 97-791, eff. 1-1-12.)

Sec. 401.5. Exclusion of student aid

For purposes of determining eligibility for or the amount of any benefits under this Act, the Department shall exclude from consideration any financial assistance received, under any student aid program administered by an agency of this State or the federal government, by a person who is enrolled as a full-time or part-time student at any public or private university, college, or community college in this State.

(Source: P.A. 88-436.)

Sec. 402. Reduced weekly benefits

Each eligible individual who is unemployed in any week, as defined in Section 239, shall be paid, with respect to such week, a benefit in an amount equal to his weekly benefit amount (plus dependents' allowances) less that part of wages (if any) payable to him with respect to such week which is in excess of 50% of his weekly benefit amount, provided that such benefit for any benefit week shall be reduced by: (1) the amount of any holiday pay which the individual is entitled to receive, and receives, for any workday in such week, and (2) the amount of any vacation wages allocated to such week by the individual's employer pursuant to Section 610 of this Act, and (3) one-fifth of the weekly benefit amount for each normal workday during which such individual is unable to work or unavailable for work, and provided, further, that this subsection shall not be construed so as to effect any change in the status of part-time workers as defined in Section 407. Such benefit, if not a multiple of $1, shall be computed to the next higher multiple of $1.

(Source: P.A. 82-22.)

Sec. 403. Maximum total amount of benefits

A. With respect to any benefit year beginning prior to September 30, 1979, any otherwise eligible individual shall be entitled, during such benefit year, to a maximum total amount of benefits as shall be determined in the manner set forth in this Act as amended and in effect on November 9, 1977.

B. With respect to any benefit year beginning on or after September 30, 1979, except as otherwise provided in this Section, any otherwise eligible individual shall be entitled, during such benefit year, to a maximum total amount of benefits equal to 26 times his or her weekly benefit amount plus dependents' allowances, or to the total wages for insured work paid to such individual during the individual's base period, whichever amount is smaller. With respect to any benefit year beginning in calendar year 2012, any otherwise eligible individual shall be entitled, during such benefit year, to a maximum total amount of benefits equal to 25 times his or her weekly benefit amount plus dependents' allowances, or to the total wages for insured work paid to such individual during the individual's base period, whichever amount is smaller. If the maximum amount includable as "wages" pursuant to Section 235 is $13,560 with respect to calendar year 2013, then, with respect to any benefit year beginning after March 31, 2013 and before April 1, 2014, any otherwise eligible individual shall be entitled, during such benefit year, to a maximum total amount of benefits equal to 25 times his or her weekly benefit amount plus dependents allowances, or to the total wages for insured work paid to such individual during the individual's base period, whichever amount is smaller. With respect to any benefit year beginning in calendar year 2016 or 2018, any otherwise eligible individual shall be entitled, during such benefit year, to a maximum total amount of benefits equal to 24 times his or her weekly benefit amount plus dependents' allowances, or to the total wages for insured work paid to such individual during the individual's base period, whichever amount is smaller.

(Source: P.A. 81-962, P.A. 97-0001, eff. 3-31-11, P.A. 97-621, eff. 11-18-11)

Sec. 404. Payment of benefits due to deceased individuals

The Director may prescribe regulations to provide for the payment of benefits which are due and payable, to the legal representative, dependents, relatives or next of kin of persons since deceased. Such regulations need not conform with the statutes governing decedent estates, and such payment shall be deemed a valid payment to the same extent as if made to the legal representative of the deceased.

(Source: Laws 1951, p. 32.)

Sec. 405. When wages payable treated as wages paid

The Director may, for the purpose of determining benefit rights of a claimant, treat wages payable but unpaid as wages paid, where such wages are not paid because of the insolvency, bankruptcy, or other financial difficulty of the employer.

(Source: Laws 1951, p. 32.)

Sec. 406. Benefits after termination of military service

An individual otherwise eligible for benefits shall not be disqualified from the receipt thereof by reason of being entitled to readjustment allowances under the Servicemen's Readjustment Act of 1944; provided, however, that the filing of a valid claim in any benefit year for readjustment allowance under said Act by a claimant for any week shall, when followed by authorization of payment thereof, be deemed an election by such claimant to avail himself of his rights to readjustment allowances under such Servicemen's Readjustment Act throughout the benefit year in which such week occurs in preference to those under this Act, and shall disqualify such claimant for benefits until whichever of the following events first occurs: (A) the exhaustion of all his rights to readjustment allowances under the Servicemen's Readjustment Act of 1944 or (B) the end of such benefit year.

(Source: Laws 1951, p. 32.)

Sec. 407. Part-time workers

As used in this Section, the term “part-time worker” means an individual whose normal work is in an occupation in which his services are not required for the customary scheduled full time hours or days prevailing in the establishment in which he is employed or who, owing to personal circumstances does not customarily work the customary scheduled full time hours or days prevailing in the establishment in which he is employed.

The Director may, in his discretion, after giving interested parties fair notice and opportunity to be heard, prescribe fair and reasonable general rules applicable to part-time workers for determining their weekly benefit amount and their total wages in insured work required to qualify such workers for benefits. Such rules shall, with respect to such workers, supersede any inconsistent provisions of this Act, but, so far as practicable, shall secure results reasonably similar to those provided in the analogous provisions of this Act. Such rules shall be made with due regard to the customary hours or days during which such individual works in such employment and to the wages payable therefor as compared with the wages that would have been payable therefor, if such individual were employed for the full time hours or days during which persons are customarily employed at full time in such work by such employer.

(Source: Laws 1951, p. 32.)

Sec. 409. Extended Benefits

A. For the purposes of this Section:

1. "Extended benefit period" means a period which begins with the third week after a week for which there is a State "on" indicator; and ends with either of the following weeks, whichever occurs later: (1) the third week after the first week for which there is a State "off" indicator, or (2) the thirteenth consecutive week of such period. No extended benefit period shall begin by reason of a State "on" indicator before the fourteenth week following the end of a prior extended benefit period.

2. There is a "State 'on' indicator" for a week if (a) the Director determines, in accordance with the regulations of the United States Secretary of Labor or other appropriate Federal agency, that for the period consisting of such week and the immediately preceding twelve weeks, the rate of insured unemployment (not seasonally adjusted) in this State (1) equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, or (2) equaled or exceeded 6 percent, or (b) the United States Secretary of Labor determines that (1) the average rate of total unemployment in this State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all states are published before the close of such week equals or exceeds 6.5%, and (2) the average rate of total unemployment in this State (seasonally adjusted) for the 3-month period referred to in (1) equals or exceeds 110% of such average rate for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years. Clause (b) of this paragraph shall only apply to weeks beginning on or after February 22, 2009, through the end of the fourth week prior to the last week for which federal sharing is provided as authorized by Section 2005(a) of Public Law 111-5 without regard to Section 2005(c) of Public Law 111-5 and is inoperative as of the end of the last week for which federal sharing is provided as authorized by Section 2005(a) of Public Law 111-5.

2.1. With respect to benefits for weeks of unemployment beginning after December 17, 2010, and ending on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by Section 2005(a) of Public Law 111-5 without regard to Section 2005(c) of Public Law 111-5, the determination of whether there has been a State "on" indicator pursuant to paragraph 2 shall be made as if, in clause (a) of paragraph 2, the phrase "2 calendar years" were "3 calendar years" and as if, in clause (b) of paragraph 2, the word "either" were "any", the word "both" were "all", and the phrase "2 preceding calendar years" were "3 preceding calendar years".

3. There is a "State 'off' indicator" for a week if there is not a State 'on' indicator for the week pursuant to paragraph 2.

4. "Rate of insured unemployment", for the purpose of paragraph 2, means the percentage derived by dividing (a) the average weekly number of individuals filing claims for "regular benefits" in this State for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the Director on the basis of his reports to the United States Secretary of Labor or other appropriate Federal agency, by (b) the average monthly employment covered under this Act for the first four of the most recent six completed calendar quarters ending before the close of such 13-week period.

5. "Regular benefits" means benefits, other than extended benefits and additional benefits, payable to an individual (including dependents' allowances) under this Act or under any other State unemployment compensation law (including benefits payable to Federal civilian employees and ex-servicemen pursuant to 5 U.S.C. chapter 85).

6. "Extended benefits" means benefits (including benefits payable to Federal civilian employees and ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this Section for weeks which begin in his eligibility period.

7. "Additional benefits" means benefits totally financed by a State and payable to exhaustees (as defined in subsection C) by reason of conditions of high unemployment or by reason of other specified factors. If an individual is eligible to receive extended benefits under the provisions of this Section and is eligible to receive additional benefits with respect to the same week under the law of another State, he may elect to claim either extended benefits or additional benefits with respect to the week.

8. "Eligibility period" means the period consisting of the weeks in an individual's benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period. An individual's eligibility period shall also include such other weeks as federal law may allow.

9. Notwithstanding any other provision to the contrary, no employer shall be liable for payments in lieu of contributions pursuant to Section 1404, by reason of the payment of extended benefits which are wholly reimbursed to this State by the Federal Government or would have been wholly reimbursed to this State by the Federal Government if the employer had paid all of the claimant's wages during the applicable base period. Extended benefits shall not become benefit charges under Section 1501.1 if they are wholly reimbursed to this State by the Federal Government or would have been wholly reimbursed to this State by the Federal Government if the employer had paid all of the claimant's wages during the applicable base period. For purposes of this paragraph, extended benefits will be considered to be wholly reimbursed by the Federal Government notwithstanding the operation of Section 204(a)(2)(D) of the Federal-State Extended Unemployment Compensation Act of 1970.

B. An individual shall be eligible to receive extended benefits pursuant to this Section for any week which begins in his eligibility period if, with respect to such week (1) he has been paid wages for insured work during his base period equal to at least 1 1/2 times the wages paid in that calendar quarter of his base period in which such wages were highest; (2) he has met the requirements of Section 500E of this Act; (3) he is an exhaustee; and (4) except when the result would be inconsistent with the provisions of this Section, he has satisfied the requirements of this Act for the receipt of regular benefits.

C. An individual is an exhaustee with respect to a week which begins in his eligibility period if:

1. Prior to such week (a) he has received, with respect to his current benefit year that includes such week, the maximum total amount of benefits to which he was entitled under the provisions of Section 403B, and all of the regular benefits (including dependents' allowances) to which he had entitlement (if any) on the basis of wages or employment under any other State unemployment compensation law; or (b) he has received all the regular benefits available to him with respect to his current benefit year that includes such week, under this Act and under any other State unemployment compensation law, after a cancellation of some or all of his wage credits

or the partial or total reduction of his regular benefit rights; or (c) his benefit year terminated, and he cannot meet the qualifying wage requirements of Section 500E of this Act or the qualifying wage or employment requirements of any other State unemployment compensation law to establish a new benefit year which would include such week or, having established a new benefit year that includes such week, he is ineligible for regular benefits by reason of Section 607 of this Act or a like provision of any other State unemployment compensation law; and

2. For such week (a) he has no right to benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, or such other Federal laws as are specified in regulations of the United States Secretary of Labor or other appropriate Federal agency; and (b) he has not received and is not seeking benefits under the unemployment compensation law of Canada, except that if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, this clause shall not apply.

3. For the purposes of clauses (a) and (b) of paragraph 1 of this subsection, an individual shall be deemed to have received, with respect to his current benefit year, the maximum total amount of benefits to which he was entitled or all of the regular benefits to which he had entitlement, or all of the regular benefits available to him, as the case may be, even though (a) as a result of a pending reconsideration or appeal with respect to the "finding" defined in Section 701, or of a pending appeal with respect to wages or employment or both under any other State unemployment compensation law, he may subsequently be determined to be entitled to more regular benefits; or (b) by reason of a seasonality provision in a State unemployment compensation law which establishes the weeks of the year for which regular benefits may be paid to individuals on the basis of wages in seasonal employment he may be entitled to regular benefits for future weeks but such benefits are not payable with respect to the week for which he is claiming extended benefits, provided that he is otherwise an exhaustee under the provisions of this subsection with respect to his rights to regular benefits, under such seasonality provision, during the portion of the year in which that week occurs; or (c) having established a benefit year, no regular benefits are payable to him with respect to such year because his wage credits were cancelled or his rights to regular benefits were totally reduced by reason of the application of a disqualification provision of a State unemployment compensation law.

D. 1. The provisions of Section 607 and the waiting period requirements of Section 500D shall not be applicable to any week with respect to which benefits are otherwise payable under this Section.

2. An individual shall not cease to be an exhaustee with respect to any week solely because he meets the qualifying wage requirements of Section 500E for a part of such week.

E. With respect to any week which begins in his eligibility period, an exhaustee's "weekly extended benefit amount" shall be the same as his weekly benefit amount during his benefit year which includes such week or, if such week is not in a benefit year, during his applicable benefit year, as defined in regulations issued by the United States Secretary of Labor or other appropriate Federal agency. If the exhaustee had more than one weekly benefit amount during his benefit year, his weekly extended benefit amount with respect to such week shall be the latest of such weekly benefit amounts.

F. 1. An eligible exhaustee shall be entitled, during any eligibility period, to a maximum total amount of extended benefits equal to the lesser of the following amounts:

a. Fifty percent of the maximum total amount of benefits to which he was entitled under Section 403B during his applicable benefit year;

b. Thirteen times his weekly extended benefit amount as determined under subsection E; or

c. Thirty-nine times his or her average weekly extended benefit amount, reduced by the regular benefits (not including any dependents' allowances) paid to him or her during such benefit year.

2. An eligible exhaustee shall be entitled, during a "high unemployment period", to a maximum total amount of extended benefits equal to the lesser of the following amounts:

a. Eighty percent of the maximum total amount of benefits to which he or she was entitled under Section 403B during his or her applicable benefit year;

b. Twenty times his or her weekly extended benefit amount as determined under subsection E; or

c. Forty-six times his or her average weekly extended benefit amount, reduced by the regular benefits (not including any dependents' allowances) paid to him or her during such benefit year.

For purposes of this paragraph, the term "high unemployment period" means any period during which (i) clause (b) of paragraph (2) of subsection A is operative and (ii) an extended benefit period would be in effect if clause (b) of paragraph (2) of subsection A of this Section were applied by substituting "8%" for "6.5%".

3. Notwithstanding paragraphs 1 and 2 of this subsection F, and if the benefit year of an individual ends within an extended benefit period, the remaining balance of extended benefits that the individual would, but for this subsection F, be otherwise entitled to receive in that extended benefit period, for weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances as defined in the federal Trade Act of 1974 within that benefit year multiplied by his weekly benefit amount for extended benefits.

G. 1. A claims adjudicator shall examine the first claim filed by an individual with respect to his eligibility period and, on the basis of the information in his possession, shall make an "extended benefits finding". Such finding shall state whether or not the individual has met the requirement of subsection B(1), is an exhaustee and, if he is, his weekly extended benefit amount and the maximum total amount of extended benefits to which he is entitled. The claims adjudicator shall promptly notify the individual of his "extended benefits finding", and shall promptly notify the individual's most recent employing unit and the individual's last employer (referred to in Section 1502.1) that the individual has filed a claim for extended benefits. The claims adjudicator may reconsider his "extended benefits finding" at any time within one year after the close of the individual's eligibility period, and shall promptly notify the individual of such reconsidered finding. All of the provisions of this Act applicable to reviews from findings or reconsidered findings made pursuant to Sections 701 and 703 which are not inconsistent with the provisions of this subsection shall be applicable to reviews from extended benefits findings and reconsidered extended benefits findings.

2. If, pursuant to the reconsideration or appeal with respect to a "finding", referred to in paragraph 3 of subsection C, an exhaustee is found to be entitled to more regular benefits and, by reason thereof, is entitled to more extended benefits, the claims adjudicator shall make a reconsidered extended benefits finding and shall promptly notify the exhaustee thereof.

H. Whenever an extended benefit period is to begin in this State because there is a State "on" indicator, or whenever an extended benefit period is to end in this State because there is a State "off" indicator, the Director shall make an appropriate public announcement.

I. Computations required by the provisions of paragraph 4 of subsection A shall be made by the Director in accordance with regulations prescribed by the United States Secretary of Labor, or other appropriate Federal agency.

J. 1. Interstate Benefit Payment Plan means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

2. An individual who commutes from his state of residence to work in another state and continues to reside in such state of residence while filing his claim for unemployment insurance under this Section of the Act shall not be considered filing a claim under the Interstate Benefit Payment Plan so long as he files his claim in and continues to report to the employment office under the regulations applicable to intrastate claimants in the state in which he was so employed.

3. "State" when used in this subsection includes States of the United States of America, the District of Columbia, Puerto Rico and the Virgin Islands. For purposes of this subsection, the term "state" shall also be construed to include Canada.

4. Notwithstanding any other provision of this Act, an individual shall be eligible for a maximum of 2 weeks of benefits payable under this Section after he files his initial claim for extended benefits in an extended benefit period, as defined in paragraph 1 of subsection A, under the Interstate Benefit Payment Plan unless there also exists an extended benefit period, as defined in paragraph 1 of subsection A, in the state where such claim is filed. Such maximum eligibility shall continue as long as the individual continues to file his claim under the Interstate Benefit Payment Plan, notwithstanding that the individual moves to another state where an extended benefit period exists and files for weeks prior to his initial Interstate claim in that state.

5. To assure full tax credit to the employers of this state against the tax imposed by the Federal Unemployment Tax Act, the Director shall take any action or issue any regulations necessary in the administration of this subsection to insure that its provisions are so interpreted and applied as to meet the requirements of such Federal Act as interpreted by the United States Secretary of Labor or other appropriate Federal agency.

K. 1. Notwithstanding any other provisions of this Act, an individual shall be ineligible for the payment of extended benefits for any week of unemployment in his eligibility period if the Director finds that during such period:

a. he failed to accept any offer of suitable work (as defined in paragraph 3 below) or failed to apply for any suitable work to which he was referred by the Director; or

b. he failed to actively engage in seeking work as prescribed under paragraph 5 below.

2. Any individual who has been found ineligible for extended benefits by reason of the provisions of paragraph 1 of this subsection shall be denied benefits beginning with the first day of the week in which such failure has occurred and until he has been employed in each of 4 subsequent weeks (whether or not consecutive) and has earned remuneration equal to at least 4 times his weekly benefit amount.

3. For purposes of this subsection only, the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work:

a. must exceed the sum of (i) the individual's extended weekly benefit amount as determined under subsection E above plus (ii) the amount, if any, of supplemental unemployment benefits (as defined in Section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week; and further,

b. is not less than the higher of-

(i) the minimum wage provided by Section 6 (a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption; or

(ii) the applicable state or local minimum wage;

c. provided, however, that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) the position was not offered to such individual in writing or was not listed with the employment service;

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefits claimants in Section 603 to the extent that the criteria of suitability in that Section are not inconsistent with the provisions of this paragraph 3;

(iii) the individual furnishes satisfactory evidence to the Director that his prospects for obtaining work in his customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefits in Section 603 without regard to the definition specified by this paragraph.

4. Notwithstanding the provisions of paragraph 3 to the contrary, no work shall be deemed to be suitable work for an individual which does not accord with the labor standard provisions required by Section 3304(a)(5) of the Internal Revenue Code of 1954 and set forth herein under Section 603 of this Act.

5. For the purposes of subparagraph b of paragraph 1, an individual shall be treated as actively engaged in seeking work during any week if -

a. the individual has engaged in a systematic and sustained effort to obtain work during such week, and

b. the individual furnishes tangible evidence that he has engaged in such effort during such week.

6. The employment service shall refer any individual entitled to extended benefits under this Act to any suitable work which meets the criteria prescribed in paragraph 3.

7. Notwithstanding any other provision of this Act, an individual shall not be eligible to receive extended benefits, otherwise payable under this Section, with respect to any week of unemployment in his eligibility period if such individual has been held ineligible for benefits under the provisions of Sections 601, 602 or 603 of this Act until such individual had requalified for such benefits by returning to employment and satisfying the monetary requalification provision by earning at least his weekly benefit amount.

L. The Governor may, if federal law so allows, elect, in writing, to pay individuals, otherwise eligible for extended benefits pursuant to this Section, any other federally funded unemployment benefits, including but not limited to benefits payable pursuant to the federal Supplemental Appropriations Act, 2008, as amended, prior to paying them benefits under this Section.

M. The provisions of this Section, as revised by this amendatory Act of the 96th General Assembly, are retroactive to February 22, 2009. The provisions of this amendatory Act of the 96th General Assembly with regard to subsection L and paragraph 8 of subsection A clarify authority already provided.

(Source: P.A. 86-3; 87-1266; P.A. 96-30, eff. 6-30-09, P.A. 97-0001, eff. 3-31-11.)

Sec. 410. Health insurance deductions-Regulations

The Director may prescribe regulations authorizing the deduction from an eligible individual's weekly benefit amount of an amount to pay for health insurance if the individual elects to have such deduction made and the deduction is made under a program approved by the United States Secretary of Labor in accordance with Section 3304(a)(4)(C) of the Internal Revenue Code.

(Source: P.A. 84-26.)

Sec. 500. Eligibility for benefits

An unemployed individual shall be eligible to receive benefits with respect to any week only if the Director finds that:

A. He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulations as the Director may prescribe, except that the Director may, by regulation, waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs, and as to such other types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or inconsistent with the purposes of this Act, provided that no such regulation shall conflict with Section 400 of this Act.

B. He has made a claim for benefits with respect to such week in accordance with such regulations as the Director may prescribe.

C. He is able to work, and is available for work; provided that during the period in question he was actively seeking work and he has certified such. Whenever requested to do so by the Director, the individual shall, in the manner the Director prescribes by regulation, inform the Department of the places at which he has sought work during the period in question. Nothing in this subsection shall limit the Director's approval of alternate methods of demonstrating an active search for work based on regular reporting to a trade union office.

1. If an otherwise eligible individual is unable to work or is unavailable for work on any normal workday of the week, he shall be eligible to receive benefits with respect to such week reduced by one-fifth of his weekly benefit amount for each day of such inability to work or unavailability for work. For the purposes of this paragraph, an individual who reports on a day subsequent to his designated report day shall be deemed unavailable for work on his report day if his failure to report on that day is without good cause, and on each intervening day, if any, on which his failure to report is without good cause. As used in the preceding sentence, “report day” means the day which has been designated for the individual to report to file his claim for benefits with respect to any week. This paragraph shall not be construed so as to effect any change in the status of part-time workers as defined in Section 407.

2. An individual shall be considered to be unavailable for work on days listed as whole holidays in “An Act to revise the law in relation to promissory notes, bonds, due bills and other instruments in writing,” approved March 18, 1874, as amended; on days which are holidays in his religion or faith, and on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday. In determining the claimant's eligibility for benefits and the amount to be paid him, with respect to the week in which such holiday occurs, he shall have attributed to him as additional earnings for that week an amount equal to one-fifth of his weekly benefit amount for each normal work day on which he does not work because of a holiday of the type above enumerated.

3. An individual shall be deemed unavailable for work if, after his separation from his most recent employing unit, he has removed himself to and remains in a locality where opportunities for work are substantially less favorable than those in the locality he has left.

4. An individual shall be deemed unavailable for work with respect to any week which occurs in a period when his principal occupation is that of a student in attendance at, or on vacation from, a public or private school.

5. Notwithstanding any other provisions of this Act, an individual shall not be deemed unavailable for work or to have failed actively to seek work, nor shall he be ineligible for benefits by reason of the application of the provisions of Section 603, with respect to any week, because he is enrolled in and is in regular attendance at a training course approved for him by the Director:

   (a) but only if, with respect to that week, the individual presents, upon request, to the claims adjudicator referred to in Section 702 a statement executed by a responsible person connected with the training course, certifying that the individual was in full-time attendance at such course during the week. The Director may approve such course for an individual only if he finds that (1) reasonable work opportunities for which the individual is fitted by training and experience do not exist in his locality; (2) the training course relates to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable work opportunities in his locality; (3) the training course is offered by a competent and reliable agency, educational institution, or employing unit; (4) the individual has the required qualifications and aptitudes to complete the course successfully; and (5) the individual is not receiving and is not eligible (other than because he has claimed benefits under this Act) for subsistence payments or similar assistance under any public or private retraining program: Provided, that the Director shall not disapprove such course solely by reason of clause (5) if the subsistence payment or similar assistance is subject to reduction by an amount equal to any benefits payable to the individual under this Act in the absence of the clause. In the event that an individual's weekly unemployment compensation benefit is less than his certified training allowance, that person shall be eligible to receive his entire unemployment compensation benefits, plus such supplemental training allowances that would make an applicant's total weekly benefit identical to the original certified training allowance.

   (b) The Director shall have the authority to grant approval pursuant to subparagraph (a) above prior to an individual's formal admission into a training course. Requests for approval shall not be made more than 30 days prior to the actual starting date of such course. Requests shall be made at the appropriate unemployment office.

   (c) The Director shall for purposes of paragraph C have the authority to issue a blanket approval of training programs implemented pursuant to the federal Workforce Investment Act of 1998 if both the training program and the criteria for an individual's participation in such training meet the requirements of this paragraph C.

   (d) Notwithstanding the requirements of subparagraph (a), the Director shall have the authority to issue blanket approval of training programs implemented under the terms of a collective bargaining agreement.

6. Notwithstanding any other provisions of this Act, an individual shall not be deemed unavailable for work or to have failed actively to seek work, nor shall he be ineligible for benefits, by reason of the application of the provisions of Section 603 with respect to any week because he is in training approved under Section 236 (a)(1) of the federal Trade Act of 1974, nor shall an individual be ineligible for benefits under the provisions of Section 601 by reason of leaving work voluntarily to enter such training if the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment as defined under the federal Trade Act of 1974 and the wages for such work are less than 80% of his average weekly wage as determined under the federal Trade Act of 1974.

D. If his benefit year begins prior to July 6, 1975 or subsequent to January 2, 1982, he has been unemployed for a waiting period of 1 week during such benefit year. If his benefit year begins on or after July 6, l975, but prior to January 3, 1982, and his unemployment continues for more than three weeks during such benefit year, he shall be eligible for benefits with respect to each week of such unemployment, including the first week thereof. An individual shall be deemed to be unemployed within the meaning of this subsection while receiving public assistance as remuneration for services performed on work projects financed from funds made available to governmental agencies for such purpose. No week shall be counted as a week of unemployment for the purposes of this subsection:

   1. Unless it occurs within the benefit year which includes the week with respect to which he claims payment of benefits, provided that, for benefit years beginning prior to January 3, 1982, this requirement shall not interrupt the payment of benefits for consecutive weeks of unemployment; and provided further that the week immediately preceding a benefit year, if part of one uninterrupted period of unemployment which continues into such benefit year, shall be deemed (for the purpose of this subsection only and with respect to benefit years beginning prior to January 3, 1982, only) to be within such benefit year, as well as within the preceding benefit

year, if the unemployed individual would, except for the provisions of the first paragraph and paragraph 1 of this subsection and of Section 605, be eligible for and entitled to benefits for such week.

2. If benefits have been paid with respect thereto.

3. Unless the individual was eligible for benefits with respect thereto except for the requirements of this subsection and of Section 605.

E. With respect to any benefit year beginning prior to January 3, 1982, he has been paid during his base period wages for insured work not less than the amount specified in Section 500E of this Act as amended and in effect on October 5, 1980. With respect to any benefit year beginning on or after January 3, 1982, he has been paid during his base period wages for insured work equal to not less than $1,600, provided that he has been paid wages for insured work equal to at least $440 during that part of his base period which does not include the calendar quarter in which the wages paid to him were highest.

F. During that week he has participated in reemployment services to which he has been referred, including but not limited to job search assistance services, pursuant to a profiling system established by the Director by rule in conformity with Section 303(j)(1) of the federal Social Security Act, unless the Director determines that:

1. the individual has completed such services; or

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

This subsection F is added by this amendatory Act of 1995 to clarify authority already provided under subsections A and C in connection with the unemployment insurance claimant profiling system required under subsections (a)(10) and (j)(1) of Section 303 of the federal Social Security Act as a condition of federal funding for the administration of the Unemployment Insurance Act.

(Source: P.A. 92-396, eff. 1-1-02.)

Sec. 500.1 Illinois Worker Adjustment and Retraining Notification Act; federal Worker Adjustment and Retraining Notification Act

Benefits payable under this Act may not be denied or reduced because of the receipt of payments related to an employer's violation of the Illinois Worker Adjustment and Retraining Notification Act or the federal Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.).

(Source P.A. 93-0915, eff. 01-01-05)

Sec. 501. Eligibility on basis of wages for previously uncovered services

A. Solely for the purposes of subsection E of Section 500, and notwithstanding any other provisions of this Act, the term "wages for insured work" as used in the said subsection E, shall include, with respect to any benefit year beginning on or after January 1, 1978, and before May 1, 1979, wages paid for previously uncovered services. For such purposes, the term "previously uncovered services" means services (except to the extent that assistance under Title II of the Federal Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services):

1. Which were not "employment" as defined in Sections 206 to 233, inclusive, and in subsection B of Section 245, or pursuant to Section 302, at any time during the one year period ending December 31, 1975; and

2. Which (a) are agricultural labor which would have been employment as defined in Section 211.4 had it been performed after December 31, 1977, or domestic service which would have been employment as defined in Section 211.5 had it been performed after December 31, 1977, or (b) are services performed for a governmental entity referred to in Section 211.1 (other than the State of Illinois and its wholly owned instrumentalities), or for a not-for-profit school which is not an institution of higher education defined in Section 246.

B. Notwithstanding any other provisions of this Act, no employer shall be liable for payments in lieu of contributions (other than payments in lieu of contributions pursuant to paragraph 1 of Section 302 C) by reason of the payment of benefits on the basis of wages paid for previously uncovered services, to the extent that reimbursement for such benefits is made to this State by the Federal Government pursuant to Section 121 of the Federal Unemployment Compensation Amendments of 1976; and wages for previously uncovered services on which such benefits are based shall not become benefit wages. Wages shall become benefit wages only when an individual is paid benefits (in the amount and pursuant to the conditions specified in Section 1501) which are not reimbursed to this State by the Federal Government. If an individual would be ineligible for benefits under subsection E of Section 500 but for the

wages paid for previously uncovered services, payments in lieu of contributions (other than payments pursuant to paragraph 1 of Section 302 C) shall not be due on the basis of any benefits paid to such individual, and the wages on which such benefits are based shall not become benefit wages.

(Source: P.A. 80-2dSS-1.)

Sec. 600. Disqualifications

An individual shall be ineligible for benefits, as provided in Sections 601 to 614, inclusive.

(Source: P.A. 80-2dSS-1.)

Sec. 601. Voluntary leaving

A. An individual shall be ineligible for benefits for the week in which he or she has left work voluntarily without good cause attributable to the employing unit and, thereafter, until he or she has become reemployed and has had earnings equal to or in excess of his or her current weekly benefit amount in each of four calendar weeks which are either for services in employment, or have been or will be reported pursuant to the provisions of the Federal Insurance Contributions Act by each employing unit for which such services are performed and which submits a statement certifying to that fact.

B. The provisions of this Section shall not apply to an individual who has left work voluntarily:

1. Because he or she is deemed physically unable to perform his or her work by a licensed and practicing physician, or because the individual's assistance is necessary for the purpose of caring for his or her spouse, child, or parent who, according to a licensed and practicing physician or as otherwise reasonably verified, is in poor physical or mental health or is mentally or physically disabled and the employer is unable to accommodate the individual's need to provide such assistance;

2. To accept other bona fide work and, after such acceptance, the individual is either not unemployed in each of 2 weeks, or earns remuneration for such work equal to at least twice his or her current weekly benefit amount;

3. In lieu of accepting a transfer to other work offered to the individual by the employing unit under the terms of a collective bargaining agreement or pursuant to an established employer plan, program, or policy, if the acceptance of such other work by the individual would require the separation from that work of another individual currently performing it;

4. Solely because of the sexual harassment of the individual by another employee. Sexual harassment means (1) unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication which is made a term or condition of the employment or (2) the employee's submission to or rejection of such conduct or communication which is the basis for decisions affecting employment, or (3) when such conduct or communication has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action;

5. Which he or she had accepted after separation from other work, and the work which he or she left voluntarily would be deemed unsuitable under the provisions of Section 603;

6. (a) Because the individual left work due to verified domestic violence as defined in Section 103 of the Illinois Domestic Violence Act of 1986 where the domestic violence caused the individual to reasonably believe that his or her continued employment would jeopardize his or her safety or the safety of his or her spouse, minor child, or parent if the individual provides the following:

(i) notice to the employing unit of the reason for the individual's voluntarily leaving; and

(ii) to the Department provides:

(A) an order of protection or other documentation of equitable relief issued by a court of competent jurisdiction; or

(B) a police report or criminal charges documenting the domestic violence; or

(C) medical documentation of the domestic violence; or

(D) evidence of domestic violence from a member of the clergy, attorney, counselor, social worker, health worker or domestic violence shelter worker.

(b) If the individual does not meet the provisions of subparagraph (a), the individual shall be held to have voluntarily terminated employment for the purpose of determining the individual's eligibility for benefits pursuant to subsection A.

(c) Notwithstanding any other provision to the contrary, evidence of domestic violence experienced by an individual, or his or her spouse, minor child, or parent, including the individual's statement and corroborating evidence, shall not be disclosed by the Department unless consent for disclosure is given by the individual.

7. Because, due to a change in location of employment of the individual's spouse, the individual left work to accompany his or her spouse to a place from which it is impractical to commute or because the individual left employment to accompany a spouse who has been reassigned from one military assignment to another. The employer's account, however, shall not be charged for any benefits paid out to the individual who leaves work under a circumstance described in this paragraph.

C. Within 90 days of the effective date of this amendatory Act of the 96th General Assembly, the Department shall promulgate rules, pursuant to the Illinois Administrative Procedure Act and consistent with Section 903(f)(3)(B) of the Social Security Act, to clarify and provide guidance regarding eligibility and the prevention of fraud.

(Source: P.A. 95-736, eff. 7-16-08; P.A. 96-30, eff. 6-30-09.)

Sec. 602. Discharge for misconduct - Felony

A. An individual shall be ineligible for benefits for the week in which he has been discharged for misconduct connected with his work and, thereafter, until he has become reemployed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks which are either for services in employment, or have been or will be reported pursuant to the provisions of the Federal Insurance Contributions Act by each employing unit for which such services are performed and which submits a statement certifying to that fact. The requalification requirements of the preceding sentence shall be deemed to have been satisfied, as of the date of reinstatement, if, subsequent to his discharge by an employing unit for misconduct connected with his work, such individual is reinstated by such employing unit. For purposes of this subsection, the term “misconduct” means the deliberate and willful violation of a reasonable rule or policy of the employing unit, governing the individual's behavior in performance of his work, provided such violation has harmed the employing unit or other employees or has been repeated by the individual despite a warning or other explicit instruction from the employing unit.

B. Notwithstanding any other provision of this Act, no benefit rights shall accrue to any individual based upon wages from any employer for service rendered prior to the day upon which such individual was discharged because of the commission of a felony in connection with his work, or because of theft in connection with his work, for which the employer was in no way responsible; provided, that the employer notified the Director of such possible ineligibility within the time limits specified by regulations of the Director, and that the individual has admitted his commission of the felony or theft to a representative of the Director, or has signed a written admission of such act and such written admission has been presented to a representative of the Director, or such act has resulted in a conviction or order of supervision by a court of competent jurisdiction; and provided further, that if by reason of such act, he is in legal custody, held on bail or is a fugitive from justice, the determination of his benefit rights shall be held in abeyance pending the result of any legal proceedings arising therefrom.

(Source: P.A. 85-956.)

Sec. 603. Refusal of work

An individual shall be ineligible for benefits if he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the Director, or to accept suitable work when offered him by the employment office or an employing unit, or to return to his customary self-employment (if any) when so directed by the employment office or the Director. Such ineligibility shall continue for the week in which such failure occurred and, thereafter, until he has become reemployed and has had earnings equal to or in excess of his current weekly benefit amount in each of four calendar weeks which are either for services in employment, or have been or will be reported pursuant to the provisions of the Federal Insurance Contributions Act by each employing unit for which such services are performed and which submits a statement certifying to that fact.

In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

Notwithstanding any other provisions of this Act, no work shall be deemed suitable and benefits shall not be denied under this Act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

If the position offered is vacant due directly to a strike, lockout, or other labor dispute; if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization; if the position offered is a transfer to other work offered to the individual by the employing unit under the terms of a collective bargaining agreement or pursuant to an established employer plan, program, or policy, when the acceptance of such other work by the individual would require the separation from that work of another individual currently performing it.

(Source: P.A. 82-22.)

Sec. 604. Labor dispute.

An individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed. The term "labor dispute" does not include an individual's refusal to work because of his employer's failure to pay accrued earned wages within 10 working days from the date due, or to pay any other uncontested accrued obligation arising out of his employment within 10 working days from the date due.

For the purpose of disqualification under this Section the term "labor dispute" does not include a lockout by an employer, and no individual shall be denied benefits by reason of a lockout, provided that no individual shall be eligible for benefits during a lockout who is ineligible for benefits under another Section of this Act, and provided further that no individual locked out by an employer shall be eligible for benefits for any week during which (1) the recognized or certified collective bargaining representative of the locked out employees refuses to meet under reasonable conditions with the employer to discuss the issues giving rise to the lockout or (2) there is a final adjudication under the National Labor Relations Act that during the period of the lockout the recognized or certified collective bargaining representative of the locked-out employees has refused to bargain in good faith with the employer over issues giving rise to the lockout, or (3) the lockout has resulted as a direct consequence of a violation by the recognized or certified collective bargaining representative of the locked out employees of the provisions of an existing collective bargaining agreement. An individual's total or partial unemployment resulting from any reduction in operations or reduction of force or layoff of employees by an employer made in the course of or in anticipation of collective bargaining negotiations between a labor organization and such employer, is not due to a stoppage of work which exists because of a labor dispute until the date of actual commencement of a strike or lockout.

This Section shall not apply if it is shown that (A) the individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and (B) he does not belong to a grade or class of workers of which immediately before the commencement of the stoppage there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided, that a lockout by the employer or an individual's failure to cross a picket line at such factory, establishment, or other premises shall not, in itself, be deemed to be participation by him in the labor dispute. If in any case, separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this Section, be deemed to be a separate factory, establishment, or other premises.

Whenever any claim involves the provisions of this Section, the claims adjudicator referred to in Section 702 shall make a separate determination as to the eligibility or ineligibility of the claimant with respect to the provisions of this Section. This separate determination may be appealed to the Director in the manner prescribed by Section 800.

(Source: P.A. 93-1088, eff. 1-1-06.)

Sec. 605. Receipt of unemployment benefits under another law

An individual shall be ineligible for benefits for any week with respect to which he has received or is seeking unemployment benefits under an unemployment compensation law of the United States or any other State or Canada, provided, that if the appropriate agency of the United States or of such other State or Canada finally determines that he is not entitled to such unemployment benefits, this ineligibility shall not apply.

(Source: P.A. 77-1443.)

Sec. 606. Receipt of Workers' Compensation

An individual shall be ineligible for benefits for any week with respect to which he is receiving or has received remuneration in the form of compensation for temporary disability under the Workers' Compensation Act of this State, or under a workers' compensation law of any other State or of the United States. If such remuneration is less than the benefits which would otherwise be due under this Act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration.

(Source: P.A. 81-992.)

Sec. 607. Ineligibility after 26 weeks - Work requirement for second benefit year

A. An individual shall be ineligible for benefits whenever, in any period commencing with a compensable week of unemployment, he has been allowed his full weekly benefit amount for each of twenty-six weeks, until he has earned wages equal to at least three times his current weekly benefit amount in bona fide work, reduced by an amount equal to his current weekly benefit amount for each week, if any, in which he was not unemployed within such period, whereupon he shall again, if otherwise eligible, be permitted to receive his full weekly benefit amount for twenty-six weeks.

   If, however, a compensable week of unemployment is followed by three or more weeks (not necessarily consecutive) in each of which he earned wages for bona fide work equal to at least his then current weekly benefit amount, such period shall be deemed to commence immediately after the last week in which he earned such wages.

   This subsection is applicable only to weeks in benefit years which begin prior to January 1, 1972.

B. An individual shall be ineligible for benefits for any week in a benefit year which begins on or after January 1, 1972, unless, subsequent to the beginning of his immediately preceding benefit year with respect to which benefits were paid to him, he performed bona fide work and earned remuneration for such work equal to at least 3 times his current weekly benefit amount.

(Source: P.A. 77-1443.)

Sec. 609. Evasion of disqualifications

An individual shall be ineligible for benefits for any week in which he causes himself to be unavailable for work with intent to avoid any of the disqualifications imposed under the provisions of Sections 601 to 608, inclusive, notwithstanding any provisions of section 500 C to the contrary.

(Source: Laws 1951, p. 32.)

Sec. 610. Vacation pay

A. Whenever an employer has announced a period of shutdown for the taking of inventory or for vacation purposes, or both, and at the time of or during such shutdown makes a payment or becomes obligated or holds himself ready to make such payment to an individual as vacation pay, or as vacation pay allowance, or as pay in lieu of vacation, or as standby pay, such sum shall be deemed “wages” as defined in Section 234, and shall be treated as provided in subsection C of this Section.

B. Whenever in connection with any separation or layoff of an individual, his employer makes a payment or payments to him, or becomes obligated and holds himself ready to make such payment to him as, or in the nature of, vacation pay, or vacation pay allowance, or as pay in lieu of vacation, and within 10 calendar days after notification of the filing of his claim, designates (by notice to the Director) the period to which such payment shall be allocated (provided, that if such designated period is extended by the employer, he may again similarly designate an extended period, by giving notice thereof not later than the beginning of the extension of such period, with the same effect as if such period of extension were included in the original designation), the amount of any such payment, or obligation to make payment, shall be deemed "wages" as defined in Section 234, and shall be treated as provided in subsection C of this Section.

C. If the employer has not designated the period provided for in subsection B within the prescribed time limits, the wages referred to in subsection B shall not be attributed or be deemed payable to such individual with respect to any week after such separation or layoff. Of the wages described in subsection A (whether or not the employer has designated the period therein described), or of the wages described in subsection B if the period therein described has been designated by the employer as therein provided, a sum equal to such individual's wages for a normal work day shall be attributed to, or deemed to be payable to him with respect to, the first and each subsequent work day except paid holidays in such period until such amount so paid or owing is exhausted. If an employee is entitled to receive and receives holiday pay for any work day in such designated period, such pay shall be deemed "wages" and the period herein designated shall be extended by such paid holiday. Any individual receiving or entitled to receive wages as provided in this Section shall be ineligible for benefits for any week in which the sums, so designated or attributed to such normal work days, equal or exceed his weekly benefit amount. If no amount is so paid or owing, or if in any week the amount so paid or owing is insufficient to attribute any sum as wages, or if the amount so designated or attributed as wages is less than such individual's weekly benefit amount, he shall be deemed "unemployed" as defined in Section 239.

(Source: P.A. 81-1521.)

Sec. 611. Retirement pay

A. For the purposes of this Section "disqualifying income" means:

1. The entire amount which an individual has received or will receive with respect to a week in the form of a retirement payment (a) from an individual or organization (i) for which he performed services during his base period or which is liable for benefit charges or payments in lieu of contributions as a result of the payment of benefits to such individual and (ii) which pays all of the cost of such retirement payment, or (b) from a trust, annuity or insurance fund or under an annuity or insurance contract, to or under which an individual or organization for which he performed services during his base period or which is liable for benefit charges or payments in lieu of contributions as a result of the payment of benefits to such individual pays or has paid all of the premiums or contributions; and

2. One-half the amount which an individual has received or will receive with respect to a week in the form of a retirement payment (a) from an individual or organization (i) for which he performed services during his base period or which is liable for benefit charges or payments in lieu of contributions as a result of the payment of benefits to such individual and (ii) which pays some, but not all, of the cost of such retirement payment, or (b) from a trust, annuity or insurance fund (including primary social security old age and disability retirement benefits, including those based on self-employment) or under an annuity or insurance contract, to or under which an individual or organization for which he performed services during his base period or which is liable for benefit charges or payments in lieu of contributions as a result of the payment of benefits to such individual pays or has paid some, but not all, of the premiums or contributions.

3. Notwithstanding paragraph 1 and 2 above, the entire amount which an individual has received or will receive, with respect to any week which begins after March 31, 1980, of any governmental or other pension, retirement, or retired pay, annuity or any other similar periodic payment which is based on any previous work of such individual during his base period or which is liable for benefit charges or payments in lieu of contributions as a result of the payment of benefits to such individual. This paragraph shall be in effect only if it is required as a condition for full tax credit against the tax imposed by the Federal Unemployment Tax Act.

B. Whenever an individual has received or will receive a retirement payment for a month, an amount shall be deemed to have been paid him for each day equal to one-thirtieth of such retirement payment. If the retirement payment is for a half-month, an amount shall be deemed to have been paid the individual for each day equal to one-fifteenth of such retirement payment. If the retirement payment is for any other period, an amount shall be deemed to have been paid the individual for each day in such period equal to the retirement payment divided by the number of days in the period.

C. An individual shall be ineligible for benefits for any week with respect to which his disqualifying income equals or exceeds his weekly benefit amount. If such disqualifying income with respect to a week totals less than the benefits for which he would otherwise be eligible under this Act, he shall be paid, with respect to such week, benefits reduced by the amount of such disqualifying income.

D. To assure full tax credit to the employers of this State against the tax imposed by the Federal Unemployment Tax Act, the Director shall take any action as may be necessary in the administration of paragraph 3 of subsection A of this Section to insure that the application of its provisions conform to the requirements of such Federal Act as interpreted by the United States Secretary of Labor or other appropriate Federal agency.

(Source: P.A. 86-3.)

Sec. 611.1. Social Security Retirement Pay Task Force.

(a) The Social Security Retirement Pay Task Force is hereby created within the Department. The Task Force shall consist of 13 members. The following members shall be appointed within 60 days after the effective date of this amendatory Act of the 97th General Assembly: 2 members appointed by the President of the Senate; 2 members appointed by the Senate Minority Leader; 2 members appointed by the Speaker of the House of Representatives; 2 members appointed by the House Minority Leader; 2 members appointed by the Governor; and the Director, who shall serve as ex officio chairman and who shall appoint one additional member who shall be a representative citizen chosen from the employee class and one additional member who shall be a representative citizen chosen from the employing class. All members shall be voting members. Members shall serve without compensation, but may be reimbursed for expenses associated with the Task Force. The Task Force shall begin to conduct business upon the appointment of all members. For purposes of Task Force meetings, a quorum is 7 members. If a vacancy occurs on the Task Force, a successor member shall be appointed by the original appointing authority. Meetings of the Task Force are subject to the Open Meetings Act.

(b) The Task Force shall analyze the impact of paragraph 2 of subsection A of Section 611 of this Act on individuals receiving primary social security old age and disability retirement benefits and make a recommendation to the General Assembly as to the advisability of amending that paragraph with regard to those individuals. Considerations to be taken into account in the analysis include but are not limited to the amount of benefits that would have been payable in prior years if that paragraph had not applied to those individuals, the potential impact on employer liabilities under the Act had that paragraph not applied to those individuals, the current and projected balances in this State's account in the federal Unemployment Trust Fund and the fact that the majority of state unemployment insurance laws do not include comparable language with regard to those individuals. The Task Force shall hold at least 3 public hearings as part of its analysis. The Task Force may establish any committees it deems necessary.

(c) All findings, recommendations, public postings, and other relevant information pertaining to the Task Force shall be posted on the Department's website. The Department shall provide staff and administrative support to the Task Force. The Department and the Task Force may accept donated services and other resources from registered not-for-profit organizations that may be necessary to complete the work of the Task Force. The Task Force shall report its findings and recommendations to the Governor and the General Assembly no later than December 31, 2012, and shall be dissolved upon submission of the report.

(Source: P.A. 97-621, eff. 11-18-11)

Sec. 612. Academic Personnel - Ineligibility between academic years or terms

A. Benefits based on wages for services which are employment under the provisions of Sections 211.1, 211.2, and 302C shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits payable on the basis of wages for other services which are employment under this Act; except that:

1. An individual shall be ineligible for benefits, on the basis of wages for employment in an instructional, research, or principal administrative capacity performed for an institution of higher education, for any week which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract or contracts to perform services in any such capacity for any institution or institutions of higher education for both such academic years or both such terms.

This paragraph 1 shall apply with respect to any week which begins prior to January 1, 1978.

2. An individual shall be ineligible for benefits, on the basis of wages for service in employment in any capacity other than those referred to in paragraph 1, performed for an institution of higher learning, for any week which begins after September 30, 1983, during a period between two successive academic years or terms, if the individual performed such service in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such service in the second of such academic years or terms.

3. An individual shall be ineligible for benefits, on the basis of wages for service in employment in any capacity other than those referred to in paragraph 1, performed for an institution of higher education, for any week which begins after January 5, 1985, during an established and customary vacation period or holiday recess, if the individual performed such service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that the individual will perform such service in the period immediately following such vacation period or holiday recess.

B. Benefits based on wages for services which are employment under the provisions of Sections 211.1 and 211.2 shall be payable in the same amount, on the same terms, and subject to the same conditions, as benefits payable on the basis of wages for other services which are employment under this Act, except that:

1. An individual shall be ineligible for benefits, on the basis of wages for service in employment in an instructional, research, or principal administrative capacity performed for an educational institution, for any week which begins after December 31, 1977, during a period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performed such service in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity for any educational institution in the second of such academic years (or terms).

2. An individual shall be ineligible for benefits, on the basis of wages for service in employment in any capacity other than those referred to in paragraph 1, performed for an educational institution, for any week which begins after December 31, 1977, during a period between two successive academic years or terms, if the individual performed such service in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such service in the second of such academic years or terms.

3. An individual shall be ineligible for benefits, on the basis of wages for service in employment in any capacity performed for an educational institution, for any week which begins after January 5, 1985, during an established and customary vacation period or holiday recess, if the individual performed such service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that the individual will perform such service in the period immediately following such vacation period or holiday recess.

4. An individual shall be ineligible for benefits on the basis of wages for service in employment in any capacity performed in an educational institution while in the employ of an educational service agency for any week which begins after January 5, 1985, (a) during a period between two successive academic years or terms, if the individual performed such service in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such service in the second of such academic years or terms; and (b) during an established and customary vacation period or holiday recess, if the individual performed such service in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that the individual will perform such service in the period immediately following such vacation period or holiday recess. The term “educational service agency” means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

C. 1. If benefits are denied to any individual under the provisions of paragraph 2 of either subsection A or B of this Section for any week which begins on or after September 3, 1982 and such individual is not offered a bona fide opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits as determined by the rules and regulations issued by the Director for the filing of claims for benefits, provided that such benefits were denied solely because of the provisions of paragraph 2 of either subsection A or B of this Section.

2. If benefits on the basis of wages for service in employment in other than an instructional, research, or principal administrative capacity performed in an educational institution while in the employ of an educational service agency are denied to any individual under the provisions of subparagraph (a) of paragraph 4 of subsection B and such individual is not offered a bona fide opportunity to perform such services in an educational institution while in the employ of an educational service agency for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits as determined by the rules and regulations issued by the Director for the filing of claims for benefits, provided that such benefits were denied solely because of subparagraph (a) of paragraph 4 of subsection B of this Section.

(Source: P.A. 87-1178.)

Sec. 613. Athletes - ineligibility between sport seasons

An individual shall be ineligible for benefits, on the basis of wages for any services if substantially all of such services consist of participating in sports or athletic events or training or preparing so to participate, for any week which begins (after December 31, 1977) during the period between two successive sport seasons (or similar periods), if the individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that the individual will perform such services in the later of such seasons (or similar periods).

(Source: P.A. 80-2dSS-1.)

Sec. 614. Non-resident aliens - ineligibility

An alien shall be ineligible for benefits for any week which begins after December 31, 1977, on the basis of wages for services performed by such alien, unless the alien was an individual who was lawfully admitted for permanent residence at the time such services were performed or otherwise was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of Section 212(d)(5) of the Immigration and Nationality Act); provided, that any modifications of the provisions of Section 3304(a)(14) of the Federal Unemployment Tax Act which

A. Specify other conditions or another effective date than stated herein for ineligibility for benefits based on wages for services performed by aliens, and

B. Are required to be implemented under this Act as a condition for the Federal approval of this Act requisite to the full tax credit against the tax imposed by the Federal Act for contributions paid by employers pursuant to this Act, shall be applicable under the provisions of this Section.

Any data or information required of individuals who claim benefits for the purpose of determining whether benefits are not payable to them pursuant to this Section shall be uniformly required of all individuals who claim benefits.

If an individual would otherwise be eligible for benefits, no determination shall be made that such individual is ineligible for benefits pursuant to this Section because of the individual's alien status, except upon a preponderance of the evidence.

(Source: P.A. 86-3; 87-122.)

Sec. 700. Filing claims for benefits

Claims for benefits shall be made in accordance with such regulations as the Director may prescribe. Each employer shall post and maintain printed statements concerning such regulations or such other matters as the Director may by regulation prescribe in places readily accessible to individuals in such employer's service. Each employer shall supply to such individuals copies of such printed statements or materials relating to claims for benefits as the Director may by regulation prescribe. Such printed statements shall be supplied by the Director to each employer without cost to the employer.

(Source: Laws 1951, p. 32.)

Sec. 701. Findings

A representative designated by the Director, and hereinafter referred to as a claims adjudicator, shall promptly examine the first claim filed by a claimant for each benefit year and, on the basis of the information in his possession, shall make a “finding.” Such “finding” shall be a statement of the amount of wages for insured work paid to the claimant during each quarter in the base period by each employer. On the basis of the “finding,” the claims adjudicator shall decide whether or not such claim is valid under Section 500 E, and, if so valid, shall compute the weekly benefit amount payable to the claimant and the maximum amount payable with respect to such benefit year; and shall promptly notify the claimant thereof, shall notify his most recent employing unit, and with respect to benefit years beginning on or after July 1, 1989, shall also notify the individual's last employer (referred to in Section 1502.1) that such claim has been filed. The claims adjudicator shall promptly notify the claimant of his “finding.”

(Source: P.A. 86-3.)

Sec. 702. Determinations

The claims adjudicator shall for each week with respect to which the claimant claims benefits or waiting period credit, make a "determination" which shall state whether or not the claimant is eligible for such benefits or waiting period credit and the sum to be paid the claimant with respect to such week. The claims adjudicator shall promptly notify the claimant and such employing unit as shall, within the time and in the manner prescribed by the Director, have filed a sufficient allegation that the claimant is ineligible to receive benefits or waiting period credit for said week, of his "determination" and the reasons therefor. The Director may, by rule adopted with the advice and aid of the Employment Security Advisory Board, require that an employing unit with 50 or more individuals in its employ during the prior calendar year, or an entity representing 5 or more employing units during the prior calendar year, file an allegation of ineligibility electronically in a manner prescribed by the Director. In making his "determination," the claims adjudicator shall give consideration to the information, if any, contained in the employing unit's allegation, whether or not the allegation is sufficient. The claims adjudicator shall deem an employing unit's allegation sufficient only if it contains a reason or reasons therefor (other than general conclusions of law, and statements such as "not actively seeking work" or "not available for work" shall be deemed, for this purpose, to be conclusions of law). If the claims adjudicator deems an allegation insufficient, he shall make a decision accordingly, and shall notify the employing unit of such decision and the reasons therefor. Such decision may be appealed by the employing unit to a Referee within the time limits prescribed by Section 800 for appeal from a "determination". Any such appeal, and any appeal from the Referee's decision thereon, shall be governed by the applicable provisions of Sections 801, 803, 804 and 805.

(Source: P.A. 81-1521, P.A. 97-621, eff. 11-18-11)

Sec. 703. Reconsideration of findings or determinations

The claims adjudicator may reconsider his finding at any time within thirteen weeks after the close of the benefit year. He may reconsider his determination at any time within one year after the last day of the week for which the determination was made, except that if the issue is whether or not, by reason of a back pay award made by any governmental agency or pursuant to arbitration proceedings, or by reason of a payment of wages wrongfully withheld by an employing unit, an individual has received wages for a week with respect to which he or she has received benefits or if the issue is whether or not the claimant misstated his earnings for the week, such reconsidered determination may be made at any time within 3 years after the last day of the week. No finding or determination shall be reconsidered at any time after appeal therefrom has been taken pursuant to the provisions of Section 800, except where a case has been remanded to the claims adjudicator by a Referee, the Director or the Board of Review, and except, further, that if an issue as to whether or not the claimant misstated his earnings is newly discovered, the determination may be

reconsidered after and notwithstanding the fact that the decision upon the appeal has become final. Notice of such reconsidered determination or reconsidered finding shall be promptly given to the parties entitled to notice of the original determination or finding, as the case may be, in the same manner as is prescribed therefor, and such reconsidered determination or reconsidered finding shall be subject to appeal in the same manner and shall be given the same effect as is provided for an original determination or finding.

(Source: P.A. 92-396, eff. 1-1-02.)

Sec. 705. Effect of finality of finding of claims adjudicator, referee, or board of review - Estoppel

If, in any "finding" made by a claims adjudicator or in any decision rendered by a Referee or the Board of Review, it is found that the claimant has been paid wages for insured work by any employing unit or units in his base period, and such "finding" of the claims adjudicator or decision of the Referee or the Board of Review becomes final, each such employing unit as shall have been a party to the claims adjudicator's "finding" as provided in Section 701, or to the proceedings before the Referee, or the Board of Review, and shall have been given notice of such "finding" of the claims adjudicator, or proceedings before the Referee or the Board of Review, as the case may be, and an opportunity to be heard, shall be forever estopped to deny in any proceeding whatsoever that during such base period it was an employer as defined by this Act, that the wages paid by such employing unit to the claimant were wages for insured work, and that the wages paid by it for services rendered for it by any individual under circumstances substantially the same as those under which the claimant's services were performed were wages for insured work.

(Source: P.A. 77-1443.)

Sec. 706. Benefits undisputed or allowed - Prompt payment

(Before 2013)

Benefits shall be paid promptly in accordance with a claims adjudicator's finding and determination, or reconsidered finding or reconsidered determination, or the decision of a Referee, the Board of Review or a reviewing court, upon the issuance of such finding and determination, reconsidered finding, reconsidered determination or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal, or file a complaint for judicial review, or the pendency of any such application or filing, unless and until such finding, determination, reconsidered finding, reconsidered determination or decision has been modified or reversed by a subsequent reconsidered finding or reconsidered determination or decision, in which event benefits shall be paid or denied with respect to weeks thereafter in accordance with such reconsidered finding, reconsidered determination, or modified or reversed finding, determination, reconsidered finding, reconsidered determination or decision. If benefits are paid pursuant to a finding or a determination, or a reconsidered finding, or a reconsidered determination, or a decision of a Referee, the Board of Review or a court, which is finally reversed or modified in subsequent proceedings with respect thereto, the benefit wages on which such benefits are based shall, for the purposes set forth in Section 1502, or benefit charges, for purposes set forth in Section 1502.1, be treated in the same manner as if such final reconsidered finding, reconsidered determination, or decision had been the finding or determination of the claims adjudicator.

(Source: P.A. 85-956.)

(After 2012)

Benefits shall be paid promptly in accordance with a claims adjudicator's finding and determination, or reconsidered finding or reconsidered determination, or the decision of a Referee, the Board of Review or a reviewing court, upon the issuance of such finding and determination, reconsidered finding, reconsidered determination or decision, regardless of the pendency of the period to apply for reconsideration, file an appeal, or file a complaint for judicial review, or the pendency of any such application or filing, unless and until such finding, determination, reconsidered finding, reconsidered determination or decision has been modified or reversed by a subsequent reconsidered finding or reconsidered determination or decision, in which event benefits shall be paid or denied with respect to weeks thereafter in accordance with such reconsidered finding, reconsidered determination, or modified or reversed finding, determination, reconsidered finding, reconsidered determination or decision. Except as otherwise provided in this Section, if benefits are paid pursuant to a finding or a determination, or a reconsidered finding, or a reconsidered determination, or a decision of a Referee, the Board of Review or a court, which is finally reversed or modified in subsequent proceedings with respect thereto, the benefit wages on which such benefits are based shall, for the purposes set forth in Section 1502, or benefit charges, for purposes set forth in Section 1502.1, be treated in the same manner as if such final reconsidered finding, reconsidered determination, or decision had been the finding or determination of the

claims adjudicator. If benefits are paid pursuant to a finding, determination, reconsidered finding or determination, or a decision of a Referee, the Board of Review, or a court which is finally reversed or modified in subsequent proceedings with respect thereto, the benefit charges, for purposes set forth in Section 1502.1, shall be treated in the same manner as if the finding, determination, reconsidered finding or determination, or decision of the Referee, the Board of Review, or the court pursuant to which benefits were paid had not been reversed if: (1) the benefits were paid because the employer or an agent of the employer was at fault for failing to respond timely or adequately to the Department's request for information relating to the claim; and (2) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

(Source: P.A. 85-956; P.A. 97-791, eff. 1-1-2013)

Sec. 800. Appeals to referee or director

Except as hereinafter provided, appeals from a claims adjudicator shall be taken to a Referee. Whenever a "determination" of a claims adjudicator involves a decision as to eligibility under Section 604, appeals shall be taken to the Director or his representative designated for such purpose. Unless the claimant or any other party entitled to notice of the claims adjudicator's "finding" or "determination," as the case may be, or the Director, within 30 calendar days after the delivery of the claims adjudicator's notification of such "finding" or "determination," or within 30 calendar days after such notification was mailed to his last known address, files an appeal therefrom, such "finding" or "determination" shall be final as to all parties given notice thereof.

(Source: P.A. 81-1521.)

Sec. 801. Decision of referee or director

A. Unless such appeal is withdrawn, a Referee or the Director, as the case may be, shall afford the parties reasonable opportunity for a fair hearing. At any hearing, the record of the claimant's registration for work, or of the claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work, or any document in the files of the Department of Employment Security submitted to it by any of the parties, shall be a part of the record, and shall be competent evidence bearing upon the issues. The failure of the claimant or other party to appear at a hearing, unless he is the appellant, shall not preclude a decision in his favor if, on the basis of all the information in the record, he is entitled to such decision. The Referee or the Director, as the case may be, shall affirm, modify, or set aside the claims adjudicator's "finding" or "determination," or both, as the case may be, or may remand the case, in whole or in part, to the claims adjudicator, and, in such event, shall state the questions requiring further consideration, and give such other instructions as may be necessary. The parties shall be duly notified of such decision, together with the reasons therefor. The decision of the Referee shall be final, unless, within 30 calendar days after the date of mailing of such decision, further appeal to the Board of Review is initiated pursuant to Section 803.

B. Except as otherwise provided in this subsection, the Director may by regulation allow the Referee, upon the request of a party for good cause shown, before or after the Referee issues his decision, to reopen the record to take additional evidence or to reconsider the Referee's decision or both to reopen the record and reconsider the Referee's decision. Where the Referee issues a decision, he shall not reconsider his decision or reopen the record to take additional evidence after an appeal of the decision is initiated pursuant to Section 803 or if the request is made more than 30 calendar days, or fewer days if prescribed by the Director, after the date of mailing of the Referee's decision. The allowance or denial of a request to reopen the record, where the request is made before the Referee issues a decision, is not separately appealable but may be raised as part of the appeal of the Referee's decision. The allowance of a request to reconsider is not separately appealable but may be raised as part of the appeal of the Referee's reconsidered decision. A party may appeal the denial of a timely request to reconsider a decision within 30 calendar days after the date of mailing of notice of such denial, and any such appeal shall constitute a timely appeal of both the denial of the request to reconsider and the Referee's decision. Whenever reference is made in this Act to the Referee's decision, the term "decision" includes a reconsidered decision under this subsection.

(Source: P.A. 88-655, eff. 9-16-94.)

Sec. 802. Appointment of referees and providing legal services in disputed claims

A. To hear and decide disputed claims, the Director shall obtain an adequate number of impartial Referees selected in accordance with the provisions of the "Personnel Code" enacted by the Sixty-ninth General Assembly. No person shall participate on behalf of the Director or the Board of Review in any case in which he is an interested party. The Director shall provide the Board of Review and such Referees with proper facilities and supplies and with assistants and employees (selected in accordance with the provisions of the "Personnel Code" enacted by the Sixty-ninth General Assembly) necessary for the execution of their functions.

B. As provided in Section 1700.1, effective January 1, 1989, the Director shall establish a program for providing services by licensed attorneys at law to advise and represent, at hearings before the Referee, the Director or the Director's Representative, or the Board of Review, "small employers", as defined in rules promulgated by the Director, and issued pursuant to the results of the study referred to in Section 1700.1, and individuals who have made a claim for benefits with respect to a week of unemployment, whose claim has been disputed, and who are eligible under rules promulgated by the Director which are issued pursuant to the results of the study referred to in Section 1700.1.

For the period beginning July 1, 1994, and extending through June 30, 1996, no legal services shall be provided under the program established under this subsection.

For the period beginning July 1, 1990, and extending through June 30, 1991, no legal services shall be provided under the program established pursuant to this subsection.

(Source: P.A. 88-655, eff. 9-16-94; 89-21, eff. 6-6-95.)

Sec. 803. Board of review - Decisions

The Board of Review may, on its own motion or upon appeal by any party to the determination or finding, affirm, modify, or set aside any decision of a Referee. The Board of Review in its discretion, may take additional evidence in hearing such appeals, or may remand the case, in whole or in part, to a Referee or claims adjudicator, and, in such event, shall state the questions requiring further consideration and give such other instructions as may be necessary. The Director may remove to the Board of Review or transfer to another Referee the proceedings on any claim pending before a Referee. Any proceedings so removed to the Board of Review shall be heard in accordance with the requirements of Section 801 by the Board of Review. At any hearing before the Board of Review, in the absence or disqualification of any member thereof representing either the employee or employer class, the hearing shall be conducted by the member not identified with either of such classes. Upon receipt of an appeal by any party to the findings and decision of a Referee, the Board of Review shall promptly notify all parties entitled to notice of the Referee's decision that the appeal has been filed, and shall inform each party of the right to apply for a Notice of Right to Sue as provided for in this Section. The Board of Review shall provide transcripts of the proceedings before the Referee within 35 days of the date of the filing of an appeal by any party. The Board of Review shall make a final determination on the appeal within 120 days of the date of the filing of the appeal and shall notify the parties of its final determination or finding, or both, within the same 120 day period. The period for making a final determination may be extended by the Board of Review to no more than 30 additional days upon written request of either party, for good cause shown.

At any time after the expiration of the aforesaid 120 day period, or the expiration of any extension thereof, and prior to the date the Board of Review makes a final determination on the appeal, the party claiming to be aggrieved by the decision of the Referee may apply in writing by certified mail, return receipt requested, to the Board of Review for a Notice of Right to Sue. The Board of Review shall issue, within 14 days of the date that the application was mailed to it, a Notice of Right to Sue to all parties entitled to notice of the Referee's decision, unless, within that time, the Board has issued its final decision. The Notice of Right to Sue shall notify the parties that the findings and decision of the Referee shall be the final administrative decision on the appeal, and it shall further notify any party claiming to be aggrieved thereby that he may seek judicial review of the final decision of the referee under the provisions of the Administrative Review Law. If the Board issues a Notice of Right to Sue, the date that such notice is served upon the parties shall determine the time within which to commence an action for judicial review. Any decision issued by the Board after the aforesaid 14 day period shall be null and void. If the Board fails to either issue its decision or issue a Notice of Right to Sue within the prescribed 14 day period, then the findings and decision of the Referee shall, by operation of law, become the final administrative decision on the appeal. In such an instance, the period within which to commence an action for judicial review pursuant to the Administrative Review Law shall begin to run on the 15th day after the date of mailing of the application for the Notice of Right to Sue. If no party applies for a Notice of Right to Sue, the decision of the Board of Review, issued at any time, shall be the final decision on the appeal.

(Source: P.A. 84-26.)

Sec. 804. Conduct of hearings-Service of notice

The manner in which disputed claims for benefits shall be presented and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the Director for determining the rights of the parties. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

Whenever the giving of notice is required by Sections 701, 702, 703, 801, 803, 805, and 900, it may be given and be completed by mailing the same to the last known address of the person entitled thereto. If agreed to by the person or entity entitled to notice, notice may be given and completed electronically, in the manner prescribed by rule, by posting the notice on a secure web site accessible to the person or entity and sending notice of the posting to the last known e-mail address of the person or entity.

(Source: Laws 1955, p. 744, P.A. 97-621, eff. 11-18-11)

Sec. 805. Additional parties

The Director, Referee, and the Board of Review, in any hearing involving benefit claims, may add parties, whenever in his or its discretion, it is necessary to the proper disposition of the case. Such additional parties shall be entitled to reasonable notice of the proceedings and an opportunity to be heard.

(Source: Laws 1951, p. 844.)

Sec. 806. Representation

Any individual or entity in any proceeding before the Director or his representative, or the Referee or the Board of Review, may be represented by a union or any duly authorized agent.

(Source: P.A. 85-956.)

Sec. 900. Recoupment

A. Whenever an individual has received any sum as benefits for which he is found to have been ineligible, the amount thereof may be recovered by suit in the name of the People of the State of Illinois, or, from benefits payable to him, may be recouped:

1. At any time, if, to receive such sum, he knowingly made a false statement or knowingly failed to disclose a material fact.

2. Within 3 years from any date prior to January 1, 1984, on which he has been found to have been ineligible for any other reason, pursuant to a reconsidered finding or a reconsidered determination, or pursuant to the decision of a Referee (or of the Director or his representative under Section 604) which modifies or sets aside a finding or a reconsidered finding or a determination or a reconsidered determination; or within 5 years from any date after December 31, 1983, on which he has been found to have been ineligible for any other reason, pursuant to a reconsidered finding or a reconsidered determination, or pursuant to the decision of a Referee (or of the Director or his representative under Section 604) which modifies or sets aside a finding or a reconsidered finding or a determination or a reconsidered determination. Recoupment pursuant to the provisions of this paragraph from benefits payable to an individual for any week may be waived upon the individual's request, if the sum referred to in paragraph A was received by the individual without fault on his part and if such recoupment would be against equity and good conscience. Such waiver may be denied with respect to any subsequent week if, in that week, the facts and circumstances upon which waiver was based no longer exist.

B. Whenever the claims adjudicator referred to in Section 702 decides that any sum received by a claimant as benefits shall be recouped, or denies recoupment waiver requested by the claimant, he shall promptly notify the claimant of his decision and the reasons therefor. The decision and the notice thereof shall state the amount to be recouped, the weeks with respect to which such sum was received by the claimant, and the time within which it may be recouped and, as the case may be, the reasons for denial of recoupment waiver. The claims adjudicator may reconsider his decision within one year after the date when the decision was made. Such decision or reconsidered decision may be appealed to a Referee within the time limits prescribed by Section 800 for appeal from a determination. Any such appeal, and any appeal from the Referee's decision thereon, shall be governed by the applicable provisions of Sections 801, 803, 804 and 805. No recoupment shall be begun until the expiration of the time limits prescribed by Section 800 of this Act or, if an appeal has been filed, until the decision of a Referee has been made thereon affirming the decision of the Claims Adjudicator.

C. Any sums recovered under the provisions of this Section shall be treated as repayments to the Department of sums improperly obtained by the claimant.

D. Whenever, by reason of a back pay award made by any governmental agency or pursuant to arbitration proceedings, or by reason of a payment of wages wrongfully withheld by an employing unit, an individual has received wages for weeks with respect to which he has received benefits, the amount of such benefits may be recouped or otherwise recovered as herein provided. An employing unit making a back pay award to an individual for weeks with respect to which the individual has received benefits shall make the back pay award by check payable jointly to the individual and to the Department.

E. The amount recouped pursuant to paragraph 2 of subsection A from benefits payable to an individual for any week shall not exceed 25% of the individual's weekly benefit amount.

In addition to the remedies provided by this Section, when an individual has received any sum as benefits for which he is found to be ineligible, the Director may request the Comptroller to withhold such sum in accordance with Section 10.05 of the State Comptroller Act and the Director may request the Secretary of the Treasury to withhold such sum to the extent allowed by and in accordance with Section 6402(f) of the federal Internal Revenue Code of 1986, as amended. Benefits paid pursuant to this Act shall not be subject to such withholding. Where the Director requests withholding by the Secretary of the Treasury pursuant to this Section, in addition to the amount of benefits for which the individual has been found ineligible, the individual shall be liable for any legally authorized administrative fee assessed by the Secretary, with such fee to be added to the amount to be withheld by the Secretary.

(Source: P.A. 85-956, P.A. 97-621, eff. 11-18-11; P.A. 97-791, eff. 1-1-13)

Sec. 901. Fraud - Repayment - Ineligibility

An individual who, for the purpose of obtaining benefits, knowingly makes a false statement or knowingly fails to disclose a material fact, and thereby obtains any sum as benefits for which he is not eligible:

A. Shall be required to repay such sum in cash, or the amount thereof may be recovered or recouped pursuant to the provisions of Section 900.

B. Shall be ineligible, except to the extent that such benefits are subject to recoupment pursuant to this Section, for benefits for the week in which he or she has been notified of the determination of the claims adjudicator referred to in Section 702 that he or she has committed the offense described in the first paragraph and, thereafter, for 6 weeks (with respect to each of which he or she would be eligible for benefits but for the provisions of this paragraph, not including weeks for which such benefits are subject to recoupment pursuant to this Section) for the first offense, and for 2 additional weeks (with respect to each of which he or she would be eligible for benefits but for the provisions of this paragraph, not including weeks for which such benefits are subject to recoupment pursuant to this Section) for each subsequent offense. For the purposes of this paragraph, a separate offense shall be deemed to have been committed in each week for which such an individual has received a sum as benefits for which he or she was not eligible. No ineligibility under the provisions of this paragraph shall accrue with respect to any week beginning after whichever of the following occurs first: (1) 26 weeks (with respect to each of which the individual would be eligible for benefits but for the provisions of this paragraph, not including weeks for which such benefits are subject to recoupment pursuant to this Section) have elapsed since the date that he or she is notified of the determination of the claims adjudicator referred to in Section 702 that he or she has committed the offense described in the first paragraph, or (2) 2 years have elapsed since the date that he or she is notified of the determination of the claims adjudicator referred to in Section 702 that he or she has committed the offense described in the first paragraph.

(Source: P.A. 91-342, eff. 1-1-00.)

Sec. 901.1. Additional penalty.

In addition to the penalties imposed under Section 901, an individual who, for the purposes of obtaining benefits, knowingly makes a false statement or knowingly fails to disclose a material fact, and thereby obtains any sum as benefits for which he or she is not eligible, shall be required to pay a penalty in an amount equal to 15% of such sum. All of the provisions of Section 900 applicable to the recovery of sums described in paragraph 1 of subsection A of Section 900 shall apply to penalties imposed pursuant to this Section. All penalties collected under this Section shall be treated in the same manner as benefits recovered from such individual.

(Source: P.A. 97-791, eff. 1-1-13)

Sec. 1000. Oaths- Certifications-Subpoenas

The Director, claims adjudicator, or other representative of the Director and any Referee and the Board of Review, or any member thereof, shall have the power, in the discharge of the duties imposed by this Act, to administer oaths and affirmations, certify to all official acts, and issue subpoenas to compel the attendance and testimony of witnesses, and the production of papers, books, accounts and documents deemed necessary as evidence in connection with a disputed claim or the administration of this Act.

(Source: P.A. 77-1443.)

Sec. 1001. Testimony-Immunity

No person shall be excused from testifying or from producing any papers, books, accounts, or documents in any investigation or inquiry or upon any hearing, when ordered to do so by the Director, Board of Review, or member thereof, or any claims adjudicator, Referee, or a representative of the Director, upon the ground that the testimony or evidence, documentary or otherwise, may tend to incriminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, before any such person or Board of Review: Provided, that such immunity shall extend only to a natural person, who, in obedience to a subpoena, and after claiming his privilege, shall, upon order, give testimony under oath or produce evidence, documentary or otherwise, under oath. No person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

(Source: P.A. 77-1443.)

Sec. 1002. Attendance of witnesses - Production of papers

All subpoenas issued under the terms of this Act may be served by any person of full age. The fees of witnesses for attendance and travel shall be the same as fees of witnesses before the circuit courts of this State, such fees to be paid when the witness is excused from further attendance. The payment of such fees shall be made in the same manner as are other expenses incurred in the administration of this Act. A subpoena issued shall be served in the same manner as a subpoena issued out of a court.

Any person who shall be served with a subpoena to appear and testify or to produce books, papers, accounts, or documents, issued by the Director or by any claims adjudicator or other representative of the Director, or by any Referee or the Board of Review, or member thereof, in the course of an inquiry, investigation, or hearing conducted under any of the provisions of this Act, and who refuses or neglects to appear or to testify or to produce books, papers, accounts, and documents relevant to said inquiry, investigation, or hearing as commanded in such subpoena, shall be guilty of a Class A misdemeanor.

Any circuit court of this State, upon application by the Director, or claims adjudicator, or other representative of the Director, or by any Referee or the Board of Review, or any member thereof, may, in its discretion, compel the attendance of witnesses, the production of books, papers, accounts, and documents, and the giving of testimony before such person or Board by an attachment for contempt or otherwise, in the same manner as production of evidence may be compelled before the court.

(Source: P.A. 83-334.)

Sec. 1003. Depositions

The deposition of any witness residing within or without the State may be taken at the instance of any claims adjudicator, Referee, member of the Board of Review, field auditor, Director's representative, or any of the parties to any proceeding arising under the provisions of this Act in the manner prescribed by law for the taking of like depositions in civil cases in the courts of this State. The Director may, at the request of any such person, issue a dedimus potestatem or commission under the seal of the Department of Employment Security in the same manner as the proper clerk's office is authorized to issue such dedimus potestatem or commission under the seal of the court in connection with any matter pending in the circuit courts of this State.

(Source: P.A. 83-1503.)

Sec. 1004. Record of proceedings

The Director shall provide facilities for the taking of testimony and the recording of proceedings at the hearings before the Director, his representative, the Board of Review, or a Referee. All expenses arising pursuant to this Section shall be paid in the same manner as other expenses incurred pursuant to this Act.

(Source: Laws 1951, p. 844.)

Sec. 1100. Review by the courts of decisions on benefits

Any decision of the Board of Review (or of the Director in cases of decisions made pursuant to Sections 800 and 801) shall be reviewable only under and in accordance with the provisions of the Administrative Review Law, provided that judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his administrative remedies as provided by this Act. The Director shall be deemed to have been a party to any administrative proceeding before the Board of Review and shall be represented by the Attorney General in any judicial action involving any such decision. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Director or Board of Review hereunder. The term “administrative decision” is defined as in Section 3-101 of the Code of Civil Procedure.

The party aggrieved by the decision of the Board of Review (or the decision of the Director rendered pursuant to Sections 800 and 801) may secure judicial review thereof in the circuit court of the county in which he resides, or in the county in which his principal place of business is located, or if he does not reside within the State of Illinois and has no place of business within this State, then in the circuit court of Cook County.

Such proceedings before the courts shall be given precedence over all other civil cases except cases arising under the Workers' Compensation Act of this State.

The Board of Review or the Director, as the case may be, shall certify the record of the proceedings to the circuit court and shall prepare a true and correct typewritten copy of such testimony and a true and correct copy of all other matters contained in such record and certified to by the secretary thereof.

Judgments and orders of the circuit court under this Act shall be reviewed by appeal in the same manner as in other civil cases.

The clerk of any court rendering a decision affecting or affirming any decision of the Board of Review or of the Director, as the case may be, shall promptly furnish the Director and the Board of Review with a copy of such decision, without charge, and the Board of Review or the Director, as the case may be, shall enter an order in accordance with such decision.

(Source: P.A. 88-655, eff. 9-16-94.)

Sec. 1200. Compensation of attorneys

No fee shall be charged any claimant in any proceeding under this Act by the Director or his representatives, or by the Referees or Board of Review, or by any court or the clerks thereof except as provided herein.

Any individual claiming benefits in any proceeding before the Director or his representative, or the Referee or the Board of Review, or his or its representatives, or a court, may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the Board of Review or, in cases arising under Section 604, by the Director.

After reasonable notice and a hearing before the Department's representative, any attorney found to be in violation of any provision of this Section shall be required to make restitution of any excess fees charged plus interest at a reasonable rate as determined by the Department's representative.

Any person who shall exact or receive any remuneration or gratuity for any services rendered on behalf of such claimant except as allowed by this Section and in an amount approved by the Board of Review or the Director, as the case may be, shall be guilty of a Class A misdemeanor. Any person who shall solicit the business of appearing on behalf of such claimant or who shall make it a business to solicit employment for another in connection with any claim for benefits under this Act shall be guilty of a Class A misdemeanor.

(Source: P.A. 93-0215, eff. 1-1-04.)

Sec. 1300. Waiver or transfer of benefit rights - Partial exemption

(A) Except as otherwise provided herein any agreement by an individual to waive, release or commute his rights under this Act shall be void.

(B) Benefits due under this Act 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. However, nothing in this Section shall prohibit a specified or agreed upon deduction from benefits by an individual, or a court or administrative order for withholding of income, for payment of past due child support from being enforced and collected by the Department of Public Aid on behalf of persons receiving a grant of financial aid under Article IV of the Illinois Public Aid Code, persons for whom an application has been made and approved for child support enforcement services under Section 10-1 of such Code, or persons similarly situated and receiving like services in other states. It is provided that:

(1) The aforementioned deduction of benefits and order for withholding of income apply only if appropriate arrangements have been made for reimbursement to the Director by the Department of Public Aid for any administrative costs incurred by the Department under this Section.

(2) The Director shall deduct and withhold from benefits payable under this Act, or under any arrangement for the payment of benefits entered into by the Director pursuant to the powers granted under Section 2700 of this Act, the amount specified or agreed upon. In the case of a court or administrative order for withholding of income, the Director shall withhold the amount of the order.

(3) Any amount deducted and withheld by the Director shall be paid to the Department of Public Aid or the State Disbursement Unit established under Section 10-26 of the Illinois Public Aid Code, as directed by the Department of Public Aid, on behalf of the individual.

(4) Any amount deducted and withheld under subsection (3) shall for all purposes be treated as if it were paid to the individual as benefits and paid by such individual to the Department of Public Aid or the State Disbursement Unit in satisfaction of the individual's child support obligations.

(5) For the purpose of this Section, child support is defined as those obligations which are being enforced pursuant to a plan described in Title IV, Part D, Section 454 of the Social Security Act and approved by the Secretary of Health and Human Services.

(6) The deduction of benefits and order for withholding of income for child support shall be governed by Titles III and IV of the Social Security Act and all regulations duly promulgated thereunder.

(C) Nothing in this Section prohibits an individual from voluntarily electing to have federal income tax deducted and withheld from his or her unemployment insurance benefit payments.

(1) The Director shall, at the time that an individual files his or her claim for benefits that establishes his or her benefit year, inform the individual that:

(a) unemployment insurance is subject to federal, State, and local income taxes;

(b) requirements exist pertaining to estimated tax payments;

(c) the individual may elect to have federal income tax deducted and withheld from his or her payments of unemployment insurance in the amount specified in the federal Internal Revenue Code; and

(d) the individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment insurance shall remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The Director shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld in accordance with the priorities established in rules promulgated by the Director.

(D) Nothing in this Section prohibits an individual from voluntarily electing to have State of Illinois income tax deducted and withheld from his or her unemployment insurance benefit payments.

(1) The Director shall, at the time that an individual files his or her claim for benefits that establishes his or her benefit year, in addition to providing the notice required under subsection C, inform the individual that:

(a) the individual may elect to have State of Illinois income tax deducted and withheld from his or her payments of unemployment insurance; and

(b) the individual is permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment insurance shall remain in the unemployment fund until transferred to the Department of Revenue as a payment of State of Illinois income tax.

(3) Amounts shall be deducted and withheld in accordance with the priorities established in rules promulgated by the Director.

(E) Nothing in this Section prohibits the deduction and withholding of an uncollected overissuance of food stamp coupons from unemployment insurance benefits pursuant to this subsection (E).

(1) At the time that an individual files a claim for benefits that establishes his or her benefit year, that individual must disclose whether or not he or she owes an uncollected overissuance (as defined in Section 13(c)(1) of the federal Food Stamp Act of 1977) of food stamp coupons. The Director shall notify the State food stamp agency enforcing such obligation of any individual who discloses that he or she owes an uncollected overissuance of food stamp coupons and who meets the monetary eligibility requirements of subsection E of Section 500.

(2) The Director shall deduct and withhold from any unemployment insurance benefits payable to an individual who owes an uncollected overissuance of food stamp coupons:

(a) the amount specified by the individual to the Director to be deducted and withheld under this subsection (E);

(b) the amount (if any) determined pursuant to an agreement submitted to the State food stamp agency under Section 13(c)(3)(A) of the federal Food Stamp Act of 1977; or

(c) any amount otherwise required to be deducted and withheld from unemployment insurance benefits pursuant to Section 13(c)(3)(B) of the federal Food Stamp Act of 1977.

(3) Any amount deducted and withheld pursuant to this subsection (E) shall be paid by the Director to the State food stamp agency.

(4) Any amount deducted and withheld pursuant to this subsection (E) shall for all purposes be treated as if it were paid to the individual as unemployment insurance benefits and paid by the individual to the State food stamp agency as repayment of the individual's uncollected overissuance of food stamp coupons.

(5) For purposes of this subsection (E), "unemployment insurance benefits" means any compensation payable under this Act including amounts payable by the Director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.

(6) This subsection (E) applies only if arrangements have been made for reimbursement by the State food stamp agency for the administrative costs incurred by the Director under this subsection (E) which are attributable to the repayment of uncollected overissuances of food stamp coupons to the State food stamp agency.

(Source: P.A. 94-237, eff. 01-01-06; P.A. 97-0791, eff. 1-1-13.)

Sec. 1400. Payment of contributions

On and after July 1, 1937, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this Act, with respect to wages payable for employment occurring during the six months' period beginning July 1, 1937, and the calendar years 1938, 1939, and 1940. For the year 1941 and for each calendar year thereafter, contributions shall accrue and become payable by each employer upon the wages paid with respect to employment after December 31, 1940. Except as otherwise provided in Section 1400.2, such contributions shall become due and shall be paid quarterly on or before the last day of the month next following the calendar quarter for which such contributions have accrued; except that any employer who is delinquent in filing a contribution report or in paying his contributions for any calendar quarter may, at the discretion of the Director, be required to report and to pay contributions on a calendar month basis. Such contributions shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. If the Director shall find that the collection of any contributions will be jeopardized by delay, he may declare the same to be immediately due and payable.

In the payment of any contributions, interest, or penalties, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

The Director may by regulation provide that if, at any time, a total amount of less than $2 is payable with respect to a quarter, including any contributions, payments in lieu of contributions, interest or penalties, such amount may be disregarded. Any amounts disregarded under this paragraph are deemed to have been paid for all other purposes of this Act. Nothing in this paragraph is intended to relieve any employer from filing any reports required by this Act or by any rules or regulations adopted by the Director pursuant to this Act.

Except with respect to the provisions concerning amounts that may be disregarded pursuant to regulation, this Section does not apply to any nonprofit organization or any governmental entity referred to in subsection B of Section 1405 for any period with respect to which it does not incur liability for the payment of contributions by reason of having elected to make payments in lieu of contributions, or to any political subdivision or municipal corporation for any period with respect to which it is not subject to payments in lieu of contributions under the provisions of paragraph 1 of Section 302C by reason of having elected to make payments in lieu of contributions under paragraph 2 of that Section, or to the State of Illinois or any of its instrumentalities.

The Director may, by regulation, provide that amounts due from an employing unit for contributions, payments in lieu of contributions, penalties, or interest be paid by an electronic funds transfer, including amounts paid on behalf of an employing unit by an entity representing the employing unit. The regulation shall not apply to an employing unit until the Director notifies the employing unit of the regulation. Except as otherwise provided in this Section, where the employing unit, within 30 days of the date of service of the notice sent pursuant to this amendatory Act of the 98th General Assembly, notifies the Director that it declines to pay by electronic funds transfer, the regulation shall not apply to the employing unit. Except as otherwise provided in this Section, where the employing unit, within 30 days of the date of service of a notice sent pursuant to Section 1509 of this Act, notifies the Director that it declines to pay by electronic funds transfer, the regulation shall not apply to the employing unit with respect to any payment due after the date the employing unit so notifies the Director. The Director is authorized to provide by regulation reasonable penalties for employing units that are subject to and fail to comply with such a regulation. Any employing unit that is not subject to the regulation may elect to become subject to the regulation by paying amounts due for contributions, payments in lieu of contributions, penalties, or interest by an electronic funds transfer. Notwithstanding any other provision to the contrary, in the case of an entity representing 5 or more employing units, neither the entity nor the employing units (for as long as they are represented by that entity) shall have the option to decline to pay by electronic funds transfer.

(Source: P.A. 98-107, eff. 7-23-13.)

Sec. 1400.1. Solvency Adjustments.

As used in this Section, "prior year's trust fund balance" means the net amount standing to the credit of this State's account in the unemployment trust fund (less all outstanding advances to that account, including but not limited to advances pursuant to Title XII of the federal Social Security Act) as of June 30 of the immediately preceding calendar year.

The wage base adjustment, rate adjustment, and allowance adjustment applicable to any calendar year after calendar year 2009 shall be as follows:

If the prior year's trust fund balance is less than $300,000,000, the wage base adjustment shall be $220, the rate adjustment shall be 0.05%, and the allowance adjustment shall be -0.3% absolute.

If the prior year's trust fund balance is equal to or greater than $300,000,000 but less than $700,000,000, the wage base adjustment shall be $150, the rate adjustment shall be 0.025%, and the allowance adjustment shall be -0.2% absolute.

If the prior year's trust fund balance is equal to or greater than $700,000,000 but less than $1,000,000,000, the wage base adjustment shall be $75, the rate adjustment shall be 0, and the allowance adjustment shall be -0.1% absolute.

If the prior year's trust fund balance is equal to or greater than $1,000,000,000 but less than $1,300,000,000, the wage base adjustment shall be -$75, the rate adjustment shall be 0, and the allowance adjustment shall be 0.1% absolute.

If the prior year's trust fund balance is equal to or greater than $1,300,000,000 but less than $1,700,000,000, the wage base adjustment shall be -$150, the rate adjustment shall be -0.025%, and the allowance adjustment shall be 0.2% absolute.

If the prior year's trust fund balance is equal to or greater than $1,700,000,000, the wage base adjustment shall be -$220, the rate adjustment shall be -0.05%, and the allowance adjustment shall be 0.3% absolute.

(Source: P.A. 93-634, eff. 1-1-04.)

Sec. 1400.2. Annual reporting and paying; household workers

This Section applies to an employer who solely employs one or more household workers with respect to whom the employer files federal unemployment taxes as part of his or her federal income tax return, or could file federal unemployment taxes as part of his or her federal income tax return if the worker or workers were providing services in employment for purposes of the federal unemployment tax. For purposes of this Section, "household worker" has the meaning ascribed to it for purposes of Section 3510 of the federal Internal Revenue Code. If an employer to whom this Section applies notifies the Director, in writing, that he or she wishes to pay his or her contributions for each quarter and submit his or her wage reports for each month or quarter, as the case may be, on an annual basis, then the due date for filing the reports and paying the contributions shall be April 15 of the calendar year immediately following the close of the months or quarters to which the reports and quarters to which the contributions apply, except that the Director may, by rule, establish a different due date for good cause.

(Source: P.A. 94-723, eff. 1-19-06; P.A 97-689, eff. 6-14-12)

Sec. 1401. Interest

Any employer who shall fail to pay any contributions (including any amounts due pursuant to Section 1506.3) when required of him by the provisions of this Act and the rules and regulations of the Director, whether or not the amount thereof has been determined and assessed by the Director, shall pay to the Department, in addition to such contribution, interest thereon at the rate of one percent (1%) per month and one-thirtieth (1/30) of one percent (1%) for each day or fraction thereof computed from the day upon which said contribution became due. After 1981, such interest shall accrue at the rate of 2% per month, computed at the rate of 12/365 of 2% for each day or fraction thereof, upon any unpaid contributions which become due, provided that, after 1987, for the purposes of calculating interest due under this Section only, payments received more than 30 days after such contributions become due shall be deemed received on the last day of the month preceding the month in which they were received except that, if the last day of such preceding month is less than 30 days after the date that such contributions became due, then such payments shall be deemed to have been received on the 30th day after the date such contributions became due.

However, all or part of any interest may be waived by the Director for good cause shown.

(Source: P.A. 93-0634, eff. 12-26-03; P.A. 97-791, eff. 1-1-13)

Sec. 1402. Penalties.

A. If any employer fails, within the time prescribed in this Act as amended and in effect on October 5, 1980, and the regulations of the Director, to file a report of wages paid to each of his workers, or to file a sufficient report of such wages after having been notified by the Director to do so, for any period which begins prior to January 1, 1982, he shall pay to the Department as a penalty a sum determined in accordance with the provisions of this Act as amended and in effect on October 5, 1980.

B. Except as otherwise provided in this Section, any employer who fails to file a report of wages paid to each of his workers for any period which begins on or after January 1, 1982, within the time prescribed by the provisions of this Act and the regulations of the Director, or, if the Director pursuant to such regulations extends the time for filing the report, fails to file it within the extended time, shall, in addition to any sum otherwise payable by him under the provisions of this Act, pay to the Department as a penalty a sum equal to the lesser of (1) $5 for each $10,000 or fraction thereof of the total wages for insured work paid by him during the period or (2) $2,500, for each month or part thereof of such failure to file the report. With respect to an employer who has elected to file reports of wages on an annual basis pursuant to Section 1400.2, in assessing penalties for the failure to submit all reports by the due date established pursuant to that Section, the 30-day period immediately following the due date shall be considered as one month.

If the Director deems an employer's report of wages paid to each of his workers for any period which begins on or after January 1, 1982, insufficient, he shall notify the employer to file a sufficient report. If the employer fails to file such sufficient report within 30 days after the mailing of the notice to him, he shall, in addition to any sum otherwise payable by him under the provisions of this Act, pay to the Department as a penalty a sum determined in accordance with the provisions of the first paragraph of this subsection, for each month or part thereof of such failure to file such sufficient report after the date of the notice.

For wages paid in calendar years prior to 1988, the penalty or penalties which accrue under the two foregoing paragraphs with respect to a report for any period shall not be less than $100, and shall not exceed the lesser of (1) $10 for each $10,000 or fraction thereof of the total wages for insured work paid during the period or (2) $5,000. For wages paid in calendar years after 1987, the penalty or penalties which accrue under the 2 foregoing paragraphs with respect to a report for any period shall not be less than $50, and shall not exceed the lesser of (1) $10 for each $10,000 or fraction of the total wages for insured work paid during the period or (2) $5,000. With respect to an employer who has elected to file reports of wages on an annual basis pursuant to Section 1400.2, for purposes of calculating the minimum penalty prescribed by this Section for failure to file the reports on a timely basis, a calendar year shall constitute a single period. For reports of wages paid after 1986, the Director shall not, however, impose a penalty pursuant to either of the two foregoing paragraphs on any employer who can prove within 30 working days after the mailing of a notice of his failure to file such a report, that (1) the failure to file the report is his first such failure during the previous 20 consecutive calendar quarters, and (2) the amount of the total contributions due for the calendar quarter of such report (or, in the case of an employer who is required to file the reports on a monthly basis, the amount of the total contributions due for the calendar quarter that includes the month of such report) is less than $500.

For any month which begins on or after January 1, 2013, a report of the wages paid to each of an employer's workers shall be due on or before the last day of the month next following the calendar month in which the wages were paid if the employer is required to report such wages electronically pursuant to the regulations of the Director; otherwise a report of the wages paid to each of the employer's workers shall be due on or before the last day of the month next following the calendar quarter in which the wages were paid.

Any employer who wilfully fails to pay any contribution or part thereof, based upon wages paid prior to 1987, when required by the provisions of this Act and the regulations of the Director, with intent to defraud the Director, shall in addition to such contribution or part thereof pay to the Department a penalty equal to 50 percent of the amount of such contribution or part thereof, as the case may be, provided that the penalty shall not be less than $200.

Any employer who willfully fails to pay any contribution or part thereof, based upon wages paid in 1987 and in each calendar year thereafter, when required by the provisions of this Act and the regulations of the Director, with intent to defraud the Director, shall in addition to such contribution or part thereof pay to the Department a penalty equal to 60% of the amount of such contribution or part thereof, as the case may be, provided that the penalty shall not be less than $400.

However, all or part of any penalty may be waived by the Director for good cause shown.

(Source: P.A. 97-689, eff. 6-14-12; 97-791, eff. 1-1-13; 98-463, eff. 8-16-13.)

Sec. 1403. Financing benefits paid to state employees

Benefits paid to individuals with respect to whom this State or any of its wholly owned instrumentalities is the last employer as provided in Section 1502.1 shall be financed by appropriations to the Department of Employment Security.

The State Treasurer shall be liable on his general official bond for the faithful performance of his duties with regard to such moneys as may come into his hands by virtue of this Section. Such liability on his official bond shall exist in addition to the liability upon any separate bond given by him. All sums recovered for losses sustained by the clearing account herein described shall be deposited therein.

In lieu of contributions required of other employers under this Act, the State Treasurer shall transfer to and deposit in the clearing account an amount equal to 100% of regular benefits, including dependents' allowances, and 100% of extended benefits, including dependents' allowances paid to an individual, but only if the State: (a) is the last employer as provided in Section 1502.1 and (b) paid, to the individual receiving benefits, wages for insured work during his base period. If the State meets the requirements of (a) but not (b), it shall be required to make payments in an amount equal to 50% of regular benefits, including dependents' allowances, and 50% of extended benefits, including dependents' allowances, paid to an individual.

On and after July 1, 2005, transfers to the clearing account pursuant to this Section shall be made directly from such funds and accounts as the appropriations to the Department authorize, as designated by the Director. On July 1, 2005, or as soon thereafter as may be reasonably practicable, all remaining funds in the State Employees' Unemployment Benefit Fund shall be transferred to the clearing account, and, upon the transfer of those funds, the State Employees' Unemployment Benefit Fund is abolished.

The Director shall ascertain the amount to be so transferred and deposited by the State Treasurer as soon as practicable after the end of each calendar quarter. The provisions of paragraphs 4 and 5 of Section 1404B shall be applicable to a determination of the amount to be so transferred and deposited. Such deposit shall be made by the State Treasurer at such times and in such manner as the Director may determine and direct.

Every department, institution, agency and instrumentality of the State of Illinois shall make available to the Director such information with respect to any individual who has performed insured work for it as the Director may find practicable and necessary for the determination of such individual's rights under this Act. Each such department, institution, agency and instrumentality shall file such reports with the Director as he may by regulation prescribe.

(Source: P.A. 094-0233, eff. 07-14-05.)

Sec. 1404. Payments in lieu of contributions by nonprofit organizations

A. For the year 1972 and for each calendar year thereafter, contributions shall accrue and become payable, pursuant to Section 1400, by each nonprofit organization (defined in Section 211.2) upon the wages paid by it with respect to employment after 1971, unless the nonprofit organization elects, in accordance with the provisions of this Section, to pay, in lieu of contributions, an amount equal to the amount of regular benefits and one-half the amount of extended benefits (defined in Section 409) paid to individuals, for any weeks which begin on or after the effective date of the election, on the basis of wages for insured work paid to them by such nonprofit organization during the effective period of such election. Notwithstanding the preceding provisions of this subsection and the provisions of subsection D, with respect to benefit years beginning prior to July 1, 1989, any adjustment after September 30, 1989 to the base period wages paid to the individual by any employer shall not affect the ratio for determining the payments in lieu of contributions of a nonprofit organization which has elected to make payments in lieu of contributions. Provided, however, that with respect to benefit years beginning on or after July 1, 1989, the nonprofit organization shall be required to make payments equal to 100% of regular benefits, including dependents' allowances, and 50% of extended benefits, including dependents' allowances, paid to an individual with respect to benefit years beginning during the effective period of the election, but only if the nonprofit organization: (a) is the last employer as provided in Section 1502.1 and (b) paid to the individual receiving benefits, wages for insured work during his base period. If the nonprofit organization described in this paragraph meets the requirements of (a) but not (b), with respect to benefit years beginning on or after July 1, 1989, it shall be required to make payments in an amount equal to 50% of regular benefits, including dependents' allowances, and 25% of extended benefits, including dependents' allowances, paid to an individual with respect to benefit years beginning during the effective period of the election.

1. Any employing unit which becomes a nonprofit organization on January 1, 1972, may elect to make payments in lieu of contributions for not less than one calendar year beginning with January 1, 1972, provided that it files its written election with the Director not later than January 31, 1972.
2. Any employing unit which becomes a nonprofit organization after January 1, 1972, may elect to make payments in lieu of contributions for a period of not less than one calendar year beginning as of the first day with respect to which it would, in the absence of its election, incur liability for the payment of contributions, provided that it files its written election with the Director not later than 30 days immediately following the end of the calendar quarter in which it becomes a nonprofit organization.
3. A nonprofit organization which has incurred liability for the payment of contributions for at least 2 calendar years and is not delinquent in such payment and in the payment of any interest or penalties which may have accrued, may elect to make payments in lieu of contributions beginning January 1 of any calendar year, provided that it files its written election with the Director prior to such January 1, and provided, further, that such election shall be for a period of not less than 2 calendar years.
4. An election to make payments in lieu of contributions shall not terminate any liability incurred by an employer for the payment of contributions, interest or penalties with respect to any calendar quarter (or month, as the case may be) which ends prior to the effective period of the election.

5. A nonprofit organization which has elected, pursuant to paragraph 1, 2, or 3, to make payments in lieu of contributions may terminate the effective period of the election as of January 1 of any calendar year subsequent to the required minimum period of the election only if, prior to such January 1, it files with the Director a written notice to that effect. Upon such termination, the organization shall become liable for the payment of contributions upon wages for insured work paid by it on and after such January 1 and, notwithstanding such termination, it shall continue to be liable for payments in lieu of contributions with respect to benefits paid to individuals on and after such January 1, with respect to benefit years beginning prior to July 1, 1989, on the basis of wages for insured work paid to them by the nonprofit organization prior to such January 1, and, with respect to benefit years beginning after June 30, 1989, if such employer was the last employer as provided in Section 1502.1 during a benefit year beginning prior to such January 1.

6. Written elections to make payments in lieu of contributions and written notices of termination of election shall be filed in such form and shall contain such information as the Director may prescribe. Upon the filing of such election or notice, the Director shall either order it approved, or, if it appears to the Director that the nonprofit organization has not filed such election or notice within the time prescribed, he shall order it disapproved. The Director shall serve notice of his order upon the nonprofit organization. The Director's order shall be final and conclusive upon the nonprofit organization unless, within 15 days after the date of mailing of notice thereof, the nonprofit organization files with the Director an application for its review, setting forth its reasons in support thereof. Upon receipt of an application for review within the time prescribed, the Director shall order it allowed, or shall order that it be denied, and shall serve notice upon the nonprofit organization of his order. All of the provisions of Section 1509, applicable to orders denying applications for review of determinations of employers' rates of contribution and not inconsistent with the provisions of this subsection, shall be applicable to an order denying an application for review filed pursuant to this subsection.

B. As soon as practicable following the close of each calendar quarter, the Director shall mail to each nonprofit organization which has elected to make payments in lieu of contributions a Statement of the amount due from it for the regular and one-half the extended benefits paid (or the amounts otherwise provided for in subsection A) during the calendar quarter, together with the names of its workers or former workers and the amounts of benefits paid to each of them during the calendar quarter, with respect to benefit years beginning prior to July 1, 1989, on the basis of wages for insured work paid to them by the nonprofit organization; or, with respect to benefit years beginning after June 30, 1989, if such nonprofit organization was the last employer as provided in Section 1502.1 with respect to a benefit year beginning during the effective period of the election. The amount due shall be payable, and the nonprofit organization shall make payment of such amount not later than 30 days after the date of mailing of the Statement. The Statement shall be final and conclusive upon the nonprofit organization unless, within 20 days after the date of mailing of the Statement, the nonprofit organization files with the Director an application for revision thereof. Such application shall specify wherein the nonprofit organization believes the Statement to be incorrect, and shall set forth its reasons for such belief. All of the provisions of Section 1508, applicable to applications for revision of Statements of Benefit Wages and Statements of Benefit Charges and not inconsistent with the provisions of this subsection, shall be applicable to an application for revision of a Statement filed pursuant to this subsection.

1. Payments in lieu of contributions made by any nonprofit organization shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of the organization, nor shall any nonprofit organization require or accept any waiver of any right under this Act by an individual in its employ. The making of any such deduction or the requirement or acceptance of any such waiver is a Class A misdemeanor. Any agreement by an individual in the employ of any person or concern to pay all or any portion of a payment in lieu of contributions, required under this Act from a nonprofit organization, is void.

2. A nonprofit organization which fails to make any payment in lieu of contributions when due under the provisions of this subsection shall pay interest thereon at the rates specified in Section 1401. A nonprofit organization which has elected to make payments in lieu of contributions shall be subject to the penalty provisions of Section 1402. In the making of any payment in lieu of contributions or in the payment of any interest or penalties, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

3. All of the remedies available to the Director under the provisions of this Act or of any other law to enforce the payment of contributions, interest, or penalties under this Act, including the making of determinations and assessments pursuant to Section 2200, are applicable to the enforcement of payments in lieu of contributions and of interest and penalties, due under the provisions of this Section. For the purposes of this paragraph, the term “contribution” or “contributions” which appears in any such provision means “payment in lieu of contributions” or “payments in lieu of contributions.” The term “contribution” which appears in Section 2800 also means “payment in lieu of contributions.”
4. All of the provisions of Sections 2201 and 2201.1, applicable to adjustment or refund of contributions, interest and penalties erroneously paid and not inconsistent with the provisions of this Section, shall be applicable to payments in lieu of contributions erroneously made or interest or penalties erroneously paid by a nonprofit organization.
5. Payment in lieu of contributions shall be due with respect to any sum erroneously paid as benefits to an individual unless such sum has been recouped pursuant to Section 900 or has otherwise been recovered. If such payment in lieu of contributions has been made, the amount thereof shall be adjusted or refunded in accordance with the provisions of paragraph 4 and Section 2201 if recoupment or other recovery has been made.
6. A nonprofit organization which has elected to make payments in lieu of contributions and thereafter ceases to be an employer shall continue to be liable for payments in lieu of contributions with respect to benefits paid to individuals on and after the date it has ceased to be an employer, with respect to benefit years beginning prior to July 1, 1989, on the basis of wages for insured work paid to them by it prior to the date it ceased to be an employer, and, with respect to benefit years beginning after June 30, 1989, if such employer was the last employer as provided in Section 1502.1 prior to the date that it ceased to be an employer.
7. With respect to benefit years beginning prior to July 1, 1989, wages paid to an individual during his base period, by a nonprofit organization which elects to make payments in lieu of contributions, for less than full time work, performed during the same weeks in the base period during which the individual had other insured work, shall not be subject to payments in lieu of contributions (upon such employer's request pursuant to the regulation of the Director) so long as the employer continued after the end of the base period, and continues during the applicable benefit year, to furnish such less than full time work to the individual on the same basis and in substantially the same amount as during the base period. If the individual is paid benefits with respect to a week (in the applicable benefit year) after the employer has ceased to furnish the work hereinabove described, the nonprofit organization shall be liable for payments in lieu of contributions with respect to the benefits paid to the individual after the date on which the nonprofit organization ceases to furnish the work.

C. With respect to benefit years beginning prior to July 1, 1989, whenever benefits have been paid to an individual on the basis of wages for insured work paid to him by a nonprofit organization, and the organization incurred liability for the payment of contributions on some of the wages because only a part of the individual's base period was within the effective period of the organization's written election to make payments in lieu of contributions, the organization shall pay an amount in lieu of contributions which bears the same ratio to the total benefits paid to the individual as the total wages for insured work paid to him during the base period by the organization upon which it did not incur liability for the payment of contributions (for the aforesaid reason) bear to the total wages for insured work paid to the individual during the base period by the organization.

D. With respect to benefit years beginning prior to July 1, 1989, whenever benefits have been paid to an individual on the basis of wages for insured work paid to him by a nonprofit organization which has elected to make payments in lieu of contributions, and by one or more other employers, the nonprofit organization shall pay an amount in lieu of contributions which bears the same ratio to the total benefits paid to the individual as the wages for insured work paid to the individual during his base period by the nonprofit organization bear to the total wages for insured work paid to the individual during the base period by all of the employers. If the nonprofit organization incurred liability for the payment of contributions on some of the wages for insured work paid to the individual, it shall be treated, with respect to such wages, as one of the other employers for the purposes of this paragraph.

E. Two or more nonprofit organizations which have elected to make payments in lieu of contributions may file a joint application with the Director for the establishment of a group account, effective January 1 of any calendar year, for the purpose of sharing the cost of benefits paid on the basis of the wages for insured work paid by such nonprofit organizations, provided that such joint application is filed with the Director prior to such January 1. The application shall identify and authorize a group representative to act as the group's agent for the purposes of this paragraph, and shall be filed in such form and shall contain such information as the Director may prescribe. Upon his approval of a joint application, the Director shall, by order, establish a group account for the applicants and shall serve notice upon the group's representative of such order. Such account shall remain in effect for not less than 2 calendar years and thereafter until terminated by the Director for good cause or, as of the close of any calendar quarter, upon application by the group. Upon establishment of the account, the group shall be liable to the Director for payments in lieu of contributions in an amount equal to the total amount for which, in the absence of the group account, liability would have been incurred by all of its members; provided, with respect to benefit years beginning prior to July 1, 1989, that the liability of any member to the Director with respect to any payment in lieu of contributions, interest or penalties not paid by the group when due with respect to any calendar quarter shall be in an amount which bears the same ratio to the total benefits paid during such quarter on the basis of the wages for insured work paid by all members of the group as the total wages for insured work paid by such member during such quarter bear to the total wages for insured work paid during the quarter by all members of the group, and, with respect to benefit years beginning on or after July 1, 1989, that the liability of any member to the Director with respect to any payment in lieu of contributions, interest or penalties not paid by the group when due with respect to any calendar quarter shall be in an amount which bears the same ratio to the total benefits paid during such quarter to individuals with respect to whom any member of the group was the last employer as provided in Section 1502.1 as the total wages for insured work paid by such member during such quarter bear to the total wages for insured work paid during the quarter by all members of the group. With respect to calendar months and quarters beginning on or after January 1, 2013, the liability of any member to the Director with respect to any penalties that are assessed for failure to file a timely and sufficient report of wages and which are not paid by the group when due with respect to the calendar month or quarter, as the case may be, shall be in an amount which bears the same ratio to the total penalties due with respect to such month or quarter as the total wages for insured work paid by such member during such month or quarter bear to the total wages for insured work paid during the month or quarter by all members of the group. All of the provisions of this Section applicable to nonprofit organizations which have elected to make payments in lieu of contributions, and not inconsistent with the provisions of this paragraph, shall apply to a group account and, upon its termination, to each former member thereof. The Director shall by regulation prescribe the conditions for establishment, maintenance and termination of group accounts, and for addition of new members to and withdrawal of active members from such accounts.

F. Whenever service of notice is required by this Section, such notice may be given and be complete by depositing it with the United States Mail, addressed to the nonprofit organization (or, in the case of a group account, to its representative) at its last known address. If such organization is represented by counsel in proceedings before the Director, service of notice may be made upon the nonprofit organization by mailing the notice to such counsel.

(Source: P.A. 86-3; P.A. 97-689, eff. 6-14-12)

Sec. 1405. Financing Benefits for Employees of Local Governments

A. 1. For the year 1978 and for each calendar year thereafter, contributions shall accrue and become payable, pursuant to Section 1400, by each governmental entity (other than the State of Illinois and its wholly owned instrumentalities) referred to in clause (B) of Section 211.1, upon the wages paid by such entity with respect to employment after 1977, unless the entity elects to make payments in lieu of contributions pursuant to the provisions of subsection B. Notwithstanding the provisions of Sections 1500 to 1510, inclusive, a governmental entity which has not made such election shall, for liability for contributions incurred prior to January 1, 1984, pay contributions equal to 1 percent with respect to wages for insured work paid during each such calendar year or portion of such year as may be applicable. As used in this subsection, the word "wages", defined in Section 234, is subject to all of the provisions of Section 235.

2. An Indian tribe for which service is exempted from the federal unemployment tax under Section 3306(c)(7) of the Federal Unemployment Tax Act may elect to make payments in lieu of contributions in the same manner and subject to the same conditions as provided in this Section with regard to governmental entities, except as otherwise provided in paragraphs 7, 8, and 9 of subsection B.

B. Any governmental entity subject to subsection A may elect to make payments in lieu of contributions, in amounts equal to the amounts of regular and extended benefits paid to individuals, for any weeks which begin on or after the effective date of the election, on the basis of wages for insured work paid to them by the entity during the effective period of such election. Notwithstanding the preceding provisions of this subsection and the provisions of subsection D of Section 1404, with respect to benefit years beginning prior to July 1, 1989, any adjustment after September 30, 1989 to the base period wages paid to the individual by any employer shall not affect the ratio for determining payments in lieu of contributions of a governmental entity which has elected to make payments in lieu of contributions. Provided, however, that with respect to benefit years beginning on or after July 1, 1989, the governmental entity shall be required to make payments equal to 100% of regular benefits, including dependents' allowances, and 100% of extended benefits, including dependents' allowances, paid to an individual with respect to benefit years beginning during the effective period of the election, but only if the governmental entity: (a) is the last employer as provided in Section 1502.1 and (b) paid to the individual receiving benefits, wages for insured work during his base period. If the governmental entity described in this paragraph meets the requirements of (a) but not (b), with respect to benefit years beginning on or after July 1, 1989, it shall be required to make payments in an amount equal to 50% of regular benefits, including dependents' allowances, and 50% of extended benefits, including dependents' allowances, paid to an individual with respect to benefit years beginning during the effective period of the election.

1. Any such governmental entity which becomes an employer on January 1, 1978 pursuant to Section 205 may elect to make payments in lieu of contributions for not less than one calendar year beginning with January 1, 1978, provided that it files its written election with the Director not later than January 31, 1978.
2. A governmental entity newly created after January 1, 1978, may elect to make payments in lieu of contributions for a period of not less than one calendar year beginning as of the first day with respect to which it would, in the absence of its election, incur liability for the payment of contributions, provided that it files its written election with the Director not later than 30 days immediately following the end of the calendar quarter in which it has been created.
3. A governmental entity which has incurred liability for the payment of contributions for at least 2 calendar years, and is not delinquent in such payment and in the payment of any interest or penalties which may have accrued, may elect to make payments in lieu of contributions beginning January 1 of any calendar year, provided that it files its written election with the Director prior to such January 1, and provided, further, that such election shall be for a period of not less than 2 calendar years.
4. An election to make payments in lieu of contributions shall not terminate any liability incurred by a governmental entity for the payment of contributions, interest or penalties with respect to any calendar quarter (or month, as the case may be) which ends prior to the effective period of the election.
5. The termination by a governmental entity of the effective period of its election to make payments in lieu of contributions, and the filing of and subsequent action upon written notices of termination of election, shall be governed by the provisions of paragraphs 5 and 6 of Section 1404A, pertaining to nonprofit organizations.
6. With respect to benefit years beginning prior to July 1, 1989, wages paid to an individual during his base period by a governmental entity which elects to make payments in lieu of contributions for less than full time work, performed during the same weeks in the base period during which the individual had other insured work, shall not be subject to payments in lieu of contribution (upon such employer's request pursuant to the regulation of the Director) so long as the employer continued after the end of the base period, and continues during the applicable benefit year, to furnish such less than full time work to the individual on the same basis and in substantially the same amount as during the base period. If the individual is paid benefits with respect to a week (in the applicable benefit year) after the employer has ceased to furnish the work hereinabove described, the governmental entity shall be liable for payments in lieu of contributions with respect to the benefits paid to the individual after the date on which the governmental entity ceases to furnish the work.
7. An Indian tribe may elect to make payments in lieu of contributions for calendar year 2003, provided that it files its written election with the Director not later than January 31, 2003, and provided further that it is not delinquent in the payment of any contributions, interest, or penalties.

8. Failure of an Indian tribe to make a payment in lieu of contributions, or a payment of interest or penalties due under this Act, within 90 days after the Department serves notice of the finality of a determination and assessment shall cause the Indian tribe to lose the option of making payments in lieu of contributions, effective as of the calendar year immediately following the date on which the Department serves the notice. Notice of the loss of the option to make payments in lieu of contributions may be protested in the same manner as a determination and assessment under Section 2200 of this Act.

9. An Indian tribe that, pursuant to paragraph 8, loses the option of making payments in lieu of contributions may again elect to make payments in lieu of contributions for a calendar year if: (a) the Indian tribe has incurred liability for the payment of contributions for at least one calendar year since losing the option pursuant to paragraph 8, (b) the Indian tribe is not delinquent in the payment of any liabilities under the Act, including interest or penalties, and (c) the Indian tribe files its written election with the Director not later than January 31 of the year with respect to which it is making the election.

C. As soon as practicable following the close of each calendar quarter, the Director shall mail to each governmental entity which has elected to make payments in lieu of contributions a Statement of the amount due from it for all the regular and extended benefits paid during the calendar quarter, together with the names of its workers or former workers and the amounts of benefits paid to each of them during the calendar quarter with respect to benefit years beginning prior to July 1, 1989, on the basis of wages for insured work paid to them by the governmental entity; or, with respect to benefit years beginning after June 30, 1989, if such governmental entity was the last employer as provided in Section 1502.1 with respect to a benefit year beginning during the effective period of the election. All of the provisions of subsection B of Section 1404 pertaining to nonprofit organizations, not inconsistent with the preceding sentence, shall be applicable to payments in lieu of contributions by a governmental entity.

D. The provisions of subsections C through F, inclusive, of Section 1404, pertaining to nonprofit organizations, shall be applicable to each governmental entity which has elected to make payments in lieu of contributions.

E. 1. If an Indian tribe fails to pay any liability under this Act (including assessments of interest or penalty) within 90 days after the Department issues a notice of the finality of a determination and assessment, the Director shall immediately notify the United States Internal Revenue Service and the United States Department of Labor.

2. Notices of payment and reporting delinquencies to Indian tribes shall include information that failure to make full payment within the prescribed time frame:

a. will cause the Indian tribe to lose the exemption provided by Section 3306(c)(7) of the Federal Unemployment Tax Act with respect to the federal unemployment tax;

b. will cause the Indian tribe to lose the option to make payments in lieu of contributions.

(Source: P.A. 92-555, eff. 6-24-02; P.A. 97-689, eff. 6-14-12)

Sec. 1405.1. Educational service centers; entities under joint agreements

A. If a school district, together with either (i) an educational service center that serves that school district and is established under Section 2-3.62 of the School Code or (ii) another governmental entity that exists under a cooperative or joint agreement to which that school district and one or more other school districts are parties, concurrently employ the same individual and compensate the individual through a common paymaster that is either the governmental entity or school district, the common paymaster is considered to be the employer of the individual.

B. Notwithstanding Section 1405, for the one-year period following the effective date of this amendatory Act of 1994, an educational service center described in subsection A or another governmental entity that exists under a cooperative or joint agreement to which 2 or more school districts are parties may elect to make payments in lieu of contributions, effective with the date that the entity became liable under this Act. The right to elect under this subsection is conditioned upon the payment, within 60 days of the election, of any payments in lieu of contributions that are based on the payment of benefits within any calendar quarters completed no more than 4 years before the date of the election.

(Source: P.A. 88-655, eff. 9-16-94.)

Sec. 1500. Rate of contribution

A. For the six months' period beginning July 1, 1937, and for each of the calendar years 1938 to 1959, inclusive, each employer shall pay contributions on wages at the percentages specified in or determined in accordance with the provisions of this Act as amended and in effect on July 11, 1957.

B. For the calendar years 1960 through 1983, each employer shall pay contributions equal to 2.7 percent with respect to wages for insured work paid during each such calendar year, except that the contribution rate of each employer who has incurred liability for the payment of contributions within each of the three calendar years immediately preceding the calendar year for which a rate is being determined, shall be determined as provided in Sections 1501 to 1507, inclusive.

For the calendar year 1984 and each calendar year thereafter, each employer shall pay contributions at a percentage rate equal to the greatest of 2.7%, or 2.7% multiplied by the current adjusted State experience factor, as determined for each calendar year by the Director in accordance with the provisions of Sections 1504 and 1505, or the average contribution rate for his major classification in the Standard Industrial Code, or another classification sanctioned by the United States Department of Labor and prescribed by the Director by rule, with respect to wages for insured work paid during such year. The Director of Employment Security shall determine for calendar year 1984 and each calendar year thereafter by a method pursuant to adopted rules each individual employer's industrial code and the average contribution rate for each major classification in the Standard Industrial Code, or each other classification sanctioned by the United States Department of Labor and prescribed by the Director by rule. Notwithstanding the preceding provisions of this paragraph, the contribution rate for calendar years 1984, 1985 and 1986 of each employer who has incurred liability for the payment of contributions within each of the two calendar years immediately preceding the calendar year for which a rate is being determined, and the contribution rate for calendar year 1987 and each calendar year thereafter of each employer who has incurred liability for the payment of contributions within each of the three calendar years immediately preceding the calendar year for which a rate is being determined shall be determined as provided in Sections 1501 to 1507.1, inclusive. Provided, however, that the contribution rate for calendar years 1989 and 1990 of each employer who has had experience with the risk of unemployment for at least 13 consecutive months ending June 30 of the preceding calendar year shall be a rate determined in accordance with this Section or a rate determined as if it had been calculated in accordance with Sections 1501 through 1507, inclusive, whichever is greater, except that for purposes of calculating the benefit wage ratio as provided in Section 1503, such benefit wage ratio shall be a percentage equal to the total of benefit wages for the 12 consecutive calendar month period ending on the above preceding June 30, divided by the total wages for insured work subject to the payment of contributions under Sections 234, 235 and 245 for the same period and provided, further, however, that the contribution rate for calendar year 1991 and for each calendar year thereafter of each employer who has had experience with the risk of unemployment for at least 13 consecutive months ending June 30 of the preceding calendar year shall be a rate determined in accordance with this Section or a rate determined as if it had been calculated in accordance with Sections 1501 through 1507.1, inclusive, whichever is greater, except that for purposes of calculating the benefit ratio as provided in Section 1503.1, such benefit ratio shall be a percentage equal to the total of benefit charges for the 12 consecutive calendar month period ending on the above preceding June 30, multiplied by the benefit conversion factor applicable to such year, divided by the total wages for insured work subject to the payment of contributions under Sections 234, 235 and 245 for the same period.

C. Except as expressly provided in this Act, the provisions of Sections 1500 to 1510, inclusive, do not apply to any nonprofit organization for any period with respect to which it does not incur liability for the payment of contributions by reason of having elected to make payments in lieu of contributions, or to any political subdivision or municipal corporation for any period with respect to which it is not subject to payments in lieu of contributions under the provisions of paragraph 1 of Section 302C by reason of having elected to make payments in lieu of contributions under paragraph 2 of that Section or to any governmental entity referred to in clause (B) of Section 211.1. Wages paid to an individual which are subject to contributions under Section 1405 A, or on the basis of which benefits are paid to him which are subject to payment in lieu of contributions under Sections 1403, 1404, or 1405 B, or under paragraph 2 of Section 302C, shall not become benefit wages or benefit charges under the provisions of Sections 1501 or 1501.1, respectively, except for purposes of determining a rate of contribution for 1984 and each calendar year thereafter for any governmental entity referred to in clause (B) of Section 211.1 which does not elect to make payments in lieu of contributions.

D. If an employer's business is closed solely because of the entrance of one or more of the owners, partners, officers, or the majority stockholder into the armed forces of the United States, or of any of its allies, or of the United Nations, and, if the business is resumed within two years after the discharge or release of such person or persons from active duty in the armed forces, the employer will be deemed to have incurred liability for the payment of contributions continuously throughout such period. Such an employer, for the purposes of Section 1506.1, will be deemed to have paid contributions upon wages for insured work during the applicable period specified in Section 1503 on or before the date designated therein, provided that no wages became benefit wages during the applicable period specified in Section 1503.

(Source: P.A. 94-301, eff. 01-01-06.)

Sec. 1501. Benefit wages

A. When an individual is paid regular benefits (defined in Section 409) under this Act, with respect to any benefit year which begins prior to November 4, 1979, which, when added to such regular benefits previously paid him for the same benefit year, equal or exceed three times his weekly benefit amount for the benefit year, his wages during his base period shall immediately become benefit wages.

B. When an individual is paid regular benefits with respect to a week in any benefit year which begins on or after November 4, 1979, an amount equal to 1/26 of the wages for insured work, but not in excess of 1/26 of $6,000, paid to him by each employer during his base period shall immediately become benefit wages provided, however, that no payment of regular benefits made on or after July 1, 1989, shall become benefit wages. Such amount, if not a multiple of $1, shall be rounded to the next higher dollar.

C. When an individual is first paid extended benefits with respect to his eligibility period (defined in Section 409), one-half of the wages for insured work paid to him by each employer during his base period applicable to the benefit year in which his eligibility period began shall immediately become benefit wages, whether or not they had previously become benefit wages. This subsection shall apply only to eligibility periods beginning in benefit years which commence prior to November 4, 1979.

D. When an individual is paid extended benefits with respect to any week in an eligibility period beginning in a benefit year commencing on or after November 4, 1979, an amount equal to 1/13 of one-half of the wages for insured work, but not in excess of 1/13 of $3,000, paid to him by each employer during his base period applicable to the benefit year in which the eligibility period began, shall immediately become benefit wages, whether or not any part of such wages had previously become benefit wages provided, however, that no payment of extended benefits made on or after July 1, 1989, shall become benefit wages. Such amount, if not a multiple of $1, shall be rounded to the next higher dollar.

E. Notwithstanding the foregoing subsections, an individual's wages shall not become benefit wages if he cannot, on the basis of such wages, meet the qualifying requirements of Section 500E, or if, by reason of the application of Section 602B, no benefit rights can accrue to him on the basis of such wages, but he is paid benefits because the wages have been combined in accordance with the provisions of Section 2700 and provided further that an individual's wages shall not become benefit wages if, by reason of the application of the third paragraph of Section 237, he is paid benefits based upon wages other than those paid in a base period as defined in the second paragraph of Section 237.

F. Notwithstanding the foregoing subsection, wages paid by a base period employer, subject to payment of contributions, to an individual who voluntarily leaves that employer shall not become benefit wages with respect to that employer but shall instead become the benefit wages of the individual's next subsequent employer if:

1. The individual had subsequent employment and earned 6 times his weekly benefit amount or more, prior to the beginning of his benefit year; or

2. For a benefit year beginning after December 31, 1986, the individual was determined to be ineligible for benefits pursuant to Section 601 from the last employing unit which was also a base period employer but thereafter earned 6 times his weekly benefit amount or more from his next subsequent employer during his benefit year, provided that the disqualifying separation occurred prior to the first payment of benefits in the individual's benefit year.

Wages paid to an individual during his base period by an employer for less than full time work, performed during the same weeks in the base period during which the individual had other insured work, shall not become benefit wages (upon such employer's request pursuant to the regulation of the Director) so long as the employer continued after the end of the base period, and continues during the applicable benefit year, to furnish such less than full time work to the individual on the same basis and in substantially the same amount during the base period. If the individual is paid benefits with respect to a week (in the applicable benefit year) after the employer has ceased to furnish the work hereinabove described, the wages paid by the employer to the individual during his base period shall become benefit wages as provided in this Section.

G. For the purposes of this Section and of Section 1504, benefits shall be deemed to have been paid on the date such payment has been mailed to the individual by the Director.

H. If any benefit wages are increased by reason of the reconsideration by a claims adjudicator of his finding, the amount of such increase shall be treated as if it became benefit wages on the day on which the claims adjudicator made the reconsidered finding.

I. Notwithstanding any other provisions of this Section, no wages paid by a base period employer shall become benefit wages after September 30, 1989, and no wages paid by a base period employer, subject to the payment of contributions, shall become the benefit wages of the individual's next subsequent employer under the provisions of subsection F above after September 30, 1989.

(Source: P.A. 85-956.)

Sec. 1501.1. Benefit charges

A. When an individual is paid regular benefits with respect to a week, an amount equal to such regular benefits, including dependents' allowances, shall immediately become benefit charges.

B. (Blank).

C. When an individual is paid extended benefits with respect to any week in his eligibility period, an amount equal to one-half of such extended benefits including dependents' allowances, shall immediately become benefit charges.

D. (Blank).

E. Notwithstanding the foregoing subsections, the payment of benefits shall not become benefit charges if, by reason of the application of subsection B of Section 237, he is paid benefits based upon wages other than those paid in a base period as defined in subsections A and C of Section 237.

F. (Blank).

G. (Blank).

H. For the purposes of this Section and of Section 1504, benefits shall be deemed to have been paid on the date such payment has been mailed to the individual by the Director or the date on which the Director initiates an electronic transfer of the benefits to the individual's debit card or financial institution account.

(Source: P.A. 85-956; P.A. 97-791, eff. 1-1-13.)

Sec. 1502. Employer's benefit wages

An employer's benefit wages shall be the wages paid by him which became benefit wages. With respect to any base period applicable to a benefit year commencing prior to November 4, 1979, an employer's benefit wages with respect to any one individual shall include only the amount specified in Section 1502 of this Act as amended and in effect on November 9, 1977. With respect to each base period applicable to benefit years commencing on and after November 4, 1979 an employer's benefit wages with respect to any one individual shall not exceed the total amount of wages paid to the individual by that employer during the base period, or $6,000, whichever amount is smaller, except that an employer's benefit wages resulting from the payment of extended benefits to an individual shall not exceed 1/2 such total amount of wages, or $3,000, whichever is smaller. The sum of an employer's benefit wages resulting from the payment to the same individual of both regular benefits with respect to his benefit year and extended benefits with respect to his eligibility period which began in that benefit year shall not exceed 1 1/2 times the individual's base period wages, or $9,000, whichever is less.

(Source: P.A. 81-962.)

Sec. 1502.1. Employer's benefit charges

A. Benefit charges which result from payments to any claimant made on or after July 1, 1989 shall be charged:

1. For benefit years beginning prior to July 1, 1989, to each employer who paid wages to the claimant during his base period;

2. For benefit years beginning on or after July 1, 1989 but before January 1, 1993, to the later of:

a. the last employer prior to the beginning of the claimant's benefit year:

i. from whom the claimant was separated or who, by reduction of work offered, caused the claimant to become unemployed as defined in Section 239, and,

ii. for whom the claimant performed services in employment, on each of 30 days whether or not such days are consecutive, provided that the wages for such services were earned during the period from the beginning of the claimant's base period to the beginning of the claimant's benefit year; but that employer shall not be charged if:

(1) the claimant's last separation from that employer was a voluntary leaving without good cause, as the term is used in Section 601A or under the circumstances described in paragraphs 1 and 2 of Section 601B; or

(2) the claimant's last separation from that employer was a discharge for misconduct or a felony or theft connected with his work from that employer, as these terms are used in Section 602; or

(3) after his last separation from that employer, prior to the beginning of his benefit year, the claimant refused to accept an offer of or to apply for suitable work from that employer without good cause, as these terms are used in Section 603; or

(4) the claimant, following his last separation from that employer, prior to the beginning of his benefit year, is ineligible or would have been ineligible under Section 612 if he has or had had base period wages from the employers to which that Section applies; or the claimant subsequently performed services for at least 30 days for an individual or organization which is not an employer subject to this Act; or

b. the single employer who pays wages to the claimant that allow him to requalify for benefits after disqualification under Section 601, 602 or 603, if:

i. the disqualifying event occurred prior to the beginning of the claimant's benefit year, and

ii. the requalification occurred after the beginning of the claimant's benefit year, and

iii. even if the 30 day requirement given in this paragraph is not satisfied; but

iv. the requalifying employer shall not be charged if the claimant is held ineligible with respect to that requalifying employer under Section 601, 602 or 603.

3. For benefit years beginning on or after January 1, 1993, with respect to each week for which benefits are paid, to the later of:

a. the last employer:

i. from whom the claimant was separated or who, by reduction of work offered, caused the claimant to become unemployed as defined in Section 239, and

ii. for whom the claimant performed services in employment, on each of 30 days whether or not such days are consecutive, provided that the wages for such services were earned since the beginning of the claimant's base period; but that employer shall not be charged if:

(1) the claimant's separation from that employer was a voluntary leaving without good cause, as the term is used in Section 601A or under the circumstances described in paragraphs 1, 2, and 6 of Section 601B; or

(2) the claimant's separation from that employer was a discharge for misconduct or a felony or theft connected with his work from that employer, as these terms are used in Section 602; or

(3) the claimant refused to accept an offer of or to apply for suitable work from that employer without good cause, as these terms are used in Section 603 (but only for weeks following the refusal of work); or

(4) the claimant subsequently performed services for at least 30 days for an individual or organization which is not an employer subject to this Act; or

(5) the claimant, following his separation from that employer, is ineligible or would have been ineligible under Section 612 if he has or had had base period wages from the employers to which that Section applies (but only for the period of ineligibility or potential ineligibility); or

b. the single employer who pays wages to the claimant that allow him to requalify for benefits after disqualification under Section 601, 602, or 603, even if the 30 day requirement given in this paragraph is not satisfied; but the requalifying employer shall not be charged if the claimant is held ineligible with respect to that requalifying employer under Section 601, 602, or 603.

B. Whenever a claimant is ineligible pursuant to Section 614 on the basis of wages paid during his base period, any days on which such wages were earned shall not be counted in determining whether that claimant performed services during at least 30 days for the employer that paid such wages as required by paragraphs 2 and 3 of subsection A.

C. If no employer meets the requirements of paragraph 2 or 3 of subsection A, then no employer will be chargeable for any benefit charges which result from the payment of benefits to the claimant for that benefit year.

D. Notwithstanding the preceding provisions of this Section, no employer shall be chargeable for any benefit charges which result from the payment of benefits to any claimant after the effective date of this amendatory Act of 1992 where the claimant's separation from that employer occurred as a result of his detention, incarceration, or imprisonment under State, local, or federal law.

D-1. Notwithstanding any other provision of this Section, an employer shall not be chargeable for any benefit charges which result from the payment of benefits to an individual for any week of unemployment during the period that the employer's business is closed solely because of the entrance of the employer, one or more of the partners or officers of the employer, or the majority stockholder of the employer into active duty in the Illinois National Guard or the Armed Forces of the United States.

E. For the purposes of Sections 302, 409, 701, 1403, 1404, 1405 and 1508.1, last employer means the employer that: 1. is charged for benefit payments which become benefit charges under this Section, or 2. would have been liable for such benefit charges if it had not elected to make payments in lieu of contributions.

(Source: P.A. 93-1012, eff. 08-24-04.)

Sec. 1502.2. Benefit conversion factor

A. For calendar year 1991, the benefit conversion factor shall be the total benefit wages based on the total benefits paid under this Act which would have become benefit wages pursuant to Sections 1501 and 1502 for the 12 consecutive calendar month period ending June 30, 1990, if Sections 1501 and 1502 were applicable during such period, divided by the total benefits paid under this Act for the same 12 month period.

B. For calendar year 1992, the benefit conversion factor shall be the total benefit wages based on the total benefits paid under this Act which would have become benefit wages pursuant to Sections 1501 and 1502 for the 24 consecutive calendar month period ending June 30, 1991, if Sections 1501 and 1502 were applicable during such period, divided by the total benefits paid under this Act for the same 24 month period.

C. For calendar year 1993 and each calendar year thereafter, the benefit conversion factor shall be the total benefit wages based on the total benefits paid under this Act which would have become benefit wages pursuant to Sections 1501 and 1502 for the 36 consecutive calendar month period ending June 30, 1992, if Sections 1501 and 1502 were applicable during such period, divided by the total benefits paid under this Act for the same 36 month period.

D. If the number obtained in the preceding subsections is not an exact multiple of one-tenth of one percent, it shall be increased or reduced, as the case may be, to the nearer multiple of one-tenth of one percent. If such number is equally near to 2 multiples of one-tenth of one percent, it shall be increased to the higher multiple of one-tenth of one percent.

E. Notwithstanding the above provisions of this Section, the benefit conversion factor shall not exceed 167 percent.

(Source: P.A. 85-1009.)

Sec. 1502.3. Benefit charges; federal disasters

Notwithstanding the provisions of Section 1502.1, no employer located in an Illinois county that has, during 1993, been declared a federal disaster area due to flooding shall be chargeable for any benefit charges which result from the payment of benefits to any individual for any weeks of unemployment during the period of the federal disaster, but only to the extent that the employer can show that the individual's unemployment was a direct result of the flooding.

(Source: P.A. 88-518.)

Sec. 1503. Benefit wage ratio

(Before 2013)

A. The benefit wage ratio for calendar years 1984, 1985 and 1986 for each employer who has incurred liability for the payment of contributions within each of the 2 calendar years immediately preceding the calendar year for which a rate is being determined shall be a percentage equal to the total of his benefit wages for the 12 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, divided by his total wages for insured work for the same period on which contributions were paid to the Director on or before July 31 immediately following such June 30.

The benefit wage ratio for calendar years prior to 1987 of each employer who has incurred liability for the payment of contributions within each of the 3 calendar years immediately preceding the calendar year for which a rate is being determined shall be a percentage equal to the total of his benefit wages for the 12 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, divided by his total wages for insured work for the same period on which contributions were paid to the Director on or before July 31 immediately following such June 30.

The benefit wage ratio for calendar years prior to 1987 of each employer who has incurred liability for the payment of contributions within each of the 4 calendar years immediately preceding the calendar year for which a rate is being determined shall be a percentage equal to the total of his benefit wages for the 24 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, divided by his total wages for insured work for the same period on which contributions were paid to the Director on or before July 31 immediately following such June 30.

The benefit wage ratio for calendar years prior to 1987 of each employer who has incurred liability for the payment of contributions within each of the 5 calendar years immediately preceding the calendar year for which a rate is being determined shall be a percentage equal to the total of his benefit wages for the 36 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, divided by his total wages for insured work for the same period on which contributions were paid to the Director on or before July 31 immediately following such June 30.

The benefit wage ratio for calendar years 1987, 1988, 1989 and 1990 for each employer who has incurred liability for the payment of contributions within each of the 3 calendar years immediately preceding the calendar year for which the rate is being determined shall be a percentage equal to the total of his benefit wages for the 12 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235 and 245 of the Act for the same period, provided, however, that beginning in 1989 such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of the employer's failure to report wages.

The benefit wage ratio for calendar years 1987, 1988, 1989, and 1990 for each employer who has incurred liability for the payment of contributions within each of the 4 calendar years immediately preceding the calendar year for which the rate is being determined shall be a percentage equal to the total of his benefit wages for the 24 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235 and 245 of the Act for the same period, provided, however, that beginning in 1989 such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of the employer's failure to report wages.

The benefit wage ratio for calendar years 1987, 1988, 1989 and 1990 for each employer who has incurred liability for the payment of contributions within each of the 5 calendar years immediately preceding the calendar year for which the rate is being determined shall be a percentage equal to the total of his benefit wages for the 36 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235 and 245 of the Act for the same period, provided, however, that beginning in 1989 such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of the employer's failure to report wages.

In no event shall an employing unit which was an employer within each of the 5 consecutive calendar years immediately preceding the calendar year for which a rate is being determined have a benefit wage ratio determined under the first, second, third, fifth or sixth paragraph of this Section. The benefit wage ratio of each such employer shall be determined in accordance with the fourth or seventh paragraph of this Section based on the calendar year for which the ratio is being determined.

B. Notwithstanding any other provision in this Act, an employer who has incurred liability for the payment of contributions within each of the 5 calendar years 1979 through 1983 and whose benefit wage ratio for the 36 month period beginning July 1, 1980 and ending June 30, 1983 would, as provided for under subsection A of this Section, equal or exceed 5.5%, shall be allowed to elect as an option the alternative benefit wage ratios provided for in this subsection to be used in determining the employer's contribution rate for all of the calendar years 1984, 1985 and 1986.

1. The total of benefit wages for each of the 12 month periods July 1, 1980 through June 30, 1981, July 1, 1981 through June 30, 1982, and July 1, 1982 through June 30, 1983 shall be adjusted, for the purposes of this paragraph 1, to the amount of benefit wages which, when divided by the employer's actual total wages for insured work for the same period, would produce a ratio equal to 5.5%, making the 36 month benefit wage ratio applicable to calendar year 1984 5.5%.

2. The total of benefit wages for each of the 12 month periods July 1, 1981 through June 30, 1982 and July 1, 1982 through June 30, 1983, shall be adjusted, for the purposes of this paragraph 2, to the amount of benefit wages which when divided by the employer's actual total wages for insured work for the same period, would produce a ratio equal to 5.5%. The sum of such benefit wages as so adjusted and the employer's actual benefit wages for the 12 month period from July 1, 1983 through June 30, 1984 shall be divided by the total of the employer's wages for insured work for the entire 36 month period to determine the 36 month benefit wage ratio applicable to calendar year 1985.

3. The total of benefit wages for the 12 month period July 1, 1982 through June 30, 1983 shall be adjusted, for the purposes of this paragraph 3, to the amount of benefit wages which when divided by the employer's actual total wages for insured work for the same period, would produce a ratio equal to 5.5%. The sum of such benefit wages as so adjusted and the employer's actual benefit wages for each of the 12 month periods July 1, 1983 through June 30, 1984 and July 1, 1984 through June 30, 1985 shall be divided by the total of the employer's wages for insured work for the entire 36 month period to determine the 36 month benefit wage ratio applicable to calendar year 1986.

As used in this subsection B, the phrase “wages for insured work” means wages for insured work on which contributions were paid to the Director on or before the appropriate date or dates as required under paragraph A of Section 1503.

The alternative benefit wage ratios provided for in this subsection shall not reduce or increase the benefit wage figure used for the calculation of the State experience factor as provided for under Section 1504 of this Act. Benefit wage amounts used for Section 1504 shall be the actual benefit wage amounts of each employer without the adjustments used in this subsection.

The Director shall by regulation promulgate a process and time by which all employers eligible to elect this alternative benefit wage methodology shall be notified of this alternative and given an opportunity for written election of this alternative.

In addition to the other provisions of this subsection an employer shall not be entitled to elect the alternative benefit wage ratios of this subsection unless such employer has no pending benefit wage protests or agrees to waive any benefit wage protests, actual or anticipated applicable to the period July 1, 1980 through June 30, 1983.

Notwithstanding Section 3000, the several provisions of this subsection B are declared to be mutually dependent and inseverable. If any provision of this subsection, or the application of any such provision to any employing unit is held invalid by a court of competent jurisdiction, this subsection B shall be invalid in its entirety.

(Source: P.A. 85-956; 85-1009.)

(After 2012)

Repealed

(Source: P.A. 85-956; 85-1009; P.A. 97-701, eff. 1-1-2013)

Sec. 1503.1. Benefit ratio

A. For calendar year 1991:

1. For each employer who has incurred liability for the payment of contributions within each of the three calendar years immediately preceding calendar year 1991, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 12 consecutive calendar month period ending on June 30, 1990, multiplied by the benefit conversion factor, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 12 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

2. For each employer who has incurred liability for the payment of contributions within each of the four calendar years immediately preceding calendar year 1991, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 12 consecutive calendar month period ending on June 30, 1990, multiplied by the benefit conversion factor, and his benefit wages for the 12 consecutive calendar month period ending on June 30, 1989, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 24 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

3. For each employer who has incurred liability for the payment of contributions within each of the five calendar years immediately preceding calendar year 1991, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 12 consecutive calendar month period ending on June 30, 1990, multiplied by the benefit conversion factor, and his benefit wages for the 24 consecutive calendar month period ending on June 30, 1989, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 36 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

B. For calendar year 1992:

1. For each employer who has incurred liability for the payment of contributions within each of the three calendar years immediately preceding calendar year 1992, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 12 consecutive calendar month period ending on June 30, 1991, multiplied by the benefit conversion factor, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 12 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

2. For each employer who has incurred liability for the payment of contributions within each of the four calendar years immediately preceding calendar year 1992, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 24 consecutive calendar month period ending on June 30, 1991, multiplied by the benefit conversion factor, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 24 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

3. For each employer who has incurred liability for the payment of contributions within each of the five calendar years immediately preceding calendar year 1992, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 24 consecutive calendar month period ending on June 30, 1991, multiplied by the benefit conversion factor, and his benefit wages for the 12 consecutive calendar month period ending on June 30, 1989, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 36 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

C. For calendar year 1993 and each calendar year thereafter:

1. For each employer who has incurred liability for the payment of contributions within each of the three calendar years immediately preceding the calendar year for which a rate is being determined, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 12 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, multiplied by the benefit conversion factor, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 12 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

2. For each employer who has incurred liability for the payment of contributions within each of the four calendar years immediately preceding the calendar year for which a rate is being determined, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 24 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, multiplied by the benefit conversion factor, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 24 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

3. For each employer who has incurred liability for the payment of contributions within each of the five calendar years immediately preceding the calendar year for which a rate is being determined, the benefit ratio shall be a percentage equal to the total of his benefit charges for the 36 consecutive calendar month period ending on the June 30 immediately preceding that calendar year, multiplied by the benefit conversion factor, divided by his total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245 of this Act for the same 36 month period, provided, however, that such wages shall not include either those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of an employer's failure to report wages.

(Source: P.A. 85-956.)

Sec. 1504. State experience factor

A. For each calendar year prior to 1988, the total benefits paid from this State's account in the unemployment trust fund during the 36 consecutive calendar month period ending June 30 of the calendar year immediately preceding the calendar year for which a contribution rate is being determined shall be termed the loss experience. The loss experience less all repayments (including payments in lieu of contributions pursuant to Sections 1403, 1404 and 1405B and paragraph 2 of Section 302C) to this State's account in the unemployment trust fund during the same 36 consecutive calendar month period divided by the total benefit wages of all employers for the same period, after adjustment of any fraction to the nearer multiple of one percent, shall be termed the state experience factor. Whenever such fraction is exactly one-half, it shall be adjusted to the next higher multiple of one percent.

B. For calendar year 1988 and each calendar year thereafter, the state experience factor shall be the sum of all regular benefits paid plus the applicable benefit reserve for fund building, pursuant to Section 1505, during the three year period ending on June 30 of the year immediately preceding the year for which a contribution rate is being determined divided by the “net revenues” for the three year period ending on September 30 of the year immediately preceding the year for which a contribution rate is being determined, after adjustment of any fraction to the nearer multiple of one percent. Whenever such fraction is exactly one-half, it shall be adjusted to the next higher multiple of one percent.

For purposes of this subsection, "Net revenue" means, for each one year period ending on September 30, the sum of the amounts, as determined pursuant to (1) and (2) of this subsection, in each quarter of such one year period.

(1) For each calendar quarter prior to the second calendar quarter of 1988, "net revenue" means all repayments (including payments in lieu of contributions pursuant to Sections 1403, 1404 and 1405B and paragraph 2 of Section 302C) to this State's account in the unemployment trust fund less "net voluntary debt repayments" during the same calendar quarter. "Net voluntary debt repayments" means an amount equal to repayments to Title XII advances less any new advances. Any such repayments made after June 30, 1987 but prior to November 10, 1987 shall be deemed to have been made prior to June 30, 1987.

(2) For each calendar quarter after the first calendar quarter of 1988, "net revenue" shall be the sum of:

(a) the amount determined by (i) multiplying the benefit wage or benefit ratios, pursuant to Sections 1503 or 1503.1, respectively, of all employers who have not elected to make payments in lieu of contributions applicable to the prior quarter by the state experience factor for that same quarter, (ii) adding this product to the fund building factor provided for in Section 1506.3, (iii) constraining this sum by the application of Sections 1506.1 and 1506.3, except that the State experience factor shall be substituted for the adjusted State experience factor in determining these constraints, and then (iv) multiplying this sum by the total wages for insured work subject to the payment of contributions under Sections 234, 235 and 245 of each employer for the prior quarter except that such wages shall not include those wages estimated by the Director prior to the issuance of a Determination and Assessment or those wages estimated as a result of an audit because of the employer's failure to report wages; plus (b) all payments in lieu of contributions pursuant to Sections 1403 and 1404 and subsection B of Section 1405 and paragraph 2 of subsection C of Section 302 received during the same calendar quarter. For purposes of computing "net revenue", employers who have not incurred liability for the payment of contributions for at least three years will be excluded from the calculation as will predecessor employers pursuant to Section 1507.

C. The state experience factor shall be determined for each calendar year by the Director. Any change in the benefit wages or benefit charges of any employer or any change in contributions (including payments in lieu of contributions pursuant to Sections 1403 and 1404 and subsection B of Section 1405 and paragraph 2 of subsection C of Section 302) received into this State's account in the unemployment trust fund after June 30 of the calendar year immediately preceding the calendar year for which the state experience factor is being determined shall not affect the state experience factor as determined by the Director for that year.

(Source: P.A. 86-3.)

Sec. 1505. Adjustment of state experience factor

The state experience factor shall be adjusted in accordance with the following provisions:

A. For calendar years prior to 1988, the state experience factor shall be adjusted in accordance with the provisions of this Act as amended and in effect on November 18, 2011.

B. (Blank).

C. For calendar year 1988 and each calendar year thereafter, for which the state experience factor is being determined.

1. For every $50,000,000 (or fraction thereof) by which the adjusted trust fund balance falls below the target balance set forth in this subsection, the state experience factor for the succeeding year shall be increased one percent absolute.

For every $50,000,000 (or fraction thereof) by which the adjusted trust fund balance exceeds the target balance set forth in this subsection, the state experience factor for the succeeding year shall be decreased by one percent absolute.

The target balance in each calendar year prior to 2003 is $750,000,000. The target balance in calendar year 2003 is $920,000,000. The target balance in calendar year 2004 is $960,000,000. The target balance in calendar year 2005 and each calendar year thereafter is $1,000,000,000.

2. For the purposes of this subsection:

"Net trust fund balance" is the amount standing to the credit of this State's account in the unemployment trust fund as of June 30 of the calendar year immediately preceding the year for which a state experience factor is being determined.

"Adjusted trust fund balance" is the net trust fund balance minus the sum of the benefit reserves for fund building for July 1, 1987 through June 30 of the year prior to the year for which the state experience factor is being determined. The adjusted trust fund balance shall not be less than zero. If the preceding calculation results in a number which is less than zero, the amount by which it is less than zero shall reduce the sum of the benefit reserves for fund building for subsequent years.

For the purpose of determining the state experience factor for 1989 and for each calendar year thereafter, the following "benefit reserves for fund building" shall apply for each state experience factor calculation in which that 12 month period is applicable:

a. For the 12 month period ending on June 30, 1988, the "benefit reserve for fund building" shall be 8/104th of the total benefits paid from January 1, 1988 through June 30, 1988.

b. For the 12 month period ending on June 30, 1989, the "benefit reserve for fund building" shall be the sum of:

i. 8/104ths of the total benefits paid from July 1, 1988 through December 31, 1988, plus

ii. 4/108ths of the total benefits paid from January 1, 1989 through June 30, 1989.

c. For the 12 month period ending on June 30, 1990, the "benefit reserve for fund building" shall be 4/108ths of the total benefits paid from July 1, 1989 through December 31, 1989.

d. For 1992 and for each calendar year thereafter, the "benefit reserve for fund building" for the 12 month period ending on June 30, 1991 and for each subsequent 12 month period shall be zero.

3. Notwithstanding the preceding provisions of this subsection, for calendar years 1988 through 2003, the state experience factor shall not be increased or decreased by more than 15 percent absolute.

D. Notwithstanding the provisions of subsection C, the adjusted state experience factor:

1. Shall be 111 percent for calendar year 1988;

2. Shall not be less than 75 percent nor greater than 135 percent for calendar years 1989 through 2003; and shall not be less than 75% nor greater than 150% for calendar year 2004 and each calendar year thereafter, not counting any increase pursuant to subsection D-1, D-2, or D-3;

3. Shall not be decreased by more than 5 percent absolute for any calendar year, beginning in calendar year 1989 and through calendar year 1992, by more than 6% absolute for calendar years 1993 through 1995, by more than 10% absolute for calendar years 1999 through 2003 and by more than 12% absolute for calendar year 2004 and each calendar year thereafter, from the adjusted state experience factor of the calendar year preceding the calendar year for which the adjusted state experience factor is being determined;

4. Shall not be increased by more than 15% absolute for calendar year 1993, by more than 14% absolute for calendar years 1994 and 1995, by more than 10% absolute for calendar years 1999 through 2003 and by more than 16% absolute for calendar year 2004 and each calendar year thereafter, from the adjusted state experience factor for the calendar year preceding the calendar year for which the adjusted state experience factor is being determined;

5. Shall be 100% for calendar years 1996, 1997, and 1998.

D-1. The adjusted state experience factor for each of calendar years 2013 through 2015 shall be increased by 5% absolute above the adjusted state experience factor as calculated without regard to this subsection. The adjusted state experience factor for each of calendar years 2016 through 2018 shall be increased by 6% absolute above the adjusted state experience factor as calculated without regard to this subsection. The increase in the adjusted state experience factor for calendar year 2018 pursuant to this subsection shall not be counted for purposes of applying paragraph 3 or 4 of subsection D to the calculation of the adjusted state experience factor for calendar year 2019.

D-2. The adjusted state experience factor for calendar year 2016 shall be increased by 19% absolute above the adjusted state experience factor as calculated without regard to this subsection. The increase in the adjusted state experience factor for calendar year 2016 pursuant to this subsection shall not be counted for purposes of applying paragraph 3 or 4 of subsection D to the calculation of the adjusted state experience factor for calendar year 2017.

D-3. The adjusted state experience factor for calendar year 2018 shall be increased by 19% absolute above the adjusted state experience factor as calculated without regard to this subsection. The increase in the adjusted state experience factor for calendar year 2018 pursuant to this subsection shall not be counted for purposes of applying paragraph 3 or 4 of subsection D to the calculation of the adjusted state experience factor for calendar year 2019.

E. The amount standing to the credit of this State's account in the unemployment trust fund as of June 30 shall be deemed to include as part thereof (a) any amount receivable on that date from any Federal governmental agency, or as a payment in lieu of contributions under the provisions of Sections 1403 and 1405 B and paragraph 2 of Section 302C, in reimbursement of benefits paid to individuals, and (b) amounts credited by the Secretary of the Treasury of the United States to this State's account in the unemployment trust fund pursuant to Section 903 of the Federal Social Security Act, as amended, including any such amounts which have been appropriated by the General Assembly in accordance with the provisions of Section 2100 B for expenses of administration, except any amounts which have been obligated on or before that date pursuant to such appropriation.

(Source: P.A. 93-0634, eff. 12-26-03, P.A. 97-621, eff. 11-18-11; P.A. 97-791, eff. 1-1-13)

Sec. 1506.1. Determination of Employer's Contribution Rate

A. The contribution rate for any calendar year prior to 1991 of each employer whose contribution rate is determined as provided in Sections 1501 through 1507, inclusive, shall be determined in accordance with the provisions of this Act as amended and in effect on November 18, 2011.

B. (Blank).

C. (Blank).

D. (Blank).

E. The contribution rate for calendar year 1991 and each calendar year thereafter of each employer who has incurred liability for the payment of contributions within each of the three calendar years immediately preceding the calendar year for which a rate is being determined shall be the product obtained by multiplying the employer's benefit ratio defined by Section 1503.1 for that calendar year by the adjusted state experience factor for the same year, provided that:

1. Except as otherwise provided in this paragraph, an employer's minimum contribution rate shall be the greater of 0.2% or the product obtained by multiplying 0.2% by the adjusted state experience factor for the applicable calendar year. An employer's minimum contribution rate shall be 0.1% for calendar year 1996. An employer's minimum contribution rate shall be 0.0% for calendar years 2012 through 2019.

2. An employer's maximum contribution rate shall be the greater of 6.4% or the product of 6.4% and the adjusted state experience factor for the applicable calendar year.

3. If any product obtained in this subsection is not an exact multiple of one-tenth of one percent, it shall be increased or reduced, as the case may be to the nearer multiple of one-tenth of one percent. If such product is equally near to two multiples of one-tenth of one percent, it shall be increased to the higher multiple of one-tenth of one percent.

4. Intermediate rates between such minimum and maximum rates shall be at one-tenth of one percent intervals.

The contribution rate of each employer for whom wages became benefit wages during the applicable period specified in Section 1503 or for whom benefit payments became benefit charges during the applicable period specified in Section 1503.1, but who did not report wages for insured work during such period, shall be the maximum contribution rate as determined by paragraph 2 of this subsection. The contribution rate for each employer for whom no wages became benefit wages during the applicable period specified in Section 1503 or for whom no benefit payments became benefit charges during the applicable period specified in Section 1503.1, and who did not report wages for insured work during such period, shall be the greater of 2.7% or 2.7% times the then current adjusted state experience factor as determined by the Director in accordance with the provisions of Sections 1504 and 1505.

F. (Blank).

G. Notwithstanding the other provisions of this Section, no employer's contribution rate with respect to calendar year 1989 and each calendar year thereafter shall exceed 5.4% of the wages for insured work paid by him during any calendar quarter, if such wages paid during such calendar quarter total less than $50,000, plus any applicable penalty contribution rate calculated pursuant to subsection C of Section 1507.1.

(Source: P.A. 94-301, eff. 01-01-06, P.A. 97-621, eff. 11-18-11; P.A. 97-791, eff. 1-1-2013)

Sec. 1506.3. Fund building rates - Temporary Administrative Funding.

A. Notwithstanding any other provision of this Act, an employer's contribution rate for calendar years prior to 2004 shall be determined in accordance with the provisions of this Act as amended and in effect on November 18, 2011. The following fund building rates shall be in effect for the following calendar years:

For each employer whose contribution rate for 2004 through 2009 would, in the absence of this Section, be 0.2% or higher, a contribution rate which is the sum of such rate and the following: a fund building rate of 0.7% for 2004; a fund building rate of 0.9% for 2005; a fund building rate of 0.8% for 2006 and 2007; a fund building rate of 0.6% for 2008; a fund building rate of 0.4% for 2009.

Except as otherwise provided in this Section, for each employer whose contribution rate for 2010 and any calendar year thereafter is determined pursuant to Section 1500 or 1506.1, including but not limited to an employer whose contribution rate pursuant to Section 1506.1 is 0.0%, a contribution rate which is the sum of the rate determined pursuant to Section 1500 or 1506.1 and a fund building rate equal to the sum of the rate adjustment applicable to that year pursuant to Section 1400.1, plus the fund building rate in effect pursuant to this Section for the immediately preceding calendar year.

For calendar year 2012 and any outstanding bond year thereafter, for each employer whose contribution rate is determined pursuant to Section 1500 or 1506.1, including but not limited to an employer whose contribution rate pursuant to Section 1506.1 is 0.0%, a contribution rate which is the sum of the rate determined pursuant to Section 1500 or 1506.1 and .55%. For purposes of this subsection, a calendar year is an outstanding bond year if, as of October 31 of the immediately preceding calendar year, there are bonds outstanding pursuant to the Illinois Unemployment Insurance Trust Fund Financing Act.

Notwithstanding any provision to the contrary, the fund building rate in effect for any calendar year after calendar year 2009 shall not be less than 0.4% or greater than 0.55%. Notwithstanding any other provision to the contrary, the fund building rate established pursuant to this Section shall not apply with respect to the first quarter of calendar year 2011. The changes made to Section 235 by this amendatory Act of the 97th General Assembly are intended to offset the loss of revenue to the State's account in the unemployment trust fund with respect to the first quarter of calendar year 2011 as a result of Section 1506.5 and the changes made to this Section by this amendatory Act of the 97th General Assembly.

Notwithstanding the preceding paragraphs of this Section or any other provision of this Act, except for the provisions contained in Section 1500 pertaining to rates applicable to employers classified under the Standard Industrial Code, or another classification system sanctioned by the United States Department of Labor and prescribed by the Director by rule, no employer whose total wages for insured work paid by him during any calendar quarter are less than $50,000 shall pay contributions at a rate with respect to such quarter which exceeds 5.4%, plus any penalty contribution rate calculated pursuant to subsection C of Section 1507.1.

All payments attributable to the fund building rate established pursuant to this Section with respect to the first quarter of calendar year 2013 and any calendar quarter thereafter as of the close of which there are either bond obligations outstanding pursuant to the Illinois Unemployment

Insurance Trust Fund Financing Act, or bond obligations anticipated to be outstanding as of either or both of the 2 immediately succeeding calendar quarters, shall be directed for deposit into the Master Bond Fund. Notwithstanding any other provision of this subsection, no fund building rate shall be added to any penalty contribution rate assessed pursuant to subsection C of Section 1507.1.

B. (Blank).

C. (Blank).

C-1. Payments received by the Department Director with respect to the first quarter of calendar year 2013 and any calendar quarter thereafter as of the close of which there are either bond obligations outstanding pursuant to the Illinois Unemployment Insurance Trust Fund Financing Act, or bond obligations anticipated to be outstanding as of either or both of the 2 immediately succeeding calendar quarters, shall, to the extent they are insufficient to pay the total amount due under the Act with respect to the quarter, be first applied to satisfy the amount due with respect to that quarter and attributable to the fund building rate established pursuant to this Section. Notwithstanding any other provision to the contrary, with respect to an employer whose contribution rate with respect to a quarter subject to this subsection would have exceeded 5.4% but for the 5.4% rate ceiling imposed pursuant to subsection A, the amount due from the employer with respect to that quarter and attributable to the fund building rate established pursuant to subsection A shall equal the amount, if any, by which the amount due and attributable to the 5.4% rate exceeds the amount that would have been due and attributable to the employer's rate determined pursuant to Sections 1500 and 1506.1, without regard to the fund building rate established pursuant to subsection A.

D. All provisions of this Act applicable to the collection or refund of any contribution due under this Act shall be applicable to the collection or refund of amounts directed pursuant to this Section for deposit into the Master Bond Fund to the extent they would not otherwise be considered as contributions.

(Source: P.A. 94-0301, eff. 01-01-06, P.A. 97-0001, eff. 03-31-11, P.A. 97-621, eff. 11-18-11; P.A. 97-791; eff. 1-1-13.)

Sec. 1506.4. Federal Penalty tax avoidance surcharge (Repealed)

(Source: P.A. 93-0634, eff. 12-26-03.)

Sec. 1506.5. Surcharge; specified period.

With respect to the first quarter of calendar year 2011, each employer shall pay a surcharge equal to 0.5% of the total wages for insured work subject to the payment of contributions under Sections 234, 235, and 245. The surcharge established by this Section shall be due at the same time as contributions with respect to the first quarter of calendar year 2011 are due, as provided in Section 1400. Notwithstanding any other provision to the contrary, with respect to an employer whose contribution rate with respect to the first quarter of calendar year 2011, calculated without regard to this amendatory Act of the 97th General Assembly, would have exceeded 5.4% but for the 5.4% rate ceiling imposed pursuant to subsection A of Section 1506.3, the amount due from the employer with respect to that quarter and attributable to the surcharge established pursuant to this Section shall equal the amount, if any, by which the amount due and attributable to the 5.4% rate exceeds the amount that would have been due and attributable to the employer's rate determined pursuant to Sections 1500 and 1506.1. Payments received by the Department with respect to the first quarter of calendar year 2011 shall, to the extent they are insufficient to pay the total amount due under the Act with respect to the quarter, be first applied to satisfy the amount due with respect to that quarter and attributable to the surcharge established pursuant to this Section. All provisions of this Act applicable to the collection or refund of any contribution due under this Act shall be applicable to the collection or refund of amounts due pursuant to this Section. Interest shall accrue with respect to amounts due pursuant to this Section to the same extent and under the same terms and conditions as provided by Section 1401 with respect to contributions. The changes made to Section 235 by this amendatory Act of the 97th General Assembly are intended to offset the loss of revenue to the State's account in the unemployment trust fund with respect to the first quarter of calendar year 2011 as a result of this Section 1506.5 and the changes made to Section 1506.3 by this amendatory Act of the 97th General Assembly.

(Source: P.A. 97-1, eff. 03-31-11; P.A. 97-791, eff. 1-1-13.)

Sec. 1506.6. Surcharge; specified period.

For each employer whose contribution rate for calendar year 2016 or 2018 is determined pursuant to Section 1500 or 1506.1, including but not limited to an employer whose contribution rate pursuant to Section 1506.1 is 0.0%, in addition to the contribution rate established pursuant to Section 1506.3, an additional surcharge of 0.3% shall be added to the contribution rate. The surcharge established by this Section shall be due at the same time as other contributions with respect to the quarter are due, as provided in Section 1400. Payments attributable to the surcharge established pursuant to this Section shall be contributions and deposited into the clearing account.

(Source: P.A. 97-621, eff. 11-18-11)

Sec. 1507. Contribution rates of successor and predecessor employing units

A. Whenever any employing unit succeeds to substantially all of the employing enterprises of another employing unit, then in determining contribution rates for any calendar year, the experience rating record of the predecessor prior to the succession shall be transferred to the successor and thereafter it shall not be treated as the experience rating record of the predecessor, except as provided in subsection B. For the purposes of this Section, such experience rating record shall consist of all years during which liability for the payment of contributions was incurred by the predecessor prior to the succession, all benefit wages based upon wages paid by the predecessor prior to the succession, all benefit charges based on separations from, or reductions in work initiated by, the predecessor prior to the succession, and all wages for insured work paid by the predecessor prior to the succession. This amendatory Act of the 93rd General Assembly is intended to be a continuation of prior law.

B. The provisions of this subsection shall be applicable only to the determination of contribution rates for the calendar year 1956 and for each calendar year thereafter.

Whenever any employing unit has succeed-ed to substantially all of the employing enterprises of another employing unit, but the predecessor employing unit has retained a distinct severable portion of its employing enterprises or whenever any employing unit has succeeded to a distinct severable portion which is less than substantially all of the employing enterprises of another employing unit, the successor employing unit shall acquire the experience rating record attributable to the portion to which it has succeeded, and the predecessor employing unit shall retain the experience rating record attributable to the portion which it has retained, if--

1. It files a written application for such experience rating record which is joined in by the employing unit which is then entitled to such experience rating record; and

2. The joint application contains such information as the Director shall by regulation prescribe which will show that such experience rating record is identifiable and segregable and, therefore, capable of being transferred; and

3. The joint application is filed prior to whichever of the following dates is the latest: (a) July 1, 1956; (b) one year after the date of the succession; or (c) the date that the rate determination of the employing unit which has applied for such experience rating record has become final for the calendar year immediately following the calendar year in which the succession occurs. The filing of a timely joint application shall not affect any rate determination which has become final, as provided by Section 1509.

If all of the foregoing requirements are met, then the Director shall transfer such experience rating record to the employing unit which has applied therefor, and it shall not be treated as the experience rating record of the employing unit which has joined in the application. Whenever any employing unit is reorganized into two or more employing units, and any of such employing units are owned or controlled by the same interests which owned or controlled the predecessor prior to the reorganization, and the provisions of this subsection become applicable thereto, then such affiliated employing units during the period of their affiliation shall be treated as a single employing unit for the purpose of determining their rates of contributions.

C. For the calendar year in which a succession occurs which results in the total or partial transfer of a predecessor's experience rating record, the contribution rates of the parties thereto shall be determined in the following manner:

1. If any of such parties had a contribution rate applicable to it for that calendar year, it shall continue with such contribution rate.

2. If any successor had no contribution rate applicable to it for that calendar year, and only one predecessor is involved, then the contribution rate of the successor shall be the same as that of its predecessor.

3. If any successor had no contribution rate applicable to it for that calendar year, and two or more predecessors are involved, then the contribution rate of the successor shall be computed, on the combined experience rating records of the predecessors or on the appropriate part of such records if any partial transfer is involved, as provided in Sections 1500 to 1507, inclusive.

4. Notwithstanding the provisions of paragraphs 2 and 3 of this subsection, if any succession occurs prior to the calendar year 1956 and the successor acquires part of the experience rating record of the predecessor as provided in subsection B of this Section, then the contribution rate of that successor for the calendar year in which such succession occurs shall be 2.7 percent.

D. The provisions of this Section shall not be applicable if the provisions of Section 1507.1 are applicable.

(Source: P.A. 94-301, eff. 01-01-06.)

Sec. 1507.1. Transfer of trade or business; contribution rate.

Notwithstanding any other provision of this Act:

A. (1) If an individual or entity transfers its trade or business, or a portion thereof, and, at the time of the transfer, there is any substantial common ownership, management, or control of the transferor and transferee, then the experience rating records of the transferor and transferee shall be combined for the purpose of determining their rates of contribution. For purposes of this subsection, a transfer of trade or business includes but is not limited to the transfer of some or all of the transferor's workforce.

(2) For the calendar year in which there occurs a transfer to which paragraph (1) applies:

(a) If the transferor or transferee had a contribution rate applicable to it for the calendar year, it shall continue with that contribution rate for the remainder of the calendar year.

(b) If the transferee had no contribution rate applicable to it for the calendar year, then the contribution rate of the transferee shall be computed for the calendar year based on the experience rating record of the transferor or, where there is more than one transferor, the combined experience rating records of the transferors, subject to the 5.4% rate ceiling established pursuant to subsection G of Section 1506.1 and subsection A of Section 1506.3.

B. If any individual or entity that is not an employer under this Act at the time of the acquisition acquires the trade or business of an employing unit, the experience rating record of the acquired business shall not be transferred to the individual or entity if the Director finds that the individual or entity acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Evidence that a business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions includes but is not necessarily limited to the following: the cost of acquiring the business is low in relation to the individual's or entity's overall operating costs subsequent to the acquisition; the individual or entity discontinued the business enterprise of the acquired business immediately or shortly after the acquisition; or the individual or entity hired a significant number of individuals for performance of duties unrelated to the business activity conducted prior to acquisition.

C. An individual or entity to which subsection A applies shall pay contributions with respect to each calendar year at a rate consistent with that subsection, and an individual or entity to which subsection B applies shall pay contributions with respect to each calendar year at a rate consistent with that subsection. If an individual or entity knowingly violates or attempts to violate this subsection, the individual or entity shall be subject to the following penalties:

(1) If the individual or entity is an employer, then, in addition to the contribution rate that would otherwise be calculated (including any fund building rate provided for pursuant to Section 1506.3), the employer shall be assigned a penalty contribution rate equivalent to 50% of the contribution rate (including any fund building rate provided for pursuant to Section 1506.3), as calculated without regard to this subsection for the calendar year with respect to which the violation or attempted violation occurred and the immediately following calendar year. In the case of an employer whose contribution rate, as calculated without regard to this subsection or Section 1506.3, equals or exceeds the maximum rate established pursuant to paragraph 2 of subsection E of Section 1506.1, the penalty rate shall equal 50% of the sum of that maximum rate and the fund building rate provided for pursuant to Section 1506.3. In the case of an employer whose contribution rate is subject to the 5.4% rate ceiling established pursuant to subsection G of Section 1506.1 and subsection A of Section 1506.3, the penalty rate shall equal 2.7%. If any product obtained pursuant to this subsection is not an exact multiple of one-tenth of 1%, it shall be increased or reduced, as the case may be, to the nearer multiple of one-tenth of 1%.

If such product is equally near to 2 multiples of one-tenth of 1%, it shall be increased to the higher multiple of one-tenth of 1%. Any payment attributable to the penalty contribution rate shall be deposited into the clearing account.

(2) If the individual or entity is not an employer, the individual or entity shall be subject to a penalty of $10,000 for each violation. Any penalty attributable to this paragraph (2) shall be deposited into the Special Administrative Account.

D. An individual or entity shall not knowingly advise another in a way that results in a violation of subsection C. An individual or entity that violates this subsection shall be subject to a penalty of $10,000 for each violation. Any such penalty shall be deposited into the Special Administrative Account.

E. Any individual or entity that knowingly violates subsection C or D shall be guilty of a Class B misdemeanor. In the case of a corporation, the president, the secretary, and the treasurer, and any other officer exercising corresponding functions, shall each be subject to the aforesaid penalty for knowingly violating subsection C or D.

F. The Director shall establish procedures to identify the transfer or acquisition of a trade or business for purposes of this Section.

G. For purposes of this Section:

"Experience rating record" shall consist of years during which liability for the payment of contributions was incurred, all benefit charges incurred, and all wages paid for insured work, including but not limited to years, benefit charges, and wages attributed to an individual or entity pursuant to Section 1507 or subsection A.

"Knowingly" means having actual knowledge of or acting with deliberate ignorance of or reckless disregard for the statutory provision involved.

Transferee" means any individual or entity to which the transferor transfers its trade or business or any portion thereof.

"Transferor" means the individual or entity that transfers its trade or business or any portion thereof.

H. This Section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor. Insofar as it applies to the interpretation and application of the term "substantial", as used in subsection A, this subsection H is not intended to alter the meaning of "substantially", as used in Section 1507 and construed by precedential judicial opinion, or any comparable term as elsewhere used in this Act.

(Source: P.A. 94-301, eff. 01-01-06.)

Sec. 1508. Statement of benefit wages and statement of benefit charges

The Director shall periodically furnish each employer with a statement of the wages of his workers or former workers which became his benefit wages together with the names of such workers or former workers. The Director shall also periodically furnish each employer with a statement of benefits which became benefit charges together with the names of such workers or former workers. Any such statement, in absence of an application for revision thereof within 45 days from the date of mailing of such statement to his last known address, shall be conclusive and final upon the employer for all purposes and in all proceedings whatsoever. Such application for revision shall be in the form and manner prescribed by regulation of the Director. If the Director shall deem any application for revision insufficient, he shall rule such insufficient application stricken and shall serve notice of such ruling and the basis therefor upon the employer. Such ruling shall be final and conclusive upon the employer unless he shall file a sufficient application for revision within 20 days from the date of service of notice of such ruling. Upon receipt of a sufficient application for revision of such statement within the time allowed, the Director shall order such application allowed in whole or in part or shall order that such application for revision be denied and shall serve notice upon the employer of such order. Such order of the Director shall be final and conclusive at the expiration of 20 days from the date of service of such notice unless the employer shall have filed with the Director a written protest and a petition for hearing, specifying his objections thereto. Upon receipt of such petition within the 20 days allowed, the Director shall fix the time and place for a hearing and shall notify the employer thereof. At any hearing held as herein provided, the order of the Director shall be prima facie correct and the burden shall be upon the protesting employer to prove that it is incorrect. All of the provisions of this Act, applicable to hearings conducted pursuant to Section 2200 and not inconsistent with the provisions of this Section, shall be applicable to hearings conducted pursuant to this Section. No employer shall have the right to object to the benefit wages or benefit charges with respect to any worker as shown on such statement unless he shall first show that such benefit wages or benefit charges arose as a result of benefits paid to such worker in accordance with a finding, reconsidered finding, determination, or reconsidered determination, or for 1987 or any calendar year thereafter a Referee's decision, to which such employer was a party entitled to notice thereof, as provided by Sections 701 to 703, inclusive, or Section 800, and shall further show that he was not notified of such finding, reconsidered finding, determination, or reconsidered determination, or for 1987 or any calendar year thereafter such Referee's decision, in accordance with the requirements of Sections 701 to 703, inclusive, or Section 800. Nothing herein contained shall abridge the right of any employer at such hearing to object to such statement of benefit wages or statement of benefit charges on the ground that it is incorrect by reason of a clerical error made by the Director or any of his employees. The employer shall be promptly notified, by mail, of the Director's decision. Such decision shall be final and conclusive unless review is had within the time and in the manner provided by Section 2205.

(Source: P.A. 85-956.)

Sec. 1508.1. Cancellation of Benefit Wages and Benefit Charges Due to Lack of Notice

A. It is the purpose of this Section to provide relief to an employer who has accrued benefit wages or benefit charges resulting from the payment of benefits of which such employer has not had notice. Whenever any of the following actions taken by the Department directly results in the payment of benefits to an individual and hence causes the individual's wages to become benefit wages in accordance with the provisions of Sections 1501 and 1502 or causes the benefits to become benefits charges in accordance with Sections 1501.1 and 1502.1, such benefit wages or benefit charges shall be cancelled if the employer proves that the Department did not give notice of such actions as required by Section 804 within the following periods of time:

1. With respect to the notice to the most recent employing unit or to the last employer (referred to in Section 1502.1) issued under Section 701, within 180 days of the date of the initial finding of monetary eligibility;
2. With respect to notice of a decision pursuant to Section 701 that the employer is the last employer under Section 1502.1, within 180 days of the date of the employer's protest or appeal that he is not the last employer under Section 1502.1;
3. With respect to a determination issued under Section 702 and the rules of the Director, within 180 days of the date of an employer's notice of possible ineligibility or remanded decision of the Referee which gave rise to the determination, except that in the case of a determination issued under Section 702 in which an issue was not adjudicated at the time of the employer's notice of possible ineligibility because of the individual's failure to file a claim for a week of benefits, within 180 days of the date on which the individual first files a claim for a week of benefits;
4. With respect to a reconsidered finding or a reconsidered determination issued under Section 703, within 180 days of the date of such reconsidered finding or reconsidered determination;
5. With respect to a Referee's decision issued under Section 801 which allows benefits, within 180 days of the date of the appeal of the finding or determination of the claims adjudicator which was the basis of the Referee's decision;
6. With respect to a decision of the Director or his representative concerning eligibility under Section 604, within 180 days of the date of the report of the Director's Representative.

B. Nothing contained in this Section shall relieve an employer from the requirements for application for revision to a statement of benefit wages or statement of benefit charges pursuant to Section 1508 or any other requirement contained in this Act or in rules promulgated by the Director.

C. The Director shall promulgate rules to carry out the provisions of this Section.

(Source: P.A. 86-3.)

Sec. 1509. Notice of employer's contribution rate

The Director shall promptly notify each employer of his rate of contribution for each calendar year by mailing notice thereof to his last known address. Such rate determination shall be final and conclusive upon the employer for all purposes and in all proceedings whatsoever unless within 15 days after mailing of notice thereof, the employer files with the Director an application for review of such rate determination, setting forth his reasons in support thereof. Such application for review shall be in the form and manner prescribed by regulation of the Director. If the Director shall deem any application for review insufficient, he shall rule such insufficient application stricken and shall serve notice of such ruling and the basis therefor upon the employer. Such ruling shall be final and conclusive upon the employer unless he shall file a sufficient application for review within ten days from the date of service of notice of such ruling. Upon receipt of a sufficient application for review within the time allowed, the Director shall order such application for review allowed in whole or in part, or shall order that such application for review be denied, and shall serve notice upon the employer of such order. Such order of the Director shall be final and conclusive at the expiration of ten days from the date of service of such notice unless the employer shall have filed with the Director a written protest and a petition for hearing, specifying his objections thereto. Upon receipt of such petition within the ten days allowed, the Director shall fix the time and place for a hearing and shall notify the employer thereof. At any hearing held as herein provided, the order of the Director shall be prima facie correct and the burden shall be upon the protesting employer to prove that it is incorrect. All of the provisions of this Act, applicable to hearings conducted pursuant to Section 2200 and not inconsistent with the provisions of this Section, shall be applicable to hearings conducted pursuant to this Section. In any such proceeding, the employer shall be barred from questioning the amount of the benefit wages or benefit charges as shown on any statement of benefit wages or statement of benefit charges which forms the basis for the computation of

such rate unless such employer shall prove that he was not, as provided in Section 1508, furnished with such statement containing the benefit wages or benefit charges which he maintains are erroneous. In such event, the employer shall have the same rights to revision of such statement in such proceedings as are provided in Section 1508. Upon the completion of such hearing, the employer shall be promptly notified by the Director, by mail, of his decision, and such decision shall be final and conclusive for all purposes and in all proceedings whatsoever unless review is had within the time and in the manner provided by Section 2205.

(Source: P.A. 85-956.)

Sec. 1510. Service of notice

Service of notice. Whenever service of notice is required by Sections 1400, 1508, and 1509, such notice may be given and be complete by depositing the same with the United States Mail, addressed to the employer at his last known address. If represented by counsel in the proceedings before the Director, then service of notice may be made upon such employer by mailing same to such counsel. If agreed to by the person or entity entitled to notice, notice may be given and completed electronically, in the manner prescribed by rule, by posting the notice on a secure web site accessible to the person or entity and sending notice of the posting to the last known e-mail address of the person or entity.

(Source: P.A. 97-621, eff. 11-18-11; 98-107, eff. 7-23-13.)

Sec. 1511. Study of experience rating

The Employment Security Advisory Board, created by Section 5-540 of the Departments of State Government Law (20 ILCS 5/5-540), is hereby authorized and directed to study and examine the present provisions of this Act providing for experience rating, in order to determine whether the rates of contribution will operate to replenish the amount of benefits paid and to determine the effect of experience rating upon labor and industry in this State.

The Board shall submit its findings and recommendations based thereon to the General Assembly. The Board may employ such experts and assistants as may be necessary to carry out the provisions of this Section. All expenses incurred in the making of this study, including the preparation and submission of its findings and recommendations, shall be paid in the same manner as is provided for the payment of costs of administration of this Act.

(Source: P.A. 90-372, eff. 7-1-98; 91-239, eff. 1-1-00.)

Sec. 1511.1. Effects of 2004 Solvency Legislation.

The Employment Security Advisory Board shall hold public hearings on the progress toward meeting the Trust Fund solvency projections made in accordance with this amendatory Act of the 93d General Assembly. The hearings shall also consider issues related to benefit eligibility, benefit levels, employer contributions, and future trust fund solvency goals. The Board shall, in accordance with its operating resolutions, approve and report findings from the hearings to the Illinois General Assembly by April 1, 2007. A copy of the findings shall be available to the public on the Department's website.

(Source: P.A. 93-0634, eff. 12-26-03.)

Sec. 1600. Agreement to contributions by employees void

Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contribution, required under this Act from such employer, shall be void, and no employer shall directly or indirectly make or require or accept any deduction from wages to finance the contribution required from him or require or accept any waiver of any right under this Act by an individual in his employ.

(Source: Laws 1951, p. 32.)

Sec. 1700. Duties and powers of Director

It shall be the duty of the Director to administer this Act. To effect such administration, there is created the Department of Employment Security, under the supervision and direction of a Director of Employment Security. The Department of Employment Security shall administer programs for unemployment compensation and a State employment service. The Director shall determine all questions of general policy, promulgate rules and regulations and be responsible for the administration of this Act.

(Source: P.A. 84-26.)

Sec. 1700.1. Study of legal services

The Director shall study the funding and implementation of subsection B of Section 802.

(Source: P.A. 85-956.)

Sec. 1701. Rules and regulations

General and special rules may be adopted, amended, or rescinded by the Director only after public hearing or opportunity to be heard thereon, of which proper notice has been given. General rules shall become effective ten days after filing with the Secretary of State and publication in one or more newspapers of general circulation in this State. Special rules shall become effective ten days after notification to or mailing to the last known address of the individuals or concerns affected thereby. Regulations may be adopted, amended, or rescinded by the Director and shall become effective ten days after filing with the Secretary of State, and such filing shall be public notice of such regulation, amendment thereto, or rescission thereof, as the case may be.

(Source: Laws 1951, p. 32.)

Sec. 1701.1. Simplification of forms

No later than December 31, 1993, the Director shall promulgate rules to simplify forms that the Department requires small businesses to file under this Act. As used in this Act, “small business” has the meaning ascribed to that term in Section 1-75 of the Illinois Administrative Procedure Act.

(Source: P.A. 88-518.)

Sec. 1702. Personnel

Subject to the other provisions of this Act, the Director is authorized to obtain, subject to the provisions of the “Personnel Code”, enacted by the 69th General Assembly, such employees, accountants, experts and other persons as may be necessary in the performance of his duties under this Act.

The Director may delegate to any such person such power and authority as he deems proper for the effective administration of this Act, and may bond any person handling money or signing checks, in such penal sum as he may deem adequate for the protection of the State.

(Source: Laws 1955, p. 2174.)

Sec. 1703. Advisory councils

The Director may appoint local or industry advisory councils, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as such because of their vocation, employment, or affiliations, and of such members representing the general public as the Director may designate. The Employment Security Advisory Board and the local councils appointed by the Director pursuant to this Section shall aid the Director in formulating policies and discussing problems related to the administration of this Act and in assuring impartiality and freedom from political influence in the solution of such problems. The Employment Security Advisory Board and such local advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

(Source: P.A. 76-1063.)

Sec. 1704. Reduction and prevention of unemployment (Repealed)

(Source: P.A. 87-1178. Repealed by P.A. 98-107, eff. 7-23-13.)

Sec. 1704.1. Earnfare Program

(a) The Department of Employment Security shall cooperate and enter into or continue any necessary agreements with the Department of Human Services (acting as successor to the Department of Public Aid under the Department of Human Services Act) to advertise and promote the Earnfare Program to all employers, recruit public and private employers to participate in the Earnfare Program, refer recruited employers to the Department of Human Services for contract negotiations, and to notify the Department of Human Services of available job listings as they occur.

(b) The Department of Human Services will furnish terminals or terminal access of its Job Listings to community based organizations in the most cost effective manner to both.

(Source: P.A. 89-507, eff. 7-1-97.)

Sec. 1705. Employment offices; State employment service

The Director shall create as many employment districts and establish and maintain as many State employment offices as he or she deems necessary to carry out the provisions of this Act. All such offices and agencies so created and established shall constitute the State employment service within the meaning of this Act. The Department of Employment Security and the Director thereof may continue to be the State agency for cooperation with the United States Employment Service under an Act of Congress 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," approved June 6, 1933, as amended.

The Director may cooperate with or enter into agreements with the Railroad Retirement Board with respect to the establishment, maintenance, and use of free employment service facilities. For the purpose of establishing and maintaining free public employment offices, the Director is authorized to enter into agreements with the Railroad Retirement Board, or any other agency of the United States charged with the administration of an unemployment compensation law, or with any political subdivision of this State, and as a part of any such agreement the Director may accept moneys, services, or quarters as a contribution, to be treated in the same manner as funds received pursuant to Section 2103.

Pursuant to Sections 4-6.2, 5-16.2, and 6-50.2 of the general election law of the State, the Director shall make unemployment offices available for use as temporary places of registration. Registration within the offices shall be in the most public, orderly, and convenient portions thereof, and Sections 4-3, 5-3, and 11-4 of the general election law relative to the attendance of police officers during the conduct of registration shall apply. Registration under this Section shall be made in the manner provided by Sections 4-8, 4-10, 5-7, 5-9, 6-34, 6-35, and 6-37 of the general election law. Employees of the Department in those offices are eligible to serve as deputy registrars.

(Source: P.A. 90-372, eff. 7-1-98, P.A. 97-621, eff. 11-18-11)

Sec. 1706. State-Federal cooperation

A. The Director is hereby authorized to cooperate with the appropriate agencies and departments of the Federal government charged with the administration of any unemployment compensation law, and to comply with all reasonable Federal regulations governing the expenditures of sums allotted or apportioned to the State for such administration, and accepted by the State. The Director may make the State's records relating to the administration of this Act available to the Railroad Retirement Board, and may furnish the Railroad Retirement Board, at the expense of such Board, such copies thereof as the Railroad Retirement Board deems necessary for its purposes.

B. In the administration of this Act, the Director shall cooperate, to the fullest extent consistent with the provisions of this Act, with the United States Secretary of Labor, or other appropriate Federal agency, with respect to the provisions of the Federal Social Security Act that relate to unemployment compensation, the Wagner-Peyser Act, the Federal Unemployment Tax Act, and the Federal-State Extended Unemployment Compensation Act of 1970; shall make such reports in such form and containing such information as the Secretary of Labor or other appropriate Federal agency may from time to time require and shall comply with such provisions as the Secretary of Labor or other appropriate Federal agency may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the Secretary of Labor or other appropriate Federal

agency governing the expenditures of such sums as may be allotted and paid to this State under Title III of the Social Security Act for the purpose of assisting in the administration of this Act.

C. In the administration of the provisions of Section 409, enacted to conform with the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, the Director shall take such action as may be necessary (1) to insure that the provisions are so interpreted and applied as to meet the requirements of the Federal Act as interpreted by the United States Secretary of Labor or other appropriate Federal agency, and (2) to secure to this State the full reimbursement of the Federal share of extended benefits paid under this Act that are reimbursable under the Federal Act.

(Source: P.A. 77-1443.)

Sec. 1800. Records and reports required of employing units - Inspection

Each employing unit shall keep such true and accurate records with respect to services performed for it as may be required by the rules and regulations of the Director promulgated pursuant to the provisions of this Act. Such records together with such other books and documents as may be necessary to verify the entries in such records shall be open to inspection by the Director or his authorized representative at any reasonable time and as often as may be necessary. Every employer who is delinquent in the payment of contributions shall also permit the Director or his representative to enter upon his premises, inspect his books and records, and inventory his personal property and rights thereto, for the purpose of ascertaining and listing the personal property owned by such employer which is subject to the lien created by this Act in favor of the Director of Employment Security. Each employing unit which has paid no contributions for employment in any calendar year shall, prior to January 30 of the succeeding calendar year, file with the Director, on forms to be furnished by the Director at the request of such employing unit, a report of its employment experience for such periods as the Director shall designate on such forms, together with such other information as the Director shall require on such forms, for the purpose of determining the liability of such employing unit for the payment of contributions; in addition, every newly created employing unit shall file such report with the Director within 30 days of the date upon which it commences business. The Director, the Board of Review, or any Referee may require from any employing unit any sworn or unsworn reports concerning such records as he or the Board of Review deems necessary for the effective administration of this Act, and every such employing unit or person shall fully, correctly, and promptly furnish the Director all information required by him to carry out the purposes and provisions of this Act.

(Source: P.A. 83-1503.)

Sec. 1801. Destruction of records by employing units

Records which employing units are required to keep and preserve pursuant to the provisions of Section 1800 may be destroyed not less than five years after the making of such records, provided that if, within the time specified by Section 2207, a determination and assessment of contributions, interest, or penalties is made, or an action for the collection of contributions, interest, or penalties is brought, records pertaining to the period or periods covered by such determination and assessment or action may not be destroyed until the determination and assessment or action has become final, or has been canceled or withdrawn.

If, in the regular course of business, an employing unit makes reproductions of any records which it is required to keep and preserve pursuant to the provisions of Section 1800, the preservation of such reproductions constitutes compliance with the provisions of this Section. For the purposes of this Section, “reproduction” means a reproduction or durable medium for making a reproduction obtained by any photographic, photostatic, microfilm, micro-card, miniature photographic or other process which accurately reproduces or forms a durable medium for so reproducing the original.

(Source: Laws 1957, p. 2667.)

Sec. 1801.1. Directory of New Hires

A. The Director shall establish and operate an automated directory of newly hired employees which shall be known as the "Illinois Directory of New Hires" which shall contain the information required to be reported by employers to the Department under subsection B. In the administration of the Directory, the Director shall comply with any requirements concerning the Employer New Hire Reporting Program established by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The Director is authorized to use the information contained in the Directory of New Hires to administer any of the provisions of this Act.

B. Each employer in Illinois, except a department, agency, or instrumentality of the United States, shall file with the Department a report in accordance with rules adopted by the Department (but in any event not later than 20 days after the date the employer hires the employee or, in the case of an employer transmitting reports magnetically or electronically, by 2 monthly transmissions, if necessary, not less than 12 days nor more than 16 days apart) providing the following information concerning each newly hired employee: the employee's name, address, and social security number, the date services for remuneration were first performed by the employee, and the employer's name, address, Federal Employer Identification Number assigned under Section 6109 of the Internal Revenue Code of 1986, and such other information as may be required by federal law or regulation, provided that each employer may voluntarily file the address to which the employer wants income withholding orders to be mailed, if it is different from the address given on the Federal Employer Identification Number. An employer in Illinois which transmits its reports electronically or magnetically and which also has employees in another state may report all newly hired employees to a single designated state in which the employer has employees if it has so notified the Secretary of the United States Department of Health and Human Services in writing. An employer may, at its option, submit information regarding any rehired employee in the same manner as information is submitted regarding a newly hired employee. Each report required under this subsection shall, to the extent practicable, be made on an Internal Revenue Service Form W-4 or, at the option of the employer, an equivalent form, and may be transmitted by first class mail, by telefax, magnetically, or electronically.

C. An employer which knowingly fails to comply with the reporting requirements established by this Section shall be subject to a civil penalty of $15 for each individual whom it fails to report. An employer shall be considered to have knowingly failed to comply with the reporting requirements established by this Section with respect to an individual if the employer has been notified by the Department that it has failed to report an individual, and it fails, without reasonable cause, to supply the required information to the Department within 21 days after the date of mailing of the notice. Any individual who knowingly conspires with the newly hired employee to cause the employer to fail to report the information required by this Section or who knowingly conspires with the newly hired employee to cause the employer to file a false or incomplete report shall be guilty of a Class B misdemeanor with a fine not to exceed $500 with respect to each employee with whom the individual so conspires.

D. As used in this Section, "newly hired employee" means an individual who (i) is an employee within the meaning of Chapter 24 of the Internal Revenue Code of 1986 and (ii) either has not previously been employed by the employer or was previously employed by the employer but has been separated from that prior employment for at least 60 consecutive days; however, "newly hired employee" does not include an employee of a federal or State agency performing intelligence or counterintelligence functions, if the head of that agency has determined that the filing of the report required by this Section with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.

Notwithstanding Section 205, and for the purposes of this Section only, the term "employer" has the meaning given by Section 3401(d) of the Internal Revenue Code of 1986 and includes any governmental entity and labor organization as defined by Section 2(5) of the National Labor Relations Act, and includes any entity (also known as a hiring hall) which is used by the organization and an employer to carry out the requirements described in Section 8(f)(3) of that Act of an agreement between the organization and the employer.

(Source: P.A. 97-621, eff. 11-18-11; 97-689, eff. 6-14-12; 97-791, eff. 1-1-13; 98-107, eff. 7-23-13; 98-463, eff. 8-16-13.)

Sec. 1900. Disclosure of information

A. Except as provided in this Section, information obtained from any individual or employing unit during the administration of this Act shall:

1. be confidential,
2. not be published or open to public inspection,
3. not be used in any court in any pending action or proceeding,

4. not be admissible in evidence in any action or proceeding other than one arising out of this Act.

B. No finding, determination, decision, ruling or order (including any finding of fact, statement or conclusion made therein) issued pursuant to this Act shall be admissible or used in evidence in any action other than one arising out of this Act, nor shall it be binding or conclusive except as provided in this Act, nor shall it constitute res judicata, regardless of whether the actions were between the same or related parties or involved the same facts.

C. Any officer or employee of this State, any officer or employee of any entity authorized to obtain information pursuant to this Section, and any agent of this State or of such entity who, except with authority of the Director under this Section, shall disclose information shall be guilty of a Class B misdemeanor and shall be disqualified from holding any appointment or employment by the State.

D. An individual or his duly authorized agent may be supplied with information from records only to the extent necessary for the proper presentation of his claim for benefits or with his existing or prospective rights to benefits. Discretion to disclose this information belongs solely to the Director and is not subject to a release or waiver by the individual.

Notwithstanding any other provision to the contrary, an individual or his or her duly authorized agent may be supplied with a statement of the amount of benefits paid to the individual during the 18 months preceding the date of his or her request.

E. An employing unit may be furnished with information, only if deemed by the Director as necessary to enable it to fully discharge its obligations or safeguard its rights under the Act. Discretion to disclose this information belongs solely to the Director and is not subject to a release or waiver by the employing unit.

F. The Director may furnish any information that he may deem proper to any public officer or public agency of this or any other State or of the federal government dealing with:

1. the administration of relief,
2. public assistance,
3. unemployment compensation,
4. a system of public employment offices,
5. wages and hours of employment, or
6. a public works program.

The Director may make available to the Illinois Industrial Commission information regarding employers for the purpose of verifying the insurance coverage required under the Workers' Compensation Act and Workers' Occupational Diseases Act.

G. The Director may disclose information submitted by the State or any of its political subdivisions, municipal corporations, instrumentalities, or school or community college districts, except for information which specifically identifies an individual claimant.

H. The Director shall disclose only that information required to be disclosed under Section 303 of the Social Security Act, as amended, including:

1. any information required to be given the United States Department of Labor under Section 303(a)(6); and
2. the making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's right to further compensation under such law as required by Section 303(a)(7); and
3. records to make available to the Railroad Retirement Board as required by Section 303(c)(1); and
4. information that will assure reasonable cooperation with every agency of the United States charged with the administration of any unemployment compensation law as required by Section 303(c)(2); and
5. information upon request and on a reimbursable basis to the United States Department of Agriculture and to any State food stamp agency concerning any information required to be furnished by Section 303(d); and
6. any wage information upon request and on a reimbursable basis to any State or local child support enforcement agency required by Section 303(e); and
7. any information required under the income eligibility and verification system as required by Section 303(f); and

8. information that might be useful in locating an absent parent or that parent's employer, establishing paternity or establishing, modifying, or enforcing child support orders for the purpose of a child support enforcement program under Title IV of the Social Security Act upon the request of and on a reimbursable basis to the public agency administering the Federal Parent Locator Service as required by Section 303(h); and

9. information, upon request, to representatives of any federal, State or local governmental public housing agency with respect to individuals who have signed the appropriate consent form approved by the Secretary of Housing and Urban Development and who are applying for or participating in any housing assistance program administered by the United States Department of Housing and Urban Development as required by Section 303(i).

I. The Director, upon the request of a public agency of Illinois, of the federal government or of any other state charged with the investigation or enforcement of Section 10-5 of the Criminal Code of 1961 (or a similar federal law or similar law of another State), may furnish the public agency information regarding the individual specified in the request as to:

1. the current or most recent home address of the individual, and

2. the names and addresses of the individual's employers.

J. Nothing in this Section shall be deemed to interfere with the disclosure of certain records as provided for in Section 1706 or with the right to make available to the Internal Revenue Service of the United States Department of the Treasury, or the Department of Revenue of the State of Illinois, information obtained under this Act.

K. The Department shall make available to the Illinois Student Assistance Commission, upon request, information in the possession of the Department that may be necessary or useful to the Commission in the collection of defaulted or delinquent student loans which the Commission administers.

L. The Department shall make available to the State Employees' Retirement System, the State Universities Retirement System, and the Teachers' Retirement System of the State of Illinois, and the Department of Central Management Services, Risk Management Division, upon request, information in the possession of the Department that may be necessary or useful to the System or the Risk Management Division for the purpose of determining whether any recipient of a disability benefit from the System or a workers' compensation benefit from the Risk Management Division is gainfully employed.

M. This Section shall be applicable to the information obtained in the administration of the State employment service, except that the Director may publish or release general labor market information and may furnish information that he may deem proper to an individual, public officer or public agency of this or any other State or the federal government (in addition to those public officers or public agencies specified in this Section) as he prescribes by Rule.

N. The Director may require such safeguards as he deems proper to insure that information disclosed pursuant to this Section is used only for the purposes set forth in this Section.

O. Nothing in this Section prohibits communication with an individual or entity through unencrypted e-mail or other unencrypted electronic means as long as the communication does not contain the individual's or entity's name in combination with any one or more of the individual's or entity's social security number; driver's license or State identification number; account number or credit or debit card number; or any required security code, access code, or password that would permit access to further information pertaining to the individual or entity.

P. Within 30 days after the effective date of this amendatory Act of 1993 and annually thereafter, the Department shall provide to the Department of Financial Institutions a list of individuals or entities that, for the most recently completed calendar year, report to the Department as paying wages to workers. The lists shall be deemed confidential and may not be disclosed to any other person.

Q. The Director shall make available to an elected federal official the name and address of an individual or entity that is located within the jurisdiction from which the official was elected and that, for the most recently completed calendar year, has reported to the Department as paying wages to workers, where the information will be used in connection with the official duties of the official and the official requests the information in writing, specifying the purposes for which it will be used. For purposes of this subsection, the use of information in connection with the official duties of an official does not include use of the information in connection with the solicitation of contributions or expenditures, in money or in kind, to or on behalf of a candidate for public or political office or a political party or with respect to a public question, as defined in Section 1-3 of the Election Code, or in connection with any commercial solicitation. Any elected federal official who, in submitting a request for information covered by this subsection, knowingly makes a false statement or fails to disclose a material fact, with the intent to obtain the information for a purpose not authorized by this subsection, shall be guilty of a Class B misdemeanor.

R. The Director may provide to any State or local child support agency, upon request and on a reimbursable basis, information that might be useful in locating an absent parent or that parent's employer, establishing paternity, or establishing, modifying, or enforcing child support orders.

S. The Department shall make available to a State's Attorney of this State or a State's Attorney's investigator, upon request, the current address or, if the current address is unavailable, current employer information, if available, of a victim of a felony or a witness to a felony or a person against whom an arrest warrant is outstanding.

T. The Director shall make available to the Department of State Police, a county sheriff's office, or a municipal police department upon request, any information concerning the current address and place of employment or former places of employment of a person who is required to register as a sex offender under the Sex Offender Registration Act that may be useful in enforcing the registration provisions of that Act.

U. The Director shall make information available to the Department of Healthcare and Family Services and the Department of Human Services for the purpose of determining eligibility for public benefit programs authorized under the Illinois Public Aid Code and related statutes administered by those departments, for verifying sources and amounts of income, and for other purposes directly connected with the administration of those programs.

(Source: P.A. 95-0911, eff. 6-23-06; P.A. 96-0420, eff. 8-13-09; P.A. 97-621, eff. 11-18-11; P.A. 97-689, 6-14-12)

Sec. 1900.1. Privileged Communications

All letters, reports, or communications of any kind, either oral or written, from an employer or his workers to each other, or to the Director or any of his agents, representatives, or employees, made in connection with the administration of this Act shall be absolutely privileged and shall not be the basis of any slander or libel suit in any court of this State unless they are false in fact and malicious in intent.

(Source: P.A. 86-3.)

Sec. 1900.2. Economic Data Task Force.

(a) The General Assembly finds that substantial public benefit is derived from enhanced access to State data and particularly to data generated by the Department and that this benefit takes the form both of private sector economic development and of opportunities to improve public policy. The General Assembly further finds that protecting the confidentiality of individuals and companies in Illinois is imperative for reasons both ethical and legal. Consequently, the General Assembly seeks to understand the potential uses and users of such data, as well as its applications for economic development and other public purposes, and, in the context of those uses, the best ways to make as much data as possible available to those constituencies to serve those purposes while protecting confidentiality and minimizing cost to the State.

(b) The Economic Data Task Force is created within the Department. The Task Force shall consist of 11 members. The following members shall be appointed within 60 days after the effective date of this amendatory Act of the 97th General Assembly: one member appointed by the President of the Senate; one member appointed by the Senate Minority Leader; one member appointed by the Speaker of the House of Representatives; one member appointed by the House Minority Leader; one member appointed by the Governor; and the Director, who shall serve as ex officio chairman and who shall appoint 5 additional members: one of whom shall be a representative citizen chosen from the employee class, one of whom shall be a representative citizen chosen from the employing class, one of whom shall be an employee of the United States Bureau of Labor Statistics (hereinafter referred to as "BLS")(or, if no BLS employee is available, a government employee from outside of Illinois with appropriate expertise), and 2 of whom shall be academic researchers with appropriate expertise. All members shall be voting members. Members shall serve without compensation, but may be reimbursed for expenses associated with the Task Force. The Task Force shall begin to conduct business upon the appointment of all members. For purposes of Task Force meetings, a quorum is 6 members. If a vacancy occurs on the Task Force, a successor member shall be appointed by the original appointing authority. Meetings of the Task Force are subject to the Open Meetings Act.

(c) The Task Force shall analyze the potential benefits and the feasibility of expanding public access to data produced and maintained by the Department including, but not limited to, data collected, estimated, and maintained under cooperative agreement with the United States Department of Labor or other federal agencies. The analysis shall include an analysis of potential uses of these data and the public benefit of those uses, and a review of current federal and State practices for providing public access to the data, as well as potential alternate processes by which the public could access data in the Department's possession. The Task Force shall hold at least 3 public hearings as part of its analysis. The Task Force may establish any committees it deems necessary.

(d) All findings, recommendations, public postings, and other relevant information pertaining to the Task Force shall be posted on the Department's website, subject to the confidentiality requirements established under federal and State

law including, but not limited to, the federal Confidential Information Protection and Statistical Efficiency Act of 2002 and Section 1900. The Department shall provide staff and administrative support to the Task Force. The Task Force shall report its findings and recommendations to the Governor and the General Assembly no later than June 30, 2013, and shall be dissolved upon submission of the report. All recommendations shall be consistent with confidentiality requirements established under federal law including, but not limited to, disclosure proofing standards.

(e) Each member of the Task Force and each Department employee must be designated as an agent of BLS pursuant to the federal Confidential Information Protection and Statistical Efficiency Act of 2002 subject to the civil and criminal sanctions for unauthorized disclosure of information protected by that Act as a condition of being able to participate in any activities of the Task Force and shall also be subject to the civil and criminal sanctions established under subsection C of Section 1900 for unauthorized disclosure of information protected by Section 1900. For purposes of this Section, information protected by Section 1900 includes, but is not limited to, the statistical formulation of disclosure-proofing methods.

(Source: P.A. 97-788, eff. 1-1-13)

Sec. 2100. Handling of funds - Bond - Accounts

A. All contributions and payments in lieu of contributions collected under this Act, including but not limited to fund building receipts and receipts attributable to the surcharge established pursuant to Section 1506.5, together with any interest thereon; all penalties collected pursuant to this Act; any property or securities acquired through the use thereof; all moneys advanced to this State's account in the unemployment trust fund pursuant to the provisions of Title XII of the Social Security Act, as amended; all moneys directed for transfer from the Master Bond Fund or the Title XII Interest Fund to this State's account in the unemployment trust fund; all moneys received from the Federal government as reimbursements pursuant to Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970, as amended; all moneys credited to this State's account in the unemployment trust fund pursuant to Section 903 of the Federal Social Security Act, as amended; all administrative fees collected from individuals pursuant to Section 900 or from employing units pursuant to Section 2206.1; and all earnings of such property or securities and any interest earned upon any such moneys shall be paid or turned over to the Department and held by the Director, as ex-officio custodian of the clearing account, the unemployment trust fund account and the benefit account, and by the State Treasurer, as ex-officio custodian of the special administrative account, separate and apart from all public moneys or funds of this State, as hereinafter provided. Such moneys shall be administered by the Director exclusively for the purposes of this Act

No such moneys shall be paid or expended except upon the direction of the Director in accordance with such regulations as he shall prescribe pursuant to the provisions of this Act.

The State Treasurer shall be liable on his general official bond for the faithful performance of his duties in connection with the moneys in the special administrative account provided for under this Act. Such liability on his official bond shall exist in addition to the liability upon any separate bond given by him. All sums recovered for losses sustained by the account shall be deposited in that account.

The Director shall be liable on his general official bond for the faithful performance of his duties in connection with the moneys in the clearing account, the benefit account and unemployment trust fund account provided for under this Act. Such liability on his official bond shall exist in addition to the liability upon any separate bond given by him. All sums recovered for losses sustained by any one of the accounts shall be deposited in the account that sustained such loss.

The Treasurer shall maintain for such moneys a special administrative account. The Director shall maintain for such moneys 3 separate accounts: a clearing account, a benefit account, and an unemployment trust fund account. All moneys payable under this Act (except moneys requisitioned from this State's account in the unemployment trust fund and deposited in the benefit account and moneys directed for deposit into the Special Programs Fund provided for under Section 2107), including but not limited to moneys directed for transfer from the Master Bond Fund or the Title XII Interest Fund to this State's account in the unemployment trust fund, upon receipt thereof, shall be immediately deposited in the clearing account; provided, however, that, except as is otherwise provided in this Section, interest and penalties shall not be deemed a part of the clearing account but shall be transferred immediately upon clearance thereof to the special administrative account; further provided that an amount not to exceed $90,000,000 in payments attributable to the surcharge established pursuant to Section 1506.5, including any interest thereon, shall not be deemed a part of the clearing account but shall be transferred immediately upon clearance thereof to the Title XII Interest Fund.

After clearance thereof, all other moneys in the clearing account shall be immediately deposited by the Director with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to the Federal Social Security Act, as amended, except fund building receipts, which shall be deposited into the Master Bond Fund. The benefit account shall consist of all moneys requisitioned from this State's account in the unemployment trust fund. The moneys in the benefit account shall be expended in accordance with regulations prescribed by the Director and solely for the payment of benefits, refunds of contributions, interest and penalties under the provisions of the Act, the payment of health insurance in accordance with Section 410 of this Act, and the transfer or payment of funds to any Federal or State agency pursuant to reciprocal arrangements entered into by the Director under the provisions of Section 2700E, except that moneys credited to this State's account in the unemployment trust fund pursuant to Section 903 of the Federal Social Security Act, as amended, shall be used exclusively as provided in subsection B. For purposes of this Section only, to the extent allowed by applicable legal requirements, the payment of benefits includes but is not limited to the payment of principal on any bonds issued pursuant to the Illinois Unemployment Insurance Trust Fund Financing Act, exclusive of any interest or administrative expenses in connection with the bonds. The Director shall, from time to time, requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to the State's account therein, as he deems necessary solely for the payment of such benefits, refunds, and funds, for a reasonable future period. The Director, as ex-officio custodian of the benefit account, which shall be kept separate and apart from all other public moneys, shall issue payment of such benefits, refunds, health insurance and funds solely from the moneys so received into the benefit account. However, after January 1, 1987, no payment shall be drawn on such benefit account unless at the time of drawing there is sufficient money in the account to make the payment. The Director shall retain in the clearing account an amount of interest and penalties equal to the amount of interest and penalties to be refunded from the benefit account. After clearance thereof, the amount so retained shall be immediately deposited by the Director, as are all other moneys in the clearing account, with the Secretary of the Treasury of the United States. If, at any time, an insufficient amount of interest and penalties is available for retention in the clearing account, no refund of interest or penalties shall be made from the benefit account until a sufficient amount is available for retention and is so retained, or until the State Treasurer, upon the direction of the Director, transfers to the Director a sufficient amount from the special administrative account, for immediate deposit in the benefit account.

Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates of and may be utilized for authorized expenditures during succeeding periods, or, in the discretion of the Director, shall be redeposited with the Secretary of the Treasury of the United States to the credit of the State's account in the unemployment trust fund.

Moneys in the clearing, benefit and special administrative accounts shall not be commingled with other State funds but they shall be deposited as required by law and maintained in separate accounts on the books of a savings and loan association or bank.

No bank or savings and loan association shall receive public funds as permitted by this Section, unless it has complied with the requirements established pursuant to Section 6 of "An Act relating to certain investments of public funds by public agencies", approved July 23, 1943, as now or hereafter amended.

B. Moneys credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to Section 903 of the Social Security Act may be requisitioned from this State's account and used as authorized by Section 903. Any interest required to be paid on advances under Title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly, by an equivalent reduction in contributions or payments in lieu of contributions from amounts in this State's account in the unemployment trust fund. Such moneys may be requisitioned and used for the payment of expenses incurred for the administration of this Act, but only pursuant to a specific appropriation by the General Assembly and only if the expenses are incurred and the moneys are requisitioned after the enactment of an appropriation law which:

1. Specifies the purpose or purposes for which such moneys are appropriated and the amount or amounts appropriated therefor;
2. Limits the period within which such moneys may be obligated to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

3. Limits the amount which may be obligated during any fiscal year to an amount which does not exceed the amount by which (a) the aggregate of the amounts transferred to the account of this State pursuant to Section 903 of the Social Security Act exceeds (b) the aggregate of the amounts used by this State pursuant to this Act and charged against the amounts transferred to the account of this State.

For purposes of paragraph (3) above, amounts obligated for administrative purposes pursuant to an appropriation shall be chargeable against transferred amounts at the exact time the obligation is entered into. The appropriation, obligation, and expenditure or other disposition of money appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor.

Moneys appropriated as provided herein for the payment of expenses of administration shall be requisitioned by the Director as needed for the payment of obligations incurred under such appropriation. Upon requisition, such moneys shall be deposited with the State Treasurer, who shall hold such moneys, as ex-officio custodian thereof, in accordance with the requirements of Section 2103 and, upon the direction of the Director, shall make payments therefrom pursuant to such appropriation. Moneys so deposited shall, until expended, remain a part of the unemployment trust fund and, if any will not be expended, shall be returned promptly to the account of this State in the unemployment trust fund.

C. The Governor is authorized to apply to the United States Secretary of Labor for an advance or advances to this State's account in the unemployment trust fund pursuant to the conditions set forth in Title XII of the Federal Social Security Act, as amended. The amount of any such advance may be repaid from this State's account in the unemployment trust fund.

D. The Director shall annually on or before the first day of March report in writing to the Employment Security Advisory Board concerning the deposits into and expenditures from this State's account in the Unemployment Trust Fund.

(Source: P.A. 93-634, eff. 1-1-04; 94-1083, eff. 1-19-07, P.A. 97-0001, eff. 3-31-11, P.A. 97-621, eff. 11-18-11; P.A. 97-791, eff. 1-1-13)

Sec. 2101. Special administrative account

Except as provided in Section 2100, all interest and penalties collected pursuant to this Act shall be deposited in the special administrative account. The amount in this account in excess of $100,000 on the close of business of the last day of each calendar quarter shall be immediately transferred to this State's account in the unemployment trust fund. However, subject to Section 2101.1, such funds shall not be transferred where it is determined by the Director that it is necessary to accumulate funds in the account in order to have sufficient funds to pay interest that may become due under the terms of Section 1202 (b) of the Federal Social Security Act, as amended, upon advances made to the Illinois Unemployment Insurance Trust Fund under Title XII of the Federal Social Security Act or where it is determined by the Director that it is necessary to accumulate funds in the special administrative account in order to have sufficient funds to expend for any other purpose authorized by this Section. The moneys available in the special administrative account shall be expended upon the direction of the Director whenever it appears to him that such expenditure is necessary for:

A. 1. The proper administration of this Act and no Federal funds are available for the specific purpose for which such expenditure is to be made, provided the moneys are not substituted for appropriations from Federal funds, which in the absence of such moneys would be available and provided the monies are appropriated by the General Assembly.

2. The proper administration of this Act for which purpose appropriations from Federal funds have been requested but not yet received, provided the special administrative account will be reimbursed upon receipt of the requested Federal appropriation.

B. To the extent possible, the repayment to the fund established for financing the cost of administration of this Act of moneys found by the Secretary of Labor of the United States of America, or other appropriate Federal agency, to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor, or other appropriate Federal agency, for the administration of this Act.

C. The payment of refunds or adjustments of interest or penalties, paid pursuant to Sections 901 or 2201.

D. The payment of interest on refunds of erroneously paid contributions, penalties and interest pursuant to Section 2201.1.

E. The payment or transfer of interest or penalties to any Federal or State agency, pursuant to reciprocal arrangements entered into by the Director under the provisions of Section 2700E.

F. The payment of any costs incurred, pursuant to Section 1700.1.

G. Beginning January 1, 1989, for the payment for the legal services authorized by subsection B of Section 802, up to $1,000,000 per year for the representation of the individual claimants and up to $1,000,000 per year for the representation of "small employers".

H. The payment of any fees for collecting past due contributions, payments in lieu of contributions, penalties, and interest shall be paid (without an appropriation) from interest and penalty monies received from collection agents that have contracted with the Department under Section 2206 to collect such amounts, provided however, that the amount of such payment shall not exceed the amount of past due interest and penalty collected.

I. The payment of interest that may become due under the terms of Section 1202 (b) of the Federal Social Security Act, as amended, for advances made to the Illinois Unemployment Insurance Trust Fund.

The Director shall annually on or before the first day of March report in writing to the Employment Security Advisory Board concerning the expenditures made from the special administrative account and the purposes for which funds are being accumulated.

If Federal legislation is enacted which will permit the use by the Director of some part of the contributions collected or to be collected under this Act, for the financing of expenditures incurred in the proper administration of this Act, then, upon the availability of such contributions for such purpose, the provisions of this Section shall be inoperative and interest and penalties collected pursuant to this Act shall be deposited in and be deemed a part of the clearing account. In the event of the enactment of the foregoing Federal legislation, and within 90 days after the date upon which contributions become available for expenditure for costs of administration, the total amount in the special administrative account shall be transferred to the clearing account, and after clearance thereof shall be deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to the Federal Social Security Act, as amended.

(Source: P.A. 94-1083, eff. 1-19-07)

Sec. 2101.1. Mandatory transfers

Notwithstanding any other provision in Section 2101 to the contrary, no later than June 30, 2007, an amount equal to at least $1,400,136 but not to exceed $7,000,136 shall be transferred from the special administrative account to this State's account in the Unemployment Trust Fund. No later than June 30, 2008, and June 30 of each of the three immediately succeeding calendar years, there shall be transferred from the special administrative account to this State's account in the Unemployment Trust Fund an amount at least equal to the lesser of $1,400,000 or the unpaid principal. For purposes of this Section, the unpaid principal is the difference between $7,000,136 and the sum of amounts, excluding interest, previously transferred pursuant to this Section. In addition to the amounts otherwise specified in this Section, each transfer shall include a payment of any interest accrued pursuant to this Section through the end of the immediately preceding calendar quarter for which the federal Department of the Treasury has published the yield for state accounts in the Unemployment Trust Fund. Interest pursuant to this Section shall accrue daily beginning on January 1, 2007, and be calculated on the basis of the unpaid principal as of the beginning of the day. The rate at which the interest shall accrue for each calendar day within a calendar quarter shall equal the quotient obtained by dividing the yield for that quarter for state accounts in the Unemployment Trust Fund as published by the federal Department of the Treasury by the total number of calendar days within that quarter. Interest accrued but not yet due at the time the unpaid principal is paid in full shall be transferred within 30 days after the federal Department of the Treasury has published the yield for state accounts in the Unemployment Trust Fund for all quarters for which interest has accrued pursuant to this Section but not yet been paid. A transfer required pursuant to this Section in a fiscal year of this State shall occur before any transfer made with respect to that same fiscal year from the special administrative account to the Title III Social Security and Employment Fund.

(Source: P.A. 94-1083, eff. 1-19-07)

Sec. 2102. Management of funds upon discontinuance of unemployment trust fund

The provisions of Sections 2100 and 2101, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this State a separate book account of all funds deposited therein by this State for benefit purposes, together with this State's proportionate share of the earnings of such unemployment trust fund, from which no other State is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to this State, shall be transferred to the State Treasurer as ex-officio custodian thereof, who shall hold, invest, transfer, sell, deposit, and release such moneys, properties or securities in a manner approved by the Director in accordance with the provisions of this Act; provided that such money shall be invested in the bonds or other interest bearing obligations of the United States of America and of the State of Illinois; and provided, further, that such investment shall at all times be so made that all the assets shall always be readily convertible into cash when needed for the payment of benefits. The Treasurer shall dispose of such securities or other properties only upon the direction of the Director.

(Source: Laws 1951, p. 32.)

Sec. 2103. Unemployment compensation administration and other workforce development costs

All moneys received by the State or by the Department Director from any source for the financing of the cost of administration of this Act, including all federal moneys allotted or apportioned to the State or to the Department Director for that purpose, including moneys received directly or indirectly from the federal government under the Job Training Partnership Act, and including moneys received from the Railroad Retirement Board as compensation for services or facilities supplied to said Board, or any moneys made available by this State or its political subdivisions and matched by moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, shall be received and held by the State Treasurer as ex-officio custodian thereof, separate and apart from all other State moneys, in the Title III Social Security and Employment Fund, and such funds shall be distributed or expended upon the direction of the Director and, except money received pursuant to the last paragraph of Section 2100B, shall be distributed or expended solely for the purposes and in the amounts found necessary by the Secretary of Labor of the United States of America, or other appropriate federal agency, for the proper and efficient administration of this Act. Notwithstanding any provision of this Section, all money requisitioned and deposited with the State Treasurer pursuant to the last paragraph of Section 2100B shall remain part of the unemployment trust fund and shall be used only in accordance with the conditions specified in the last paragraph of Section 2100B.

If any moneys received from the Secretary of Labor, or other appropriate federal agency, under Title III of the Social Security Act, or any moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this State or its political subdivisions and matched by moneys granted to this State pursuant to the provisions of the Wagner-Peyser Act, are found by the Secretary of Labor, or other appropriate Federal agency, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary, by the Secretary of Labor, or other appropriate Federal agency, for the proper administration of this Act, it is the policy of this State that such moneys shall be replaced by moneys appropriated for such purpose from the general funds of this State for expenditure as provided in the first paragraph of this Section. The Director shall report to the Governor’s Office of Management and Budget, in the same manner as is provided generally for the submission by State Departments of financial requirements for the ensuing fiscal year, and the Governor shall include in his budget report to the next regular session of the General Assembly, the amount required for such replacement.

Moneys in the Title III Social Security and Employment Fund shall not be commingled with other State funds, but they shall be deposited as required by law and maintained in a separate account on the books of a savings and loan association or bank.

The State Treasurer shall be liable on his general official bond for the faithful performance of his duties as custodian of all moneys in the Title III Social Security and Employment Fund. Such liability on his official bond shall exist in addition to the liability upon any separate bond given by him. All sums recovered for losses sustained by the fund herein described shall be deposited therein.

Upon the effective date of this amendatory Act of 1987 (January 1, 1988), the Comptroller shall transfer all unobligated funds from the Job Training Fund into the Title III Social Security and Employment Fund.

On September 1, 2000, or as soon thereafter as may be reasonably practicable, the State Comptroller shall transfer all unobligated moneys from the Job Training Partnership Fund into the Title III Social Security and Employment Fund. The moneys transferred pursuant to this amendatory Act may be used or expended for purposes consistent with the conditions under which those moneys were received by the State.

Beginning on the effective date of this amendatory Act of the 91st General Assembly, all moneys that would otherwise be deposited into the Job Training Partnership Fund shall instead be deposited into the Title III Social Security and Employment Fund, to be used for purposes consistent with the conditions under which those moneys are received by the State, except that any moneys that may be necessary to pay liabilities outstanding as of June 30, 2000 shall be deposited into the Job Training Partnership Fund.

(Source: P.A. 94.-793, eff. 5-19-06; P.A. 97-791, eff. 1-1-13)

Sec. 2103.1. Employment Security Administrative Fund (Repealed)

(Source: P.A. 094-0232, eff. 07-14-05)

Sec. 2104. Employment Assistance Revolving Fund (Repealed)

(Source: P.A. 93-0634, eff. 12-26-03.)

Sec. 2105. Local Employment Assistance Fund (Repealed).

(Source: P.A. 91-357, eff. 7-29-99. Repealed by P.A. 98-107, eff. 7-23-13.)

Sec. 2106.1. Master Bond Fund

There is hereby established the Master Bond Fund held by the Director or his or her designee as ex-officio custodian thereof separate and apart from all other State funds. The moneys in the Fund shall be used in accordance with the Illinois Unemployment Insurance Trust Fund Financing Act.

(Source: P.A. 93-0634, eff. 12-26-03.)

Sec. 2107. Special Programs Fund

The Special Programs Fund shall be held separate and apart from all public moneys or funds of this State. All moneys that may be received by the State for the payment of trade readjustment allowances or alternative trade adjustment assistance for older workers under the Trade Act of 1974, as amended, or disaster unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, or for the payment of any other benefits where the Department will pay the benefits as an agent of the United States Department of Labor or its successor agency pursuant to federal law (except benefits payable through the State's account in the federal Unemployment Trust Fund established and maintained pursuant to the federal Social Security Act, as amended), shall be deposited into the Special Programs Fund, together with any moneys that may otherwise be directed for deposit into that Fund. No such moneys shall be paid or expended except upon the direction of the Director who, as ex officio custodian of the Special Programs Fund, shall expend such moneys only in accordance with the directions of the United States Department of Labor or its successor agency, as an agent of the United States Department of Labor or its successor agency. Moneys in the Special Programs Fund shall not be commingled with other State funds, but they shall be deposited as required by law and maintained in a separate account on the books of a savings and loan association, bank, or other qualified financial institution. All interest earnings on amounts within the Special Programs Fund shall accrue to the Special Programs Fund. The Director shall be liable on her or his general official bond for the faithful performance of her or his duties in connection with the moneys in the Special Programs Fund. Such liability on her or his official bond shall exist in addition to the liability upon any separate bond given by her or him. All sums recovered for losses sustained by the Special Programs Fund shall be deposited into the Fund.

This amendatory Act of the 94th General Assembly is not intended to alter processes or requirements with respect to the Special Programs Fund from those in existence immediately prior to the effective date of this amendatory Act of the 94th General Assembly.

(Source: P.A. 94-1083, eff. 1-19-07)

Sec. 2108. Title XII Interest Fund.

The Title XII Interest Fund shall be held separate and apart from all public moneys or funds of this State. Payments attributable to the surcharge established pursuant to Section 1506.5 in an amount not to exceed $90,000,000 shall be deposited into the Title XII Interest Fund, together with any moneys that may otherwise be directed for deposit into that Fund. No such moneys shall be paid or expended except upon the direction of the Director who, as ex officio custodian of the Title XII Interest Fund, shall expend such moneys only for the payment of interest required to be paid on advances under Title XII of the Social Security Act or for transfer to this State's account in the unemployment trust fund. Any funds remaining in the Title XII Interest Fund after payment of the interest due as of September 30, 2011, on advances under Title XII of the Social Security Act shall be transferred to this State's account in the unemployment trust fund no later than October 31, 2011.

Moneys in the Title XII Interest Fund shall not be commingled with other State funds, but they shall be deposited as required by law and maintained in a separate account on the books of a savings and loan association, bank, or other qualified financial institution. All interest earnings on amounts within the Title XII Interest Fund shall accrue to the Title XII Interest Fund. The Director shall be liable on her or his general official bond for the faithful performance of her or his duties in connection with the moneys in the Title XII Interest Fund. Such liability on her or his official bond shall exist in addition to the liability upon any separate bond given by her or him. All sums recovered for losses sustained by the Title XII Interest Fund shall be deposited into the Fund.

(Source: P.A. 97-0001, eff. 3-3-11.)

Sec. 2200. Determination and assessment of contributions by the director

If it shall appear to the Director that any employing unit or person has failed to pay any contribution, interest or penalty as and when required by the provisions of this Act or by any rule or regulation of the Director, or if the amount of any contribution payment made by an employing unit for any period is deemed by the Director to be incorrect in that it does not include all contributions payable for such period, or if the Director shall find that the collection of any contributions which have accrued but are not yet due will be jeopardized by delay, and declares said contributions immediately due and payable, or if it shall appear to the Director that he has made any final assessment which did not include all contributions payable by the employer for the periods involved, or if it appears to the Director that any employing unit or person has, by reason of any act or omission or by operation of law, become liable for the payment of any contributions, interest or penalties not originally incurred by him, the Director may in any of the above events determine and assess the amount of such contributions or deficiency, as the case may be, together with interest and penalties due and unpaid, and immediately serve notice upon such employing unit or person of such determination and assessment and make a demand for payment of the assessed contribution together with interest and penalties thereon. If the employing unit or person incurring any such liability has died, such assessment may at the discretion of the Director be made against his personal representative. Such determination and assessment by the Director shall be final at the expiration of 20 days from the date of the service of such written notice thereof and demand for payment, unless such employing unit or person shall have filed with the Director a written protest and a petition for a hearing, specifying its objections thereto. Upon the receipt of such petition within the 20 days allowed, the Director shall fix the time and place for a hearing and shall notify the petitioner thereof. The Director may amend his determination and assessment at any time before it becomes final. In the event of such amendment the employing unit or person affected shall be given notice thereof and an opportunity to be heard in connection therewith. At any hearing held as herein provided, the determination and assessment that has been made by the Director shall be prima facie correct and the burden shall be upon the protesting employing unit or person to prove that it is incorrect. Upon the conclusion of such hearing a decision shall be made by the Director either canceling, increasing, modifying or affirming such determination or assessment and notice thereof given to the petitioner. Such notice shall contain a statement by the Director of the cost of the certification of the record computed at the rate of 5¢ per 100 words. The record shall consist of the notices and demands caused to be served by the Director, the original determination and assessment of the Director, the written protest and petition for hearing, the testimony introduced at such hearing, the exhibits produced at such hearing, or certified copies thereof, the decisions of the Director and such other documents in the nature of pleadings filed in the proceeding.

(Source: Laws 1951, p. 32.)

Sec. 2201. Refund or adjustment of contributions

Not later than 3 years after the date upon which any contributions, interest or penalties thereon were paid, an employing unit which has paid such contributions, interest or penalties thereon erroneously, may file a claim with the Director for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof where such adjustment cannot be made; provided, however, that no refund or adjustment shall be made of any contribution, the amount of which has been determined and assessed by the Director, if such contribution was paid after the determination and assessment of the Director became final, and provided, further, that any such adjustment or refund, involving contributions with respect to wages on the basis of which benefits have been paid, shall be reduced by the amount of benefits so paid. Upon receipt of a claim the Director shall make his determination, either allowing such claim in whole or in part, or ordering that it be denied, and serve notice upon the claimant of such determination. Such determination of the Director shall be final at the expiration of 20 days from the date of service of such notice unless the claimant shall have filed with the Director a written protest and a petition for hearing, specifying his objections thereto. Upon receipt of such petition within the 20 days allowed, the Director shall fix the time and place for a hearing and shall notify the claimant thereof. At any hearing held as herein provided, the determination of the Director shall be prima facie correct and the burden shall be upon the protesting employing unit to prove that it is incorrect. All of the provisions of this Act applicable to hearings conducted pursuant to Section 2200 shall be applicable to hearings conducted pursuant to this Section. Upon the conclusion of such hearing, a decision shall be made by the Director and notice thereof given to the claimant. If the Director shall decide that the claim be allowed in whole or in part, or if such allowance be ordered by the Court pursuant to Section 2205 and the judgment of said Court has become final, the Director shall, if practicable, make adjustment without interest in connection with subsequent contribution payments by the claimant, and if adjustments thereof cannot practicably be made in connection with such subsequent contribution payments, then the Director shall refund to the claimant the amount so allowed, without interest except as otherwise provided in Section 2201.1 from moneys in the benefit account established by this Act. Nothing herein contained shall prohibit the Director from making adjustment or refund upon his own initiative, within the time allowed for filing claim therefor, provided that the Director shall make no refund or adjustment of any contribution, the amount of which he has previously determined and assessed, if such contribution was paid after the determination and assessment became final.

If this State should not be certified for any year by the Secretary of Labor of the United States of America, or other appropriate Federal agency, under Section 3304 of the Federal Internal Revenue Code of 1954, the Director shall refund without interest to any instrumentality of the United States subject to this Act by virtue of permission granted in an Act of Congress, the amount of contributions paid by such instrumentality with respect to such year.

The Director may by regulation provide that, if there is a total credit balance of less than $2 in an employer's account with respect to contributions, interest, and penalties, the amount may be disregarded by the Director; once disregarded, the amount shall not be considered a credit balance in the account and shall not be subject to either an adjustment or a refund.

(Source: P.A. 90-554, eff. 12-12-97.)

Sec. 2201.1. Interest on Overpaid Contributions, Penalties and Interest

The Director shall quarterly furnish each employer with a statement of credit balances in the employer's account where the balances with respect to all contributions, interest and penalties combined equal or exceed $2. Under regulations prescribed by the Director and subject to the limitations of Section 2201, the employer may file a request for an adjustment or refund of the amount erroneously paid. Interest shall be paid on refunds of erroneously paid contributions, penalties and interest imposed by this Act, except that if any refund is mailed by the Director within 90 days after the date of the refund claim, no interest shall be due or paid. The interest shall begin to accrue as of the date of the refund claim and shall be paid at the rate of 1.5% per month computed at the rate of 12/365 of 1.5% for each day or fraction thereof. Interest paid pursuant to this Section shall be paid from monies in the special administrative account established by Sections 2100 and 2101. This Section shall apply only to refunds of contributions, penalties and interest which were paid as the result of wages paid after January 1, 1988.

(Source: P.A. 90-554, eff. 12-12-97.)

Sec. 2202. Finality of finding of claims adjudicator, Referee or Board of Review in proceedings before the director or his representative

If at any hearing held pursuant to Sections 2200 or 2201 before the Director or his duly authorized representative it shall appear that, in a prior proceeding before a claims adjudicator, Referee or the Board of Review, a decision was rendered in which benefits were allowed to a claimant, based upon a finding by such claims adjudicator, Referee or the Board of Review, as the case may be, that (A) the petitioning employing unit is an employer as defined by this Act, or (B) the claimant has rendered services for such employing unit that constitute employment as defined by this Act, or (C) the claimant was paid or earned, as the case may be, any sum that constitutes "wages" as defined by this Act, and that such employing unit was given notice of such prior proceedings and an opportunity to be heard by appeal to such Referee or the Board of Review, as the case may be, in such prior proceeding, and that such decision of the claims adjudicator, Referee or Board of Review allowing benefits to the claimant became final, the aforementioned finding of the claims adjudicator, Referee or the Board of Review, as the case may be, shall be final and incontrovertible as to such employing unit, in the proceedings before the Director or his duly authorized representative, and shall not be subject to any further right of judicial review by such employing unit. If, after the hearing held pursuant to Sections 2200 or 2201, the Director shall find that services were rendered for such employing unit by other individuals under circumstances substantially the same as those under which the claimant's services were performed, the finality of the findings made by the claims adjudicator, Referee or the Board of Review, as the case may be, as to the status of the services performed by the claimant, shall extend to all such services rendered for such employing unit, but nothing in this Section shall be construed to limit the right of any claimant to a fair hearing as provided in Sections 800, 801, and 803.

(Source: P.A. 77-1443.)

Sec. 2203. Service of notice-Place of hearing-By whom conducted

Whenever service of notice is required by Sections 2200 or 2201, such notice shall be deemed to have been served when deposited with the United States certified or registered mail addressed to the employing unit at its principal place of business, or its last known place of business or residence, or may be served by any person of full age in the same manner as is provided by statute for service of process in civil cases. If represented by counsel in the proceedings before the Director, then service of notice may be made upon such employing unit by mailing same to such counsel. If agreed to by the person or entity entitled to notice, notice may be given and completed electronically, in the manner prescribed by rule, by posting the notice on a secure web site accessible to the person or entity and sending notice of the posting to the last known e-mail address of the person or entity. All hearings provided for in Sections 2200 and 2201 shall be held in the county wherein the employing unit has its principal place of business in this State, provided that if the employing unit has no principal place of business in this State, such hearing may be held in Cook County, provided, further, that such hearing may be held in any county designated by the Director if the petitioning employing unit shall consent thereto. The hearings shall be conducted by the Director or by any full-time employee of the Director, selected in accordance with the provisions of the "Personnel Code" enacted by the Sixty-Ninth General Assembly, by him designated. Such representative so designated by the Director shall have all powers given the Director by Sections 1000, 1002, and 1003 of this Act.

(Source: Laws 1957, p. 2667., P.A. 97-621, eff. 11-18-11)

Sec. 2204. Finality of director's decision in absence of judicial review

Any decision of the Director made upon the conclusion of any hearing held pursuant to the provisions of Sections 2200 or 2201 shall be final and conclusive, unless reviewed as provided in Section 2205.

(Source: Laws 1951, p. 32.)

Sec. 2205. Judicial review of decisions on contributions

The Circuit Court of the county wherein the hearing provided for in Sections 2200 and 2201 was held shall have power to review the final administrative decisions of the Director rendered pursuant to those Sections. The provisions of the Administrative Review Law, and all amendments and modifications thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of such final administrative decisions of the Director. The term “administrative decision” is defined as in Section 3-101 of the Code of Civil Procedure. Such review proceedings shall be given precedence over all other civil cases except cases arising under the Workers' Compensation Act of this State.

The Director shall not be required to certify the record to the Circuit Court unless the party commencing such proceedings for review shall pay to the Director the cost of certification of the record as provided in Section 2200. The Director or the Commissioner of Unemployment Compensation, in the absence of the Director, upon receipt of such payment, shall prepare and certify to the court a true and correct typewritten copy of all matters contained in such record.

The Clerk of any court rendering a decision affecting a decision of the Director shall promptly furnish the Director with a copy of such court's decision, without charge, and the Director shall enter an order in accordance with such decision.

(Source: P.A. 84-1438.)

Sec. 2206. Collection of amounts due

If any employing unit or person shall default in any payment required to be made under this Act, the Director is authorized to contract for assistance in collecting such amounts and to expend sums from the nonappropriated portion of the Special Administrative Account established by Section 2101 in an amount not to exceed any penalties and interest collected to pay for such services. Any amount due may also be collected by civil action against the employing unit or person brought in the name of the People of the State of Illinois, without regard as to whether or not the amount of such contributions has been assessed by the Director as provided in Section 2200, and the same, when collected, shall be treated in the same manner as contributions paid under this Act, and such employing unit's or person's compliance with the provisions of this Act requiring payments to be made under this Act shall date from the time of the payment of said money so collected. Civil action brought under this Section to collect contributions or interest thereon shall be entitled to preference upon the calendar over all other civil actions except judicial review proceedings under this Act and cases arising under the Workers' Compensation Act of this State.

(Source: P.A. 85-956.)

Sec. 2206.1. Additional remedies-Default in payment of contribution

In addition to the remedies provided by this Act, when an employing unit defaults in any payment or contribution required to be made to the State under the provisions of this Act, the Director may request the Comptroller to withhold the amount due in accordance with the provisions of Section 10.05 of the State Comptroller Act and the Director may request the Secretary of the Treasury to withhold the amount due to the extent allowed by and in accordance with Section 6402(f) of the federal Internal Revenue Code of 1986, as amended. Where the Director requests withholding by the Secretary of the Treasury pursuant to this Section, in addition to the amount of the payment otherwise owed by the employing unit, the employing unit shall be liable for any legally authorized administrative fee assessed by the Secretary, with such fee to be added to the amount to be withheld by the Secretary.

(Source: P.A. 83-1, P.A. 97-621, eff. 11-18-11)

Sec. 2207. Limitations

No determination and assessment of contributions, interest, or penalties shall be made, and no action for the collection of contributions, interest, or penalties which is not based upon a final determination and assessment shall be brought against any employing unit, more than four years after the last day of the month immediately following the calendar quarter in which the wages, upon which such contributions accrued, were paid. This paragraph shall not apply to any employing unit which, for the purpose of evading the payment of contributions, interest or penalties, has willfully failed to pay any contribution, interest or penalty, or part thereof, or to file any report, when required by the provisions of this Act or the rules and regulations of the Director, or has knowingly made a false statement or knowingly failed to disclose a material fact.

Commencing July 1, 1951, whenever the interest provided for in Section 1401 on contributions in any quarter, has accrued to sixty per cent of the amount of the contributions due from any employing unit for such quarter prior to the payment of any part of such contributions, no action shall be brought, or determination and assessment made, against such employing unit for collection of the interest in excess of said sixty per cent of such contributions; provided, however, that nothing herein contained shall be construed to act as a limitation upon the collection of any interest which has accrued prior to July 1, 1951.

(Source: Laws 1957, p. 2667.)

Sec. 2208. Jurisdiction over resident and nonresident employing units

Any employing unit which is not a resident of this State and which exercises the privilege of having one or more individuals perform services for it within this State, and any resident employing unit which exercises that privilege and thereafter removes from this State, shall be deemed thereby to appoint the Secretary of State as its agent and attorney for the acceptance of process or notice in any judicial or administrative proceeding under this Act. The filing of such process or notice with the Secretary of State shall be sufficient service upon or notice to such employing unit and shall be of the same force and validity as if served upon it personally within this State if (A) notice of the service of such process or notice together with a copy thereof is sent by certified or registered mail, return receipt requested, to such employing unit at its principal place of business or its last known place of business or residence and (B) an affidavit of compliance with the provisions of this Section and a copy of the notice of service are appended to the original of the process filed in the course of such action.

Such continuances in any such action shall be granted as are necessary to afford such employing unit a reasonable opportunity to defend its interests.

(Source: Laws 1957, p. 2667.)

Sec. 2208.1. Return receipts.

Whenever any provision of this Act requires service by certified or registered mail, either a paper return receipt issued by the United States Postal Service or an electronic return receipt issued by the United States Postal Service shall constitute proof of service.

(Source: P.A. 98-107, eff. 7-23-13.)

Sec. 2300. Conduct of hearings-Evidence

The Director may adopt regulations governing the conduct of hearings held pursuant to any provisions of this Act. All such hearings shall be conducted in a manner provided by such regulations whether or not they prescribe a procedure which conforms to the common law or statutory rules of evidence or other technical rules or procedure, and no informality in the manner of taking testimony, in any such proceeding, nor the admission of evidence contrary to the common law rules of evidence, shall invalidate any decision made by the Director.

(Source: Laws 1951, p. 32.)

Sec. 2301. Testimony under oath

At any hearing held pursuant to the provisions of this Act, all testimony shall be given under oath or affirmation.

(Source: Laws 1951, p. 32.)

Sec. 2302. Admissibility of certified copies

A copy of any document or record on file with the Director certified to be a true copy by the Director, or the Commissioner of Unemployment Compensation, under the seal of the Department of Employment Security, shall be admissible in evidence at any hearing conducted pursuant to the provisions of this Act and in all judicial proceedings, in the same manner as are public documents.

(Source: P.A. 83-1503.)

Sec. 2303. Decisions of Board of Review or Director prima facie correct

At any hearing held pursuant to the provisions of Sections 1508, 1509, 2200, or 2201 and in all judicial proceedings involving the review of any decision of the Board of Review or of any decision, order, ruling, determination and assessment, statement of benefit wages, statement of benefit charges, or rate determination made by the Director, the finding or decision of the Board of Review, or decision, order, ruling, determination and assessment, statement of benefit wages, statement of benefit charges, or rate determination of the Director, sought to be reviewed, shall be prima facie correct, and the burden shall be upon the person seeking such review to establish the contrary.

(Source: P.A. 85-1009.)

Sec. 2304. Written reports of director's employees as evidence

At any hearing held pursuant to any of the provisions of this Act and in all judicial proceedings, the written report of any employee of the Director made in the regular course of the performance of such employee's duties, shall be competent evidence of the facts therein contained.

(Source: Laws 1951, p. 32.)

Sec. 2305. Presumption of validity of determination and assessment-Employing unit's contribution reports prima facie evidence

In any action for the collection of contributions based upon a determination and assessment by the Director, it shall be presumed that such determination and assessment has been validly made and the burden shall be upon the defendant to prove the contrary. In any hearing conducted pursuant to Sections 2200 or 2201 and in any action for the collection of contributions based upon contribution report forms issued to any employing unit and received by the Director in the regular course of his administration of this Act, such reports shall be admissible into evidence upon presentation without proof of execution and shall be prima facie evidence that the employing unit to whom such reports were issued was an employer during the period covered by such reports and of the liability of such employing unit for the payment of the amount of contributions therein set forth.

(Source: Laws 1951, p. 32.)

Sec. 2306. Certified copies of decisions or notices as evidence

A copy of any finding or decision of a claims adjudicator, Referee or the Board of Review and of any decision, order, ruling, determination and assessment, statement of benefit wages, statement of benefit charges, or rate determination made by the Director, and of any notice served by the Director, upon certification by the Commissioner of Unemployment Compensation or the Director to be a true and correct copy, and further certification that the records of the Director disclose that it was duly served upon the employing unit therein named, shall be admissible into evidence in all hearings and judicial proceedings as prima facie proof that it was made, rendered, or issued and that it was duly served upon such employing unit at the time and in the manner stated in such certification.

(Source: P.A. 85-1009.)

Sec. 2401. Recording and release of lien

A. The lien created by Section 2400 shall be invalid only as to any innocent purchaser for value of stock in trade of any employer in the usual course of such employer's business, and shall be invalid as to any innocent purchaser for value of any of the other assets to which such lien has attached, unless notice thereof has been filed by the Director in the office of the recorder of the county within which the property subject to the lien is situated. The Director may, in his discretion, for good cause shown and upon the reimbursement of any recording fees paid by the Director with respect to the lien, issue a certificate of withdrawal of notice of lien filed against any employer, which certificate shall be recorded in the same manner as herein provided for the recording of notice of liens. Such withdrawal of notice of lien shall invalidate such lien as against any person acquiring any of such employer's property or any interest therein, subsequent to the recordation of the withdrawal of notice of lien, but shall not otherwise affect the validity of such lien, nor shall it prevent the Director from re-recording notice of such lien. In the event notice of such lien is re-recorded, such notice shall be effective as against third persons only as of the date of such re-recordation.

B. The recorder of each county shall procure at the expense of the county a file labeled "Unemployment Compensation Contribution Lien Notice" and an index book labeled "Unemployment Compensation Contribution Lien Index." When a notice of any such lien is presented to him for filing, he shall file it in numerical order in the file and shall enter it alphabetically in the index. The entry shall show the name and last known business address of the employer named in the notice, the serial number of the notice, the date and hour of filing, and the amount of contribution, interest and penalty thereon due and unpaid. When a certificate of complete or partial release of such lien issued by the Director is presented for filing in the office of the recorder where a notice of lien was filed, the recorder shall permanently attach the certificate of release to the notice of lien and shall enter the certificate of release and the date in the Unemployment Compensation Contribution Lien Index on the line where the notice of lien is entered. In case title to land to be affected by the Notice of Lien is registered under the provisions of "An Act Concerning Land Titles", approved May 1, 1897, as amended, such notice shall be filed in the office of the Registrar of Titles of the county within which the property subject to the lien is situated and shall be entered upon the register of titles as a memorial or charge upon each folium of the register of title affected by such notice, and the Director shall not have a preference over the rights of any bona fide purchaser, mortgagee, judgment creditor or other lien holder arising prior to the registration of such notice.

C. The Director shall have the power to issue a certificate of partial release of any part of the property subject to the lien, upon the reimbursement of any recording fees paid by the Director with respect to the lien, if he shall find that the fair market value of that part of such property remaining subject to the lien is at least equal to the amount of all prior liens upon such property plus double the amount of the liability for contributions, interest and penalties thereon remaining unsatisfied.

D. Where the amount of or the liability for the payment of any contribution, interest or penalty is contested by any employing unit against whose property a lien has attached, and the determination of the Director with reference to such contribution has not become final, the Director may issue a certificate of release of lien upon the reimbursement of any recording fees paid by the Director with respect to the lien and the furnishing of bond by such employing unit in 125% the amount of the sum of such contribution, interest and penalty, for which lien is claimed, with good and sufficient surety to be approved by the Director conditioned upon the prompt payment of such contribution, together with interest and penalty thereon, by such employing unit to the Director immediately upon the decision of the Director in respect to the liability for such contribution, interest and penalty becoming final.

E. When a lien obtained pursuant to this Act has been satisfied and upon the reimbursement of any recording fees paid by the Director with respect to the lien, the Department shall issue a release to the person, or his agent, against whom the lien was obtained and such release shall contain in legible letters a statement as follows:

> FOR THE PROTECTION OF THE OWNER, THIS RELEASE SHALL BE FILED WITH THE RECORDER OR THE REGISTRAR OF TITLES, IN WHOSE OFFICE, THE LIEN WAS FILED.

(Source: P.A. 98-107, eff. 7-1-14.)

Sec. 2402. Priority of lien

The lien created by Section 2400 shall be prior to all other liens, whether general or specific, and shall be inferior only to any claim for wages filed pursuant to “An Act to protect employees and laborers in their claims for wages” approved June 15, 1887, as amended, in an amount not exceeding $250.00 for work performed within six months from the date of filing such claim, and to such liens as shall attach prior to the filing of Notice of Lien by the Director with the recorder as provided in this Act; provided, however, that in all cases where statutory provision is made for the recordation or other public notice of a lien, the lien of the Director shall be inferior only to such liens as shall have been duly recorded, or of

which public notice shall have been duly given, in the manner provided by such statute, prior to the filing of notice of lien by the Director with the recorder as in this Act provided.

(Source: P.A. 83-358.)

Sec. 2403. Enforcement of lien

In addition and as an alternative to any other remedy provided by law, the Director may foreclose the lien created by Section 2400 by petition in the name of the People of the State of Illinois to the Circuit Court of the county wherein the property subject to the lien is situated, in the same manner as provided by law for the foreclosure of other liens, provided that no hearing or proceeding provided by this Act for the review of the liability for the payment of the sums secured by such lien is pending and the time for taking thereof has expired. The process, practice and procedure for such foreclosure shall be the same as provided in the Civil Practice Law, as amended, except that in all such cases, it shall not be necessary that the petition describe the property to which the lien has attached. The employer against whom such petition has been filed shall file in the proceedings a full and complete schedule, under oath, of all property and rights thereto which he owned at the time the contributions, upon which the lien sought to be foreclosed is based, became due, or which he subsequently acquired, and if such employer fails to do so after having been so ordered by the court, he may be punished as in other cases of contempt of court.

The court in any proceeding commenced pursuant to the provisions of this Act may appoint a receiver with power to administer or liquidate the assets subject to the lien, pursuant to the order of the court.

Upon sale of the above stated property, the proceeds shall be applied to the payment of the costs incurred in the proceedings, and the satisfaction of such liens as have attached to the property in the order of their priority; the balance, if any, shall be paid to such parties as the court shall find to be entitled thereto. The Director is hereby empowered to bid at any sale conducted pursuant to the provisions of this Act.

The Director may also enforce the lien created by this Act to the same extent and in the same manner as is provided by the Retailers' Occupation Tax Act, as amended, for the enforcement of the lien created by that Act, except that, notwithstanding any provision of that Act to the contrary, the Director may also enforce the lien created by this Act by using designated agents to serve and enforce bank levies.

The Director's rights to redemption from a judicial sale or a sale for the enforcement of a judgment, or a judgment satisfying indebtedness secured by a mortgage on, any real estate which is subject to a lien created by this Act, which is inferior to the lien enforced or foreclosed by such sale, or the lien securing the indebtedness satisfied, as the case may be, shall be the same as those of the Department of Revenue with reference to the lien created by the Retailers' Occupation Tax Act, and the procedure provided by law for the termination of the rights of redemption by the Department of Revenue shall be applicable to the termination of the rights of redemption of the Director. The statutory notice required to be served upon and endorsed by the Director of Revenue by the Retailers' Occupation Tax Act shall be served upon and endorsed by the Director.

(Source: P.A. 88-655, eff. 9-16-94.)

Sec. 2404. Court may enjoin delinquent employing unit

Any employing unit which willfully refuses or fails to pay any contribution, interest or penalties found to be due to the Director by his final determination and assessment, after 30 days' written notice of intent to proceed under this Section, sent by the Director to the employing unit at its last known address by registered or certified mail, may be enjoined from operating any business as an “employer”, as defined in this Act, anywhere in this State, while such contribution, interest or penalties remain unpaid, upon the complaint of the Director in the Circuit Court of the county in which the employing unit resides or has or had a place of business within the State. The provisions of this Section shall be deemed cumulative and in addition to any provision of this Act relating to the collection of contributions by the Director.

(Source: Laws 1965, p. 1792.)

Sec. 2405. Process; failure to file reports or make payments.

The process available to the Department of Revenue pursuant to Section 3-7 of the Uniform Penalty and Interest Act with respect to an unpaid trust tax, interest, or penalties shall be available to the Department of Employment Security with respect to unpaid contributions, payments in lieu of contributions, penalties, and interest due pursuant to this Act where any officer or employee of the employer who has the control, supervision, or responsibility of filing wage or contribution reports and making payment of contributions or payments in lieu of contributions pursuant to this Act willfully fails to file the report or make the payment or willfully attempts in any other manner to evade or defeat a liability pursuant to this Act. For purposes of this Section, references to the Department or Director of Revenue in Section 3-7 of the Uniform Penalty and Interest Act shall be deemed to be references to the Department or Director of Employment Security. Procedures for protest and review of a notice of penalty liability under this Section shall be the same as those prescribed for protest and review of a determination and assessment under Section 2200.

(Source: P.A. 97-621, eff. 11-18-11)

Sec. 2500. Director not required to pay costs

Neither the Director nor the State of Illinois shall be required to furnish any bond, or to make a deposit for or pay any costs of any court or the fees of any of its officers in any judicial proceedings in pursuance to the provisions of this Act; provided, further, that whenever enforcement or collection of any judgment liability created by this Act, is levied by any sheriff or coroner upon any personal property, and such property is claimed by any person other than the defendant or is claimed by the defendant as exempt from levy by virtue of the exemption laws of this State, then it shall be the duty of the person making such claim to give notice in writing of his or her claim and of his or her intention to prosecute the same, to the sheriff or coroner within 10 days after the making of the levy; on receiving such notice the sheriff or coroner shall proceed in accordance with the provisions of Part 2 of Article XII of the Code of Civil Procedure, as amended; the giving of such notice within the 10 day period shall be a condition precedent to any judicial action against the sheriff or coroner for wrongfully levying, seizing or selling the property and any such person who fails to give such notice within the time shall be forever barred from bringing any judicial action against such sheriff or coroner for injury or damages to or conversion of the property.

(Source: P.A. 83-1362.)

Sec. 2600. Liability of certain other persons for payment of contributions incurred by delinquent employers

Every assignee, receiver, trustee in bankruptcy, liquidator, administrator, executor, sheriff, mortgagee, conditional vendor, or any other person who shall sell substantially all of (A) the business, or (B) the stock of goods, or (C) the furniture or fixtures, or (D) the machinery and equipment, or (E) the goodwill of any employing unit shall, at least 7 days prior to the date of such sale, notify the Director of the name and address of the person conducting such sale, the date, the place and the terms of such sale and a description of the property to be sold. Any assignee, receiver, trustee in bankruptcy, liquidator, administrator, executor, sheriff, mortgagee, conditional vendor, or any other person who shall fail to observe the requirements of this section shall be personally responsible for all loss in contributions, penalties and interest attributable to such failure to notify the Director as herein provided.

Any employing unit which shall, outside the usual course of its business, sell or transfer substantially all or any one of the classes of its assets hereinabove enumerated and shall cease to own said business, shall, within 10 days after such sale or transfer, file such reports as the Director shall prescribe and pay the contributions, interest and penalties required by this Act with respect to wages for employment up to the date of said sale or transfer. The purchaser or transferee shall withhold sufficient of the purchase money to cover the amount of all contributions, interest and penalties due and unpaid by the seller or transferor or, if the payment of money is not involved, shall withhold the performance of the condition that constitutes the consideration for the transfer, until such time as the seller shall produce a receipt from the Director showing that the contributions, interest and penalties have been paid or a certificate that no contributions, interest or penalties are due. If the seller or transferor shall fail to pay such contributions within the 10 days specified, then the purchaser or transferee shall pay the money so withheld to the Director of Employment Security. If such seller or transferor shall fail to pay the aforementioned contributions, interest or penalties within the 10 days and said purchaser or transferee shall either fail to withhold such purchase money as above required or fail to pay the same to the Director immediately after the expiration of 10 days from the date of such sale as above required, or shall fail to withhold the performance of the condition that constitutes the consideration for the transfer in cases where the payment of money is not involved or is not the sole consideration, such purchaser or transferee shall be personally liable to the Director for the

payment to the Director of the contributions, interest and penalties incurred by the seller or transferor up to the amount of the reasonable value of the property acquired by him.

Any person who shall acquire any property or rights thereto which at the time of such acquisition is subject to a valid lien in favor of the Director shall be personally liable to the Director for a sum equal to the amount of contributions secured by such lien but not to exceed the reasonable value of such property acquired by him.

(Source: P.A. 83-1503.)

Sec. 2700. Reciprocal arrangements

The Director is hereby authorized to enter into arrangements with the appropriate agencies of other States or the Federal Government or Canada whereby:

A. Services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one State shall be deemed to be services performed entirely within any one of the States or Canada (1) in which any part of such individual's service is performed or (2) in which such individual has his residence or (3) in which the employing unit maintains a place of business.

B. Potential rights to benefits accumulated under the unemployment compensation laws of one or more States or Canada or under one or more such laws of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the Director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the State's account in the unemployment trust fund.

C. Wages or employment under an unemployment compensation law of another State or Canada or of the Federal Government, shall be deemed to be wages for insured work for the purpose of determining an individual's rights to benefits under this Act, and wages for insured work shall be deemed to be wages or employment on the basis of which unemployment compensation under such law of another State or Canada or of the Federal Government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to this State's account in the unemployment trust fund for such of the benefits paid under this Act upon the basis of such wages or employment, and provisions for reimbursements therefrom for such of the compensation paid under such other law upon the basis of wages for insured work, as the Director finds will be fair and reasonable as to all affected interests.

D. Contributions due under this Act with respect to wages for insured work shall for the purposes of Section 1401 of this Act be deemed to have been paid to the Director as of the date payment was made as contributions therefor under another State or Federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to this State's account in the unemployment trust fund of such contributions and the actual earnings thereon as the Director finds will be fair and reasonable as to all affected interests. E. Contributions, interest, and penalties properly due and owing to any Federal agency or any State by an employing unit, and erroneously paid to this State, may be repaid or transferred to such agency or State, and contributions, interest, and penalties properly due and owing to this State by an employing unit and erroneously paid to any Federal agency or any State may be repaid or transferred to this State. In the event that the State or the Federal agency to which such contributions were erroneously paid has paid benefits based in whole or in part on the wages on which such contributions were paid, such arrangements may provide that such Federal agency or State may deduct such an amount of such benefits paid as the parties to the arrangement shall find is just and equitable, from the contributions, interest, and penalties to be repaid or transferred. In the event that the amount of such benefits, as so found, exceeds the amount of contributions, interest, and penalties erroneously paid, the arrangements may provide for reimbursement of such excess by the Federal agency or State to which such contributions, interest, and penalties should have been paid. Arrangements entered into prior to July 1, 1945, which comply with the provisions of this subsection are hereby validated to the same extent as if they had been entered into on or after July 1, 1945

E. Contributions, interest, and penalties properly due and owing to any Federal agency or any State by an employing unit, and erroneously paid to this State, may be repaid or transferred to such agency or State, and contributions, interest, and penalties properly due and owing to this State by an employing unit and erroneously paid to any Federal agency or any State may be repaid or transferred to this State. In the event that the State or the Federal agency to which such contributions were erroneously paid has paid benefits based in whole or in part on the wages on which such contributions were paid, such arrangements may provide that such Federal agency or State may deduct such an amount of such benefits paid as the parties to the arrangement shall find is just and equitable, from the contributions, interest, and penalties to be repaid or transferred. In the event that the amount of such benefits, as so found, exceeds the amount of contributions, interest, and penalties erroneously paid, the arrangements may provide for reimbursement of such excess by the Federal agency or State to which such contributions, interest, and penalties should have been paid. Arrangements entered into prior to July 1, 1945, which comply with the provisions of this subsection are hereby validated to the same extent as if they had been entered into on or after July 1, 1945.

F. Notwithstanding any other provision of this Section, the Director shall participate in any arrangements for the payment of benefits on the basis of combining an individual's wages and employment under this Act with his wages and employment under the unemployment compensation laws of other States or Canada, which are approved by the United States Secretary of Labor or other appropriate Federal agency in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of benefits in such situations, and which include provisions for (1) applying the base period specified in a single State law to a claim involving the combining of an individual's wages and employment subject to two or more State unemployment compensation laws; and (2) avoiding the duplicate use of wages and employment by reason of such combining.

(Source: P.A. 77-1443.)

Sec. 2701. Authorization of financial transactions resulting from reciprocal arrangements

Authority is hereby given to the Director to make and the Treasurer to make or receive payments of such amounts as the Director finds are due to or from this State by reason of any arrangement entered into by him pursuant to the provisions of Sections 2700 and 2702. Reimbursements of benefits paid pursuant to such arrangements shall be deemed to be benefits for the purpose of Section 2100. The Director is authorized to make to other State, Canadian or Federal agencies and to receive from such other State, Canadian or Federal agencies reimbursements from or to this State's account in the unemployment trust fund in accordance with arrangements entered into pursuant to Section 2700.

(Source: P.A. 77-1443.)

Sec. 2702. Exchange of information, services and facilities-Equality of rights of nonresidents

A. The administration of this Act and of other State and Federal unemployment compensation and public employment service laws will be promoted by cooperation between this State and such other States and the appropriate Federal agencies in exchanging services, and making available facilities and information. The Director is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this Act as he deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law and, in like manner, to accept and utilize information, services, and facilities made available to this State by the agency charged with the administration of any such other unemployment compensation or public employment service law.

B. To the extent permissible under the laws and Constitution of the United States, the Director is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this Act and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under this Act or under the unemployment compensation law of such foreign government.

C. Benefits shall not be denied or reduced to an individual solely because he files a claim in another State or in Canada or solely because he resides in another State or in Canada at the time he files a claim for benefits.

(Source: P.A. 77-1443.)

Sec. 2800. Violations and penalties

A. It shall be unlawful for any person or employing unit to--

1. Make a false statement or representation or fail to disclose a material fact:

a. To obtain, or increase, or prevent, or reduce any benefit or payment under the provisions of this Act, or under the unemployment compensation law of any State or the Federal Government, either for himself or for any other person; or

b. To avoid or reduce any contribution or other payment required from an employing unit under this Act.

2. Fail to pay a contribution due under the provisions of this Act.

3. Fail to furnish any report, audit, or information duly required by the Director under this Act.

4. Refuse to allow the Director or his duly authorized representative to inspect or copy the pay roll or other records or documents relative to the enforcement of this Act or required by this Act.

5. Make any deduction from the wages of any individual in its employ because of its liability for the payment of contributions required by this Act.

6. Knowingly fail to furnish to any individual in its employ any notice, report, or information duly required under the provisions of this Act or the rules or regulations of the Director.

7. Attempt to induce any individual, directly or indirectly (by promise of re-employment or by threat not to employ or not to re-employ or by any other means), to refrain from claiming or accepting benefits or to waive any other rights under this Act; or to maintain a rehiring policy which discriminates against former individuals in its employ by reason of their having claimed benefits.

8. Pay contributions upon wages for services not rendered for such employing unit if the purpose of such payment is either to reduce the amount of contributions due or to become due from any employing unit or to affect the benefit rights of any individual.

9. Solicit, or aid or abet the solicitation of, information from any individual concerning his place of employment, residence, assets or earnings, by any means which are intended to mislead such individual to believe that the person or employing unit seeking such information is the Department or one of its Divisions or branches, or a representative thereof.

B. Any employing unit or person who willfully violates any provision of this Section or any other provision of this Act or any rule or regulation promulgated thereunder, or does any act prohibited by this Act, or who fails, neglects, or refuses to perform any duty required by any provision of this Act or rule or regulation of the Director, within the time prescribed by the Director, for which no penalty has been specifically provided, or who fails, neglects, or refuses to obey any lawful order given or made by the Director, shall be guilty of a Class B misdemeanor, and each such act, failure, neglect, or refusal shall constitute a separate and distinct offense. An employing unit's or person's willful filing of a fraudulent quarterly wage report shall constitute a Class 4 felony if the amount of contributions owed with respect to the quarter is less than $300 and a Class 3 felony if the amount of contributions owed with respect to the quarter is $300 or more. An employing unit's or person's willful failure to honor a subpoena issued by the Department shall constitute a Class 4 felony. If a person or employing unit described in this Section is a corporation, the president, the secretary, and the treasurer, and any other officer exercising corresponding functions, shall each be subject to the aforesaid penalties for the violation of any provisions of this Section of which he or they had or, in the exercise of his or their duties, ought to have had knowledge, not including the provisions regarding the filing of a fraudulent quarterly wage report or the willful failure to honor a subpoena.

(Source: P.A. 98-107, eff. 7-23-13.)

Sec. 2900. Moneys and increments to be sole source of benefits-Non-priority of rights

The moneys payable under this Act, together with increments thereon, shall be the sole and exclusive source for the payment of benefits payable hereunder, and such benefits shall be deemed to be due and payable only to the extent that such moneys payable under this Act with increments thereon, are available.

Nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him either on his own behalf or on behalf of such individuals.

(Source: Laws 1951, p. 32.)

Sec. 3000. Separability of provisions

If any provision of this Act or the application thereof to any person or circumstance, is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances, shall not be affected thereby.

(Source: Laws 1951, p. 32.)

Sec. 3100. Saving clause

The legislature reserves the power to amend or repeal this Act at any time, and all rights, privileges or immunities conferred by this Act, or by acts done pursuant thereto, shall exist subject to such power.

(Source: Laws 1951, p. 32.)

Sec. 3200. Title of act

This Act may be cited as the Unemployment Insurance Act. Whenever the term “unemployment compensation” appears in this Act it shall mean “unemployment insurance”.

(Source: P.A. 86-1475.)

HEALTH CARE WORKER BACKGROUND CHECK ACT
(225 ILCS 46/1-99)

Sec. 25. Persons ineligible to be hired by health care employers and long-term care facilities

(a) After January 1, 1996, or January 1, 1997, as applicable, no health care employer shall knowingly hire, employ, or retain any individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit one or more of the offenses defined in Sections 8-1.1, 8-1.2, 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.1, 9-3.2, 9-3.3, 10-1, 10-2, 10-3, 10-3.1, 10-4, 10-5, 10-7, 11-6, 11-9.1, 11-19.2, 11-20.1, 12-1, 12-2, 12-3, 12-3.1, 12-3.2, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-4.4, 12-4.5, 12-4.6, 12-4.7, 12-7.4, 12-11, 12-13, 12-14, 12-14.1, 12-15, 12-16, 12-19, 12-21, 12-21.6, 12-32, 12-33, 16-1, 16-1.3, 16A-3, 17-3, 18-1, 18-2, 18-3, 18-4, 18-5, 19-1, 19-3, 19-4, 20-1, 20-1.1, 24-1, 24-1.2, 24-1.5, or 33A-2 of the Criminal Code of 1961; those provided in Section 4 of the Wrongs to Children Act; those provided in Section 53 of the Criminal Jurisprudence Act; those defined in Section 5, 5.1, 5.2, 7, or 9 of the Cannabis Control Act; or those defined in Sections 401, 401.1, 404, 405, 405.1, 407, or 407.1 of the Illinois Controlled Substances Act, unless the applicant or employee obtains a waiver pursuant to Section 40.

(a-1) After January 1, 2004, no health care employer shall knowingly hire any individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility shall knowingly hire any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has (i) been convicted of committing or attempting to commit one or more of the offenses defined in Section 12-3.3, 12-4.2-5, 16-2, 16G-15, 16G-20, 18-5, 20-1.2, 24-1.1, 24-1.2-5, 24-1.6, 24-3.2, or 24-3.3 of the Criminal Code of 1961; Section 4, 5, 6, 8, or 17.02 of the Illinois Credit Card and Debit Card Act; or Section 5.1 of the Wrongs to Children Act; or (ii) violated Section 10-5 of the Nurse Practice Act.

A UCIA criminal history record check need not be redone for health care employees who have been continuously employed by a health care employer since January 1, 2004, but nothing in this Section prohibits a health care employer from initiating a criminal history check for these employees.

A health care employer is not required to retain an individual in a position with duties involving direct care for clients, patients, or residents, and no long-term care facility is required to retain an individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, who has been convicted of committing or attempting to commit one or more of the offenses enumerated in this subsection.

(b) A health care employer shall not hire, employ, or retain any individual in a position with duties involving direct care of clients, patients, or residents, and no long-term care facility shall knowingly hire, employ, or retain any individual in a position with duties that involve or may involve contact with residents or access to the living quarters or the financial, medical, or personal records of residents, if the health care employer becomes aware that the individual has been convicted in another state of committing or attempting to commit an offense that has the same or similar elements as an offense listed in subsection (a) or (a-1), as verified by court records, records from a state agency, or an FBI criminal history record check. This shall not be construed to mean that a health care employer has an obligation to conduct a criminal history records check in other states in which an employee has resided.

(Source: P.A. 095-0639, eff. 10-5-07.)

(**Note:** The amendment to Section 25 made by P.A. 94-665 does not affect the non-charging provisions of Section 55 of the Healthcare Worker Background Check Act because the definition of "long-term care facility" in Section 15 of this Act makes clear that all long-term care facilities are health care facilities under the non-charging provisions of Section 55.)

Sec. 40. Waiver.

(a) An applicant, employee, or nurse aide may request a waiver of the prohibition against employment by submitting the following information to the entity responsible for inspecting, licensing, certifying, or registering the health care employer within 5 working days after the receipt of the criminal records report:

(1) Information necessary to initiate a fingerprint-based UCIA criminal records check in a form and manner prescribed by the Department of State Police; and

(2) The fee for a fingerprint-based UCIA criminal records check, which shall not exceed the actual cost of the record check.

(a-5) The entity responsible for inspecting, licensing, certifying, or registering the health care employer may accept the results of the fingerprint-based UCIA criminal records check instead of the items required by paragraphs (1) and (2) of subsection (a).

(b) The entity responsible for inspecting, licensing, certifying, or registering the health care employer may grant a waiver based upon any mitigating circumstances, which may include, but need not be limited to:

(1) The age of the individual at which the crime was committed;

(2) The circumstances surrounding the crime;

(3) The length of time since the conviction;

(4) The applicant or employee's criminal history since the conviction;

(5) The applicant or employee's work history;

(6) The applicant or employee's current employment references;

(7) The applicant or employee's character references;

(8) Nurse aide registry records; and

(9) Other evidence demonstrating the ability of the applicant or employee to perform the employment responsibilities competently and evidence that the applicant or employee does not pose a threat to the health or safety of residents, patients, or clients.

(c) The entity responsible for inspecting, licensing, certifying, or registering a health care employer must inform the health care employer if a waiver is being sought and must act upon the waiver request within 30 days of receipt of all necessary information, as defined by rule.

(d) An individual shall not be employed from the time that the employer receives the results of a non-fingerprint check containing disqualifying conditions until the time that the individual receives a waiver from the Department. If the individual challenges the results of the non-fingerprint check, the employer may continue to employ the individual if the individual presents convincing evidence to the employer that the non-fingerprint check is invalid. If the individual challenges the results of the non-fingerprint check, his or her identity shall be validated by a fingerprint-based records check in accordance with Section 35.

(e) The entity responsible for inspecting, licensing, certifying, or registering the health care employer shall be immune from liability for any waivers granted under this Section.

(f) A health care employer is not obligated to employ or offer permanent employment to an applicant, or to retain an employee who is granted a waiver under this Section.

(Source: P.A. 094-0665, eff. 1-1-06.)

Sec. 55. Immunity from liability

A health care employer shall not be liable for the failure to hire or to retain an applicant or employee who has been convicted of committing or attempting to commit one or more of the offenses enumerated in Section 25 of the Act.

No health care employer shall be chargeable for any benefit charges that result from the payment of unemployment benefits to any claimant when the claimant's separation from that employer occurred because the claimant's criminal background included an offense enumerated in Section 25, or the claimant's separation from that health care employer occurred as a result of the claimant violating a policy that the employer was required to maintain pursuant to the Drug Free Workplace Act.

(Source: P.A. 90-441, eff. 1-1-98; 91-598, eff. 1-1-00.)

Sec. 60. Offense

(a) Any person whose profession is job counseling who knowingly counsels any person who has been convicted of committing or attempting to commit any of the offenses enumerated in Section 25 to apply for a position with duties involving direct contact with a client, patient, or resident of a health care employer shall be guilty of a Class A misdemeanor unless a waiver is granted pursuant to Section 40 of this Act.

(b) Subsection (a) does not apply to an individual performing official duties in connection with the administration of the State employment service described in Section 1705 of the Unemployment Insurance Act.

(Source: P.A. 91-598, eff. 1-1-00.)

NEW HIRE REPORTING ACT
(20 ILCS 1020/)

Sec. 30. Toll-free telephone line; public service announcements

(a) The Department of Employment Security shall establish a toll-free telephone line for new hire reporting, employer follow-up to correct errors and facilitate electronic transmission, and an expedited administrative hearing process to determine reasonable cause in non-compliance situations.

(b) The Department of Employment Security shall issue public service announcements and mailings to inform employers about the new hire reporting requirements and procedures pursuant to Section 1801.1 of the Unemployment Insurance Act, including simple instructions on completion of the form W-4 and information on electronic or magnetic transmission of data.

(Source: P.A. 90-425, eff. 8-15-97.)

Sec. 40. Emergency judicial hearing

If the issue of an employer's reasonable cause for failure to comply with the reporting requirements pursuant to Section 1801.1 of the Unemployment Insurance Act is not resolved through the expedited administrative hearing process authorized under subsection (a) of Section 30, the employer may file a petition in the circuit court to seek judicial review of that issue.

(Source: P.A. 90-425, eff. 8-15-97.)

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CHAPTER XXV: DEPARTMENT OF EMPLOYMENT SECURITY
PART 1301 ACCESS TO RECORDS OF THE DEPARTMENT OF EMPLOYMENT SECURITY

SUBPART A: INTRODUCTION

Section 1301.110 Summary and Purpose

a) This Part states the policy of the Department of Employment Security for making its records available for reasonable public inspection while, at the same time, protecting legitimate interests in confidentiality.

b) This Part:

1) Establishes the following classifications for records in the Agency's possession:
A) Records that shall be disclosed; and

B) Records that shall be withheld from disclosure.

2) Contains the procedures by which requesters may obtain records in the Agency's possession; and

3) Contains the procedures for claiming and determining that records submitted to the Agency are exempt from disclosure.

(Source: Amended at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.120 Definitions

a) Terms not defined in this Section shall have the same meaning as in the Freedom of Information and the Illinois Unemployment Insurance Act.

b) The following definitions are applicable for purposes of this Part:

"Act" means the Illinois Unemployment Insurance Act [820 ILCS 405]

"Agency" means the Illinois Department of Employment Security.

"Commercial purpose" means the use of any part of a record or records, or information derived from records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request is:

to access and disseminate information concerning news and current or passing events;

for articles of opinion or features of interest to the public; or

for the purpose of academic, scientific, or public research or education. (Section 2(c-10) of FOIA)

"Copying" means the reproduction of any record by means of any photographic, electronic, mechanical, or other process, device or means now known or hereafter developed and available to the Agency. (Section 2(d) of FOIA)

"Director" means the Director of the Agency.

"FOIA" means the Freedom of Information Act [5 ILCS 140].

"Freedom of Information Officer" or "FOI Officer" means an individual or individuals responsible for receiving and responding to requests for public records.

"News media" means a newspaper or other periodical issued at regular intervals, news service in paper or electronic form, radio station, television station, television network, community antenna television service, or person or corporation engaged in making news reels or other motion picture news for public showing. (Section 2(f) of FOIA)

"Person" means any individual, corporation, partnership, firm, organization or association, acting individually or as a group. (Section 2(b) of FOIA)

"Private information" means unique identifiers, including a person's Social Security number, driver's license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal email addresses. Private information also includes home address and personal license plates, except as otherwise provided by law or when compiled without possibility of attribution to any person. (Section 2(c-5) of FOIA)

"Public Access Counselor" means an individual appointed to that office by the Attorney General under Section 7 of the Attorney General Act [15 ILCS 205]. *"Public body" means all legislative, executive, administrative, or advisory bodies of the State, State universities and colleges, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, any subsidiary bodies of any of the foregoing, including but not limited to committees and subcommittees thereof, and a School Finance Authority created under Article 1E of the School Code* [105 ILCS 5]. (Section 2(a) of FOIA)

"Records" means all records, reports, forms, writings, letters, memoranda, books, papers, maps, photographs, microfilms, cards, tapes, recordings, electronic data processing records, electronic communications, recorded information and all other documentary materials pertaining to the transaction of public business, regardless of physical form or characteristics, having been prepared by or for, or having been or being used by, received by, in the possession of or under the control of the Agency. (Section 2(c) of FOIA)

"Requester" means a person who submits to the Agency a written request, electronically or on paper, for records in accordance with these rules.

"Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. (Section 7(1)(c) of FOIA)

(Source: Amended at 35 Ill. Reg. 6066, effective March 25, 2011)

SUBPART B: CLASSIFICATION OF RECORDS

Section 1301.201 Records that Will Be Disclosed

Upon request meeting the requirements of this Part, the Agency shall disclose to the requester all records requested except that it shall not disclose certain records as provided in Section 1301.202 or 1301.203. Records covered under this Section shall include, but are not limited to:

a) Records of funds. All records relating to the obligation, receipt, and use of public funds of the Agency are records subject to inspection and copying by the public. (Section 2.5 of FOIA)

b) Payrolls. Certified payroll records submitted to the Agency under Section 5(a)(2) of the Prevailing Wage Act [820 ILCS 130] are records subject to inspection and copying in accordance with the provisions of FOIA; except that contractors' and employees' addresses, telephone numbers, and Social Security numbers will be redacted by the Agency prior to disclosure. (Section 2.10 of FOIA)

c) Criminal history records. The following documents maintained by the Agency pertaining to criminal history record information are records subject to inspection and copying by the public pursuant to FOIA:

1) Court records that are public;

2) Records that are otherwise available under State or local law; and

3) Records in which the requesting party is the individual identified, except as provided under Section 1301.202(a)(5)(F). (Section 2.15(b) of FOIA)

d) Settlement agreements. All settlement agreements entered into by or on behalf of the Agency are records subject to inspection and copying by the public, provided that information exempt from disclosure under Section 1301.202 or 1301.203 of this Part may be redacted. (Section 2.20 of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.202 Records that Will Be Withheld from Disclosure

When a request is made to inspect or copy a record that contains information that is otherwise exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the Agency shall make the remaining information available for inspection and copying. (Section 7(1) of FOIA)

a) Subject to this requirement and Section 7 of FOIA, the following shall be exempt from inspection and copying:

1) Information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law; (Section 7(1)(a) of FOIA)

2) Private information, unless disclosure is required by another provision of FOIA, a State or federal law or a court order; (Section 7(1)(b) of FOIA)

3) Files, documents, and other data or databases maintained by one or more law enforcement agencies and specifically designed to provide information to one or more law enforcement agencies regarding the physical or mental status of one or more individual subjects; (Section 7(1) (b-5) of FOIA)

4) Personal information contained within records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual subjects of the information. "Unwarranted invasion of personal privacy" means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject's right to privacy outweighs any legitimate public interest in obtaining the information. The disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy; (Section 7(1)(c) of FOIA)

5) Records in the possession of any public body created in the course of administrative enforcement proceedings, and any law enforcement or correctional agency for law enforcement purposes, but only to the extent that disclosure would:

A) *Interfere with pending or actually and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency that is the recipient of the request;*

B) *Interfere with active administrative enforcement proceedings conducted by the public body that is the recipient of the request;*

C) *Create a substantial likelihood that a person will be deprived of a fair trial or an impartial hearing;*

D) *Unavoidably disclose the identity of a confidential source, confidential information furnished only by the confidential source, or persons who file complaints with or provide information to administrative, investigative, law enforcement, or penal agencies, except that the Agency will provide traffic accident reports, the identities of witnesses to traffic accidents, and rescue reports, except when disclosure would interfere with an active criminal investigation;*

E) *Disclose unique or specialized investigative techniques other than those generally used and known, or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the Agency;*

F) *Endanger the life or physical safety of law enforcement personnel or any other person; or*

G) *Obstruct an ongoing criminal investigation by the Agency;* (Section 7(1)(d) of FOIA)

6) *Records that relate to or affect the security of correctional institutions and detention facilities;* (Section 7(1)(e) of FOIA)

7) *Preliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated, except that a specific record or relevant portion of a record shall not be exempt when the record is publicly cited and identified by the head of the Agency. The exemption provided in this subsection (a)(7) extends to all those records of officers and agencies of the General Assembly that pertain to the preparation of legislative documents;* (Section 7(1)(f) of FOIA)

8) *Trade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested. All trade secrets and commercial or financial information obtained by a public body, including a public pension fund, from a private equity fund or a privately held company within the investment portfolio of a private equity fund as a result of either investing or evaluating a potential investment of public funds in a private equity fund. The exemption contained in this* subsection (a)(8) *does not apply to the aggregate financial performance information of a private equity fund, nor to the identity of the fund's managers or general partners. The exemption contained in this* subsection (a)(8) *does not apply to the identity of a privately held company within the investment portfolio of a private equity fund, unless the disclosure of the identity of a privately held company may cause competitive harm. Nothing in this* subsection (a)(8) *shall be construed to prevent a person or business from consenting to disclosure;* (Section 7(1)(g) of FOIA)

9) *Proposals and bids for any contract, grant, or agreement, including information that if it were disclosed would frustrate procurement or give an advantage to any person proposing to enter into a contract or agreement with the body, until an award or final selection is made. Information prepared by or for the body in preparation of a bid solicitation shall be exempt until an award or final selection is made;* (Section 7(1)(h) of FOIA)

10) *Valuable formulae, computer geographic systems, designs, drawings and research data obtained or produced by the Agency when disclosure could reasonably be expected to produce private gain or public loss. The exemption for "computer geographic systems" provided in this* subsection (a)(10) *does not extend to requests made by news media as defined in* Section 1301.120 *when the requested information is not otherwise exempt and the only purpose of the request is to access and disseminate information regarding the health, safety, welfare or legal rights of the general public;* (Section 7(1)(i) of FOIA)

11) *The following information pertaining to educational matters:*

A) *Test questions, scoring keys, and other examination data used to administer an academic exam;*

B) *Information received by a primary or secondary school, college, or university under its procedure for the evaluation of faculty members by their academic peers;*

C) *Information concerning a school's or university's adjudication of student disciplinary cases, but only to the extent that disclosure would unavoidably reveal the identity of the student; and*

D) *Course materials or research materials used by faculty members;* (Section 7(1)(j) of FOIA)

12) *Architects' plans and engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in whole or in part with public funds and for projects constructed or developed with public funds, including but not limited to power generating and distribution stations and other transmission and distribution facilities, water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings, but only to the extent that disclosure would compromise security;* (Section 7(1)(k) of FOIA)

13) *Minutes of meetings of public bodies closed to the public as provided in the Open Meetings Act* [5 ILCS 120] *until the public body makes the minutes available to the public under Section 2.06 of the Open Meetings Act;* (Section 7(1)(l) of FOIA)

14) *Communications between the Agency and an attorney or auditor representing the Agency that would not be subject to discovery in litigation, and materials prepared or compiled by or for the Agency in anticipation of a criminal, civil or administrative proceeding upon the request of an attorney advising the Agency, and materials prepared or compiled with respect to internal audits of the Agency;* (Section 7(1)(m) of FOIA)

15) *Records relating to the Agency's adjudication of employee grievances or disciplinary cases; however, this exemption shall not extend to the final outcome of cases in which discipline is imposed;* (Section 7(1)(n) of FOIA)

16) *Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section;* (Section 7(1)(o) of FOIA)

17) *Records relating to collective negotiating matters between the Agency and its employees or representatives, except that any final contract or agreement shall be subject to inspection and copying;* (Section 7(1)(p) of FOIA)

18) *Test questions, scoring keys, and other examination data used to determine the qualifications of an applicant for a license or employment;* (Section 7(1)(q) of FOIA)

19) *The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act* [735 ILCS 30], *records, documents and information relating to that parcel shall be exempt except as may be allowed under discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt only until a sale is consummated;* (Section 7(1)(r) of FOIA)

20) *Any and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool. Insurance or self-insurance (including any intergovernmental risk management association or self-insurance pool) claims, loss or risk management information, records, data, advice or communications;* (Section 7(1)(s) of FOIA)

21) *Information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of a public body responsible for the regulation or supervision of financial institutions or insurance companies, unless disclosure is otherwise required by State law;* (Section 7(1)(t) of FOIA)

22) *Information that would disclose or might lead to the disclosure of secret or confidential information, codes, algorithms, programs or private keys intended to be used to create electronic or digital signatures under the Electronic Commerce Security Act* [5 ILCS 175]; (Section 7(1)(u) of FOIA)

23) *Vulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this* subsection (a)(23) *may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations;* (Section 7(1)(v) of FOIA)

24) *Maps and other records regarding the location or security of generation, transmission, distribution, storage, gathering, treatment, or switching facilities owned by a utility, by a power generator, or by the Illinois Power Agency;* (Section 7(1)(x) of FOIA)

25) *Information contained in or related to proposals, bids, or negotiations related to electric power procurement under Section 1-75 of the Illinois Power Agency Act* [20 ILCS 3855] *and Section 16-111.5 of the Public Utilities Act* [220 ILCS 5] *that is determined to be confidential and proprietary by the Illinois Power Agency or by the Illinois Commerce Commission;* (Section 7(1)(y) of FOIA)

26) *Information about students exempted from disclosure under Section 10- 20.38 or 34-18.29 of the School Code, and information about undergraduate students enrolled at an institution of higher education exempted from disclosure under Section 25 of the Illinois Credit Card Marketing Act of 2009* [110 ILCS 26]; (Section 7(1)(z) of FOIA)

27) Information the disclosure of which is exempted under the Viatical Settlements Act of 2009 [215 ILCS 158]; (Section 7(1)(aa) of FOIA)

28) Information regarding interments, entombments, or inurnments of human remains that are submitted to the Cemetery Oversight Database under the Cemetery Care Act [760 ILCS 100] or the Cemetery Oversight Act [225 ILCS 411], whichever is applicable. (Section 7(1)(bb) of FOIA)

b) A record that is not in the possession of the Agency but is in the possession of a party with whom the Agency has contracted to perform a governmental function on behalf of the Agency, and that directly relates to the governmental function and is not otherwise exempt under FOIA, shall be considered a record of the Agency for purposes of Subpart C. (Section 7(2) of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.203 Statutory Exemptions

To the extent provided for by the following statutes, the following shall be exempt from inspection and copying:

a) *All information determined to be confidential under Section 4002 of the Technology Advancement and Development Act* [20 ILCS 700].

b) *Library circulation and order records identifying library users with specific materials under the Library Records Confidentiality Act* [75 ILCS 70].

c) *Applications, related documents, and medical records received by the Experimental Organ Transplantation Procedures Board and any and all documents or other records prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.*

d) *Information and records held by the Department of Public Health and its authorized representatives relating to known or suspected cases of sexually transmissible disease or any information the disclosure of which is restricted under the Illinois Sexually Transmissible Disease Control Act* [410 ILCS 325].

e) *Information the disclosure of which is exempted under Section 30 of the Radon Industry Licensing Act* [420 ILCS 44].

f) *Firm performance evaluations under Section 55 of the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act* [30 ILCS 535].

g) *Information the disclosure of which is restricted and exempted under Section 50 of the Illinois Prepaid Tuition Act* [110 ILCS 979].

h) *Information the disclosure of which is exempted under the State Officials and Employees Ethics Act* [5 ILCS 430] *and records of any lawfully created State or local inspector general's office that would be exempt if created or obtained by an Executive Inspector General's office under that Act.*

i) *Information contained in a local emergency energy plan submitted to a municipality in accordance with a local emergency energy plan ordinance that is adopted under Section 11-21.5-5 of the Illinois Municipal Code* [65 ILCS 5].

j) *Information and data concerning the distribution of surcharge moneys collected and remitted by wireless carriers under the Wireless Emergency Telephone Safety Act* [20 ILCS 2605].

k) *Law enforcement officer identification information or driver identification information compiled by a law enforcement agency or the Department of Transportation under Section 11-212 of the Illinois Vehicle Code* [625 ILCS 5].

l) *Records and information provided to a residential health care facility resident sexual assault and death review team or the Executive Council under the Abuse Prevention Review Team Act* [210 ILCS 28].

m) *Information provided to the predatory lending database created pursuant to Article 3 of the Residential Real Property Disclosure Act* [765 ILCS 77], *except to the extent authorized under that Article.*

n) *Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital Crimes Litigation Act* [725 ILCS 124]. *This subsection (n) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.*

o) *Information that is prohibited from being disclosed under Section 4 of the Illinois Health and Hazardous Substances Registry Act* [410 ILCS 525].

p) *Security portions of system safety program plans, investigation reports, surveys, schedules, lists, data, or information compiled, collected or prepared by or for the Regional Transportation Authority under Section 2.11 of the Regional Transportation Authority Act* [70 ILCS 3615] *or the St. Clair County Transit District under the Bi-State Transit Safety Act* [45 ILCS 111].

q) *Information prohibited from being disclosed by the Personnel Records Review Act* [820 ILCS 40].

r) *Information prohibited from being disclosed by the Illinois School Student Records Act* [105 ILCS 10].

s) *Information the disclosure of which is restricted under Section 5-108 of the Public Utilities Act* [220 ILCS 5]. (Section 7.5 of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.210 Office to Which Requests are Submitted (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.220 Form and Content of Requests (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

SUBPART C: REQUESTING RECORDS FROM THE AGENCY

Section 1301.301 Submittal of Requests for Records

a) Any request for public records should be submitted in writing to the FOI Officer at the Agency.

b) The Agency has one FOI Officer, located in the 33 South State Street, Chicago, Illinois 60603 office.

c) Contact information for the FOI Officer can be found online at www.ides.state.il.us/foia/contacts.html.

d) FOIA requests may be submitted via mail, e-mail, fax, or hand delivery. Requests should be mailed or hand delivered to:

Department of Employment Security
33 South State Street, Room 937
Chicago IL 60603
Attn: FOI Officer

e) E-mailed requests should be sent to des.foiarequest@illinois.gov, contain the request in the body of the e-mail, and indicate in the subject line of the e-mail that it contains a FOIA request. Faxed FOIA requests should be faxed to 312/793-5645, Attn: FOI Officer.

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.302 Information To Be Provided in Requests for Records
A request for records should include:

a) The complete name, mailing address and telephone number of the requester;

b) As specific a description as possible of the records sought. Requests that the Agency considers unduly burdensome or categorical may be denied. (See Section 3(g) of FOIA and Section 1301.402 of this Part.);

c) A statement as to the requested medium and format for the Agency to use in providing the records sought: for example, paper, specific types of digital or magnetic media, or videotape;

d) A statement as to the requested manner for the Agency to use in providing the records sought: for example, inspection at Agency headquarters or providing paper or electronic copies;

e) A statement as to whether the requester needs certified copies of all or any portion of the records, including reference to the specific documents that require certification;

f) A statement as to whether the request is for a commercial purpose; and

g) If the request involves unemployment insurance records for an individual or employing unit, a detailed explanation of the purpose for which the records are needed.

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.303 Requests for Records for Commercial Purposes

a) *It is a violation of FOIA for a person to knowingly obtain a record for a commercial purpose without disclosing that it is for a commercial purpose if requested to do so by the Agency.* (Section 3.1(c) of FOIA)

b) *The Agency shall respond to a request for records to be used for a commercial purpose within 21 working days after receipt. The response shall:*

1) *Provide to the requester an estimate of the time required by the Agency to provide the records requested and an estimate of the fees to be charged, which the Agency may require the person to pay in full before copying the requested documents;*

2) *Deny the request pursuant to one or more of the exemptions set out in* Section 1301.202 or 1301.203;

3) *Notify the requester that the request is unduly burdensome and extend an opportunity to the requester to attempt to reduce the request to manageable proportions; or*

4) *Provide the records requested.* (Section 3.1(a) of FOIA)

c) *Unless the records are exempt from disclosure, the Agency shall comply with a request within a reasonable period considering the size and complexity of the request, and giving priority to records requested for non-commercial purposes.* (Section 3.1(b) of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.310 Timeline for Department Response (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.320 Categories of Department Responses (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

SUBPART D: AGENCY RESPONSE TO REQUESTS FOR RECORDSPROCEDURES FOR APPEAL OF A DENIAL

Section 1301.401 Timeline for Agency Response

a) Except as stated in Section 1301.303 or subsection (b) or (c), the Agency will respond to any written *request for records within 5 business days after its receipt of the request* at the address given in Section 1301.301. *Failure to comply with a written request, extend the time for response, or deny a request within 5business days after its receipt shall be considered a denial of the request. If the Agency fails to respond to a request within the requisite periods in* this subsection (a) *but thereafter provides the requester with copies of the requested records, it will not impose a fee for such copies. If the Agency fails to respond to a request received, it will not treat the request as unduly burdensome as provided under* Section 1301.402. (Section 3(d) of FOIA) A written request from the Agency to provide additional information shall be considered a response to the FOIA request.

b) *The time limits prescribed in* subsection (a) *may be extended for not more than5 business days from the original due date for any of the following reasons:*

1) *The requested records are stored in whole or in part at locations other than the office having charge of the requested records;*

2) *The request requires the collection of a substantial number of specified records;*

3) *The request is couched in categorical terms and requires an extensive search for the records responsive to it;*

4) *The requested records have not been located in the course of routine search and additional efforts are being made to locate them;*

5) *The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are exempt from disclosure under Section 7 or 7.5 of FOIA or should be revealed only with appropriate deletions;*

6) The request for records cannot be complied with by the Agency within the time limits prescribed by subsection (a) *without unduly burdening or interfering with the operations of the Agency; or*

7) *There is a need for consultation, which shall be conducted with all practicable speed, with another public body or among two or more components of a public body having a substantial interest in the determination or in the subject matter of the request.* (Section 3(e) of FOIA)

c) *The person making a request and the Agency may agree in writing to extend the time for compliance for a period to be determined by the parties. If the requester and the Agency agree to extend the period for compliance, a failure by the Agency to comply with any previous deadlines shall not be treated as a denial of the request for the records.* (Section 3(e) of FOIA)

d) *When additional time is required for any of the reasons set forth in subsection (b), the Agency will, within 5 business days after receipt of the request, notify the person making the request of the reasons for the extension and the date by which the response will be forthcoming. Failure to respond within the time permitted for extension shall be considered a denial of the request. If the Agency fails to respond to a request within the time permitted for extension but thereafter provides the requester with copies of the requested public records, it may not impose a fee for those copies. If the Agency issues an extension and subsequently fails to respond to the request, it will not treat the request as unduly burdensome under Section 1301.402.* (Section 3(f) of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.402 Requests for Records that the Agency Considers Unduly Burdensome

a) *The Agency will fulfill requests calling for all records falling within a category unless compliance with the request would unduly burden the Agency, there is no way to narrow the request, and the burden on the Agency outweighs the public interest in the information. Before invoking this exemption, the Agency will extend to the requester an opportunity to confer with it in an attempt to reduce the request to manageable proportions.* (Section 3(g) of FOIA) The amended request must be in writing.

b) *If the Agency determines that a request is unduly burdensome, it shall do so in writing, specifying the reasons why it would be unduly burdensome and the extent to which compliance will so burden the operations of the Agency. Such a response shall be treated as a denial of the request for information.* (Section 3(g) of FOIA)

c) *Repeated requests for records that are unchanged or identical to records previously provided or properly denied under this Part from the same person shall be deemed unduly burdensome.* (Section 3(g) of FOIA)

(Source: Added at 35. Ill. Reg. 6066, effective March 25, 2011)

Section 1301.403 Requests for Records that Require Electronic Retrieval

a) A request for records that requires electronic retrieval will be treated the same as any other request for records, with the same timeline and extensions as allowed for other records.

b) The Agency will retrieve and provide electronic records only in a format and medium that is available to the Agency.

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.404 Denials of Requests for Records

a) The Agency will deny requests for records when:
   1) Compliance with the request would unduly burden the Agency, as determined pursuant to Section 1301.402, and the requester has not reduced the request to manageable proportions; or

   2) The records are exempt from disclosure pursuant to Section 7 or 7.5 of FOIA or Section 1301.202 or 1301.203.

b) The denial of a request for records must be in writing.
   1) The notification shall include a description of the records denied; *the reason for the denial, including a detailed factual basis for the application of any exemption claimed; and the names and titles or positions of each person responsible for the denial* (Section 9(a) of FOIA);

   2) *Each notice of denial shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor* (Section 9(a) of FOIA); *and*

   3) *When a request for records is denied on the grounds that the records are exempt under Section 7 or 7.5 of FOIA, the notice of denial shall specify the exemption claimed to authorize the denial and the specific reasons for the denial, including a detailed factual basis and a citation to the supporting legal authority* (Section 9(b) of FOIA).

c) A requester may treat the Agency's failure to respond to a request for records within 5 business days after receipt of the written request as a denial for purposes of the right to review by the Public Access Counselor.

d) If the Agency has given written notice pursuant to Section 1301.401(d), failure to respond to a written request within the time permitted for extension may be treated as a denial for purposes of the right to review by the Public Access Counselor.

e) *Any person making a request for records shall be deemed to have exhausted his or her administrative remedies with respect to that request if the Agency fails to act within the time periods provided in* Section 1301.401. (Section 9(c) of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.405 Requests for Review of Denials – Public Access Counselor

a) *A person whose request to inspect or copy a record is denied by the Agency may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the date of the final denial.* (Section 9.5(a) of FOIA)

b) If the Agency *asserts that the records are exempt under* Section 1301.202(a)(4) or (a)(7), *it will, within the time periods provided for responding to a request, provide written notice to the requester and the Public Access Counselor of its intent to deny the request in whole or in part. The notice will include:*

1) *A copy of the request for access to records;*

2) *The proposed response from the Agency; and*

3) *A detailed summary of the Agency's basis for asserting the exemption.* (Section 9.5(b) of FOIA)

c) *Upon receipt of a notice of intent to deny from the Agency, the Public Access Counselor shall determine whether further inquiry is warranted.* The Public Access Counselor shall process the notification of intent to deny as detailed in Section 9.5(b) of FOIA. *Times for response or compliance by the Agency* under Section 1301.401 *will be tolled until the Public Access Counselor concludes his or her inquiry.* (Section 9.5(b) of FOIA)

d) *Within 7 working days after the Agency receives a request for review from the Public Access Counselor, the Agency shall provide copies of records requested and shall otherwise fully cooperate with the Public Access Counselor.* (Section 9.5(c) of FOIA)

e) *Within 7 working days after it receives a copy of a request for review and request for production of records from the Public Access Counselor, the Agency may, but is not required to, answer the allegations of the request for review. The answer may take the form of a letter, brief, or memorandum. The Public Access Counselor shall forward a copy of the answer to the person submitting the request for review, with any alleged confidential information to which the request pertains redacted from the copy.* (Section 9.5(d) of FOIA)

f) *The requester may, but is not required to, respond in writing to the answer within 7 working days and shall provide a copy of the response to the Agency.* (Section 9.5(d) of FOIA)

g) *In addition to the request for review, and the answer and response thereto, if any, a requester or the Agency may furnish affidavits or records concerning any matter germane to the review.* (Section 9.5(e) of FOIA)

h) *A binding opinion from the Attorney General shall be binding upon both the requester and the Agency, subject to administrative review under* Section 1301.407. (Section 9.5(f) of FOIA)

i) *If the Attorney General decides to exercise his or her discretion to resolve a request for review by mediation or by a means other than issuance of a binding opinion, the decision not to issue a binding opinion shall not be reviewable.* (Section 9.5(f) of FOIA)

j) *Upon receipt of a binding opinion concluding that a violation of FOIA has occurred, the Agency shall either take necessary action immediately to comply with the directive of the opinion or shall initiate administrative review under* Section 1301.407. *If the opinion concludes that no violation of FOIA has occurred, the requester may initiate administrative review under* Section 1301.407. (Section 9.5(f) of FOIA)

k) If the Agency discloses records in accordance with an opinion of the Attorney General, the Agency is immune from all liabilities by reason thereof and shall not be liable for penalties under FOIA. (Section 9.5(f) of FOIA)

l) *If the requester files suit under* Section 1301.406 *with respect to the same denial that is the subject of a pending request for review, the requester shall notify the Public Access Counselor, and the Public Access Counselor shall so notify the Agency.* (Section 9.5(g) of FOIA)

m) *The Attorney General may also issue advisory opinions to the Agency regarding compliance with FOIA. A review may be initiated upon receipt of a written request from the Director of the Agency or the Agency's Chief Legal Counsel, which shall contain sufficient accurate facts from which a determination can be made. The Public Access Counselor may request additional information from the Agency in order to assist in the review. If the Agency relies in good faith on an advisory opinion of the Attorney General in responding to a request, the Agency is not liable for penalties under FOIA, so long as the facts upon which the opinion is based have been fully and fairly disclosed to the Public Access Counselor.* (Section 9.5(h) of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.406 Circuit Court Review

A requester also has the right to file suit for injunctive or declaratory relief in the Circuit Court for Sangamon County or for the county in which the requester resides, in accordance with the procedures set forth in Section 11 of FOIA.

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.407 Administrative Review

A binding opinion issued by the Attorney General shall be considered a final decision of an administrative agency, for purposes of administrative review under the Administrative Review Law [735 ILCS 5/Art. III]. *An action for administrative review of a binding opinion of the Attorney General shall be commenced in Cook County or Sangamon County. An advisory opinion issued to the Agency shall not be considered a final decision of the Attorney General for purposes of this Section.* (Section 11.5 of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.410 Appeal of a Denial (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.420 Director's Response to Appeal (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

SUBPART E: PROCEDURES FOR PROVIDING RECORDS TO REQUESTERS

Section 1301.510 Inspection of Records

a) The Agency may make available records for personal inspection at the Agency's headquarters office located at 33 S. State St., Chicago, Illinois, or at another location agreed to by both the Agency and the requester. No original record shall be removed from State-controlled premises except under constant supervision of the agency responsible for maintaining the record. The Agency may provide records in duplicate forms, including, but not limited to, paper copies, data processing printouts, videotape, microfilm, audio tape, reel to reel microfilm, photographs, computer disks and diazo.

b) *When a person requests a copy of a record maintained in an electronic format, the Agency will furnish it in the electronic format specified by the requester, if feasible. If it is not feasible to furnish the records in the specified electronic format, then the Agency will furnish it in the format in which it is maintained by the Agency, or in paper format at the option of the requester.* (Section 6(a) of FOIA)

c) A requester may inspect records by appointment only, scheduled subject to space availability. The Agency will schedule inspection appointments to take place during normal business hours, which are 8:30 a.m. to 5:00 p.m. Monday through Friday, exclusive of State holidays. If the requester must cancel the viewing appointment, the requester shall so inform the Agency as soon as possible before the appointment.

d) In order to maintain routine Agency operations, the requester may be asked to leave the inspection area for a specified period of time.

e) The requester will have access only to the designated inspection area.

f) Requesters shall not be permitted to take briefcases, folders or similar materials into the room where the inspection takes place. An Agency employee may be present during the inspection.

g) The requester shall segregate and identify the documents to be copied during the course of the inspection.

(Source: Amended at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.511 Copying of Records; Fees

a) In accordance with Section 1301.512, unless a fee is otherwise fixed by statute, the Agency will provide copies of records and certifications of records in accordance with the fee schedule set forth in Appendix A.

b) *In calculating its actual cost for reproducing records or for the use of the equipment of the Agency to reproduce records, the Agency will not include the costs of any search for and review of the* records or other personnel costs associated with reproducing the records. (Section 6(b) of FOIA)

c) In order to expedite the copying of records that the Agency cannot copy, due to the volume of the request or the operational needs of the Agency, in the timelines established in Section 1301.401, the requester may provide, at the requester's expense, the copy machine, all necessary materials, and the labor to copy the public records at the Agency headquarters in Chicago, Illinois, or at another location agreed to by both the Agency and the requester. No original record shall be removed from State-controlled premises except under constant supervision of the agency responsible for maintaining the record.

d) Copies of records will be provided to the requester only upon payment of any fees due. *The Agency may charge the requester for the actual cost of purchasing the recording medium, whether disc, diskette, tape, or other medium, but the Agency will not charge the requester for the costs of any search for and review of the records or other personnel costs associated with reproducing the records.* (Section 6(a) of FOIA) Payment must be by check or money order sent to the Agency, payable to "Director of Employment Security".

e) If a contractor is used to inspect or copy records, the following procedures shall apply:

1) The requester, rather than the Agency must contract with the contractor;

2) The requester is responsible for all fees charged by the contractor;

3) The requester must notify the Agency of the contractor to be used prior to the scheduled on-site inspection or copying;

4) Only Agency personnel may provide records to the contractor;

5) The Agency must have verification that the requester has paid the Agency, if payment is due, for the copying of the records before providing the records to the contractor; and

6) The requester must provide to the Agency the contractor's written agreement to hold the records secure and to copy the records only for the purpose stated by the requester.

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.512 Reduction and Waiver of Fees

a) *Fees may be reduced or waived by the Agency if the requester states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the public interest. In making this determination, the Agency will consider the following:*

1) *Whether the principal purpose of the request is to disseminate information regarding the health, safety, welfare or legal rights of the general public; and*

2) *Whether the principal purpose of the request is personal or commercial benefit. For purposes of this subsection (a), "commercial benefit" shall not apply to requests made by news media when the principal purpose of the request is to access and disseminate information regarding the health, safety, welfare, or legal rights of the general public.* (Section 6(c) of FOIA)

b) The Agency will provide copies of records without charge to federal, State, and municipal agencies, Constitutional officers and members of the General Assembly, and not-for-profit organizations providing evidence of good standing with the Secretary of State's Office.

c) *Except to the extent that the General Assembly expressly provides, statutory fees applicable to copies of records when furnished in a paper format will not be applicable to those records when furnished to a requester in an electronic format.* (Section 6(a) of FOIA)

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.520 Copies of Public Records (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.530 General Materials Available from the Office of the Commissioner (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.APPENDIX A Fee Schedule for Duplication and Certification of Records

TYPE OF DUPLICATION	FEE (PER COPY)
Paper copy from original, up to and including 50 copies of black and white, letter or legal sized copies	No charge
Paper copy from original, in excess of 50 copies of black and white, letter or legal *sized* copies	$.15/page
Paper copy from microfilm original	$.15/page
Microfilm diazo from original	$.50/diazo
VHS video copy of tape	Actual cost of the reproduction
Audio tape copy of tape	Actual cost of the reproduction
CD ROM disk	Actual cost of the reproduction
Photograph from negative	Actual cost of the reproduction
Blueprints/oversized prints	Actual cost of the reproduction

Paper copies in color or in a size other than letter or legal	Actual cost of the reproduction
Certification fee	$1.00/record

NOTE: Expense for delivery other than by First Class U.S. Mail must be borne by the requester.

(Source: Added at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.ILLUSTRATION A Request for Public Records (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.ILLUSTRATION B Denial of Request for Public Records (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.ILLUSTRATION C Partial Approval of Request for Public Records (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.ILLUSTRATION D Deferral of Response to Request for Public Records (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

Section 1301.ILLUSTRATION E FOIA Appeal − Director's Response (Repealed)

(Source: Repealed at 35 Ill. Reg. 6066, effective March 25, 2011)

TITLE 56: LABOR AND EMPLOYMENT
CHAPTER IV: DEPARTMENT OF EMPLOYMENT SECURITY
SUBCHAPTER a: GENERAL PROVISIONS
PART 2712: GENERAL APPLICATION
SUBPART A: FACSIMILE MACHINES

Section 2712.1 Use Of Facsimile Machines

As of January 1, 1998, and notwithstanding any other provisions of this Chapter to the contrary, any document which is a response to or protest of a statement or notice that has been issued by the Department or the Director to which there are protest or appeal rights may be filed by facsimile transmission sent to the designated Department address. The date imprinted on the document by the Department's telefax machine shall have the same effect as the U.S. Postal Service's postmark. The individual or entity filing a document by telefax transmission bears the risk that the transmission will not be successful. The date imprinted on the transmission confirmation document by the sender's telefax machine may be presented as evidence of successful transmission and filing of the document.

(Source: Added at 21 Ill. Reg. 9472, effective July 2, 1997)

SUBPART B: DIGESTS AND REPORTERS

Section 2712.100 IDES Board of Review Reporter

a) The Department of Employment Security (IDES) publishes a compilation of all Board of Review decisions in a complete reporter as the IDES Board of Review Reporter (the Reporter).

b) Microfilm copies of the Reporter and its included cases, or copies on CD-ROM if so requested by the libraries, shall be available for public review at:

1) The Illinois Document Depository Libraries in: Carbondale; Champaign/Urbana; Charleston; Chicago; Edwardsville; Normal; Peoria; Rockford; Rock Island; and Springfield.

2) Public Libraries in: Geneva; Galesburg; Joliet; Kankakee; Mt. Vernon; Ottawa; and Waukegan.

(Source: Amended at 33 Ill. Reg. 9617, effective July 1, 2009)

Section 2712.105 Digest of Adjudication Precedents

a) The Department of Employment Security publishes as an abridged reporter a compilation of selected Board of Review decisions, court orders and published appellate court decisions in the Digest of Adjudication Precedents (the Digest). It is available as part of a larger publication known as the UI Handbook.

b) Availability of Handbook

1) Copies of the UI Handbook and its updates shall be available at a price equal to the Agency's publication cost by writing to:

Illinois Department of Employment Security
Office of Legal Counsel
33 South State Street − 9th Floor
Chicago, Illinois 60603

2) Copies of the UI Handbook shall be available free of charge at the Department's website, www.ides.state.il.us.

c) Any individual desiring to submit a decision or order for inclusion in the Digest may do so by submitting a copy of such decision or order and his or her rationale for such inclusion to the address provided in subsection (b).

d) To be considered for inclusion in the Digest, a decision must fulfill any one of the following criteria:

1) The decision resolves an issue not already included in the Digest;

2) The decision modifies, creates an exception to, overrules, reverses, extends or changes a ruling previously included in the Digest;

3) The decision presents a fact pattern likely to repeat itself in future cases; or,

4) The decision provides a statement of applicable facts and states a general principle of law which is readily applicable to the daily work of an Adjudicator, Referee or the Board of Review.

(Source: Amended at 33 Ill. Reg. 9617, effective July 1, 2009)

SUBPART C: LEGAL SERVICES PROGRAM

Section 2712.201 Definitions

All other terms used in this Part shall have the meaning set forth in the Unemployment Insurance Act [820 ILCS 405] (Act).

"Small employer" is any employing unit, as defined in Section 204 of the Act [820 ILCS 405/204], that reported wages paid to fewer than 20 individuals, whether part time or full time, for each of any two of the four calendar quarters preceding the quarter in which its application for legal assistance is made.

"Tax case" will mean an appeal brought pursuant to 56 Ill. Adm. Code 2725.

"Valid claim or defense" is one which, to the best of the provider or attorney's knowledge, information and belief formed after reasonable inquiry, within the necessary time constraints, is well grounded in fact and is warranted by existing law, is not interposed for any improper purpose (i.e., for the purpose of harassment or delay) and, if proven by a preponderance of the legally competent evidence of record at a hearing on that issue, would require the proponent of the claim or defense to prevail.

(Source: Amended at 33 Ill. Reg. 9617, effective July 1, 2009)

Section 2712.202 Agreement To Hold the Department Of Employment Security And Its Employees Harmless

By participating in this legal services program, individuals and small employers acknowledge that the Department of Employment Security and its employees are not responsible for the quality of the legal services that are provided and that their sole remedy for any alleged malpractice shall be an action against the legal services provider or attorney involved in the matter.

(Source: Added at 13 Ill. Reg. 795, effective January 4, 1989)

Section 2712.203 Eligibility Requirements For Legal Services For Individuals

a) If funding is available for the service, individuals who are held to be ineligible with respect to a week of unemployment insurance benefits by either a claims adjudicator or a referee can qualify for legal services under this Part to pursue their appeals to the referee, Director's representatives, the Director or the Board of Review if they can present a valid claim or defense.

Example: An individual quits his job in Chicago to relocate in California where he can pursue his dream of becoming an internationally renowned surfer. The claims adjudicator holds that he quit his job without good cause attributable to his employer. The individual admits that he quit his job solely to pursue his surfing goal but wishes to appeal the claims adjudicator's determination because he needs his unemployment benefits to finance his ambitions. This individual would not qualify for legal services under this Part because he has presented no legal justification under existing precedent for his appeal.

b) Whether a claim or defense is valid will be determined by the attorney assigned to the case by the legal service provider. If the individual disagrees with the judgment of the attorney assigned to the matter by the legal service provider, the individual may pursue the internal review process established by the legal service provider. If the internal review process of the legal service provider still results in a decision that the individual does not have a "valid" claim or if the individual decides to forego the legal service provider's internal review process, he can hire a private attorney who may then be eligible for reimbursement pursuant to Section 2712.207(b).

c) Application for legal services under this Part must be made at least three working days prior to the date of a scheduled hearing before the referee. Failure to make application for services prior to three working days before the hearing shall disqualify the individual from receiving such services if the attorney assigned by the legal service provider finds that the reason that the individual failed to apply for such services prior to such three day period would not constitute good cause for a continuance under 56 Ill. Adm. Code 2720.240.

1) Example 1: On the date of his hearing the individual appears at the office of the legal services provider and requests an attorney to represent him at his hearing later in the day. If the attorney assigned to his case finds that the reason that this individual failed to seek legal assistance prior to this time would constitute good cause for a continuance under 56 Ill. Adm. Code 2720.240, then, if the claimant meets the other criteria for eligibility for this program, the attorney will agree to represent this individual.

2) Example 2: On the date of her hearing before the referee the individual appears at the office of the legal services provider and requests an attorney to appear on her behalf at the scheduled hearing that day. If the individual's reason for failing to seek legal assistance prior to this time would not constitute good cause for a continuance under 56 Ill. Adm. Code 2720.240 in the judgment of the assigned attorney, then the attorney will deny the individual the requested representation at the referee hearing. However, if the individual is otherwise eligible for the program, the fact that she was denied assistance under this subsection at the hearing before the referee would not preclude the individual from seeking assistance in preparing her appeal to the Board of Review if the referee rules against her after her hearing.

d) Even if individuals do not qualify for legal services under this Section because they do not have a valid claim or defense, they shall be entitled to a maximum of one hour of legal advice regarding their unemployment insurance claim from the attorney assigned to the matter by the legal services provider.

(Source: Amended at 17 Ill. Reg. 3194, effective March 2, 1993)

Section 2712.205 Eligibility Requirements For Legal Services For Small Employers

a) Except for any unpaid contributions, penalties or interest which are the subject of the appeal for which the legal services are requested, a small employer requesting services under this program must not be delinquent in the payment of any monies due the Director under this Act.

b) The small employer must present a valid claim or defense to the action for which the legal services are sought. Whether a claim or defense is valid will be determined by the attorney assigned to the case by the legal service provider. If the small employer disagrees with the judgment of the attorney assigned to the matter by the legal service provider, it may pursue the internal review process established by the legal service provider. If the internal review process of the legal service provider still results in a decision that the small employer does not have a "valid" claim or if the small employer decides to forego the legal service provider's internal review process, it can hire a private attorney who may then be eligible for reimbursement pursuant to Section 2712.207(b).

c) Application for legal services under this Part must be made at least three working days prior to the date of a scheduled hearing pursuant to 56 Ill. Adm. Code 2725 or before the referee under 56 Ill. Adm. Code 2720. Failure to make application for services prior to three working days before the hearing shall disqualify the small employer from receiving such services if the attorney assigned by the legal service provider finds that the reason that the small employer failed to apply for such services prior to such 3 day period would not constitute good cause for a continuance under 56 Ill. Adm. Code 2720.240. See examples following Section 2712.203(c).

d) To be eligible for legal services at a hearing, the small employer must be a "party", as defined in 56 Ill. Adm. Code 2720.1 or must be the appellant to an adverse decision, determination, order or ruling under 56 Ill. Adm. Code 2725 or the issue for which the legal services are being sought must be whether the small employer is a "party" as defined in 56 Ill. Adm. Code 2720.1.

e) Even if the small employer does not qualify for legal services under this Section because it does not have a valid claim or defense, it shall be entitled to a maximum of one hour of legal advice regarding its unemployment insurance claim from the attorney assigned to the matter by the legal services provider.

(Source: Amended at 17 Ill. Reg. 3194, effective March 2, 1993)

Section 2712.207 Attorney Eligibility for Requirements

a) The Director of the Department of Employment Security will contract separately for individuals and small employers with one or more legal service providers who will then be responsible to either hire staff attorneys or for assembling a referral panel of attorneys for providing the legal services pursuant to Section 802 of the Act [820 ILCS 405/802]. Except as provided in subsection (b), the Director shall make no payments for legal services under this Part to anyone other than the legal service providers.

b) If any individual or small employer is denied legal services by a legal service provider because that individual's or small employer's claim or defense was determined not to be valid and that individual or small employer then hires a private attorney and prevails on that claim or defense, the individual or small employer shall be entitled to reimbursement for the services of the private attorney in an amount not to exceed the maximum fee set forth in Section 2712.210.

c) All attorneys participating in this program, whether as staff attorneys or referral panelists for a legal services provider or a private attorney must be licensed by the State of Illinois and must carry or must be insured for at least $100,000 in malpractice insurance.

d) Any legal service provider under this Section must agree to maintain a toll-free number so that claimants and small employers can consult a plan attorney to determine their possible eligibility for the program.

(Source: Amended at 33 Ill. Reg. 9617, effective July 1, 2009)

Section 2712.210 Maximum Fees Allowed

Where the individual or small employer has failed to present a "colorable claim":

a) The maximum hourly rate for private attorneys paid for under this program shall be $50.

b) The maximum number of billable hours per referee appeal shall be six; the maximum number of billable hours per Board of Review appeal shall also be six. A maximum of ten billable hours shall be allowed per tax case.

(Source: Added at 13 Ill. Reg. 795, effective January 4, 1989)

PART 2714: INTERSTATE AND FEDERAL COOPERATION
SUBPART A: GENERAL PROVISIONS

Section 2714.10 Definitions

All other terms used in this Part shall have the meaning set forth in Sections 200 through 247 of the Unemployment Insurance Act, unless the context clearly requires otherwise.

"Act" means the Unemployment Insurance Act [820 ILCS 405].

"Agent State" means any state in which an individual files a claim for benefits from another state.

"Agency" means any officer, board, commission or other authority charged with the administration of the unemployment insurance law of a participating jurisdiction.

"Benefits" means the compensation payable to an individual, with respect to his or her unemployment, under the unemployment compensation law of any state.

"Interested Jurisdiction" means any participating jurisdiction to which an election submitted under this Part is sent for its approval; and "interested agency" means the agency of a participating jurisdiction.

"Interstate Benefit Payment Plan" shall have the meaning set forth in Section 409(J) of the Act.

"Interstate Claimant" means an individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state. However, if such an individual requests to be considered an interstate claimant, the request shall be granted by Illinois as a liable state.

"Jurisdiction" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, or, with respect to the federal government, the coverage of any federal unemployment insurance program.

"Liable State" means any state against which an individual files, through another state, a claim for benefits.

"Participating Jurisdiction" means a jurisdiction whose administrative agency has subscribed to the Interstate Reciprocal Coverage Arrangement, which implements Section 3304(a)(9)(A) of the Federal Unemployment Tax Act (26 USC 3304(a)(9)(A)) and is authorized by 820 ILCS 405/2700A and B, and whose adherence to the Arrangement has not terminated.

"Services Customarily Performed by an Individual in More Than One Jurisdiction" means services performed in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if the services are required or expected to be performed in more than one jurisdiction under the election.

"State" shall have the meaning set forth in Section 409(J)(3) of the Act.

"Week of Unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

(Source: Amended at 35 Ill. Reg. 6108, effective march 25, 2011)

SUBPART B: INTERSTATE BENEFIT PAYMENTS

Section 2714.200 Application

This Subpart shall govern the Department of Employment Security in its administrative cooperation with other States subscribing to the Interstate Benefit Payment Plan.

Section 2714.205 Registration For Work

a) Each interstate claimant shall be registered for work through any public employment office in the agent State when and as required by the law, regulations, rules or procedures of the agent State.

b) Each agent State shall duly report to the liable State whether each interstate claimant meets the registration for work requirements of that agent State, as determined in accordance with the law of such agent State. Illinois, as an agent State, shall determine the registration for work requirements in accordance with the provisions of 56 Ill. Adm. Code 2720.125(a)(1).

Section 2714.210 Benefit Rights Of Interstate Claimants

a) If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits from that State, then claims shall be filed only against such State as long as such benefit credits are available. Thereafter, the claimant may file claims against any other State in which there are available benefit credits.

b) For the purposes of this Subpart, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

Section 2714.215 Claim for Benefits

Claims for benefits or waiting week credit shall be filed in accordance with the liable state's requirements for interstate claims taking. When Illinois is the liable state, initial interstate claims and continued claims must be filed via the internet or telephone. The laws applicable to intrastate claims and certifications shall apply to interstate claims and weeks when Illinois is the liable state.

(Source Amended at 35 Ill. Reg. 6108, effective March 25, 2011)

Section 2714.220 Determination of Claims

The agent state shall have no responsibility and authority in connection with the determination of interstate claims nor to the investigation and reporting of relevant facts.

(Source: Amended at 35Ill. Reg. 6108, effective March 25, 2011)

Section 2714.225 Appeal Procedures

a) The agent State shall afford all reasonable cooperation in the taking of evidence and holding of hearings in connection with appealed interstate benefit claims.

b) With respect to the time limits for taking an appeal, an appeal made by an interstate claimant shall be deemed to have been made and communicated to Illinois as a liable State on the date it is received by any officer of the agent State in accordance with the laws of such agent State. Illinois, as an agent State, shall accept any appeal filed by an interstate claimant at any local office in accordance with the provisions of 56 Ill. Adm. Code 2720.200.

c) Except where contrary to the provisions of this Part, the provisions of 56 Ill. Adm. Code 2720 shall be applicable where Illinois is the liable State.

SUBPART C: EMPLOYER ELECTIONS TO COVER MULTI-STATE WORKERS

Section 2714.300 Application

The Subpart shall govern the Department of Employment Security in its administrative cooperation with other States subscribing to the Interstate Reciprocal Coverage Arrangement, hereinafter referred to as "the Arrangement."

Section 2714.305 Submission And Approval Of Coverage Elections Under The Interstate Reciprocal Coverage Arrangement

a) Any employing unit may file an election, on Form RC-1, to cover under the law of a single participating jurisdiction all of the services performed for the employing unit by any individual who customarily works for such employing unit in more than one participating jurisdiction. Such election may be filed, with respect to an individual, with Illinois as the elected jurisdiction if:

1) The employer is otherwise liable in Illinois; and,

2) One or more of the following conditions exist:

A) *Any part of the individual's services are performed in Illinois*; or,

B) *The individual has his residence in Illinois*; or,

C) *The employing unit maintains a place of business* (Ill. Rev. Stat. 1983, ch. 48, par. 760(A)) in Illinois and the individual does not reside in or perform services in another jurisdiction where the employer is liable; and,

3) Forms RC-1 and RC-2A are filed as provided in this Subpart; and,

4) All other interested jurisdictions have approved of such election as provided in this Subpart; and,

5) All affected workers have approved of such election as provided in Section 2714.315.

b) The agency of the elected jurisdiction (thus selected and determined) shall initially approve or disapprove the election (Illinois will approve if the requirements of Section 2714.305(a) are met):

1) If the agency approves the election, it shall forward a copy of such approval to the agency of each participating jurisdiction specified on the election, under whose unemployment compensation law the individual or individuals in question might, in the absence of the election, be covered.

Each interested agency shall approve or disapprove the election as promptly as practicable and shall notify the agency of the elected jurisdiction accordingly.

2) If its law so requires, an interested agency may, before taking such action, require from the electing employing unit satisfactory evidence that the affected employees have been notified of, and have acquiesced in, the election. Such acquiescence is required in Illinois pursuant to Section 2714.315(a).

c) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor.

d) An election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies. An election thus approved shall take effect, as to any interested agency, only if it has been approved by such agency.

e) If an election is approved only in part, or is disapproved by some agencies, the electing employing unit may withdraw its election within 10 days after being notified of such action.

Section 2714.310 Effective Periods Of Elections

a) Commencement:

1) An election approved under this Subpart shall become effective at the beginning of the calendar quarter in which the election is submitted, unless the election as approved specifies the beginning of a different calendar quarter;

2) If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, the earlier date shall be approved as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question and to no others.

b) Termination:

1) The application of an election to an individual under this Subpart shall terminate if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction. The termination shall be effective as to the close of the calendar quarter in which notice of such finding is mailed to all parties affected;

2) Except as provided in subsection (b)(1), each election approved shall remain in effect through the close of the calendar year in which the election is initially submitted and approved, and thereafter until the close of the calendar quarter of any subsequent year in which the employing unit gives written notice of its termination to all effected agencies.

3) Whenever an election under this Subpart ceases to apply to any individual under subsections (b)(1) or (b)(2), the electing employing unit shall notify the affected individual accordingly.

Section 2714.315 Reports And Notices By The Electing Unit

a) The electing unit shall promptly notify each individual affected by its approved election, on Form RC-2A supplied by the elected jurisdiction, and shall furnish the elected agency a copy of the RC-2A signed by each such affected individual.

b) Whenever an individual covered by an election under this Subpart is separated from his employment, the electing unit shall again inform the individual, immediately, as to the jurisdiction under whose unemployment compensation law his services have been covered. If, at the time of separation, the individual is not located in the elected jurisdiction, the electing unit shall notify him as to the procedure for filing interstate benefit claims.

c) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as when an individual's services for the employer cease to be performed in more than one participating jurisdiction or when a change in work assigned to an individual requires him to perform services in a new participating jurisdiction outside Illinois.

PART 2720: CLAIMS, ADJUDICATION, APPEALS AND HEARINGS
SUBPART A: GENERAL PROVISIONS

Section 2720.1 Definitions

All other terms used in this Part shall have the meaning set forth in definitions, Sections 200 through 247 of the Unemployment Insurance Act [820 ILCS 405/200 through 247], unless the context requires otherwise. Throughout this Part, the use of terms imparting the masculine gender shall also apply to the feminine gender.

"Act" means the Unemployment Insurance Act [820 ILCS 405].

"Adjudicator" means the person authorized to make findings, determinations or recoupment decisions relating to a claimant's eligibility for unemployment insurance benefits.

"Agency" means the Department of Employment Security.

"Appeal" means the process of agency or judicial review of a finding, determination or decision.

"Appellant" means a party who appeals an Agency finding, determination or decision.

"Appellee means a party to a finding, determination or decision appealed by the appellant.

"Board" means the Board of Review of the Department of Employment Security.

"Call Day" means the day a claimant actually calls to access the Telephone Certification System.

"Certification" means an individual's attestation to facts regarding his or her eligibility for benefits for a particular period. The Department may provide for certification in person, by telephone, or by mail. In many instances, depending upon the context, the terms "certification" and "certification form" and "claim certification" or the like should be considered synonymous.

"Certification Day" means the day of the week designated for a telephone filer to call to certify for benefits.

"Certification Detail Screen" means the record maintained by the Telephone Certification System of the claimant's responses to questions asked during a completed telephone certification, and the date of the claimant's call to access the system with respect to that completed certification.

"Claim Series" means a week or series of consecutive weeks for which benefit or waiting week credit is granted.

"Claimant" means a person who applies for benefits under the Act.

"Claimant Identification Number" means the unique personal identification number the Agency assigns to a claimant. The Agency will use the Claimant Identification Number instead of the claimant's Social Security Number on all material it sends to the claimant.

"Customary Occupation" means the work in which the individual was last engaged or the occupation for which he or she is best qualified by training, experience and education.

"Decision" means the statement made by a Referee, the Director or the Board of Review with respect to any appeal from a finding or determination relating to rights or obligations under the Act or a statement by an Adjudicator that an employing unit's protest is insufficient.

"Determination" means *An Adjudicator's statement of whether or not a claimant is eligible for benefits or waiting week credit, and the dollar amount of such benefits for each week with respect to which a claim is made* [820 ILCS 405/702].

"Director's Representative" means an employee of the Agency designated by the Director of Employment Security to conduct hearings and to recommend decisions to the Director.

"Electronic Data Transmission" is a means by which the Director provides an electronic transfer of the Notice of Claim to Last Employing Unit and Last Employer or other Interested Party to the data center of the Illinois Department of Central Management Services where the transmission can be retrieved by the employing unit (see Section 2720.7).

"Employing Unit" shall have the same meaning as that set forth in Section 204 of the Act.

"Filing date" means the date a document was mailed to or received by the Agency, whichever is earlier.

"Finding" means *a statement by an Adjudicator of the amount of wages for insured work paid to a claimant during each quarter in the claimant's base period by each employer* [820 ILCS 405/701].

"Full-time Work" is the number of hours a class of workers would customarily work if the employing unit had all the work it could handle without working overtime. Except when the contrary is provided by a collective bargaining agreement or company policy, full time work is customarily 40 hours per week. For example, 37.5 hours per week is full time work for Illinois State employees because it is so provided by State personnel policy.

"Initial Claim" means an application for benefits that, meeting all monetary eligibility requirements, commences a claim series.

"Local Office" means the office of the Agency servicing claimants who live in a specific geographical area.

"Mail Filer" means a claimant who, although he or she may use the Telephone Certification System, is permitted to certify by mail.

"Monetary Eligibility" means a claimant's eligibility for a weekly amount of unemployment insurance and the amount of dependency allowance, if any, based on the amount of qualifying wages paid.

"Nonmonetary Eligibility" means that the claimant has established monetary eligibility and has not been found ineligible or subject to disqualification under the Act from receiving unemployment insurance benefits.

"Part-time Work" means *services not* normally *required for the customary schedule of full time hours or days prevailing in the establishment* in which such services are performed, or services performed by a person who, owing to his or her personal circumstances or the nature of the work he is qualified to perform, *does not customarily work the schedule of full time hours or days prevailing in the establishment in which he* or she *is employed* [820 ILCS 404/407]. Generally, part-time work will be less than 40 hours per week except where company policy or a collective bargaining agreement provides for a lesser number of hours per week as full time work. In such cases, part time work shall be work less than the number of full time hours set by the collective bargaining agreement or company policy.

"Part-total Employment" means part-time work with an employing unit other than one's regular employing unit.

> EXAMPLE: The claimant is laid off by Company A, his or her regular employing unit, as defined in this Section, and accepts temporary, part-time work with Company B, an employing unit other than his or her regular employing unit. The part-time work with Company B constitutes "part-total employment."

"Partial Employment" means part-time work with one's regular employment unit.

"Party" means, with respect to issues of nonmonetary eligibility, the claimant and any employing unit that files a timely and sufficient protest pursuant to Section 2720.130. Only a party under Section 702 of the Act may appeal a nonmonetary determination or decision of the Agency regarding eligibility for benefits. With respect to findings under Section 701 of the Act, "Party" means the claimant and any employer whose base period wages are in question. With respect to the issues of sufficiency and timeliness of a protest pursuant to Section 2720.130 of this Part, "Party" means only the employing unit that files the protest.

"Personal Identification Number" or "PIN" means a number that enables the claimant to access the Telephone Certification System. Valid use of a PIN serves as the claimant's signature.

"Protest" means the Agency form, Employer Notice of Possible Ineligibility, or a letter in lieu thereof, which alleges that the claimant is not entitled to unemployment insurance benefits.

"Referee" means the administrative law judge assigned to conduct hearings on appealed Adjudicator findings, determinations or recoupment decisions and to make decisions on the matters appealed.

"Regular Employing Unit" is either the employing unit for which an individual expects to continue working and to work full time if business warrants it, or any employing unit for which the individual worked full time for 9 consecutive weeks during the preceding 52 weeks.

"Service Area" means a geographical area served by a local office.

"Services" means not only work actually performed, but the entire employer-employee relationship. Any attachment to an employing unit for which wages are payable constitutes a service for that employing unit.

"Telephone Certification System" or "TCS" means a system implemented by the Agency that enables a claimant to certify for benefits or obtain information by touch-tone telephone.

"Telephone Filer" means a claimant who has established a PIN and uses the Telephone Certification System to certify.

(Source: Amended at 35 Ill. Reg. 6114, effective March 25, 2011)

Section 2720.2 Emergency Extensions Of The Time Limits For Filing (Emergency Expired)

(Source: Emergency Amendment added at 16 Ill. Reg. 7506, effective April 22, 1992, for a maximum of 150 days; emergency expired September 19, 1992)

Section 2720.3 "Week" In Relation To "Benefit Year"

A week shall be deemed to be within the benefit year which includes the ending date of such week.

Example: The individual's benefit year ends on Monday, April 1, 1985. He establishes a new benefit year claim, effective April 2, 1985. If this individual files a continued claim for the week ending April 6, 1985, that week will be deemed to be in the benefit year beginning April 2, 1985.

(Source: Added at 11 Ill. Reg. 14338, effective August 20, 1987)

Section 2720.5 Service Of Notices, Decisions, Orders

a) Except as provided in subsection (b), a notice, decision or order shall be served on every party, either by:

1) Personal service; or,

2) Mailing in envelope, sealed and properly addressed to the last known address of the party, with the correct amount of postage prepaid.

b) Where an agreement is made between the agency and the employing unit (or its authorized agent) and the necessary identifying information is available, the "Notice of Claim to Last Employing Unit and Last Employer or other Interested Party" shall be sent to the employing unit (or its authorized agent) by means of an electronic data transmission rather than by mailing a document to the employing unit.

c) A person may designate an agent to receive his notices and decisions by filing the name and address of the agent with the Agency. In such cases, notice to the agent so designated is notice to the person. A person's designation of the agent shall remain in effect until the Agency receives a notice that the agency relationship no longer exists.

d) Notwithstanding the appointment of an agent in accordance with subsection (c), the "Notice of Claim to Last Employing Unit and Last Employer or Other Interested Party" (see Section 2720.130) shall be sent to the employing unit identified by the claimant at the time he files his claim for benefits.

(Source: Amended at 16 Ill. Reg. 2556, effective January 30, 1992)

Section 2720.7 Application For Electronic Data Transmission

a) In lieu of receiving its "Notice of Claim to Last Employing Unit and Last Employer or Other Interested Party" as a paper document sent through the United States mail, an employing unit (or its authorized agent) may apply to have such document sent to it through electronic data transmission.

b) The Director shall approve such application if the employing unit (or its authorized agent) agrees to:

1) At its own expense, on a daily basis, retrieve its electronically transmitted data from the data center of the Illinois Department of Central Management Services, designated by the Director;

2) Accept the date shown on the agency's records as conclusive evidence of the date that the electronically transmitted data was sent to the data center of the Illinois Department of Central Management Services;

3) Demonstrate to the Director that the volume of claims filed against it justifies the cost to the agency of putting the employing unit on the electronic data transmission system.

c) The Director must also find that the employing unit's (or its authorized agent's) electronic data processing equipment is compatible with that used by the Director.

(Source: Added at 16 Ill. Reg. 2556, effective January 30, 1992)

Section 2720.10 Computation of Time

a) The calendar day on which any notice, decision or order is mailed or electronically transmitted by the agency shall be excluded in computing time.

b) The calendar day on which notice is due from a party or from an employing unit which is seeking to become a party pursuant to Section 2720.130(a) or action is required by a party or by an employing unit which is seeking to become a party pursuant to Section 2720.130(a) shall be included in the computation of time.

c) If the last day a document may be filed by a party or by an employing unit which is seeking to become a party pursuant to Section 2720.130(a) is a day on which the Agency facility is closed, the due date is extended to the end of the next day on which the facility is open.

d) The date on the document shall be rebuttable evidence that it was mailed on that date; a postmark placed on the envelope by the United States Postal Service shall be conclusive evidence of the date of mailing; where a "Notice of Claim to Last Employing Unit and Last Employer or other Interested Party" is electronically transmitted to an employing unit (or its authorized agent), the date of transmission shown on the agency's records shall be conclusive evidence of the date of service of the Notice.

(Source: Amended at 18 Ill. Reg. 16340, effective October 24, 1994)

Section 2720.11 Methods Of Payment

a) For purposes of this Section, "benefits" includes payments to a claimant pursuant to the Unemployment Insurance Act; trade readjustment allowances and alternative trade adjustment assistance payable pursuant to the Trade Act of 1974, as amended (19 USC 2101 et seq.); disaster unemployment assistance payable pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 USC 5121 et seq.); and any other payments the Department may make with respect to unemployment.

b) Except as otherwise provided in subsection (c), the Department will pay benefits to a claimant by crediting the benefits to a financial institution account that the Department shall establish for the claimant and against which the claimant may electronically draw funds through the use of a debit card. The issuance of a debit card pursuant to this Section does not entitle a claimant to draw funds unless:

1) the claimant has activated the card in accordance with the instructions of the financial institution with which the account was established; and

2) the account has a positive balance. The claimant's use of a card pursuant to this Section shall be subject to the terms of the cardholder agreement provided by the financial institution with which the claimant's account has been established. The Department may make adjustments to an account established pursuant to this Section when necessary to correct credit or debit entries made in error.

c) Notwithstanding subsection (b), the Department will pay benefits to a claimant by direct deposit into a financial institution account designated by the claimant if the designation is in effect at the time the benefit payment is processed. A designation made pursuant to this subsection shall be made on a Direct Deposit Authorization Form provided by the Department and shall subject the claimant to the terms and conditions set forth on the form. The Department may make adjustments to an account designated pursuant to this Section when necessary to correct credit or debit entries made in error.

d) This Section applies to trade readjustment allowance payments made on or after the effective date of this Section, payments made pursuant to the Unemployment Insurance Act with respect to benefit years beginning on or after the effective date of this Section, and all other benefit payments made on or after October 1, 2008, except alternative trade adjustment assistance payments. This Section applies to alternative trade adjustment assistance payments made on or after April 1, 2009. Paper checks will not be issued through the regular benefit payment system with regard to benefit payments to which this Section applies.

(Source: Added at 32 Ill. Reg. 13177, effective July 24, 2008)

Section 2720.15 Disqualification Of Adjudicator, Referee, Or Board Of Review

a) No Adjudicator or Referee or member of the Board of Review shall participate in any manner in any investigation or proceeding under the Act if he has a financial or other direct personal interest in the outcome of the proceeding or investigation. Personal interest includes family, social or professional relationships, or general bias or prejudice which would tend to affect the ability of the Adjudicator, Referee or Board member to remain fair and impartial.

b) A party seeking disqualification must file a written request to disqualify with the person whose disqualification is sought prior to the commencement of the investigation or proceeding. The request to disqualify must contain specific facts which indicate a financial or other direct personal interest in the outcome of the proceeding or investigation.

c) The person whose disqualification is sought will issue his decision on the request prior to the investigation or proceeding. If the request is denied, the reasons for the denial must be set forth in writing and the Adjudicator, Referee or Board of Review will proceed with the investigation or proceeding. The requests and the reasons for the denial will be part of the record in any appeal.

Section 2720.18 Board Of Review: A Quorum (Emergency Expired)

(Source: Added by emergency rulemaking at 27 Ill. Reg. 4217, effective February 15, 2003, for a maximum of 150 days; emergency expired July 15, 2003)

Section 2720.20 Attorney Representation Of Claimants

a) Attorneys for claimants must file an "Attorney Appearance and Authorization for Representation" form signed by the claimant and his attorney. This form must be filed with the Agency prior to a hearing before an Adjudicator or Referee, or prior to the decision of an Adjudicator, Referee, or Board of Review, whichever occurs first after the Attorney begins his representation of the claimant.

b) Absent prior approval by the Board of Review pursuant to subsection (c), an attorney representing a claimant may not charge or receive more than:

1) 15% of the amount of the weekly benefits in a claim series received by the claimant after the claimant hires the attorney; or

2) $150 per hour, whichever is greater.

c) If an attorney believes that the fee arrived at pursuant to subsection (b) is inadequate, the attorney may file a request with the Board of Review setting forth the facts supporting the attorney's claim for additional fees. Such requests shall include the attorney's certification that the claimant was served with a copy of the request. The Board of Review shall grant or deny the request in whole or in part based on whether the complexity of the case, the result obtained, the expertise required and the time expended in rendering legal services warrant a fee in excess of that allowable pursuant to subsection (b).

d) A claimant wishing to comment on or object to a request for additional fees under subsection (c) shall do so in writing to the Board of Review within 10 days after the request is served on him. All decisions regarding requests for additional fees shall articulate the reasons for the grant or denial of the request and shall be final administrative decisions. Nothing in this Section shall be construed as prohibiting an attorney from collecting the sum allowable under subsection (b) prior to the decision of the Board of Review.

e) A claimant or employer may authorize an attorney or his designated agent to review the agency file regarding the claimant or employer for the purpose of determining whether to represent the claimant or employer in proceedings before the Agency. The authorization shall be in writing and may be delivered to the Agency office applicable to the particular claimant's or employer's case. Upon delivery of the authorization to the applicable Agency office, the attorney or its designated agent may review the file without filing an appearance form or becoming the claimant's or employer's counsel of record.

(Source: Amended at 29 Ill. Reg. 1909, effective January 24, 2005)

Section 2720.25 Forms of Papers Filed

a) Each form provided by the Agency that specifies the information to be provided shall be completed in full as indicated. Every other document prepared by claimants, parties, or their representatives shall bear the name of the claimant, either the Social Security Number or Claimant Identification Number of the claimant, the name and address of the employer, the name, address, and telephone number of the person filing the document, and, if a person has received notice of appeal, the docket number of that appeal.

b) The omission of necessary information described in subsection (a) may lead to substantial delay in the review process of the document and could prevent any consideration of the document or its contents. In instances in which information cannot be obtained by other means, the Agency shall immediately return the document with a description of the needed information to the person who filed it. If the document with all required information is returned within 10 days after the date the Agency mailed it back to the person, the document shall be considered filed on the date the Agency originally received it.

(Source: Amended at 35 Ill Reg. 6114, effective March 25, 2011)

Section 2720.30 Correction Of Technical Errors

a) Subject to the provisions of this Section, the Agency shall on its own motion or the motion of a party, correct any technical error in any Finding, Determination or Decision necessary to effectuate the intent of the originating authority by issuing a corrected Finding, Determination or Decision. Production of new evidence shall not be a technical error under the provisions of this Section.

Example: The Referee issues a Decision, which states the facts and applicable law. The text of the Decision indicates that benefits will be allowed. However, the conclusion of the Decision states that benefits are denied. Either on its own motion or the motion of a party, the Agency shall correct this Decision so that the conclusion follows from the facts and the law as set out in the text of the Decision.

b) Any corrected Decision shall set forth the matter being corrected in a different type font than the original text.

c) No corrected Finding, Determination or Decision shall be issued where:

1) The issue in question has been appealed to a higher authority; or,

2) More than thirteen weeks have passed since the end of the benefit year affected by the Finding, or more than a year has passed since the last day of the week for which the Determination was made; or,

3) More than 30 days have passed since the date of mailing of the Decision of the Referee or the Board of Review.

d) Where the Agency denies a motion of a party to issue a corrected Finding, Determination, or Decision, the motion shall be considered an appeal to the original Finding, Determination or Decision to the next higher level of review within the Agency. Such motion does not stay the period for filing an appeal to the circuit court.

(Source: Amended at 21 Ill. Reg. 9441, effective July 7, 1997)

SUBPART B: APPLYING FOR UNEMPLOYMENT INSURANCE BENEFITS

Section 2720.100 Filing a Claim

a) Each employer shall deliver the form What Every Worker Should Know About Unemployment Insurance to each worker separated from employment for an expected duration of 7 or more days. The form shall be delivered to the worker at the time of separation or, if delivery is impracticable, it shall be mailed, within 5 days after the date of the separation, to the worker's last known address. The forms shall be supplied by the Agency to each employer without cost. Every employer subject to the provisions of the Unemployment Insurance Act (including every employing unit that has elected, with the approval of the Director, to become an employer subject to the Act) shall post and maintain such notices as may be furnished by the Director. These printed notices shall be posted in conspicuous places in all of the establishments of the employer and shall be easily accessible for examination by the worker. The Director will, upon request, supply a sufficient number of duplicate notices to ensure that the notices are accessible to all workers.

b) Unless a claimant is otherwise instructed by the Agency and except as otherwise provided in subsection (e), an initial claim for unemployment insurance benefits may be filed in person at any local office or on the internet at the Agency's website, www.ides.state.il.us. Subject to Section 2720.25, when filing a claim in person, the claimant shall provide the following to the local office:

1) A valid Social Security card or other evidence of his or her Social Security number, such as a W-2 form;

2) Any other form of positive identification such as a driver's license, state photo ID card or payroll check stub showing his or her name, address and date of birth;

3) For each employing unit for whom the claimant worked during the past 2 years:

A) The employing unit's name and address;

B) Dates of service;

C) Reasons for the claimant's separation:

i) If the employing unit is the federal government, Standard Form 8 and Personnel Action Form 50, or any other documents, such as a Form W-2 or check stub, that show he or she has worked for the federal government.

ii) If the employing unit is the military, Separation Form DD-214;

4) The name and birthdate of the claimant’s youngest dependent child;

5) Social Security Number, if any, of the claimant's spouse, and information about the spouse's employment during the last 2 years if the claimant is claiming the spouse as a dependent;

6) Information about other income, such as Social Security benefits, pensions, workers' compensation, severance, vacation or bonus pay or other unemployment insurance benefits that the claimant has received or will receive after the termination of his or her employment.

c) The Agency will accept and process any claim filed. When the claimant files his or her claim, the claimant will be informed of the requirements for receiving unemployment insurance benefits, including the requirement that the claimant be able to work, available for work and actively seeking work.

d) Within a reasonable time thereafter (customarily within 7 days), the claimant will be provided with a finding showing whether he or she has monetary eligibility and, if so, the amount of benefits.

e) The Agency shall require a claimant to file in person at a local office if there is a significant discrepancy between information that the claimant provides while attempting to file a claim via the internet and information contained in Agency records or such other government records as the Agency may utilize.

f) Once a claimant establishes a "valid" claim, that is, one on which the claimant is monetarily eligible for benefits, that claim cannot be withdrawn. The local office is under no obligation to advise an individual when to file his or her claim so as to qualify for the optimum benefit amount.

EXAMPLE: An individual files a valid claim effective June 6, 2010. He later learns that if he had waited until after July 1, 2010 to file his claim, he would have been entitled to a higher weekly benefit amount. The individual cannot withdraw the claim that he established effective June 6 to obtain a higher weekly benefit amount.

(Source: Amended at 35 Ill. Reg. 6114, effective March 25, 2011)

Section 2720.101 Filing, Registering And Reporting By Mail Under Special Circumstances

a) The application of this Section is limited to individuals who fall within the following general categories and who meet the requirements set forth in subsection (c):

1) Persons residing in any area or community where no transportation is readily or cheaply available, where no local office exists and where itinerant service is not furnished;

2) Persons working less than full time and residing in any area or community where itinerant service is furnished but who are employed at the time itinerant service is available to them;

3) Persons in the armed forces of the United States;

4) Persons whose physical condition prevents filing, registering and reporting in person;

5) Persons in full time employment under such circumstances that reporting, registering or filing in person would be inconsistent with the purposes of the Act;

6) Persons claiming benefits with respect to a week of partial unemployment, defined as a calendar week of less than full time work with respect to which wages payable to an individual are less than his weekly benefit amount and are earned from his regular employing unit.

b) Except when otherwise specified in Rules by the Director, the requirements of Section 500(A) of the Act, with respect to the persons described in subsection (a) are waived.

c) General Provisions

1) Notwithstanding the provisions of any other Section of 56 Ill. Adm. Code: Chapter IV, any unemployed individual in any of the categories of subsection (a) shall, under those circumstances and subject to those conditions set forth in this Section, be permitted to file a claim for benefits by mail and register for work by mail. Such permission shall be granted only in cases where all of the following circumstances and conditions exist:

A) A request by the individual or his authorized agent orally or in writing has been made;

B) The individual has furnished such information as the Claims Adjudicator may require to determine the propriety of the request;

C) The Claims Adjudicator has found that failure to grant permission would be inconsistent with the purposes of the Act.

2) The Claims Adjudicator shall have the right to withdraw permission with respect to any week if he finds that reporting in person would not be inconsistent with the purposes of the Act.

d) Effects Of Filing By Mail

1) Filing, registering and reporting by mail in accordance with the provisions of this Section shall have the same effect as filing, registering, and reporting in person at an unemployment office.

2) Where permission to file by mail has been granted, the date of the request for permission (as evidenced by the postmark if the request is by mail) shall be considered as the date of claim; provided, however, that backdating for good cause shall be granted to the same extent that it is granted to persons who file claims in person. (See Sections 2720.105(b) and 2720.120).

3) Except with respect to the necessity for appearing in person at an unemployment office, all provisions of 56 Ill. Adm. Code: Chapter IV, applicable to filing, registering, and reporting in person shall be applicable to filing, registering, and reporting by mail in accordance with this Section.

4) The Agency may, when accepting mail filings, conduct interviews with such applicants by telephone or in person to review the written submissions.

(Source: Added at 11 Ill. Reg.14338, effective August 20, 1987)

Section 2720.105 Time For Filing An Initial Claim For Benefits

a) An initial claim for benefits should be filed no later than the end of the first week in which the claimant is separated from work. If it is filed later than the week the claimant became separated from work and backdating is not requested, the claim shall begin in the week in which it was filed.

b) If an initial claim is filed later than the end of the first week after the separation, but less than one year thereafter, at the claimant's request the Agency will backdate the claim to the appropriate date and determine eligibility for that period if the claimant shows:

1) The individual's unawareness of his rights under the Act;

2) Failure of either the employing unit or the agency to discharge its responsibilities or obligations under the Act or the rules;

3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his benefit rights; or,

4) Other circumstances beyond the claimant's control; and,

5) The claimant shows he filed his claim within 14 days after the reasons for failure to file no longer existed.

c) A claim with respect to a single week of total or part-total unemployment immediately preceded by a week of partial employment, shall be dated as of the first day of the week of total or part-total unemployment, if the claim is filed within the time limits for filing the claim with respect to the week of partial unemployment, under Section 2720.106.

d) If a claim is filed by any person who is not unemployed at the time of filing, such claim shall be dated as of the first day of the next following week for which the individual is unemployed. It shall be the obligation of the individual to inform the Agency when he does become unemployed.

(Source: Amended at 11 Ill. Reg.14338, effective August 20, 1987)

Section 2720.106 Dating Of Claims For Weeks Of Partial Unemployment

a) An individual who files a claim for a week of partial unemployment shall present valid evidence for the week, if the evidence has been furnished to him by the employing unit.

1) The failure of the individual to present valid evidence shall not be a ground for denial of benefits or waiting period credit with respect to the week.

2) If an individual fails to present valid evidence for the week, and it is not otherwise available, the Agency shall request the employing unit to furnish evidence in accordance with the provisions of Section 2720.107.

b) A claim for a week of partial unemployment shall be dated as of the first day of that week if the individual files the claim within five weeks after the end of the calendar week in which he received valid evidence for the week of partial unemployment. A claim with respect to a week of partial unemployment may be filed by mail if the individual has previously filed a valid claim or if the individual had previously filed an invalid claim but the issue is under appeal for the current benefit year.

c) A claim for a week of partial unemployment, filed after the end of the period allowed in subsection (b) for good cause such as the inability to file within the five week period due to work schedule, illness or other circumstances beyond the claimant's control, may be dated as of the first day of such week, if it is filed at the first available opportunity, but not later than eight weeks after the end of such period.

(Source: Added at 11 Ill. Reg.14338, effective August 20, 1987)

Section 2720.107 Employing Unit Reports for Partial Unemployment

a) Valid evidence as used in this Section and Section 2720.106 means a pay stub, pay envelope or voucher for the week showing:

1) The worker's name;

2) His or her Social Security number;

3) The ending date of the calendar week;

4) The wages earned by the worker during the week;

5) The employing unit's name;

6) A statement that the earnings were for a week of less than full time work, due to lack of work;

7) The signature (actual or facsimile) of a person authorized by the employing unit to sign such forms, or other positive identification of the authority supplying the valid evidence; and

8) The date on which the valid evidence was issued.

b) Requirement to furnish worker with valid evidence:

1) Not later than the payday for the period covered by the valid evidence, if so requested by the worker, the employing unit shall deliver the valid evidence to a worker for each calendar week during which the worker worked less than full time because of lack of work and earned less than his or her weekly benefit amount.

2) The employing unit shall deliver to the requesting claimant the valid evidence, whether or not the employing unit has received a Notice of Claim.

c) If the employing unit fails to provide the requested information to the individual, an employing unit shall respond to the Agency's request for valid evidence for the individual specified in the request, by showing the individual's earnings and whether the individual worked less than full time because of lack of work and earned less than his or her weekly benefit amount in each calendar week covered by the request. The response shall be mailed to the address specified in the request, within 5 business days after receipt of the request. Failure of an employing unit to provide valid evidence when requested will result in the payment of benefits based on the individual's explanation of his or her earnings for the weeks in question.

(Source: Amended at 33 Ill. Reg. 9623, effective August 1, 2009)

Section 2720.108 Alternative "Base Period"

a) Section 237 of the Act provides a definition of the term "base period". This section also provides that, where an individual does not qualify for the maximum weekly benefit amount provided under Section 401 of the Act because he had insufficient wages during his base period as a result of being unemployed and where he was awarded temporary total disability during the period under any worker's compensation or occupational diseases act, he shall be entitled to have his weekly benefit amount computed using an alternative base period, as described in this Section of the Act.

b) For the purposes of determining the applicability of the alternative base period described in Section 237, "awarded" temporary total disability shall not be limited to awards made by the Illinois Industrial Commission or similar agencies in other states but shall include settlements and voluntary payments by employing units or their insurers.

(Source: Added at 16 Ill. Reg. 2556, effective January 30, 1992)

Section 2720.110 Required Second Visit To Local Office (Repealed)

(Source: Repealed at 17 Ill. Reg. 17937, effective October 4, 1993)

Section 2720.112 Telephone Certification

a) Except as provided in subsection (c), each claimant shall be a telephone filer.

b) On his "Certification Day," a telephone filer shall call a designated telephone number and enter his PIN as directed and respond to the questions concerning his or her claim for the prior two weeks. If a telephone filer misses his or her regular certification day, he may call on Thursday or Friday of that week, or on his certification day or Thursday or Friday of the next week.

c) A mail filer will be sent a copy of the questions concerning his or her claim for the prior two weeks and shall respond in accordance with the provisions of Section 2720.115(a); provided, a claimant cannot file by mail unless he or she requests to do so and furnishes such information as the Claims Adjudicator may require to determine:

1) He or she speaks neither English nor Spanish; or

2) He or she is hearing impaired; or

3) He or she has no reasonable access to a touch-tone telephone. In determining whether a claimant has reasonable access to a touch-tone telephone, consideration shall be given, but not necessarily limited to, the following factors: the claimant's known physical or mental limitations, the claimant's concerns for his or her safety, and the overall level of effort required to access a touch-tone telephone; an occasional inconvenience or mere preference does not mean a claimant has no reasonable access to a touch-tone telephone.

A) EXAMPLE: A telephone filer, who has no telephone in his apartment, but has used touch-tone telephones in the lobby of his building and elsewhere in his neighborhood to certify, requests to become a mail filer. His reason is that sometimes he must wait a few minutes for someone to get off the telephone, so he would prefer to be a mail filer. An occasional inconvenience or mere preference does not mean he has no reasonable access to a touch-tone telephone. He cannot be a mail filer.

B) EXAMPLE: An individual who has been a telephone filer fails to certify and more than two weeks have passed since his certification day. This raises a late reporting issue for the weeks under review, to be resolved by applying the provisions of Section 2720.120(b). Irrespective of how that issue is resolved, if it is found that the claimant no longer has reasonable access to a touch-tone telephone, then, for future weeks, the claimant may certify by mail.

d) A mail filer may become a telephone filer upon his or her request.

e) A date shown (or absence of a date) on the "Certification Detail Screen" shall be rebuttable evidence that a telephone filer certified (or failed to certify) on that date. If a telephone filer attempts to certify more than two weeks after his or her certification day, this will result in a delay in the processing of benefit payments and raise a late reporting issue, to be resolved by the application of Section 2720.120(b).

f) All provisions of this or any other Part, which are not inconsistent with the provisions of this Section, shall remain in effect.

(Source: Amended at 33 Ill. Reg. 9623, effective August 1, 2009)

Section 2720.115 Continuing Eligibility Requirements

a) After the claimant has filed his or her initial claim, the claimant must certify as to his or her continuing eligibility. Even if the claimant has been denied benefits, he or she must continue to certify and maintain his or her work search record, and meet other eligibility requirements of the Act, for each week for which he or she expects payment upon reversal of that denial. The claimant shall certify as a telephone filer pursuant to Section 2720.112 unless he or she qualifies as a mail filer pursuant to Section 2720.112(c). If the claimant is a mail filer, the Agency will mail him or her a form called Claim Certification (BIS-653) every two weeks or will send him or her a Notice explaining why the Claim Certification was not sent, but only if this is the claimant's first certification following the filing of his or her initial claim or if the claimant had certified for the prior two week period. The claimant must complete the Claim Certification and file it at the local office, either by mail or in person, on the "Date To Mail" indicated on the form (see Section 2720.120). If the claimant is a mail filer and does not receive a Claim Certification within 20 days after filing his or her initial claim or after he or she received his or her last Claim Certification, he or she must notify the local office and obtain a Claim Certification.

b) If at any time the Agency has reason to investigate the claimant's continuing eligibility, the Agency will so inform the claimant in writing. The claimant must co-operate with the investigation by appearing at the time and place instructed by the Agency on the "Notice of Claims Adjudicator's Interview," with all information he has regarding any question which has been raised. Failure to co-operate will result in a Finding, Determination or Decision being issued without further information from the claimant.

c) A claimant certifying for benefits under this Section as a telephone filer or mail filer shall maintain a work search record for each week he or she is claiming benefits.

1) The work search record shall include the names and addresses of the employing units contacted, as well as the names of specific persons contacted, if possible; the dates and methods of the contacts; the type of work sought, including wages and hours requested or desired; and the results of the contacts.

2) The claimant shall provide his or her work search record to the Agency upon the Agency's written request. The Agency shall only request the claimant's work search record with regard to a week in which: an employing unit makes a sufficient protest regarding the claimant's work search for the week and requests the opportunity to review the claimant's work search record for that week; an employing unit requests to review the record for a week, on the condition that the request is made during that week; or the Agency otherwise has information that would provide the basis for a review of the work search. When the claimant provides a work search record, an employing unit, or the attorney or agent of the employing unit or the claimant, may review the record pursuant to subsection (e). When an employing unit requests to review the record for a week, the Agency shall not request the claimant to provide his or her work search record if the primary purpose of the employing unit's request is to harass the claimant.

3) A claimant's failure to provide his or her work search record as requested may result in a determination or decision being issued that the claimant did not conduct an active work search.

d) Where an employing unit makes a timely and sufficient protest regarding work search pursuant to Section 2720.130, and benefits are allowed, a copy of the claims adjudicator's investigation for the period involved will be sent to the protesting employing unit along with the Adjudicator's Determination regarding the adequacy of the work search (customarily within 20 days after receipt of the protest).

e) If the employing unit or claimant, or the attorney or agent of the employing unit or the claimant, wishes to review or obtain copies of other documents in the file for the purpose of pursuing their rights under the Act, he or she may do so in the local office, where it shall be made available upon reasonable notice. To review or obtain a copy of a hearing transcript, see Section 2720.320 of this Part.

(Source: Amended at 33 Ill. Reg. 9623, effective August 1, 2009)

Section 2720.120 Time For Filing Claim Certification For Continued Benefits

a) The completed Claim Certification should be filed on the "Date To Mail" as indicated on the form and failure to file the completed Claim Certification on the "Date To Mail" will result in a delay in the processing of benefit payments.

b) If the Claim Certification is filed more than two weeks late but less than one year late, the Agency will process it if the claimant shows:

1) The individual's unawareness of his rights under the Act; or,

2) Failure of either the employing unit or the agency to discharge its responsibilities or obligations under the Act or the rules; or,

3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his benefit rights; or,

4) Other circumstances beyond the individual's control;

and the claimant shows he filed his claim within 14 days after the reasons for the failure to file no longer existed.

Section 2720.125 Work Search Requirements For Regular Unemployment Insurance Benefits (Repealed)

(Source: Repealed at 14 Ill. Reg. 18489, effective November 5, 1990)

Section 2720.126 Availability For Part Time Work Only (Repealed)

(Source: Repealed at 14 Ill. Reg. 18489, effective November 5, 1990)

Section 2720.127 Director's Approval Of Training (Repealed)

(Source: Repealed at 14 Ill. Reg. 18489, effective November 5, 1990)

Section 2720.128 Active Search For Work: Attendance At Training Courses (Repealed)

(Source: Repealed at 14 Ill. Reg. 18489, effective November 5, 1990)

Section 2720.129 Regular Attendance In Approved Training (Repealed)

(Source: Repealed at 14 Ill. Reg. 18489, effective November 5, 1990)

Section 2720.130 Employing Unit Protest Of Benefit Payment

a) A protest, ("Notice Of Possible Ineligibility" or a letter in lieu thereof) raises questions of eligibility, entitles an employing unit to receive an Adjudicator's Determination regarding questions of eligibility raised, and if timely and sufficient as set out below, provides party status and appeal rights of such Determination relating to the protest.

1) The employing unit shall file, either by mail or by hand delivery, the protest within ten calendar days after the date of notice shown on the Form "Notice of Claim to Last Employing Unit and Last Employer or Other Interested Party" (see Section 2720.10 for the computation of time). The protest shall be addressed, if mailed, or hand delivered to the Director at the local office designated on the form received by the employing unit. If the employing unit mails or hand delivers the protest to an address other than the address designated on the form received by the employing unit, timeliness of the notice shall be measured from the date of receipt at the proper address instead of the postmark date or the hand delivery date, as the case may be.

2) The protest should include the names, addresses and telephone numbers of persons having knowledge of the facts and circumstances supporting the allegation whom the employing unit designates for the Agency to contact for further information. The protest must meet the sufficiency requirements of subsection (d) of this Section.

b) Because, during a claim series, acts or circumstances may occur which could result in ineligibility, an employing unit's protest with respect to those acts or circumstances will be deemed timely (irrespective of the ten day time limit set forth in subsection (a)) and will, if also sufficient, provide party status; except, if the employing unit protests that, under Section 500C of the Act, the individual was not able to work, available for work or actively seeking work, then (that part of) the employing unit's protest will not be deemed timely and will not provide party status for any week prior to the week in which it was received by the Agency. Whether or not a protest is deemed timely or an employing unit is provided party status, ineligibility is determined from the week in which the acts or circumstances occurred.

1) Example: The employing unit from which the individual was separated does not respond within 10 days of date of mailing of the Notice of Claim to Last Employer, Last Employing Unit or other Interested Party. Later, during the claim series, the employing unit offers the individual suitable work that he refuses without good cause. The employing unit then protests, alleging that the individual should be ineligible under Section 603 of the Act, refusal of suitable work. This protest shall be deemed timely beginning with the week in which the refusal of work occurred.

2) Example: During the third week of the claim series, the school district which employed the individual as a teacher during the last academic term offers him a contract to teach again in the next academic term. During the seventh week of the claims series, the school district protests that the individual should be ineligible under Section 612 of the Act. This protest shall be deemed timely as of the date that it is determined that the contract was offered to the individual.

3) Example: The individual has been receiving benefits for fourteen weeks. In the fifteenth week, his former employer hears that the individual may have been incapacitated by an injury beginning in week six of the claim series. The employer protests that the individual should be ineligible for benefits under Section 500C of the Act beginning with week six of the claim series. While the Agency will investigate this individual's eligibility for benefits beginning with week six, the employer will only be a party to the determination of eligibility beginning with the week in which the employer notifies the Agency of its allegation of possible ineligibility.

c) Where an employer alleges that an individual who was initially an unemployed individual but was later not unemployed under Section 239 of the Act, because the individual returned to work for the employer and continued to claim benefits, a protest shall be considered timely if filed within 45 days of the date the Agency mails the employer a Statement of Benefit Wages (BEN-118) which includes a period in which the employer alleges that the individual claimed benefits while he was employed by the employer.

d) As long as the employing unit gives a reason or reasons for the allegation and the reason(s) is directly related to the issue raised and is not a general conclusion of law, the allegation shall be considered sufficient. A protest under this Section is sufficient only if limited to one claimant, except as otherwise provided below, and only if it:

1) Alleges on the protest that the claimant is not eligible for benefits or waiting week credit by providing material reasons or facts in support of the allegation, other than a conclusion of law, which would support the claimant being held ineligible for benefits; or,

   A) EXAMPLE: SUFFICIENT - EMPLOYING UNIT'S PROTEST ALLEGES:
      i) The claimant is not able to and available for work because she is in school.
      ii) The claimant is not able to and available for work because he has no child care during working hours.
      iii) The claimant is not able to and available for work because he has removed himself to an area of substantially less favorable work opportunities.
      iv) The claimant is not able to and available for work because she is seeking part-time work.
      v) The claimant is not able to and available for work because he is in an occupation for which there is demand in the labor market area.

   B) EXAMPLE: NOT SUFFICIENT - EMPLOYING UNIT'S PROTEST ALLEGES:
      i) The claimant is not actively seeking work. (General conclusion of law).
      ii) The claimant is not available for work. (No reason given for allegation).
      iii) The claimant is not able to and available for work because he was discharged from his last job. (Reason given is not related to the issue raised).

2) Alleges that the claimant is not eligible for benefits, because, in connection with any separation or layoff, the claimant has been or will be paid vacation pay, vacation pay allowance, or pay in lieu of vacation, in which event, the employing unit must designate, on the protest, within 10 calendar days after notification of the filing of his claim, or within 10 calendar days of the date such vacation pay is paid or payable, the period to which such pay is allocated. It is not necessary that a protest be filed for each individual vacation payment. No such designation is necessary for disqualification purposes, for vacation payments made during an announced period of shutdown for the purposes of inventory, vacation, or both; or

3) Alleges that the claimant is not eligible for benefits because he is unemployed due to his involvement in a labor dispute; and the employing unit, within 5 days of the start of the period of the work stoppage due to a labor dispute, provides the Agency with the name and Social Security number of each worker involved in the dispute. The list shall be filed with the Agency's Labor Dispute section. Upon receipt of the list, the Agency will mail a Labor Dispute Questionnaire to the employing unit and the union or representative of the employees involved in the labor dispute. The employing unit, union, and/or employee representative must respond to the questionnaire within 10 days. If the questionnaire is not received within 10 days, the Agency will issue a decision based on the information contained in the record at that time. The filing of the above list will constitute an allegation of possible ineligibility under the labor dispute provision (Section 604 of the Act) only and shall not be construed as an allegation of possible ineligibility under any other provision of the Act.

e) In instances when the Agency decides that the protest has not met the sufficiency requirements of subsection (d)(1), the Agency shall immediately return the protest with a description of the needed information. If the protest with all required information is refiled within 10 days of the date the Agency mailed it back to the employing unit, the protest shall be considered filed on the date the Agency originally received it. In no event shall the Agency return an inadequate protest more than once. In the event that a protest does not meet the sufficiency requirements of subsection (d)(1) of this Section after being returned to the employing unit once, the Adjudicator shall determine the protest to be insufficient. A Decision that a protest is insufficient may be appealed pursuant to Section 2720.200.

(Source: Amended at 18 Ill. Reg. 16340, effective October 24, 1994)

Section 2720.132 Required Notice By An Employer Of Separation For Alleged Felony Or Theft Connected With The Work

a) Whenever an employer discharges an individual for an alleged felony or theft in connection with his work, the employer shall notify the Agency of the separation.

b) The notification required by subsection (a) shall include the name of the individual discharged, his social security number, the name of the employer, its mailing address, its Illinois Employer Account Number, and the date of separation.

c) If the notification required by subsection (a) meets the sufficiency requirements of Section 602B of the Act and is mailed to the Agency within at least 10 days after the date that the individual files his next claim for benefits, then such employer shall be a party to the Agency's determination of eligibility under Section 602(B) of the Act.

d) Except when the notification is being made in response to a "Notice of Claim to Last Employing Unit and Last Employer or Other Interested Party", the notification required by subsection (a) must be sent to:

Illinois Department of Employment Security
33 South State Street, 9th Floor
Chicago, IL 60603
Attn: Felony and Theft Unit

(Source: Amended at 29 Ill. Reg. 1909, effective January 24, 2005)

Section 2720.135 Adjudicator Investigation

a) If any question arises concerning the claimant's monetary or nonmonetary eligibility, the claimant will be notified in writing. The adjudicator will inform the claimant of the precise factual question relating to his eligibility, the Sections of the law involved and the source of the information that raised the question.

b) An Adjudicator will investigate all allegations in the employer's protest. He will contact the employer, claimant and, if possible, any other source that either party identifies to resolve the protest, provided that the Agency will not contact witnesses identified by the claimant or the employer without notifying the claimant or the employer's designated contact person (see Section 2720.130(a)(2)) of this Part), as appropriate. The claimant will be given an opportunity to provide the Adjudicator with any statements or other evidence to refute or explain the allegations and establish his rights to benefits.

(Source: Amended at 18 Ill. Reg. 16340, effective October 24, 1994)

Section 2720.140 Adjudicator Determination

a) The Adjudicator's Determination will set forth, in writing, its factual and legal basis. The Agency will mail a copy of the Adjudicator's Determination to all parties (see Section 2720.1 of this Part). For an employing unit that is not entitled to party status under Section 702 of the Act, the Agency will mail to the nonparty employing unit:

1) A copy of the Determination regarding the claimant's eligibility for benefits as information only if the employing unit's protest is untimely pursuant to Section 2720.130 of this Part, or if the claimant is disqualified under a separation issue (Section 601, 602, 603 of the Act) and the employing unit from which the separation occurred filed no protest;

2) A copy of the Determination that the employing unit's protest is insufficient pursuant to Section 2720.130, from which the employing unit may make an appeal, after affording the employing unit an opportunity to submit a sufficient protest in accordance with Section 2720.130.

b) When the employing unit files a sufficient protest alleging that the claimant is not able to perform work, unavailable to accept work, or not actively seeking work, the Adjudicator's Determination shall be limited to the claim period set forth in the protest (or the date of the initial claim if the protest is timely pursuant to Section 2720.130) and not beyond the last week for which the claimant has certified for benefits at the time of the Adjudicator's Determination.

1) If the Adjudicator determines that the claimant is ineligible, the Adjudicator will send his written Determination to the claimant and protesting employing unit and continue to investigate the claimant's ability, availability, or work search, as appropriate, for each week for which the claimant files a Claim Certification. The claimant will not receive benefits for any subsequent weeks until and unless an Adjudicator determines that the condition alleged to cause the disqualification no longer exists or that the claimant is actively seeking work, as appropriate; in that case, the Adjudicator's written Determination that the claimant is eligible from a specific date will be sent to the claimant and protesting employing unit.

2) Once an Adjudicator determines the claimant eligible, the Adjudicator will provide the employing unit with no further Determinations on the claimant's ability, availability, or work search for a subsequent period unless the employer files a sufficient protest for a subsequent period (see Section 2720.130 of this Part) or the Adjudicator has other reason to investigate the claimant's ability, availability, or work search.

3) If such determination of eligibility is appealed, reversed and benefits denied, parties to the appeal will receive a subsequent determination setting forth the date on which the claimant became able to work, available for work, or began actively seeking work, as appropriate.

c) When an employing unit files an untimely but otherwise sufficient protest alleging that the claimant was discharged for committing a felony or theft in connection with his work, the Adjudicator will make and issue a Determination under Section 602A of the Act, discharge for misconduct, though the employing unit shall not be a party to such Determination.

(Source: Amended at 11 Ill. Reg.14338, effective August 20, 1987)

Section 2720.145 Payment Of Unemployment Insurance Benefits For Initial Claims

a) If no question is raised concerning a claimant's eligibility to receive benefits, the Agency will begin promptly to pay benefits to the claimant following its receipt of the claimant's first certification form. If the claimant does not receive his benefits within 15 days of the date that he mailed his first certification form to the local office, he must report to the local office no later than the Friday of the second week following the week that he mailed his first certification form to the local office to prevent further delay in the payment of benefits.

b) If a question is raised concerning claimant's eligibility to receive benefits, the Adjudicator will promptly investigate the matter pursuant to Section 2720.135 of this Part. (Customarily such investigation will be completed within 20 days.)

1) If the Adjudicator finds the claimant is eligible for benefits, the claimant will receive benefits. However, the employer may seek reversal of the Adjudicator's determination by appealing that determination (see Section 2720.200 of this Part). If the claimant is subsequently determined to be ineligible, benefits received may be recouped or recovered.

2) If the Adjudicator finds the claimant is not eligible for benefits, the claimant will not receive benefits. However, the claimant may seek reversal of the Adjudicator's determination by appealing that determination (see Section 2720.200 of this Part). If the claimant is subsequently determined to be eligible, all benefits due will be paid.

(Source: Amended at 17 Ill. Reg. 17937, effective October 4, 1993)

Section 2720.150 Applying For Unemployment Insurance Benefits Under Extension Programs

From time to time, various unemployment insurance programs which pay benefits beyond 26 weeks, such as Extended Benefits under Section 409 of the Unemployment Insurance Act, or Federal Supplemental Compensation, may be in effect. When such a program becomes effective, the Agency will notify the claimant in writing of the requirements to receive benefits under such a program and where and when to file his claim for benefits under such programs.

Section 2720.155 Non-Resident Application For Benefits

a) A claimant who has worked in Illinois but lives outside Illinois may apply for benefits by filing a claim at the unemployment insurance office in the state or territory in which he resides. As soon as the individual becomes unemployed, he should report to the nearest unemployment insurance office and follow the procedures as directed by that office.

b) A claimant who has worked in Illinois but lives outside Illinois may, at his option, file his claim in Illinois.

Section 2720.160 Reconsidered Findings Or Determination

a) *An Adjudicator shall reconsider an original Finding or Determination at the written request of a party or upon receipt of new information relating to the original issues, if the request is received by the Agency within the following time limits:*

1) In the case of a Finding, within 13 weeks after the close of the claimant's benefit year;

2) *In the case of a Determination, within 1 year after the last day of the week for which the Determination was made, except that if the issue is whether or not the claimant misstated his earnings for the week* or whether or not the claimant has been paid wages by reason of a back pay award made by any governmental agency or pursuant to arbitration proceedings or by reason of a payment of wages wrongfully withheld by an employing unit, within 3 years after the last day of the week [820 ILCS 405/703];

3) A Finding or Determination shall not be reconsidered subsequent to the filing of an appeal under Section 2720.200, except where the issue is newly discovered as to whether or not the claimant misstated his earnings, or unless the matter is remanded to the Adjudicator by a Referee, the Board of Review or a court.

b) A reconsidered Finding or Determination shall relate only to the issues and period of time set forth in the original Finding or Determination.

c) The Adjudicator shall investigate the original records and facts and document a report of a reconsidered investigation that includes the new information, and shall:

1) Affirm the original Finding or Determination if the new facts are not sufficient to modify or reverse the original Finding or Determination and, unless otherwise instructed by the party, process an appeal to the Referee on behalf of the requesting party, in accordance with Section 2720.200, in which case the appeal shall be considered an appeal to the original Finding or Determination; or

2) Modify or reverse the original Finding or Determination if the new facts require a different result, and issue a reconsidered Finding or Determination to the parties vacating and replacing the original Finding or Determination and affording full appeal rights under Section 2720.200.

(Source: Amended at 29 Ill. Reg. 1909, effective January 24, 2005)

SUBPART C: APPEALS TO REFEREE

Section 2720.200 Filing of Appeal

a) Any party may appeal an Adjudicator's determination or finding. An appeal should be filed in person at or by mail to the local office where the claim was filed.

b) The appeal must be filed within 30 days after the Adjudicator's determination or finding was mailed or hand delivered to the parties (see Section 2720.10).

c) No special form is necessary to file an appeal to the Referee. The appeal must comply with the following requirements:

1) The appeal must be in writing, dated and signed by the person appealing or that person’s representative; and

2) The appeal must be limited to one claimant and contain the name of the claimant and either the Social Security or Claimant Identification Number of the claimant.

d) An appeal of a labor dispute determination to a Director's Representative under Section 604 of the Act and Section 2720.275 may be filed by any party to a determination or an agent representing all members of the affected class of workers by listing either the Social Security or Claimant Identification Numbers of the employees on the appeal.

e) At the request of any appellant, an Adjudicator at the local office where the appeal should be filed pursuant to subsection (a) will assist the appellant to file the appeal. The Adjudicator providing assistance and the appellant will sign the appeal.

f) The Agency will promptly schedule a hearing before a Referee and, except as provided in Section 2720.201, mail notice of the hearing to the parties. (Customarily notice of hearing will be mailed within 15 days after the filing of the appeal.)

(Source: Amended at 35 Ill. Reg. 6114, effective March 25, 2011)

Section 2720.201 Application For Electronic Data Transmission Of Notice Of Hearing

a) In lieu of receiving its notice of hearing as a paper document sent through the United States mail, an employing unit (or its authorized agent) may apply to have such document sent to it through electronic data transmission.

b) The Director shall approve such application if the employing unit (or its authorized agent) agrees to:

1) At its own expense, on a daily basis, retrieve its electronically transmitted data from the data center of the Illinois Department of Central Management Services, designated by the Director;

2) Accept the date shown on the agency's records as conclusive evidence of the date that the electronically transmitted data was sent to the data center of the Illinois Department of Central Management Services;

3) Demonstrate to the Director that the volume of hearings at which it has party status justifies the cost to the agency of putting the employing unit (or its authorized agent) on the electronic data transmission system.

c) The Director must also find that the employing unit's (or its authorized agent's) electronic data processing equipment is compatible with that used by the Director.

(Source: Added at 18 Ill. Reg. 16340, effective October 24, 1994)

Section 2720.205 Notice Of Hearing

a) Written notice of the time, date and place of the hearing shall be mailed to the parties at least 10 days before the date of the hearing.

b) The notice will identify the parties and the Findings or Determination being appealed and will inform the parties of the issues upon which the appeal is based.

c) In the event that a claimant appeals an Adjudicator's Determination regarding a separation issue (Sections 601, 602, 603 of the Act), and where the employing unit from which the separation occurred is not a party, such employing unit will receive notice of hearing which it may attend as a nonparty and present such facts and evidence as it may possess.

d) No hearing, or part of a hearing shall be conducted on an issue to which the parties have not been given notice pursuant to subsections (a) and (b) of this Section, unless such notice is waived by all parties either in writing or on the record.

e) Unless notice is waived pursuant to subsection (d), if during or after the hearing the Referee determines that the facts require a Decision under a Section(s) of the Act different from the Section(s) specified in the notice given pursuant to subsections (a) and (b), or that the notice does not accurately describe the question at issue, then the Referee shall immediately terminate the hearing, if applicable, issue no Decision on the merits for the Section(s) or questions for which proper notice was not given and shall either:

1) Remand the unresolved issue(s) back to the Claims Adjudicator for a Finding or Determination on the correct issue(s) if facts or issues are introduced which were not previously presented to the Claims Adjudicator; or,

Example: The referee is examining the claimant with respect to the reason for separation from work. During the course of the hearing the claimant indicates that he may not be able to work. Under the circumstances the Referee shall remand the case to the Claims Adjudicator for a Determination under Section 500 of the Act.

2) Cause new notices containing the correct issue(s) to be mailed to the parties where the facts remain the same as presented to the Claims Adjudicator but the incorrect issue was identified.

Example: Based solely on the testimony of the claimant, the Claims Adjudicator determines that the claimant was discharged from his last job. After hearing testimony from the parties, the Referee decides that the separation was caused by the claimant's voluntary resignation. Here, if the parties refuse to waive notice, the Referee shall cause new notices containing the correct issue to be mailed to the parties.

(Source: Amended at 21 Ill. Reg. 9441, effective July 7, 1997)

Section 2720.207 Untimely Appeals

a) Whenever it shall appear to the Referee that the appeal was not filed in a timely manner as provided in the Act and no issue relating to timeliness is raised in the letter of appeal, the Referee shall issue his or her decision dismissing the appeal without holding a hearing on the matter. The Referee shall expedite the processing of cases to which this subsection applies.

b) If a timely appeal is filed with the Board of Review of a decision issued pursuant to subsection (a), the Board of Review shall immediately remand the matter to the Referee for a hearing on the question of the timeliness of the appeal.

(Source: Added at 33 Ill. Reg. 9623, effective August 1, 2009)

Section 2720.210 Preparation for the Hearing

a) Each party shall appear at the hearing before the Referee with witnesses or documents it believes to be necessary to establish or refute allegations set forth in the appeal.

b) The Agency shall provide to a party requiring a foreign language interpreter, at the Agency's expense, an interpreter able and willing to translate verbatim from the witness's language into English and vice versa. The Referee will administer an interpreter's oath to any interpreter.

c) Upon timely request to the Referee assigned to the case, or his or her supervisor prior to the beginning of an in-person hearing, a party may inspect the file during the Agency's regular business hours at the office of the Referee assigned to the case. The Agency will maintain a written record of the date and name of any person inspecting the file. In the case of a telephone hearing, a file may be inspected at the local office where the claim was filed or at the Agency's main office at 33 S. State, Chicago IL, if the request is made at least 2 working days prior to the hearing; wheb the request is timely made, the Agency will provide the party making the request with an opportunity to inspect the file at least 24 hours prior to the hearing.

(Source: Amended at 35 Ill. Reg. 6114, effective March 25, 2011)

Section 2720.215 Format Of Hearings

a) Except as otherwise provided in subsection (b), hearings shall be conducted by telephone.

b) A witness or party may appear in-person, upon the Referee's motion or upon the request of the witness or party for good cause shown where the request is received by the Referee prior to the date of the hearing. Where a referee schedules an in-person appearance on his own motion, the witness or party may appear by telephone, upon the witness' or party's request, where the request is received by the Referee prior to the date of the hearing, unless the witness is required to appear in-person pursuant to this subsection. A witness or party shall be required to appear in-person if the Referee finds that an in-person appearance is necessary for the furnishing of interpretive services to a party who is hearing or speech impaired, or due to the volume or complexity of the evidence. If the Referee denies or requires the in-person appearance of a witness or party, the reasons for doing so shall be stated on the record.

c) A party appearing by telephone shall submit to the Referee and any opponent any documents that it intends to introduce at the hearing in time to ensure receipt of the documents before the date of the scheduled hearing. If a party is appearing by telephone in a matter that has been remanded by either the Board of Review or the Circuit Court and the opposing party was represented by an attorney before the body which ordered the matter remanded, copies of such documents must be served on the attorney for the opposing party. If the Referee finds that any document introduced or referenced in the course of the hearing was not received, the Referee shall continue the hearing until such document is received or proceed with the hearing with or without the admission of such document. If the Referee proceeds with the scheduled hearing, the reasons for admitting or not admitting such document shall be stated on the record.

d) This Section shall not apply to appeals of decisions relating to the amount of wages found in a claimant's base period; those cases will be governed by the provisions of Section 2725.200.

(Source: Amended at 21 Ill. Reg. 9441, effective July 7, 1997)

Section 2720.220 Ex Parte (One Party Only) Communications

In any contested matter involving more than one party, the Referee shall not communicate, directly or indirectly, in connection with any substantive issue, with any interested person or party except on notice and opportunity for all parties to participate. (Ill. Rev. Stat. 1983, ch. 127, par. 1015). If the Referee receives any such ex parte (one party only) communication, including any documents, he shall inform the other parties of the substance of any such oral communication and provide copies of any such written communication or documents as soon as practicable after the communication. The other party shall be given an opportunity to respond to any ex parte (one party only) communication either in writing or on the record.

Section 2720.225 Subpoenas

a) A party may request the Referee to issue a subpoena to compel the attendance of a witness or the production of documents. The request shall be made either in writing or on the record. The Request for Subpoena shall:

1) Identify the witness or documents sought;

2) State the facts that will be proven by each witness and each document sought.

b) The Referee shall grant or deny the request either on the record or in writing. If the Referee grants the Request for Subpoena, he shall if necessary, reschedule the hearing for a specific date. The Referee shall deny the Request for Subpoena only if he finds that the evidence sought is immaterial, irrelevant or cumulative. If the Referee denies the Request for Subpoena, he shall proceed to conduct the hearing. The specific reasons for the denial shall be part of the record on appeal.

c) If a party, or any person or organization within the control of a party, fails to obey a subpoena of a Referee, the Referee shall treat the evidence required by the subpoena but not produced as establishing the truth of the position of the party who subpoenaed the documents. If a nonparty fails to obey a subpoena, the party seeking enforcement of the subpoena, or its attorney, shall prepare an application to the circuit court of the county in which the hearing is pending requesting enforcement of the subpoena pursuant to Section 1002 of the Act and shall present the application to the Referee. If the Referee is satisfied that the subpoena was properly served and that the application is in proper form, the Referee shall sign the application. The party seeking enforcement of the subpoena, or its attorney, may then file and prosecute the application to the Circuit Court.

d) At the request of the party seeking enforcement of the subpoena to the Circuit Court, all proceedings affected by the subpoenaed evidence shall be stayed pending judicial resolution of the enforcement issue.

(Source: Amended at 11 Ill. Reg.14338, effective August 20, 1987)

Section 2720.227 Depositions

a) The Referee or the Director's Representative if the issue is Section 604 before whom an eligibility issue is pending shall order the taking of the deposition, person other than the appellant, under oral examination or written questions for use as evidence at the hearing provided:

1) It appears to the Referee that the deposition of such person is necessary for the preservation of relevant testimony because of the substantial possibility it would be unavailable at the time of the hearing (such as when a witness has a scheduled vacation or out of town business trip or job interview set for the date of the hearing); and,

2) Such request is made on motion by a party who gives notice of such motion to all other parties to the issue.

b) The taking of depositions shall be in accordance with the provisions for taking depositions in civil cases (Ill. Rev. Stat. 1985, ch. 110A, pars. 203 - 217), and the order for the taking of a deposition may provide that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

c) Any other parties to the issue shall have the right to confront and cross-examine any witness whose deposition is taken. The other parties may waive such right in writing, filed with the Referee.

d) Depositions shall be taken in the county of residence or employment of the witness, as specified in Rule 203 of the Illinois Supreme Court (Ill. Rev. Stat. 1985, ch. 110A, par. 203), unless the witness waives such right in writing.

e) No deposition shall be allowed in any proceeding under Section 800 or 801 of the Act, except as provided herein.

f) Failure to obey an order for deposition shall result in the same sanctions as provided in Section 2720.225 for failure to comply with a subpoena.

(Source: Added at 11 Ill. Reg. 18671, effective October 29, 1987)

Section 2720.230 Consolidation Or Severance Of Proceedings

a) The Referee shall, on his own motion or the request of a party, consolidate hearings if he finds that the hearings involve a common question of law or fact, that consolidation will expedite the hearings, and that no right of any party will be prejudiced.

b) Prior to consolidation, all parties shall be given notice of the motion to consolidate in writing or on the record and shall be given an opportunity to be heard on the motion in writing or on the record.

c) The Referee shall sever cases previously consolidated if he finds that the conditions in subsection (a) have not been satisfied.

Section 2720.235 Withdrawal Of Appeal

The appellant may voluntarily withdraw his appeal by signed written statement filed with the Referee or by oral statement on the record at any time before the Referee's decision is issued. All parties will receive written notice of the withdrawal.

Section 2720.240 Continuances

a) The Referee to whom the appeal was assigned, or a hearings supervisor if the Referee is not available, shall grant a continuance requested by a party only for "exceptional reasons". The request must be made in person, by telephone, or in writing, and such request must be received prior to the conclusion of the hearing. Such "exceptional reasons" are limited to:

1) Compassionate Grounds:

A) Medical reasons that prevent the individual from appearing if the Referee is provided with proper documentation or proof of such reasons, including but not limited to a previously scheduled medical appointment; or

B) Medical emergency or death in the family;

2) Unforeseen circumstances such as accident, flood, fire, civil disorder, public utility emergency, military necessity or other insuperable interference;

3) A demand by a party to obtain legal representation or to inspect the case file, provided that it is shown at the time of the request that due diligence was exerted to obtain such representation or to inspect the file;

4) The claimant is employed, is scheduled for an employment interview or is participating in a training program approved for him by the Director under the provisions of Section 500C5 of the Act at the time of the hearing and cannot reasonably appear at the hearing either in person or by telephone;

5) When a party's attorney has a conflict in his schedule because he has an appointment with a client, a court appearance or comparable matter scheduled for the same time as the hearing before the Referee and the attorney cannot reasonably appear at the hearing before the Referee and cannot reasonably find a substitute counsel;

Example: A continuance is requested because a party's attorney has a conflict in his schedule because he has a court appearance scheduled for the same time as the hearing before the Referee. The court appearance is for a routine matter, such as an agreed motion or a status call, which could be handled by another member of the attorney's firm. Such a conflict will not constitute good cause for a continuance. It will be incumbent on the attorney to reschedule his court appearance or obtain substitute counsel to appear in his stead before the Referee.

6) The employer's representative or witness is unable to appear either in person or by telephone due to a plant shutdown for vacation, inventory or holiday which is provided for by a collective bargaining agreement or the employer's custom and the Referee is provided with documentation of such contract agreement or custom;

7) A party is unable to attend the hearing either in person or by telephone due to a conflicting legal or regulatory requirement, including but not limited to jury duty; or

8) When, at the same time as the hearing before the Referee, a party's representative is scheduled to participate in another hearing before a Referee or Director's representative and no other reasonable accommodation can be made, on the condition that the representative notifies the Agency of the conflict no later than five working days after issuance of the hearing notice that should have made the conflict patently evident.

b) In the event that a continuance is granted, the hearing will be set for the earliest available time and date, but, absent exceptional reasons, no more than seven days after the scheduled hearing. The Agency will inform the parties of the date, time and place of the continued hearing either orally or in writing.

(Source: Amended at 21 Ill. Reg. 9441, effective July 7, 1997)

Section 2720.245 Conduct Of Hearing

a) The Referee will control the hearing which will be confined to the factual and/or legal issues on appeal and ensure that the parties have a full opportunity to present all evidence and testimony regarding such issue(s).

b) Following examination of each witness by the Referee, that witness may be questioned and cross-examined by any other party and further questioned by the Referee, if necessary, to ensure clarity and completeness of the issues and of the record. The Referee shall ensure that the parties have a full opportunity to present all evidence and testimony regarding the factual and/or legal issues on appeal.

c) If any person becomes abusive or disruptive so that a full and fair hearing cannot be conducted, the Referee shall exclude the person from the hearing. The Referee will then continue the hearing without the participation of the excluded individual and will render a decision based on the evidence in the record.

d) The Director shall prohibit any individual from representing a party in a proceeding under this Part if the Director finds that such individual is or has been guilty of violating the standards in Rule 8.4 of the Illinois Rules of Professional Conduct, Article 8 of the Rules of the Illinois Supreme Court or has intentionally disregarded the provisions of the Act or rules promulgated thereunder, or the written instructions of the Board of Review. Such prohibition shall be in writing and shall be applicable for a period not to exceed 120 days from the date such decision is mailed to the party. Such individual may appeal the Director's Decision under the Administrative Review Law [735 ILCS 5/Article III].

e) Unless agreed to by all parties in writing or on the record, no bifurcated (split) hearings shall be held.

Example: The appellant appears at the scheduled hearing, and his testimony is taken by the referee; the appellee fails to appear but later requests and is granted a reopened hearing; at the reopened hearing, only the appellee appears. This situation shall not constitute a bifurcated hearing.

(Source: Amended at 21 Ill. Reg. 9441, effective July 7, 1997)

Section 2720.250 Rules Of Evidence

Technical rules of evidence do not apply to hearings before Referees. However, the decision of the Referee will be based on the preponderance of the credible, legally competent evidence in the record. The Referee need not rule on any objection to the introduction of evidence or testimony, but any such objection shall be duly noted and made part of the record.

Section 2720.255 Failure Of Party To Appear At The Scheduled Hearing

a) Failure of the appellant to appear at the hearing at the time the hearing is scheduled before the Referee will result in a dismissal of the appeal. If the hearing is scheduled to be conducted by telephone or the appellant has been allowed or required to appear by telephone, failure of the appellant to inform the Referee of the telephone number at which he can be reached at that time or to answer the telephone at that number will also result in dismissal of the appeal.

b) Failure of the appellee to appear at the hearing at the time the hearing is scheduled, or, if a hearing is scheduled to be conducted by telephone or the appellee has been allowed or required to appear by telephone, failure of the appellee to inform the Referee of the telephone number at which he can be reached at that time, or to answer the telephone at that number, will cause the Referee to issue a decision based on the evidence introduced by the appellant at the hearing and the evidence in the record.

c) Failure of any witness to appear at the hearing at the time that the hearing is scheduled, or, if the hearing is scheduled to be conducted by telephone or the witness has been allowed or required to appear by telephone, a party's failure to inform the Referee of the telephone number at which the Referee can, at the time of the hearing, reach the witness or the witness' failure to answer the telephone at the number given to the Referee by the party seeking the witness' testimony, shall cause the Referee to conduct the hearing with those parties and witnesses who appeared in person or were available by telephone and to make his decision based on the available testimony and evidence in the record.

d) If any party or witness shall refuse to consent to the tape recording of the hearing by the Referee or refuse to take the oath or affirmation when requested by the Referee, the participation of that individual in the hearing shall be terminated, and the hearing shall be conducted as if the individual failed to appear.

e) If a party fails to appear and an adverse decision is rendered, that party may, by letter or on the record, request rehearing of the appeal from the Referee or from his supervisor, provided that party has not filed an appeal to the Board of Review pursuant to Section 2720.300. In the event that such an appeal to the Board of Review has been filed, the rehearing request will be denied. The following procedure shall be used:

1) Requests to rehear the appeal must be filed no later than 10 days after the hearing or the date that the party first knew or should have known of the scheduled hearing, whichever is later, but in no event beyond the time for filing a timely appeal to the Board of Review pursuant to Section 2720.300(a); e.g., the appellant does not attend a hearing because he claims not to have received notice of the hearing; he does, however, receive a decision that his appeal has been dismissed for failing to appear at the hearing, his request for rehearing must be filed within 10 days after this decision because, as a result of the dismissal of his appeal, he should have known that he missed the scheduled hearing. Such requests must state the facts showing that failure to appear at the scheduled hearing was either due to not having received timely notice of the hearing or for an "exceptional reason" as set forth in Section 2720.240 and that either a request for continuance under that Section was improperly denied or the failure to make the request for a continuance was caused by reasons outside of the control of the party and by circumstances that could not have been foreseen and avoided. Upon a party's request, the party shall be treated as not having appeared at the hearing before the Referee and a rehearing shall be granted if, in making the request, the party shows that, at the time of the hearing, the party's representative was participating in another hearing before a Referee or Director's representative, the conflict was not patently evident prior to the scheduled start of the party's hearing and no other reasonable accommodation could be made; except with respect to the facts required to be shown, the request must be consistent with all other provisions of this subsection (e).

2) Based on the statements in the request and the facts of the record:

   A) If the request meets the requirements of subsection (e) (1), a hearing shall be scheduled with notice to all parties (see Section 2720.205); or

   B) If the request fails to meet the requirements of subsection (e) (1), the request shall be denied, and a written decision setting forth the reasons for the denial shall be issued. In such cases, if an adverse decision on the merits was issued, a timely appeal to the denial of a timely request for rehearing shall also constitute a timely appeal on the merits of the matter.

3) At the start of the hearing any party may present its objections to the request. The Referee will consider all objections and responses and supporting evidence, if any, and will grant or deny the request for a rehearing at that time based on the preponderance of the evidence. If the Referee denies the request, he will terminate the proceedings. If the Referee grants the request, he will proceed to conduct a hearing on the merits.

4) If there is an objection to the request, the Referee's ruling will be on the record, will state the reasons for the ruling which grants or denies the request. All denials of requests for rehearing shall be in writing.

5) If the party disagrees with the denial of the request for rehearing, he must appeal such denial within the time and in the manner set forth in Section 2720.300.

6) A decision to grant a rehearing is not immediately subject to appeal but may be raised by the aggrieved party if an appeal is filed to the decision on the merits of the matter.

   Example: A decision is made to grant a rehearing to an appellant. After the rehearing, a decision is made in favor of the appellant. The appellee may appeal this decision to the Board of Review. In his appeal to the Board of Review, the appellee (now the appellant) may request that the Board of Review rule on the propriety of the granting of the rehearing before it goes to the merits of the matter.

(Source: Amended at 21 Ill. Reg. 9441, effective July 7, 1997)

Section 2720.265 The Record

A complete record will be kept of all proceedings before the Referee. The record will consist of a digital recording and/or tape recording of testimony of the parties and their witnesses, and the digital and/or paper copy of all documents introduced into evidence, all notices, written motions or requests, decisions, findings of fact, and reports of investigations by the Adjudicator, Referee or Board of Review relating to the factual and/or legal issues on appeal.

(Source: Amended at 21 Ill. Reg. 9441, effective July 7, 1997)

Section 2720.270 Referee's Decision

The Referee's decision will include findings of fact and conclusions of law, separately stated and based on the preponderance of the credible, legally competent evidence in the record. The Agency will mail a written copy of the Agency's decision to the parties (see Section 2720.1) and to nonparty employers pursuant to Section 2720.205(c). (Customarily a decision will be mailed within 45 days of the date of filing of the appeal.)

(Source: Amended at 12 Ill. Reg. 14660, effective September 6, 1988)

Section 2720.275 Labor Dispute Appeals

a) Appeals from an Adjudicator's Determination regarding eligibility under Section 604 of the Act relating to unemployment due to a labor dispute shall be heard by the Director or a Director's Representative.

b) All procedural provisions of Subpart C, except for requests for rehearings, shall be applicable to the labor dispute proceedings.

c) After the completion of a hearing regarding any matter under the provisions of Section 604 of the Act, the Director's Representative shall issue a written report to the Director containing a Recommended Decision stating a factual and legal basis for it. A copy of the report and Recommended Decision shall be mailed to all parties and their designated representatives.

d) Within 10 days after the mailing of the report and Recommended Decision, any party may file written objections to it with the Director's Representative. After receipt of the report and Recommended Decision and objections or if no objections are filed within the time provided, the Director shall make a Decision affirming, modifying, or setting aside the Recommended Decision or remanding the proceedings with instructions.

(Source: Added at 11 Ill. Reg.14338, effective August 20, 1987)

Section 2720.277 Prehearing Conference In Labor Dispute Appeal

a) In any case arising under the provisions of Section 604 of the Act, the Director or the Director's Representative shall hold a prehearing conference, if it will expedite the hearing.

b) All parties shall be given notice of such prehearing conference, and the following items shall be considered at the conference:

1) Simplification of the issues;

2) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof at the hearing;

3) The limitation on the number of witnesses or the scope of their testimony.

c) After the conference, the Director or the Director's Representative shall issue an agreed order or stipulation either in writing or on the record, which recites any action taken at the prehearing conference and which specifies as to issues for hearing those not disposed of at the conference. Such order or stipulations shall be made part of the record.

(Source: Added at 11 Ill. Reg. 18671, effective October 29, 1987)

SUBPART D: APPEALS TO THE BOARD OF REVIEW

Section 2720.300 Filing of Appeal

a) Any party may appeal a Referee's decision. An appeal shall be filed in person or by mail. The appeal must be filed within 30 days after the Referee's decision has been mailed to the parties. The appeal should be filed at the address shown on the Referee's decision.

b) No special form is necessary to file an appeal to the Board of Review. The appeal should comply with the following requirements:

1) The appeal must be in writing, dated and signed by the person appealing or that person’s representative;

2) The appeal must contain the docket number of the Referee's decision, the name of the claimant and either the Social Security or Claimant Identification Number of the claimant;

3) The appeal must set forth the parts of the decision with which the appealing party disagrees and the specific reasons for that disagreement.

c) Any person may request help to write an appeal from the staff of the local office where the claim was filed. Timely filing of an appeal at the local office will be deemed timely filing of an appeal.

(Source: Amended at 35 Ill. Reg. 6114, effective March 25, 2011)

Section 2720.305 Notice of Appeal

Written notice of the Appeal to the Board of Review will be mailed to the parties or their duly designated representatives and to nonparty employers in accordance with the provisions of Section 2720.205(c). Each notice of appeal will state the issues involved in the appeal, the date of filing of the appeal, and the appellant's right to apply for a Notice of Right to Sue as provided in Section 2720.345.

(Source: Amended at 11 Ill. Reg.18671, effective October 29, 1987)

Section 2720.310 Request for Oral Argument

The Board of Review shall decide a case on the record as defined in Section 2720.265 without oral argument or shall grant oral argument where it is necessary or appropriate for a full and fair disposition of the appeal, as follows:

a) Upon filing an appeal to the Board of Review, or, if the requesting party is the appellee, within 7 days after mailing of the Notice of Appeal, a party may request in writing that the Board hear oral argument. The requesting party must certify in writing that he or she has served a copy of his or her request for oral argument to all other parties.

b) Thereafter, the Board will promptly grant or deny the request (customarily within 30 days after the request). If the request is denied, the Board will issue its decision based on the record. Its decision will also contain the reasons for the denial of the request. If the request is granted, the Board will inform the parties in writing and will order such hearing as is necessary for a full and fair disposition of the appeal.

c) Request for Oral Argument by an appellee must contain the Board of Review Docket Number assigned to the matter, as set forth in the Notice of Appeal.

(Source: Amended at 33 Ill. Reg. 9623, effective August 1, 2009)

Section 2720.315 Submission of Written Argument or Request to Submit Additional Evidence

a) Except as provided for in subsection (a)(1), the Board of Review will consider written argument submitted to the Board within 15 days after the appeal has been filed, or, if the written argument is submitted by the appellee, within 7 days after the date of mailing of the Notice of Appeal. The Board of Review shall make the entire file of the proceedings in question available to the parties to prepare such written argument as they wish to file.

1) In the event that a transcript or copy of the file is sought by the appellant, the request for a transcript or a copy of the file must be made within 15 days after the appeal is filed, or, if the request is made by the appellee, within 7 days after the mailing of the Notice of Appeal. In the event only a transcript is initially sought and obtained, a later request for a copy of the file must be made within 7 days after the date the transcript is mailed or made available for inspection. Any written argument shall be filed with the Board no later than 10 days after the date that the transcript or file is mailed or made available for inspection, whichever is later. The submitting party shall certify that it served a copy of the written argument on the opposing party.

2) If the opposing party wishes to file a response, it must file with the Board and serve on the submitting party any response within 7 days after the submitting party's written arguments were mailed to the opposing party.

3) If the submitting party wishes to file a reply, it must file with the Board and serve on the opposing party any reply within 5 days after the opposing party's response was mailed to the submitting party.

b) The Board of Review will consider requests to submit additional evidence if the requests are submitted by the appellant within 15 days after the date an appeal is filed or by the appellee within 7 days after the date of mailing of the Notice of Appeal. In the event a transcript or copy of the file is sought, the request to submit additional evidence shall be filed no later than 10 days after the date the transcript or copy of the file is mailed or made available for inspection, whichever is later. The requesting party shall certify that it served a copy of its request on the opposing party.

1) A request to submit additional evidence must include:

A) A summary of the evidence to be introduced; and

B) An explanation showing that the requesting party, for reasons not its fault and outside its control, was unable to introduce the evidence at the hearing before the Referee.

2) If the party that filed a request to submit additional evidence, or its witness, failed to appear at a scheduled hearing, the party must show that either it did not receive timely notice of the hearing, that its failure to appear at the hearing was due to circumstances beyond its control or that it requested a continuance before the conclusion of the hearing, which was denied.

3) The opposing party may file with the Board and serve on the requesting party any written response within 7 days after the request to submit additional evidence was mailed to the opposing party.

4) The requesting party may file with the Board and serve on the opposing party any written reply within 5 days after the opposing party's response was mailed to the requesting party.

5) The Board of Review shall grant or deny the requests in writing with a finding of facts and reasons for the grant or denial. In the event a request to submit additional evidence is granted, the Order granting the request shall specify the time, place and manner in which the evidence is to be submitted.

c) At the request of the party and for good cause shown, the Board will grant a reasonable extension of time within which to submit a written argument or request to submit additional evidence. No extension shall be for less than 7 days nor more than 30 days.

d) All notices, written arguments, requests to submit additional evidence, responses and replies must contain the Board of Review Docket number assigned to the matter, as set forth in the Notice of Appeal (see Section 2720.25).

(Source: Amended at 33 Ill. Reg. 9623, effective August 1, 2009)

Section 2720.320 Access to Record

Upon reasonable notice, either written or oral, to the Board of Review, a party may inspect the file during normal business hours at the office of the Board. A party may also obtain a copy of the record at the party’s own expense at the cost of $.25 per page

(Source : Amended at 11 Ill. Reg. 18671, effective October 29, 1987)

Section 2720.325 Withdrawal of Appeal

The appellant may voluntarily withdraw his appeal by signed written statement filed with the Board of Review at any time before the Board's decision is issued. All parties will receive notice of the withdrawal.

Section 2720.330 Consolidation Or Severance Of Appeals

a) The Board shall, on its own motion or at the request of any party, consolidate appeals if it finds that the appeals involve common questions of law or facts, that consolidations will expedite the disposition of the appeals, and that no rights of any party will be prejudiced.

b) Prior to consolidation, all parties shall be given notice of the motion to consolidate in writing or on the record and shall be given an opportunity to be heard on the motion in writing or on the record.

c) The Board shall sever cases previously consolidated if it finds that the conditions in subsection (a) have not been satisfied.

Section 2720.335 Decision Of The Board Of Review

The decision of the Board of Review will set forth, in writing, the factual and legal basis for its decision. The Board of Review shall cause a written copy of its decision to be mailed to the parties pursuant to Section 2720.1 of this Part, and/or their designated representatives pursuant to Section 2720.5(b) of this Part, and to nonparty employers (see Section 2720.205(c) of this Part) within the time limits specified in Section 803 of the Act.

(Source: Amended at 11 Ill. Reg. 18671, effective October 29, 1987)

Section 2720.340 Extensions Of Time In Which To Issue A Board Of Review Decision

Section 803 of the Act requires that the Board of Review shall issue its Decision within 120 days of the date of filing of the appeal to the Board. However, an extension of up to 30 days shall be granted upon the written request of a party, addressed to the Board of Review, if the party states that the additional time is necessary for the submission of its written argument or in order to submit additional evidence. Notice of Approval of an Extension shall be given to the other party or to the non-party employer by the Board of Review.

(Source: Added at 11 Ill. Reg. 14338, effective August 20, 1987)

Section 2720.345 Issuance Of Notice Of Right To Sue

a) If at the expiration of 120 days from the date of the filing of the appeal or after the expiration of an extension issued pursuant to Section 2720.340, whichever is later, the Board of Review has failed to issue its Decision, the appellant may file a written request, by certified mail, return receipt requested, for a Notice of Right to Sue.

b) Upon receipt of a request for a Notice of Right to Sue, the Board of Review shall either issue a Notice of Right to Sue, shall issue its Decision, or take no action.

c) If the Board of Review neither issues a Notice of Right to Sue nor its Decision within 14 days of the date of filing of the request for a Notice of Right to Sue, the Decision of the Referee shall be final and the appellant shall have a right to seek judicial review under the Administrative Review provisions in Article III of the Code of Civil Procedure. Any Decision of the Board of Review issued after the expiration of this 14 day period shall be null and void.

d) If the Board issues a Notice of Right to Sue, the party to whom it is issued shall have 35 days from the date of mailing of the Notice in which to commence an action for judicial review. If the Board of Review fails to issue a Decision or a Notice of Right to Sue, the appellant shall have 35 days from the day following the 14th day after it filed its request for a Notice of Right to sue in which to commence an action for judicial review.

(Source: Added at 11 Ill. Reg. 14338, effective August 20, 1987)

PART 2725: ADMINISTRATIVE HEARINGS AND APPEALS
SUBPART A: GENERAL PROVISIONS

Section 2725.1 Definitions

All other terms used in this Part shall have the meaning set forth in definitions, Sections 200 through 247 of the Unemployment Insurance Act [820 ILCS 405/200 through 247].

"Act" means the Unemployment Insurance Act [820 ILCS 405].

"Adjudicator" means the person authorized to make findings, reconsidered findings, determinations, reconsidered determinations or decisions relating to the Act.

"Agency" means the Department of Employment Security.

"Application" means an Application for Revision of Statement of Benefit Charges or Application for Review of Rate Determination.

"Claim" means a Claim for Adjustment or Refund.

"Claimant" means a person who applies for benefits under the Act.

"Determination" means an Adjudicator's statement of whether or not a claimant is eligible for benefits or waiting week credit, and the dollar amount of such benefits for each week with respect to which a claim is made (. (See 820 ILCS 405/702.)

"Director" means the Director of Employment Security.

"Director's Representative" means the administrative law judge designated by the Director to conduct hearings and recommend decisions to the Director.

"Filing Date" means the date a document was mailed to or received by the Agency, whichever is earlier.

"Finding" means *a statement by an Adjudicator of the amount of wages for insured work paid to a claimant during each quarter in the claimant's base period by each employer* [820 ILCS 405/701].

"Local Office" means the office of the Agency serving claimants who live in a specific geographical area.

"Petition" means a Protest and Petition for Hearing.

(Source: Amended at 35 Ill. Reg. 6129, effective March 25, 2011)

Section 2725.2 Emergency Extensions of Time Limits For Filing Objections to Recommended Decision (Emergency Expired)

(Source: Emergency rule added at 16 Ill. Reg. 7502 effective April 22, 1992, for a maximum of 150 days; emergency expired September 19, 1992)

Section 2725.3 Burden Of Proof

In all proceedings under this Part the party on whom the Act places the burden of proof must establish its position by a preponderance of the evidence. An application for relief under this Part will be granted when a party proves its allegations by a preponderance of the evidence.

Section 2725.5 Designation Of Agents

Any employing unit may designate an agent to receive any documents by filing the name and address of such agent with the Agency or by changing its designated address to be in care of its agent. In such cases, notice to the designated agent is notice to the employing unit. Notwithstanding the foregoing, such documents sent to an employing unit shall be adequate notice under this Subpart.

Section 2725.10 Computation Of Time

a) The calendar day on which any notice, decision, ruling or order is mailed or delivered by personal service by the Agency shall be excluded in computing time.

b) The calendar day on which notice is due or action is required by a party shall be included in the computation of time.

c) If the last day a response is due to be filed is a day on which the Agency is closed, the due date is extended to the end of the next day on which the Agency is open.

d) The date on the document shall be rebuttable evidence that it was mailed or delivered on that date. A postmark placed on the envelope by the United States Postal Service shall be conclusive evidence of the date of mailing. An Agency notation showing the date of receipt shall be conclusive evidence of the date of personal service, or of an undated, unpostmarked document which is mailed. A return receipt signed and dated by an Agency employee shall be conclusive evidence of the date of receipt.

Section 2725.11 Use of Private Messenger Services

For purposes of Section 2725.10, any date recorded or marked by a designated delivery service, recognized as such by the Internal Revenue Service (IRS) pursuant to 26 USC 7502(f), shall be treated as the postmark placed on an envelope by the United States Postal Service. IRS Notice 2004-83 (modifying Notice 2002-62), effective January 1, 2005, provides the list of designated delivery services and is subject to further revision by the IRS. Should there be additional or superseding IRS notices, procedures or other documents that are promulgated in the future, this Section will be amended accordingly. Until such time as this Section is amended, only those recognized designated delivery services in IRS Notice 2004-83 (modifying Notice 2002-62), effective January 1, 2005, shall be acceptable.

EXAMPLE: The employer is required to file its quarterly wage report for the first quarter of 2009 by April 30, 2009. On April 30, 2009, ABC Messenger Service records that it has received the wage report from the employer for delivery to the Agency. On May 1, 2009, ABC Messenger Service delivers the wage report to the Agency. A penalty will be assessed against this employer unless the IRS officially recognizes ABC Messenger Service as a designated delivery service at the time.

(Source: Added at 33 Ill. Reg. 9641, effective July 1, 2009)

Section 2725.15 Disqualification Of Agency Employee

a) No Agency employee shall participate in any manner in any investigation or proceeding under the Act if such individual has a financial or other direct personal interest in the proceeding or investigation. Personal interest includes family, social or professional relationship or general bias or prejudice which would tend to affect the ability of the Agency employee to remain fair and impartial.

b) A person seeking such disqualification of an Agency employee must file a written request prior to the investigation or proceeding to disqualify the individual whose removal is sought. The request to disqualify must contain specific facts which indicate a financial or direct personal interest defined in subsection (a), or specific facts which indicate prejudice on the part of the person whose disqualification is sought.

c) The Agency employee whose disqualification is sought will respond to the request prior to the investigation or proceeding orally on the record or in writing. Further proceedings in the matter will be stayed until a decision on disqualification is rendered. If the request is granted, the Agency will reassign the matter. If the request is denied, the reasons for the denial shall be set forth in writing or on the record and the Agency employee will proceed with the investigation or proceeding. The request and reasons for the denial shall be part of the record on appeal.

Section 2725.20 Request For Clarification

Any employer may request clarification of information contained on a "Statement of Benefit Wages" or a "Statement of Benefit Charges" (Ben-118), "Notice of Employer's Contribution Rate" (ER-5) or "Determination and Assessment" by contacting the Department of Employment Security, Division of Revenue, at the address or telephone number listed on such applicable form. However, such response by the Revenue Division shall be for informational and clarification purposes only and not binding on either the employer or the Agency.

(Source: Amended at 13 Ill. Reg. 17383, effective 10/30/89)

Section 2725.25 Form Of Papers Filed

a) Each Application, Protest, or Claim shall bear the name, address and account number of the employing unit, and, where the employment or unemployment status of the individual or claimant is at issue, the name and Social Security account number of the individual or claimant, along with the name, address and telephone number of the person filing the document.

b) All subsequent papers shall bear the docket number, if applicable, of the matter, along with the name, address and telephone number of the individual filing the document.

SUBPART B: FILING OF APPLICATIONS AND CLAIMS FOR RELIEF

Section 2725.100 Application For Revision Of Statement Of Benefit Charges

a) Applications for Revision of the Statement of Benefit Charges must be filed at the address specified on such Statement, within 45 days of the mailing of such Statement, as provided in Section 1508 of the Act.

b) An Application shall set forth: the name and Social Security account number of each claimant whose benefit charges are contested; the amount of benefit charges contested or the weeks of benefit charges contested; the year and quarter of the Statement contested; and, in the cases described in subsections (b)(1), (2) and (3) below, a statement of facts providing the basis for relief upon which the employer relies in its Application.

1) If an employer alleges that the benefit charges arose from the payment of benefits to a claimant for weeks of eligibility to which the employer was entitled to notice of a determination pursuant to Sections 702 or 703 of the Act, and was not notified of such determination of eligibility and the claimant was improperly paid benefits, the employer must show that it filed in response to notice of the claim, a timely (see 56 Ill. Adm. Code 2720.130) Notice of Possible Ineligibility or letter in lieu thereof alleging that the claimant was ineligible for benefits for the weeks charged and did not receive a determination of eligibility or decision holding the Notice of Possible Ineligibility or letter in lieu thereof as insufficient or untimely.

A) A copy of the allegedly unanswered Notice of Possible Ineligibility or letter in lieu thereof should, if possible, be included with the Application, together with any subsequent documentation where applicable, such as a Referee or Board of Review decision holding the Notice of Possible Ineligibility as sufficient.

B) If the employer did not file a timely and sufficient Notice of Possible Ineligibility or letter in lieu thereof (pursuant to 56 Ill. Adm. Code 2720.130) in response to the notice of claim, the employer's remedy is to request a reconsidered determination from the local office Claims Adjudicator where the claimant filed for benefits, pursuant to Section 703 of the Act, or if a determination of eligibility was served upon the employer, its remedy is to file an appeal to the determination under Section 800 of the Act.

C) If the determination of eligibility for the weeks charged is reversed, the employer will receive appropriate relief from the benefit charges through the operation of Section 706 of the Act.

2) If the employer is charged for benefits and claims that it was not sent a notice that a claim was filed, the employer must allege this fact and, at a hearing, must prove lack of notice and must show the reasons why the payment of benefits to the claimant for the weeks charged is improper.

A) If an employer was served with a notice that a claim was filed, the employer's remedy for relief of the benefit charges is its protest of the claimant's eligibility pursuant to Section 800 of the Act or a request for reconsideration of a determination pursuant to Section 703 of the Act with the Claims Adjudicator at the local office where the claimant filed for benefits.

B) If the determination is subsequently modified or reversed, the benefit charges will be modified or cancelled, as appropriate, through the operation of Section 706 of the Act. (See 56 Ill. Adm. Code 2720).

3) When the employer alleges that a clerical error was made by the Agency, the nature of the clerical error and its effect on the benefit charges must be clearly stated. A copy of the material bearing the error must accompany the Application.

c) An Application which fails to meet the criteria in subsection (b)(1) thru (3) shall be ruled insufficient and the Director shall serve notice of such ruling and the basis therefor upon the employer. The ruling shall be final and conclusive unless the employer files, within 20 days of the date of mailing of the ruling, a written objection or a revised Application for Revision of the Statement of Benefit Charges, specifically responding to the reasons the original Application was ruled insufficient. The written objection or revised Application shall be reviewed and, if sufficient, an order issued. An employer disagreeing with such order may appeal to a Director's Representative under Subpart C of this Part if such appeal is taken within 20 days of the date of mailing of the order. If the written objection or revised Application is still found to be insufficient, it shall again be ruled insufficient, and such ruling shall be final and subject to review under the State's Administrative Review Law [735 ILCS 5].

1) Where an employer alleges that a claimant was not an unemployed individual under Section 239 of the Act during a period when such claimant was paid benefits, no relief shall be available under Section 1508 of the Act, but the matter shall be referred to the local office where the claimant last filed a claim for benefits for investigation to which such employer shall be a party. If the claimant is determined ineligible, appropriate relief will be granted to such employer under Section 706 of the Act.

2) Where an employer alleges that his Statement of Benefit Charges is incorrect because it is not the chargeable employer pursuant to Section 1502.1 of the Act, such Application must contain a reference to and a copy of the decision which reverses the claims adjudicator and holds that the employer is not the chargeable employer. Unless the employer has filed a timely request for reconsideration to the decision that the claims adjudicator has found it to be the chargeable employer, pursuant to 56 Ill. Adm. Code 2765.325, 2765.326 or 2765.329, such employer shall not be entitled to a revision of its "Statement of Benefit Charges".

d) Upon receipt of a sufficient Application, the Application shall be ordered allowed or denied in whole or in part and notice of such order stating the basis therefor shall be mailed to the employer. Such application will be allowed in part and denied in part where the employer has contested multiple benefit charges but has made sufficient allegations on some but not all. Such order shall become final and conclusive at the expiration of 20 days from the date of mailing of such order, unless the employer shall have filed a Petition specifying its objections thereto.

e) Where the allegation in the Application is lack of notice of a determination or reconsidered determination and the ineligibility of the claimant for a specific reason, such employer shall be sent either a copy of the original determination or reconsidered determination, as may be applicable, and if the allegation of lack of notice proves to be true, the period for filing a timely appeal under Section 800 of the Act and 56 Ill. Adm. Code 2720, Subpart C shall begin from the date of mailing of the copy of the determination or reconsidered determination.

(Source: Amended at 20 Ill. Reg. 6378, effective April 29, 1996)

Section 2725.105 Application For Review Of Rate Determination

a) An Application for Review of Rate Determination must be filed at the address on the Notice of Contribution Rate Determination within 15 days of the mailing of the Notice of Contribution Rate Determination to the employer.

b) A sufficient Application shall set forth the following:

1) If the rate determination is based in whole or in part on erroneous benefit charges, the Application must allege:

A) The employer was not served with a Statement of Benefit Charges containing the benefit charges used in the calculation of the employer's contribution rate; or

B) The employer has received an order or decision allowing an adjustment of the benefit charges used in calculating the employer's contribution rate. A copy of such order or decision must be attached to the application.

2) If a determination or decision allowing the payment of benefits has finally been reversed or modified and the benefit charges resulting from such benefit payment were not revised in accordance with the provisions of Section 706 of the Act, the employer shall provide a copy of such final reconsidered finding, reconsidered determination or decision.

3) If the Agency has made a mathematical error, the employer shall provide a detailed, clear statement showing the correct calculations.

4) If the employer alleges that the provisions of Section 1507 of the Act have been erroneously applied, the employer must show that it complied with 56 Ill. Adm. Code 2760.105(b), if applicable, and shall provide a statement of whether the employer has succeeded to substantially all or to a distinct severable portion of the employing enterprises of a predecessor, or whether a successor has succeeded to substantially all or a distinct severable portion of the employer's employing enterprises, and the factual basis for such statements.

5) If the employer alleges an incorrect Standard Industrial Classification code, a statement of the employer's primary activity and the factual basis for such statement.

6) If the employer alleges that it has not been credited with the full amount of wages for insured work subject to the payment of contributions that it reported, it shall state the exact amount of such wages and the quarters for which such wages were reported and shall provide a copy of its "Employer's Contribution and Wage Report" (see 56 Ill. Adm. Code 2760.25) and any forms, Social Security Number Correction and Name Change Notice, used to report additional wages for the same quarters (see 56 Ill. Adm. Code 2760.145).

c) An Application which does not specify the factual basis for relief sought, or does not contain the information required by the applicable Section of this Part, shall be ruled insufficient. The ruling shall be final and conclusive unless the employer files, within 10 days of the date of mailing of such ruling, a written objection or revised Application, specifically responding to the reasons the original Application was ruled insufficient. The written objection or revised Application shall be reviewed and an order allowing or denying relief issued.

d) If the Application is sufficient, the Agency shall investigate the allegations in the Application based on agency records and any documents supplied by the employer. The Agency shall issue a written order with reasons denying the Application or allowing the Application in whole or in part.

e) An employer disagreeing with the order may appeal to a Director's Representative under Subpart C of this Part.

f) If the basis for review of the rate determination is a pending benefit charge matter, such matter is not a basis for relief under this Section, but rather the employer's remedy is pursuant to Section 1508 of the Act and Section 2725.100 of this Part. If the benefit charges are modified or cancelled, as appropriate, through the operation of Section 2725.100 of this Part, appropriate relief will be granted through the operation of Sections 1508 and 1509 of the Act.

Example: While review of a benefit charge matter is pending, the employer receives a Notice of Contribution Rate Determination based on the contested benefit charges. This employer's pending Application for Revision of Statement of Benefit Charges shall be deemed to be an Application for Review of that portion of its rate based on the contested Statement. If such employer prevails on the Application for Review of Statement of Benefit Charges, its benefit ratio shall be modified accordingly and, if this results in a change to its rate, a revised Notice of Contribution Rate Determination will be issued.

(Source: Amended at 20 Ill. Reg. 6378, effective April 29, 1996)

Section 2725.110 Protest Of Determination And Assessment

a) A Protest of a Determination and Assessment must be filed in the form of a Petition at the address shown on the Determination and Assessment within 20 days of service.

b) A sufficient Petition shall set forth the specific part of the Determination and Assessment with which the employing unit disagrees and the specific legal and factual basis for the disagreement and, in the specific situations described in this subsection (b), will state the following:

1) If the employing unit alleges that it has paid all or part of the amount assessed: the exact amount of the contributions, penalties and interest paid, if any, the date[s] paid and the quarter[s] to which the payment[s] relate[s]; or

2) If the employing unit alleges that the Determination and Assessment is erroneous because of clerical error: the specific nature of the clerical error; or

3) If the employing unit claims one or more persons whose wages are the basis of the Determination and Assessment were not in employment: the names, addresses and Social Security account numbers of such persons, the nature of the services performed, if any, and the reasons the person or persons are not considered in employment; or

4) If the employing unit alleges that it is not an employer subject to the Act: the reasons for that allegation and supporting facts.

c) An employing unit which files a Petition that does not contain the information required by subsection (b) shall be notified of the insufficiency and given 20 days from the date of mailing of such notice to revise the Petition or file objections to the notice. If, within the 20 day period, a revised Petition or objections responding to the notice are filed and the Petition or revised Petition is still determined to be insufficient, the revised Petition or original Petition and objections, as the case may be, shall be adjudicated under Subpart C of this Part. If, within the 20 day period, no further documents are filed, the Petition shall be ruled insufficient and such ruling, notice of which shall be provided to the employing unit, shall be final and subject to review under the State's Administrative Review Law [735 ILCS 5/Art. III].

d) An employing unit which files a Petition, but not within the time prescribed, shall be notified of its untimeliness and given 20 days from the date of mailing of such notice to submit further information or objections to the notice of untimeliness. If, within the 20 day period, such information or objections are filed but do not sufficiently respond to the notice of untimeliness, the Petition shall be adjudicated under Subpart C. If, within the 20 day period, no such information or objections are filed, the Petition shall be ruled untimely and such ruling, notice of which shall be provided to the employing unit, shall be final and subject to review under the State's Administrative Review Law [735 ILCS 5/Art. III].

e) Except as provided in subsection (f), if the Petition is sufficient and timely, the Agency shall investigate the allegations in the Petition based upon Agency records and any documents supplied by the employing unit. If the Agency determines that the Petition should be allowed, the Agency shall cancel the Determination and Assessment by written order. If the Agency determines that the Petition should be allowed in part and denied in part, the Agency shall modify the Determination and Assessment by written order, with reasons for the partial denial. An employing unit disagreeing with the Order to Modify the Determination and Assessment may file a Petition to the Modified Determination and Assessment as provided in subsections (a) and (b). If the Agency determines that the Determination and Assessment should be affirmed, the Petition shall be adjudicated under Subpart C of this Part.

f) If an employing unit files a timely and sufficient Petition in response to a Modified Determination and Assessment issued under subsection (e) or a Determination and Assessment which is issued as a result of an audit, such Petition shall be adjudicated under Subpart C of this Part.

(Source: Amended at 20 Ill. Reg. 6378, effective April 29, 1996)

Section 2725.115 Claim For Adjustments (Credits) And Refunds

a) Claims for Adjustments (Credits) or Refunds must be made on the agency form, "Employer's Claim for Adjustment/Refund," and filed at the address listed on the form. Such a claim must be filed within three (3) years after the date on which the employing unit paid the contributions, interest or penalties which are the basis of the employing unit's claim.

b) A sufficient Claim for Adjustment (Credit) or Refund must meet the requirements set forth in 56 Ill. Adm. Code 2760.150 and shall set forth the reason for the refund:

1) The employer overpaid due to a mathematical error. For example, the employer misplaced a decimal point in computing his contributions due;

2) The employer paid at an incorrect rate. For example, the assigned rate was 2.0% and the employer paid at 3.7%. This frequently occurs the first year an employer received a rate based on its experience;

3) The employer reported wages paid to workers to Illinois that should have been reported to a different state. In such a case, the employer must supply the Agency with a list of workers' names and Social Security account numbers on the form titled "Employer's Correction Report Of Wages Previously Reported" if he has not already done so on the form titled "Employer's Correction Report For The Quarter" (see 56 Ill. Adm. Code 2760.145(a)). If any benefits have been paid to these workers by Illinois, the refund amount shall be adjusted downward to reflect any benefits paid due to the employer's error;

4) The employer reported payments that are excluded from the definition of "wages" by the Act. For example, a sole proprietor reported compensation paid to his parents. In such cases, the employer must supply the agency with a list of the workers' names and Social Security account numbers on an "Employer's Correction Report For Wages Previously Reported" if he has not already done so on an "Employer's Correction Report For The Quarter" (see 56 Ill. Adm. Code 2760.145(a)). If any benefits have been paid to these workers, the refund amount shall be adjusted downward to reflect any benefits paid due to the employer's error;

5) The employer incorrectly reported total payments as wages subject to the payment of contributions;

EXAMPLE: The employer made an error in computing the excess wages. In such case, the employer must file an "Employer's Correction Report Of Wages Previously Reported" to correct his error if he has already not done so on an "Employer's Correction Report For The Quarter" (see 56 Ill. Adm. Code 2760.145(a)).

6) The employer overpaid due to a rate revision;

EXAMPLE: The employer's rate is revised downward after he has already paid the contributions for the quarter, thus creating a credit balance for which he can request a refund or adjustment.

7) The employing unit is not an employer subject to the Act, but has paid contributions;

8) Any other circumstances which would show that the employer overpaid his contributions;

9) The employing unit has paid interest and/or penalties which were determined not due.

c) If the Claim for Adjustment (Credit) or Refund is sufficient, the Agency shall investigate the allegation in the claim by examining Agency records and documents supplied by the employer and then issue a written order.

d) A claim which does not specify the factual basis for the relief sought or does not contain the information required by subsection (b) shall be ruled insufficient. The ruling shall be final and conclusive unless the employer files, within 20 days of the date of mailing of such ruling in accordance with Section 2203 of the Act, a written objection or revised Claim, specifically responding to the reasons the original Claim was ruled insufficient The written objection or revised Claim shall be reviewed and an order allowing in whole or in part or denying in whole or in part, issued. An employer disagreeing with such order may appeal to a Director's Representative under Subpart C.

(Source: Amended at 16 Ill. Reg. 2122, effective January 27, 1992)

Section 2725.120 Application For Cancellation Of Benefit Charges Due To Lack Of Notice

a) An Application for Cancellation of Benefit Charges due to lack of notice made pursuant to Section 1508.1 of the Act shall be sufficient only if the following requirements are met:

1) The employer has also filed a timely and sufficient Application for Revision of Statement of Benefit Charges, as provided in Section 2725.100; and

2) The employer specifically alleges in its Application for Cancellation of Benefit Charges that the Agency did not issue one or more of the following Notices within the required time period:

A) A "Notice to Last Employer, Last Employing Unit or Other Interested Party," (See 56 Ill. Adm. Code 2720.130(a)(1)) within 180 days after the date of the initial Finding; or

B) A "Notice of Determination" (BEN-134) (See 56 Ill. Adm. Code 2720.140(a)) under Section 702 of the Act within 180 days after the employer's timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof (see 56 Ill. Adm. Code 2720.130), or, in the case of a remanded Decision regarding the sufficiency of the employer's protest under Section 702 of the Act, within 180 days after the remanded Decision; or

C) In the case of a "Notice of Determination" (BEN-134) issued under Section 702 of the Act, in which an issue was not adjudicated at the time of the employer's timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof, because of the individual's failure to file a claim for a week of benefits, within 180 days after the date on which the individual first files a claim for a week of benefits; or

D) A "Notice of Reconsideration of Findings" or "Notice of Reconsideration of Determination" (BEN-134), within 180 days after the date of reconsideration; or

E) A "Notice of Referee's Decision" (See 56 Ill. Adm. Code 2720.270), which allows benefits, within 180 days after the date that the appeal was received by the Agency; or

F) Under Section 604 of the Act, a "Notice of Director's Decision" within 180 days after the date of the report and Recommended Decision of the Director's Representative; or

G) With respect to the notice of a decision that the employer is a chargeable employer, pursuant to 56 Ill. Adm. Code 2765, within 180 days after the employer's protest or appeal of such a decision.

b) A citation to Section 1508.1 of the Act or this Section of the Rules need not be made in the Application, nor is it necessary to specifically allege the failure of the Agency to act within 180 days.

Example: The employer meets the requirements of subsection (a)(1) and alleges that the Agency failed to respond to its timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof by issuing a "Notice of Determination" (BEN-134). If the Agency finds that the allegations contained in the employer's Application for Cancellation of Benefit Charges are true, and 180 days have elapsed since the employer's "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof, then the benefit charges in question will be cancelled.

c) The Application for Cancellation of Benefit Charges can be made a part of an Application for Revision of Statement of Benefit Charges provided that the requirements of subsection (a)(2) are satisfied.

d) An Application for Cancellation of Benefit Charges will be denied if an Application for Revision of Statement of Benefit Charges regarding the same benefit charges and based on the same allegation has already been denied.

e) The cancellation of benefit charges will be allowed if it is proven by the employer that:

1) The employer meets the definition of a "party" under 56 Ill. Adm. Code 2720.1; and

2) The Agency failed to issue one or more of the "Notices", as set forth in subsection (a)(2); and

3) The employer has satisfied the requirements of Section 1508 of the Act; and

4) The Agency's actions directly resulted in the payment of benefits to an individual and hence caused benefit charges in accordance with the provisions of Sections 1501, 1501.1, 1502 and 1502.1 of the Act. For the purposes of this Section, the Agency's actions "directly resulted" in the payment of benefits where the Agency fails to respond to a timely, where required, notice from an employer within the time limits set in subsection (a)(2).

Example 1: The employer files a late appeal to the Referee (after expiration of the 30 day appeal period set forth by Section 800 of the Act). Even if the Agency fails to rule on the employer's appeal within 180 days from the date the appeal is filed, the employer's benefit charges will not be cancelled, as the Agency's failure to rule on an issue over which the Referee has no jurisdiction cannot "directly result" in the payment of benefits. This result would be different if the employer proves that its appeal was filed in a timely manner.

Example 2: The employer files a timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof to which the Agency makes no response within 180 days. Even if the claimant is found to be eligible for benefits, these benefit charges will be subject to cancellation if the other requirements of this Section are met.

f) All of the provisions of Section 1508 of the Act and Section 2725.100 of this Part, applicable to Applications for Revision of Statements of Benefit Charges and not inconsistent with the provisions of Section 1508.1 of the Act and this Section, shall apply to Applications for Cancellation of Benefit Charges under Section 1508.1 of the Act.

Example: The employer must file its timely Application for Revision of Statement of Benefit Charges in response to a Statement of Benefit Charges. If any benefit charges are allowed by the employer to become final, it cannot later request that the benefit charges be cancelled due to its subsequently meeting the requirements of Section 1508.1 of the Act.

(Source: Amended at 20 Ill. Reg. 6378, effective April 29, 1996)

SUBPART C: APPEALS TO DIRECTOR'S REPRESENTATIVE

Section 2725.200 Filing Of Appeal

a) An employing unit may appeal an order or Determination and Assessment of the Director by filing a written Petition. The Petition should be filed at the address shown on the order or Determination and Assessment being appealed. The Petition must be filed within 20 days after the Director's order or Determination and Assessment was served on the employing unit, except for orders on Application for review of rate determinations, which must be filed within 10 days of the date of service.

b) No special form is necessary to file a Petition. However, in addition to the requirements of Section 2725.25, the following must be included:

1) The Petition must be in writing, dated and signed by the employing unit appealing or its agent;

2) The Petition must set forth the specific parts of the order or Determination and Assessment with which the employing unit disagrees and the specific legal and factual basis for that disagreement.

c) The employing unit may request a pre-hearing conference.

(Source: Amended at 20 Ill. Reg. 6378, effective April 29, 1996)

Section 2725.205 Pre-Hearing Conference

a) The Director's Representative shall, on his own motion or the motion of a party, conduct a pre-hearing conference, if it expedites the hearing. The pre-hearing conference may be in person or by telephone. The Director's Representative shall make a record with all stipulations as part of the pre-hearing conference.

b) During or subsequent to the pre-hearing conference, the petitioner may move to commence the hearing in accordance with Sections 2725.215, 2725.220 or 2725.225. The record shall then be opened and petitioner's waiver of written notice shall be made on the record.

Section 2725.210 Notice Of Hearing

a) The Agency shall schedule a hearing and written notice of the date, place and time of the hearing shall be mailed to the parties, at least 25 days prior to the scheduled hearing.

b) If the hearing is to be conducted by telephone, the notice will so inform the parties and include instructions for informing the agency of the necessary telephone numbers (see Section 2725.220). At least 20 days prior notice shall be given for a telephone hearing.

Section 2725.215 Preparation for the Hearing

a) Each party shall appear at the hearing before the Director's Representative with such witnesses and/or documents believed necessary to establish a right to relief as set forth in the Petition.

b) The Agency shall provide to a party requiring a foreign language interpreter, at the Agency's expense, an interpreter able to translate verbatim from the witnesses' language to English and vice versa. The Director's Representative will administer an interpreter's oath to any interpreter.

c) Upon request to the Director's Representative assigned to hear the case, a party may inspect the file at a reasonable time and place. The date and name of any person inspecting the file shall be placed on the file jacket.

(Source: Amended at 33 Ill. Reg. 9641, effective July 1, 2009)

Section 2725.220 Telephone Hearings

a) When because of distances involved, or it is impractical for the parties, witnesses or the Director's Representative to appear in the same county for a hearing, the Director's Representative has the authority to schedule a telephone hearing. Any party shall have a right not to participate in a telephone hearing, and any party electing not to participate in a telephone hearing shall be granted an in-person hearing. If a hearing is to be conducted by telephone, the notice shall so inform the parties and include instructions for providing the Agency with any necessary telephone numbers. The in-person presence of some parties or witnesses at the hearing shall not prevent the participation of other parties or witnesses by telephone.

b) A party to a telephone hearing must submit to the Director's Representative at least 5 days before the date of the scheduled hearing any documents that are intended to be introduced at the hearing. Copies of the documents must also be provided to any other party prior to the date of the scheduled hearing. All documents submitted to the Director's Representative will be identified on the record.

(Source: Amended at 35 Ill. Reg. 6129, effective March 25, 2011)

Section 2725.225 Ex Parte (One Party Only) Communications

a) The Director's Representative shall not initiate ex parte communications, directly or indirectly, in any matter in connection with any substantive issue, with any interested person or party. If the Director's Representative receives any such ex parte communication, including any documents, he shall inform the other parties of the substance of any such oral communication and provide copies of any such written communication or documents. The other party shall be given an opportunity to review any such ex parte communication.

b) Nothing shall prevent the Director's Representative from communicating ex parte about routine matters such as requests for continuances or opportunities to inspect the file, as long as all parties are informed of the substance of the ex parte communication. The date and type of communication, the persons involved and the results of such routine communications shall be part of the record.

Section 2725.230 Subpoenas

a) The Director's Representative may issue a subpoena to compel the attendance of a witness or the production of documents when such witness or document has or contains relevant evidence but is not being presented by the party, witness or holder of a document. A party may also request the Director's Representative to issue a subpoena to compel the attendance of a witness or the production of documents. The request shall be either in writing or on the record and shall:

1) Identify the witness or document sought;

2) State the facts that will be proven by each witness and/or document sought.

b) The Director's Representative shall grant or deny the request, either in writing or on the record. If the Request for Subpoena is granted, the Director's Representative shall, if necessary, reschedule the hearing to a specific date. The Request for Subpoena shall be denied only if the Director's Representative finds that the evidence sought is immaterial, irrelevant or cumulative. If the Request for Subpoena is denied, the Director's Representative shall proceed to conduct the hearing, and the specific reasons for denial of the Request for Subpoena shall be made part of the record on appeal.

c) If a witness fails to obey a subpoena, the party seeking enforcement of the subpoena shall prepare an application to the circuit court of the county in which the subpoenaed witness resides requesting enforcement of the subpoena pursuant to Section 1002 of the Act and shall present the application to the Director's Representative. If satisfied that the subpoena was properly served and that the application is in proper form, the Director's Representative shall sign the application and the party seeking enforcement of the subpoena, or its attorney, may then file and prosecute the application to the circuit court. In such instance, the matter shall be continued pending the outcome of enforcement of the subpoena.

Section 2725.232 Depositions

a) Where any hearing is pending under this Part, the Director's Representative shall order the taking of a person's deposition, specifying the subject matter to be covered, under oral examination or written questions for use as evidence at the hearing if:

1) It appears to the Director's Representative that the deposition of such person is necessary for the preservation of relevant testimony because of a substantial possibility it would be unavailable at the time of the hearing (i.e. potential witness is moving out of state, incarcerated, etc.); and,

2) Such request is made by a motion of a party who gives notice of this motion to any other parties to the issue and to the Office of Legal Counsel of the Agency.

b) The taking of depositions shall be in accordance with the rules for the taking of depositions in civil cases, and the order for the taking of a deposition may provide that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place.

c) Any other parties and the Agency shall have the right to confront and cross-examine any witness whose deposition is taken. The other parties and the Agency may waive such right in writing, filed with the Director's Representative.

d) Depositions shall be taken in the county of residence or of employment of the witness, as specified in Rule 203 of the Rules of the Illinois Supreme Court, unless the witness waives such right in writing.

e) Failure to obey an order for deposition shall result in the same sanctions as provided in Section 2725.230 for failure to comply with a subpoena.

Section 2725.235 Consolidation Or Severance Of Proceedings

a) The Director's Representative shall, on his own motion or the motion of a party, consolidate hearings if he finds that hearings involve a common question of law or fact, that consolidation will expedite the hearings, and that no rights of any party will be prejudiced.

b) All parties shall be given notice of the motion to consolidate and opportunity to be heard on the motion.

c) The Director's Representative shall sever cases previously consolidated if it appears that the requirements of subsection (a) are not met.

Section 2725.237 Adding Necessary Parties

a) The Director's Representative shall add one or more additional parties whenever he finds that it is necessary for the proper disposition of a case. Such additional party or parties shall be given reasonable notice of this action and an opportunity to be heard.

Example: The Director issues a Determination and Assessment based on a finding that Employer A has failed to report and pay contributions on wages that it paid to Mr. Smith. Employer A contends that it did not employ Mr. Smith but that he was employed instead by Employer B. Employer B, which has a lower contribution rate than Employer A, reported the wages of Mr. Smith and paid contributions on those wages so that it is not possible to make a Determination and Assessment against Employer B and then to consolidate the cases. If the Director's Representative finds that it is necessary for the proper disposition of the case, he shall add Employer B as a party, and Employer B shall be given reasonable notice and an opportunity to be heard.

b) Whenever an employing unit believes that it should be added as an additional party in a case pending before the Director's Representative but the Director's Representative has not done so, it shall file a Motion to Intervene. Such Motion shall include arguments in support of such Motion. If the Director's Representative finds that the addition of the employing unit is necessary for the proper disposition of the case, it shall be added as a party. If the Director's Representative finds that the addition of the employing unit is not necessary for the proper disposition of the case, the Motion shall be denied and the reasons therefore noted in the record.

(Source: Added at 16 Ill. Reg. 113, effective December 23, 1991)

Section 2725.240 Withdrawal Of Petition For Hearing

The employer may voluntarily withdraw his petition by filing a signed written statement with the Director's Representative or by oral statement on the record. Any other parties will receive notice of the withdrawal.

Section 2725.245 Continuances

All requests for continuances of hearings or pre-hearing conferences must be either in writing or on the record and must set forth the reasons for such request. The Director's Representative to whom the matter was assigned, or the supervisor if the Director's Representative is not available, shall grant a continuance for good cause shown, such as the unavailability of a witness or a party due to accident, illness or circumstances beyond the person's control. In that event, the hearing will be rescheduled to the earliest mutually agreeable time and date and the agency will inform all parties of the date and time of the rescheduled hearing.

Section 2725.250 Conduct Of Hearing

a) The Director's Representative will control the hearing which will be confined to the relevant factual and/or legal issues.

b) At the hearing the petitioning employer must produce testimony, argument or other evidence to establish that the Director's order or determination and assessment is incorrect.

c) Following the testimony of each witness, the witness may be questioned and cross-examined by the opposing party, if any, and then may be questioned and cross-examined by the Director's Representative or such other employee of the Director as the Director may designate. The Director's Representative or such other employee of the Director as the Director may designate shall represent the Director and may present any evidence to support the Director's order or determination and assessment.

d) It is the duty of the Director's Representative to ensure that the party or parties, as appropriate, have full opportunity to present all evidence relevant to the issues before the Director's Representative.

e) If any person becomes disruptive or abusive, the Director's Representative shall exclude that person from the hearing and the hearing will continue without the participation of the excluded individual. The Director's Representative shall render a decision based on all evidence in the record.

f) The Director shall prohibit any person from representing a party in any proceeding under this Part if the Director finds that the person is or has been guilty of violating the Code of Professional Responsibility, Article 8 of the Rules of the Illinois Supreme Court or has intentionally disregarded the provisions of the Act, rules promulgated thereunder or written instructions of the Director. The prohibition shall be in writing and shall be applicable for a period not to exceed 120 days from the date the decision is mailed to the party.

(Source: Amended at 35 Ill. Reg. 6129, effective March 25, 2011)

Section 2725.255 Rules of Evidence

The rules of evidence as provided in Section 10-40 of the Illinois Administrative Procedure Act [5 ILCS 100/10-40] shall apply. The Director's Representative need not rule on any objection to the introduction of evidence or testimony, but any such objection shall be duly noted and made part of the record.

(Source: Amended at 35 Ill. Reg. 6129, effective March 25, 2011)

Section 2725.260 Oral Argument-Memoranda-Post Hearing Documents

a) The Director's Representative shall give each party an opportunity to present oral argument after the evidentiary hearing has been concluded.

b) The Director's Representative shall, either on the record or in writing, if necessary to clarify the issues, require any party to file a memorandum. A party at the conclusion of the hearing may file, either in writing or on the record, a notice of intent to file a memorandum in support of its position. Such memorandum shall include proposed findings of fact and conclusions of law, and the Director's Representative shall set a reasonable schedule for filing any memoranda. Each party filing such memoranda shall furnish a copy thereof to all other parties, at the time of such filing.

Section 2725.265 The Record

A complete record shall be kept of all proceedings before the Director's Representative, which shall include all items required by Section 10-35 of the Illinois Administrative Procedure Act [5 ILCS 100/10-35].

(Source: Amended at 35 Ill. Reg. 6129, effective March 25, 2011)

Section 2725.270 Recommended Decision

a) The Director's Representative shall issue a recommended decision without a hearing where:

1) The Record fails to state a basis for relief under the facts stated or the law;

2) The Petition or revised Petition, Application for review of a rate determination, Application for revision of statement of benefit wages or statement of benefit charges, or Claim for refund or adjustment was not filed in a timely manner as provided for in the Act and no issues relating to timeliness have been raised by the petitioner.

b) The Director's Representative, at the conclusion of the hearing, or upon the failure of an appealing party to appear at a scheduled hearing or failure of such party to provide any necessary telephone number or to answer at a designated telephone number at the time of such scheduled hearing as provided in Section 2725.220, shall submit his recommended decision to the Director. Such recommended decision shall include:

1) A statement of the issues involved;

2) Findings of fact;

3) Conclusions of law;

4) A recommended decision.

c) A copy of such recommended decision shall be served upon all parties.

d) Such recommended decision shall become the decision of the Director unless objections are filed to the recommended decision in accordance with Section 2725.275.

(Source: Amended at 13 Ill. Reg. 17383, effective 10/30/89)

Section 2725.275 Objections To Recommended Decision

a) Any party shall have the right to file objections to a recommended decision within 20 days after the service of such recommended decision. Such objections shall also be served upon the other parties, if any.

b) Objections to a recommended decision shall be sufficient only if they set forth specifically and in detail a basis for relief. Failure to file or set forth an objection in accordance with these rules shall be deemed a waiver of such objection.

c) If the employer failed to appear at the hearing before the Director's Representative or failed to provide any necessary telephone numbers at the time of such scheduled hearing as provided in Section 2725.220 and such employer wants a hearing, he must file his objections and the facts which show that his failure to appear, provide the telephone number or answer the telephone was caused by reasons outside of his control, or by circumstances that could not be reasonably foreseen and avoided and that there is a likelihood that a hearing on the merits would result in the relief sought.

d) If an employer receives a recommended decision pursuant to Section 2725.270(a), such employer may also demand a hearing before the Director's Representative to orally present such objections. A hearing will be scheduled and shall be limited to the issues set forth in the recommended decision and the objections filed.

e) Upon written request or oral request on the record, within 10 days after service of such recommended decision, the employer shall be granted one 10 day extension of the time for filing objections. Notice of such request must be served upon the other parties, if any.

Section 2725.280 Decision Of Director

a) After review of the objections to the recommended decision, the Director shall make his decision and serve notice thereof on the party or parties thereto.

b) The Director may, after review of the objections to the recommended decision, order that a matter be remanded to the Director's Representative for rehearing or to take additional testimony whenever the Director believes that there is a basis for relief as provided in this Part or that the record is incomplete.

c) The Director shall issue a decision at any stage of the proceedings where it appears from the pleadings, the Agency file and other matters of record that a decision awarding all the relief sought by the petitioner should be issued and a hearing on the merits would be unnecessary; provided, however, that such a decision shall not be issued if there are other parties who would be denied due process by the lack of notice and the opportunity to be heard.

SUBCHAPTER b: COVERAGE OF UNEMPLOYMENT INSURANCE ACT

PART 2730: WAGES
SUBPART B: OTHER REMUNERATION TREATED AS WAGES

Section 2730.100 Money Value Of Board And Lodging, Etc.

a) Except as otherwise provided in this Section, board, lodging or other remuneration in kind received by an individual from his employer for personal services performed by the individual for the employer shall be deemed to be wages paid by the individual's employer. Meals which are given for the convenience of the employer are not remuneration for the performance of personal services and, therefore, are not wages. Meals that are given for the convenience of the employer must be furnished for substantial non-compensatory business reasons rather than as additional compensation to the worker. When the meal is served at the location where the services are performed, it is presumed that the meal is for the convenience of the employer. When the meal is served at a location other than where the service is performed, it is presumed that the meal is not for the benefit of the employer.

1) Example: An individual performs services at a restaurant. The employer does not want the worker to bring food from another restaurant to eat at his establishment. Meals are provided to the worker as a convenience for the employer and, therefore, are not remuneration to the worker for his services. Under such circumstances, the value of the meal is not deemed to be wages.

2) An employer provides ambulance services and always needs to have drivers ready for emergencies. Meals are provided at the dispatch terminal so that drivers will always be available. Under such circumstances, the value of the meals are not deemed to be wages.

3) Whenever a worker is required to work past seven o'clock in the evening, the employer reimburses the worker for her dinner. If the worker has the option of leaving the location where the work is performed for dinner, it is presumed that this meal is not for the benefit of the employer.

4) Whenever a worker is required to work past seven o'clock in the evening, the employer orders dinner brought in for the worker. It is presumed that this meal is for the benefit of the employer.

b) The money value of the remuneration in kind received by the individual shall be the fair market value of such remuneration. "Fair market value" is the cash value of the remuneration which would be reached between a willing buyer and a willing seller. The Director has the authority to determine or approve the fair market value of remuneration in kind received by the individual, and this value shall be used in determining the wages paid to the individual and in computing contributions due under the Unemployment Insurance Act [820 ILCS 405/100 *et seq.*], hereinafter referred to as "the Act".

c) Where a money value for board, lodging or other remuneration in kind furnished an individual by an employer is agreed upon in a contract of hire, this agreed on amount shall be deemed the fair market money value of such remuneration unless this amount is less than the fair market money value specifically determined by the Director under subsection (b) above.

(Source: Amended at 18 Ill. Reg. 14958, effective September 27, 1994)

Section 2730.105 Reporting Gratuities

a) Each employer who employs individuals who customarily receive gratuities from persons other than the employer in the course of their work with the employer shall inform, either orally or in writing, all those individuals of their duty to report currently the amount of the gratuities to the employer, and post a notice, issued by the Director, which may be conveniently read (such as on the employer's bulletin board) by all such individuals. The notice shall be procured by an employer from the Director.

b) Each individual who customarily receives gratuities in the course of his or her work from persons other than his or her employer shall, on the day he or she is paid wages for a pay period by his or her employer, or not later than the next succeeding pay day, submit a written statement or form, in duplicate, to his or her employer concerning the amount of gratuities received during the pay period.

c) The statement or form referred to by subsection (b) shall contain the information required to be listed under Section 6053(a) of the Internal Revenue Code of 1954 (26 USC 1 et seq.). Each employer shall acknowledge the receipt of the statement or form on the duplicate copy and return the copy to the individual, who shall retain it as evidence of the fact that he or she has reported gratuities in accordance with the requirements of this Section. The employer shall retain each original statement or form for a period of three years.

d) Each employer shall include in its regular monthly or quarterly reports, as the case may be, to the Director the amount of gratuities reported to it by each individual under subsection (b); provided, however, that in the event the employer shall deem the amount so reported by the individual to be in excess of the amount of gratuities actually received by the individual, the employer shall attach to its monthly or quarterly report a statement indicating the amount reported by the individual, the amount reported by the employer, the difference between those amounts, and the basis for the employer's belief that the differences were not actually received by the individual.

e) If, for any reason, the employer fails to obtain from the individuals in its employ the amount of gratuities received by such individuals, the employer shall estimate the amounts of such gratuities. The employer shall estimate the amount of the gratuities as the greater of 8% of the gross receipts for service provided by the individual or the applicable federal minimum wage (29 USC 206 et seq.) times the number of hours worked by the individual.

(Source: Amended at 37 Ill. Reg. 7432, effective May 14, 2013)

Section 2730.130 Exceptions To Liability Of Certain Third Party Payors For Contributions And Reporting Of Certain Payments On Account Of Sickness And Accident Disability

a) Section 235 of the Act [820 ILCS 405/235] provides, in pertinent part, that the term "wages" does not include:

> *The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), made to, or on behalf of, an individual or any of his dependents under a plan or system established by an employer which makes provision generally for individuals performing services for him (or for such individuals generally and their dependents) or for a class or classes of such individuals (or for a class or classes of individuals and their dependents), on account of sickness or accidental disability, or medical or hospitalization expenses in connection with sickness or accident disability.*

b) For purposes of this exclusion:

1) The plan or system must provide generally for individuals performing services for the employer, or for such individuals and their dependents, or for a class or classes of such individuals and their dependents (plan has a definite basis for determining who is eligible, such as length of service, occupation or salary classification);

2) A payment is made on account of sickness or accident disability if it constitutes remuneration or a payment in lieu of remuneration for any period during which the individual is absent from work (unable to perform services) on account of sickness or personal injuries;

3) A dependent of an individual is the individual's husband or wife, children and any other member of the individual's immediate family as defined in 18 USC 115(c)(2);

4) Payments made under a workers' compensation law are excluded from the term "wages";

5) If an individual receives a payment on account of sickness or accident disability which is not initially made under a workers' compensation law but that must later be repaid to the employer because the individual receives a workers' compensation award with respect to the same period of absence from work, the payment shall be considered "wages".

c) Payments made by third parties not excluded by this Part or the Act are to be included as "wages" and the third party is to be considered the employer, unless the requirements in this subsection (c) are met.

1) The last employer for whom the individual worked prior to becoming sick or disabled or for whom the individual was working at the time the individual became sick or disabled shall be deemed to be the employer for whom the personal services are performed, provided that the employer made contributions on behalf of the individual to the plan or system under which the individual is paid.

2) The absence of an agreement between the third party payor and the employer that the employer will be required to report the wages and pay the contributions will render the third party as the employer, and, as such, the third party will be required to report the wages and pay the contributions as applicable.

3) The Agency will consider the employer for whom the personal services are performed to be the employer for the purposes of reporting wages paid to workers, pursuant to 56 Ill. Adm. Code 2760.125, and the payment of contributions if all of the following requirements are met:

A) The third party and the employer for whom the personal services are performed agree that the employer (not the third party) will be treated as the employer with respect to the wages; and

B) The third party notifies the employer at least six working days prior to the end of the month following the preceding calendar quarter (or the preceding month in the case of an employer subject to 56 Ill. Adm. Code 2760.125(a)(1)) of the Social Security account numbers, employee names, and the amount of sickness or accident disability payments made during the month or calendar quarter, as the case may be.

i) For the purposes of determining timeliness of the notice, the provisions of 56 Ill. Adm. Code 2765.60 shall apply;

ii) A notification that contains the required information and that has been made by a third party to an employer, as required by the Federal Insurance Contributions Act (26 USC 1501 et seq.) will be sufficient notification under this Part.

4) The employer reports the wages pursuant to Section 2760.125, and includes the wages in the calculation and payment of contributions.

d) A third party making a payment on account of sickness or accident disability to an individual as agent for the employer or making such a payment directly to the employer shall not be treated as the employer with respect to the payments unless the agency agreement so provides. The determining factor as to whether a third party is an agent of the employer is whether the third party bears any insurance risk.

1) If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party is an agent of the employer even if the third party is responsible for making determinations of eligibility of the individual employees of the employer for payments on account of sickness and accident disability.

2) If the third party is paid an insurance premium and not reimbursed on a cost plus fee basis, the third party is not an agent of the employer, but the third party is treated as the employer, as provided in subsection (c).

(Source: Amended at 37 Ill. Reg. 7432, effective May 14, 2013)

Section 2730.150 Payments Under A Cafeteria Plan

Payments which are not taxable for federal income tax purposes as part of a cafeteria plan established under Section 125 of the Internal Revenue Code of 1986 are not included in "wages", as defined in Section 234 of the Act (Ill. Rev. Stat, 1989. ch. 48, par. 344), to the extent that (1) the benefit chosen under the plan is specifically excluded under Section 235 of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 345) and (2) under Section 245(C) of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 370(C)) the benefit is not includable in the terms "wages" subject to the payment of taxes under the Federal Unemployment Tax Act (FUTA).

a) Example: Payments made under a plan established by an employer generally for individuals in its employ to provide for the payment of medical insurance premiums which would not be includable in gross income for federal income tax purposes under Section 125 of the Internal Revenue Code of 1986 are not includable as wages because there is a specific exclusion in Section 235 of the Act for payments on account of medical or hospitalization expenses in

connection with sickness or accident disability and such payments are not subject to the payment of taxes under FUTA.

b) Example: Payments made under a plan established by an employer generally for individuals in its employ to provide for the payment of life insurance premiums which would not be includable in gross income for federal income tax purposes under Section 125 of the Internal Revenue Code of 1986 are not includable as wages because there is a specific exclusion in Section 235 of the Act for payments on account of death and such payments are not subject to the payment of taxes under FUTA.

c) Example: Payments made under a plan established by an employer generally for individuals in its employ to provide for the payment of dependent care assistance which would not be includable in gross income for federal income tax purposes under Section 125 of the Internal Revenue Code of 1986 are includable as wages because there is no specific exclusion in Section 235 of the Act for payments on account of dependent care assistance even though they are not subject to the payment of taxes under FUTA.

(Source: Added at 15 Ill. Reg. 16964, effective November 12, 1991)

Section 2730.155 Payments Under A Plan Authorized By Section 401(k) of the Internal Revenue Code of 1986

Payments not taxable for income tax purposes under Section 401(k) of the Internal Revenue Code of 1986 are included in "wages", as defined in Section 234 of the Act. Amounts deducted from an individual's taxable income pursuant to salary reduction arrangements, as well as employer contributions, are also "wages".

(a) Example: An individual is entitled to $1,000 in salary. It is agreed between the employer and the individual that $50 of his salary is to be placed in the employer's 401(k) plan fund, and the individual is paid cash of $950. The 401(k) plan does not provide for employer contributions. The individual's "wages" under Section 234 of the Act are $1,000.

(b) Example: An individual is entitled to $1,000 in salary. It is agreed between the employer and the individual that $50 is to be placed in the employer's 401(k) plan fund, and the individual is paid cash of $950. In addition to the aforementioned arrangement, the employer makes a contribution of $50 to the fund on behalf of the individual. The individual's "wages" under Section 234 of the Act are $1,050.

(Source: Added at 15 Ill. Reg. 16964, effective November 12, 1991)

SUBCHAPTER c: RIGHTS AND DUTIES OF EMPLOYERS

PART 2732: EMPLOYMENT
SUBPART A: COVERAGE

Section 2732.125 Requirement That "Four Or More" Employees Of A Nonprofit Organization Perform Services Within This State

In applying Section 211.2 of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 321.2), only individuals performing services in this State shall be included in determining whether the nonprofit organization has had four or more individuals in employment.

Example: Organization X is a nonprofit organization, as defined in Section 501(c)(3) of the Internal Revenue Code of 1986, and is exempt from income tax under Section 501(a) of that Code. It maintains its national headquarters in Madison, Wisconsin where it employs ten persons. It also maintains a branch office in Chicago where it employs one worker. The services of the one worker in Chicago shall not constitute employment in Illinois because this organization does not have 4 or more individuals in employment in Illinois.

(Source: Added at 15 Ill. Reg. 11423, effective July 30, 1991)

SUBPART B: SERVICES IN EMPLOYMENT

Section 2732.200 Section 212 of the Act – Services in Employment

a) In determining whether services performed by an individual for an employing unit are employment, as defined by Section 212 of the Unemployment Insurance Act (the Act) [820 ILCS 405/212], the Agency shall, when applicable to a particular factual situation:

1) Review written agreements between the individual and the employing unit;

2) Interview the individual or employing unit;

3) Obtain statements of other persons with relevant information;

4) Examine regulatory statutes governing the organization, trade or business;

5) Examine the books and records of the employing unit; and

6) Make any other investigation necessary to make a determination.

b) The Agency will apply the exceptions specified in the Act to the facts as they exist, and the designation or description which the parties apply to their relationship is not controlling.

c) The mechanics of compensation are not controlling and the fact that an individual is compensated by commission or any payment other than salary does not preclude a determination that the individual is in employment under the Act.

d) The exceptions in Section 212 of the Act are conjunctive, and all three must be proven by the employer to establish the exemption.

e) "Engaged in an independently established trade, occupation, or business" within the meaning of Section 212(C) of the Act means that the individual has a proprietary interest in the business that he or she can sell, give away or operate without hinderance from any other party. While no one factor will determine if an individual is engaged in an independently established trade, occupation, profession or business as set out in Section 212(C) of the Act, the business reality or totality of circumstances will determine the presence of this condition. The following types of factors indicate that the individual is engaged in an independently established trade, occupation, profession, or business, as set out in Section 212(C) of the Act:

1) The individual's interest in the business is not subject to cancellation or destruction upon severance of the relationship;

2) The individual has an investment of capital and owns the capital goods of the business enterprise;

3) The individual gains the profits and bears the losses of the business enterprise;

4) The individual makes his or her services available to the general public or the business community on a continuing basis;

5) The individual includes the individual's services on a Federal Income Tax Schedule as an independent business or profession;

6) The individual performs services for the employing unit under his or her own business name;

7) The individual has a shop or office of his or her own;

8) The employing unit does not represent the individual as an employee of the firm to its customers;

9) The individual hires his or her own helpers or employees, without the employing unit's approval, pays them without reimbursement from the employing unit, and reports their income to the Internal Revenue Service;

10) The individual has an account number with the Agency and reports the wages of his or her workers monthly or quarterly, as the case may be, to the Agency;

11) The individual has the right to perform similar services for others on whatever basis and whenever he or she chooses;

12) The individual maintains a business listing in the telephone directory or in appropriate trade journals;

13) If the services require a license, the individual has obtained and paid for the license in his or her own name.

f) The two factors in Section 212(B) of the Act are in the alternative. Section 212(B) of the Act is satisfied if the service is either outside the usual course of business of the employing unit or performed outside of all the places of business of the employing unit:

1) Services that merely render the place of business more pleasant or are not necessary to the employing unit's business are outside the usual course of business.

EXAMPLE: The services of a window washer engaged by an employing unit whose business is selling woolens are outside the usual course of the business of the employing unit.

2) Because services are performed outside the employing unit's premises does not preclude an individual from being found to be in employment. This decision is based upon the occupation and the factual context in which the services are performed.

A) EXAMPLE: The homes of typists who are typing manuscripts for an employing unit are places of business of the employing unit.

B) EXAMPLE: Any territory in which a salesman represents his or her employing unit's interests is the employing unit's place of business.

g) "Direction or control" within the meaning of Section 212(A) of the Act means that an employing unit has the right to control and direct the worker, not only as to the work to be done but also as to how it should be done, whether or not that control is exercised. The following are illustrative of the types of questions the Department will examine to determine whether "direction or control" exists. The type of business subject to review and the relationship being examined will determine which questions are asked in any given review under this Section. No one question or answer or combination of questions and answers will determine whether direction or control exists but rather the business reality or totality of circumstances will determine if direction or control exists:

1) Does the employing unit issue assignments or schedule work, set quotas or time requirements;

2) Does the employing unit have the right to change the methods used by the worker in performing his or her services;

3) Does the employing unit require the worker to follow a routine or schedule;

4) Does the employing unit require the worker to report to a specific location and/or at regular intervals;

5) Does the employing unit require the worker to furnish a record of his or her time to the firm;

6) Does the employing unit require the worker to perform services a specific number of hours per day or per week;

7) Does the employing unit engage the worker on a permanent basis;

8) Does the employing unit reimburse the worker for expenses incurred;

9) Is the worker eligible for a pension, a bonus, paid vacation or sick pay;

10) Does the employing unit carry workers' compensation insurance on the worker;

11) Does the employing unit deduct Social Security tax from the worker's compensation;

12) Does the employing unit report the worker's income to the Internal Revenue Service on Form W-2;

13) Does the employing unit bond the worker;

14) Does the employing unit furnish the worker with materials and supplies, tools or equipment;

15) Does the employing unit furnish the worker with transportation, samples, a drawing account, business cards, an expense account, or order blanks;

16) Does the employing unit allow the worker to sell noncompetitive lines or engage in other employment;

17) Does the employing unit restrict the worker in terms and conditions of sale and choice of customers;

18) Does the employing unit assign or limit the territory in which the individual performs;

19) Does the employing unit set the price and credit terms for the products or service;

20) Does the employing unit reserve the right to approve orders or contracts;

21) Does the employing unit have a right to discharge;

22) Does the employing unit require attendance at meetings or training courses;

23) Does the employing unit have the right to appoint the individual's supervisors;

24) Does the employing unit have the right to set rules and regulations;

25) Does the employing unit purport to guarantee the product or service performed;

(Source: Amended at 37 Ill. Reg. 7440, effective May 14, 2013)

Section 2732.203 The Effect Of Regulation By A Governmental Entity On "Direction Or Control" Under Section 212 Of The Act

In determining whether direction or control exists, the Agency shall consider the factors set forth in Section 2732.200. Regulation or licensing of a person, organization, trade or business by a governmental entity or use of the terms "direction" and/or "control" in a regulatory or licensing requirement shall not, by operation of law or "per se", constitute a showing of "direction or control" for the purpose of Section 212 of the Act or Section 2732.200(g).

Source: Added at 16 Ill. Reg. 8173, effective May 18, 1992)

Section 2732.205 Owner-Operators Of Motorized Vehicles

a) Section 212.1 of the Act [820 ILCS 405/212.1] applies only to services performed on or after August 8, 1995.

b) The burden of proving that services are exempt, under Section 212.1, from the Act's definition of "employment" rests with the person or entity to which the individual is contracted to perform the services.

c) Section 212.1 applies only to services an individual performs as an operator of a truck, truck-tractor or tractor.

Example: Smith performs services for Company A, which is licensed by the Illinois Commerce Commission as a motor carrier of personal property. These services consist entirely of loading and unloading trucks at Company A's loading dock. Section 212.1 does not exempt Smith's services for Company A from the Act's definition of "employment."

d) For purposes of applying Section 212.1:

1) "Truck" has the meaning ascribed to it in Section 1-211 of the Illinois Vehicle Code [625 ILCS 5/1-211].

2) "Truck-tractor" has the meaning ascribed to it in Section 1-212 of the Illinois Vehicle Code [625 ILCS 5/1-212].

3) "Tractor" has the meaning ascribed to "road tractor" in Section 1-178 of the Illinois Vehicle Code [625 ILCS 5/1-178].

4) "Family member" means any parent, sibling, child, sibling of a parent, or any of the foregoing relations by marriage.

5) A person or entity owns, controls or operates another entity when:

A) by virtue of its ownership interest in that other entity, it has the power to direct the management of the other entity; or

B) by virtue of its ownership interest in that other entity combined with the ownership interest of one or more others, it actually directs, by itself or in conjunction with others, the management of the other entity; or

C) it has responsibility for overseeing the day-to-day operations of that other entity.

6) Ownership, control or operation may be through any one or more natural persons or proxies, powers of attorney, nominees, proprietorships, partnerships, associations, corporations, trusts, joint stock companies or other entities or devices or any combination thereof.

7) "Person or entity" means a sole proprietorship, partnership, association, corporation or any other legal entity.

8) A requirement imposed by a governmental regulatory or licensing agency with respect to services an individual performs as an operator of a truck, truck-tractor or tractor is not a requirement imposed on the individual by any person or entity to which the individual is contracted to perform the services.

e) Section 212.1(a)(1) of the Act

Section 212.1(a)(1) is not satisfied unless:

1) The services are performed by an individual who is registered or licensed as a motor carrier of real or personal property by the Illinois Commerce Commission, the Interstate Commerce Commission, the United States Department of Transportation or any successor agencies; or

2) Both:

A) The individual performing the services is doing so under an owner-operator lease contract; and

B) The person or entity with which the individual is contracted to perform the services is registered or licensed as a motor carrier of real or personal property by the Illinois Commerce Commission, the Interstate Commerce Commission, the United States Department of Transportation or any successor agencies.

Example: Jones, who owns her own pickup truck, works for ABC Hardware Store. As part of the regular course of Jones' work for ABC, she uses her pickup truck to make deliveries to customers. Neither Jones nor ABC is licensed or registered as a motor carrier of property. Section 212.1 does not exempt the delivery services Jones performs for ABC from the Act's definition of "employment."

f) Section 212.1(a)(2) of the Act

Section 212.1(a)(2) is not satisfied unless both paragraphs (1) and (2) of this subsection (f) are satisfied.

1) The individual performing the services must be able, with reasonable notice if required by the contract, to terminate the lease contract with the person or entity to which the individual is contracted to perform the services, prior to the termination date specified in the contract, without incurring any legal or equitable liability to such person or entity other than liability for damage to the property being carried or damage or injury caused as a result of the operation of the truck, truck-tractor or tractor.

A) Example: The lease contract between Smith and Motor Carrier A extends from January 1, 1997, through June 30, 1997, and provides that Smith's terminating the contract prior to June 30, 1997, under any circumstances, will result in Smith's being liable for liquidated damages determined according to a formula specified in the contract. Section 212.1 does not exempt the services Smith performs pursuant to the contract from the Act's definition of "employment" because Smith does not have the right to terminate the contract as contemplated by Section 212.1(a)(2) of the Act.

B) Example: The lease contract between Jones and Motor Carrier C extends from January 1, 1997, through June 30, 1997, but provides that Jones may terminate the lease contract prior to June 30, 1997, without incurring any liability to C other than liability for damage to the property being carried or damage or injury caused as a result of the operation of Jones' truck, on the condition that Jones provides C with reasonable notice of termination. If Jones terminates the contract without providing C with reasonable notice, Jones will be liable for liquidated damages determined in accordance with a formula specified in the contract. Under these facts, absent any other evidence that indicates C has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for C are exempt from the Act's definition of "employment".

2) Following the termination of the lease contract, the individual must be able to perform the same or similar services for others, on whatever basis and whenever he or she chooses, without incurring any legal or equitable liability to the person or entity to which the individual was contracted to perform the services under the terminated lease contract.

Example: The lease between Davis and Motor Carrier B provides that, upon termination of the contract, Davis shall not, for a period of six months, perform services as an operator of a truck, truck-tractor or tractor for any other motor carrier located within a 90-mile radius of B's main office. The provision is enforceable by injunction. Section 212.1 does not exempt the services Davis performs pursuant to the contract from the Act's definition of "employment."

g) Section 212.1(a)(3) of the Act

Section 212.1(a)(3) is not satisfied unless the person or entity to which the individual is contracted to perform the services imposes no requirements on the individual to perform the services, or be available to perform the services, at a specific time or times, according to a specific schedule or for a specified number of hours. The person or entity is not considered as having imposed such a requirement where the person or entity informs the individual performing the services of a pickup or delivery time specified by the shipper or receiver of the property to be transported.

1) Example: Adams telephones Motor Carrier A at 8:00 A.M. each day Adams is available to provide truck driving services to see whether A has any work for Adams. After being informed that there is work, Adams must make himself available to perform the work by 9:00 A.M. If Adams fails to make himself available by 9:00 A.M., Motor Carrier A will enter a demerit on his personnel records. If Adams accumulates five demerits during a year, Motor Carrier A will terminate its relationship with Adams. Section 212.1 does not exempt the services Adams performs for Motor Carrier A from the Act's definition of "employment."

2) Example: Motor Carrier B telephones Smith in each of five consecutive weeks to offer Smith work providing truck driving services for B. Each time, Smith indicates he is not interested. B does not contact Smith after that. By itself, B's decision not to attempt to do further business with Smith, an individual who has consistently refused B's offers of work, is not evidence that B has imposed any requirements on Smith to perform services, or be available to perform services, at a specific time or times, according to a specific schedule or for a specified number of hours.

3) Example: ABC Produce Company has contracted with XYZ Trucking Company to deliver produce to various wholesalers every Tuesday, Thursday and Saturday; ABC has instructed XYZ the produce must be delivered to each wholesaler no later than 4 A.M. Jones is to perform the services for XYZ as the operator of a truck, transporting produce from ABC. XYZ informs Jones of the 4 A.M. deadline imposed by ABC. It is understood that Jones' failure to meet the deadline may jeopardize his ability to drive for XYZ again. The deadline was specified by the shipper. The fact that a carrier may be reluctant to transact future business with a driver who has failed to meet the shipper's deadline does not, by itself, indicate the carrier has failed to satisfy Section 212.1. Under these facts, absent any other evidence that indicates XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

4) Example: White operates a truck for the ABC Produce Company. ABC instructs White that produce picked up from ABC's terminal must be delivered to XYZ Wholesaler by 4 A.M. on the delivery date. It is understood that White's failure to meet the deadline may jeopardize his ability to drive for ABC again. The fact that ABC may be reluctant to transact future business with a driver who has failed to meet the delivery time ABC, as the shipper, has specified does not by itself indicate ABC has failed to satisfy Section 212.1. Under these facts, absent any other evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services White performs for ABC are exempt from the Act's definition of "employment".

5) Example: Under a contract between Reynolds and ABC Construction Company, Reynolds is to deliver asphalt to a specified ABC construction site at 8 A.M. on the designated day. Timely delivery of asphalt will require Reynolds to pick up the asphalt from the location specified by ABC no later than 7 A.M. It is understood that Reynolds' failure to pick up and deliver the asphalt on time may jeopardize his ability to drive for ABC again. The fact that ABC may be reluctant to transact future business with a driver who has failed to meet the pickup and delivery times ABC, as the receiver, has specified does not, by itself, indicate ABC has failed to satisfy Section 212.1. Under these facts, absent any other evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Reynolds performs for ABC are exempt from the Act's definition of "employment".

h) Section 212.1(a)(4) of the Act

Section 212.1 (a)(4) is not satisfied unless:

1) the individual performing the services leases or holds title to the truck, truck-tractor or tractor; and

Example: Smith operates a truck for ABC Trucking Company. ABC holds title to the truck. Section 212.1 does not exempt the services Smith performs for ABC from the Act's definition of "employment."

2) the individual or entity from which the truck, truck-tractor or tractor is leased or which holds a security or other interest in the truck, truck-tractor or tractor is not:

A) the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted to perform the services; or

B) owned, controlled or operated by or in common with, to any extent, directly or indirectly, the person or entity to which the individual operating the truck, truck- tractor or tractor is contracted to perform the services or a family member of a shareholder, owner or partner of the person or entity with which the individual is contracted to perform the services.

i) Example: Adams operates a truck for XYZ Trucking Company, a corporation in which Jones is the majority shareholder. While Adams holds title to the truck, ABC Trucking Company, of which Jones is the sole proprietor, holds a lien on Adams' truck. Section 212.1 does not exempt the services Adams performs for XYZ from the Act's definition of "employment," since ABC is owned or controlled in common with XYZ.

ii) Example: Madison operates a truck for XYZ Trucking, a corporation in which Jefferson is a five-percent shareholder. Madison holds title to the truck, but ABC Finance Company, which is managed by the brother of Jefferson's father-in-law, holds a lien on the truck. Section 212.1 does not exempt the services Madison performs for XYZ from the Act's definition of "employment," since the individual who operates ABC is a family member of a shareholder of XYZ.

iii) Example: ABC Trucking Company, a corporation, is being audited by the Department of Employment Security to determine, among other items, whether services that Jones provided for ABC were "employment" for purposes of the Act. ABC demonstrates that Jones held title to the truck he operated in service to ABC while he was performing the services for ABC. ABC also provides a written statement, signed by an owner or officer of ABC and attesting that the owner or officer has made reasonable inquiries into the matter and, to the best of the owner's or officer's knowledge, while Jones was performing the services for ABC, ABC did not have any interest in Jones' truck; no individual or entity that might have held an interest in Jones' truck was owned, controlled or operated by or in common with, to any extent, directly or indirectly, ABC, and no individual or entity that might have held an interest in Jones' truck was owned, controlled or operated by or in common with, to any extent, directly or indirectly, a family member of a shareholder of ABC. The auditor is not aware of any evidence that contradicts the written statement. These facts indicate that paragraph (4) of Section 212.1 is satisfied with respect to the services Jones performed for ABC.

i) Section 212.1(a)(5) of the Act

1) Section 212.1(a)(5) is not satisfied unless the individual operating the truck, truck-tractor or tractor pays all costs of licensing and operating the truck, truck-tractor or tractor. Section 212.1(a)(5) is not satisfied if the costs of licensing or operating the truck, truck-tractor or tractor are separately reimbursed by an individual or entity other than the individual operating the truck, truck-tractor or tractor. Costs not directly associated with the operation or licensing of the truck, including but not limited to telephone charges, expenses related to the loading or unloading of cargo and workers' compensation premiums with respect to the operator of a truck, truck-tractor or tractor do not constitute costs of licensing or operating the truck, truck-tractor or tractor.

A) Example: Smith operates a truck for ABC Trucking Company. At the end of each week in which Smith has performed services for ABC, the company furnishes Smith a check, accompanied by a statement itemizing the licensing and operational expenses for which Smith is being reimbursed, including wear and tear on Smith's truck. Section 212.1 does not exempt the services Smith performs for ABC from the Act's definition of "employment."

B) Example: Adams operates a truck for XYZ Trucking Company, which furnishes Adams with a company debit card Adams may use to purchase fuel. XYZ covers all approved charges against the debit card and does not charge them back to Adams. Section 212.1 does not exempt the services Adams performs for XYZ from the Act's definition of "employment."

C) Example: Jones operates a truck for XYZ Trucking Company. At the end of each week in which Jones has performed services for XYZ, the company furnishes Jones with a check. Jones deposits a portion of the payment received from XYZ in a checking account she maintains to cover the costs of operating the truck. Under these facts, absent any other evidence that indicates that XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

D) Example: Reynolds operates a truck for ABC Trucking Company. At the end of each week in which Reynolds has performed services for ABC, the company furnishes Reynolds with a check, based on a flat per mile fee. There is no indication that any portion of the fee is intended as a separate reimbursement to cover any costs directly associated with operating or licensing Reynolds' truck. Under these facts, absent any other evidence that indicates that ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Reynolds performs for ABC are exempt from the Act's definition of "employment".

E) Example: Smith operates a truck for ABC Construction Company. At the end of each week in which Smith has performed services for ABC, the company furnishes Smith with a check, based on an hourly fee for his services. There is no indication that any portion of the check is intended as a separate reimbursement to cover any costs directly associated with operating or licensing Smith’s truck. Under these facts, absent any evidence that indicates ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Smith performs for ABC are exempt from the Act's definition of "employment".

F) Example: ABC Trucking Company pays for a customized paint job for the truck of any driver who drives over 1,000,000 miles for it without an accident, as long as the driver owns the truck. While technically, the cost of painting a truck may be considered an operating cost, the principal purpose of the payments in this case is not to reimburse the driver for operating costs but to reward his or her safe driving record. Under these facts, absent any other evidence that indicates that ABC has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services the driver performs for ABC are exempt from the Act's definition of "employment".

2) Paragraph (1) of this subsection does not apply where federal or State law or regulation requires that the costs of licensing or operating the truck, truck-tractor or tractor be paid by the person or entity to which the individual operating the truck, truck-tractor or tractor is contracted to perform the services.

j) Section 212.1(a)(6) of the Act

1) Section 212.1(a)(6) is not satisfied unless:

A) the individual performing the services offers or advertises his or her services to the public; and

B) the individual performing the services maintains his or her own business identity.

2) Compliance with subsection (j)(1) can be demonstrated by the individual displaying his or her name on the truck, truck-tractor or tractor, or otherwise.

Example: Smith has his name and address painted on the doors of his truck. While operating his truck in the performance of services for XYZ Trucking, Smith also has affixed to his truck an identification device indicating he is hauling for XYZ. There is nothing on the truck to indicate Smith does not offer his services to the public. Under these facts, absent any other evidence that indicates XYZ has failed to satisfy the elements of subsections (e) through (k) of this Section, the services Smith performs for XYZ are exempt from the Act's definition of "employment".

k) Section 212.1(a) of the Act is not satisfied if, as a condition for retaining an individual's services as an operator of a truck, truck-tractor or tractor, the person or entity to which the individual is contracted specifies the person or entity from which the individual is to purchase the truck, truck-tractor or tractor.

1) Example: Smith operates a truck for ABC Trucking Company. The truck was purchased from XYZ Company, from which ABC requires anyone who wishes to drive for ABC to purchase his or her truck. Section 212.1 does not exempt the services Smith performs for ABC from the Act's definition of "employment."

2) Example: Jones operates a truck for XYZ Trucking Company. Jones purchased the truck from Smith. Previously, Adams, the owner of XYZ, had advised Jones that Smith was interested in selling the truck. Adams had also indicated that, based on what he knew about the truck, he would have bought it if he had been in the market for a truck. However, at no time did Adams indicate that Jones' ability to perform services for XYZ was dependent upon Jones' purchasing a truck from Smith. Under these facts, absent any other evidence that indicates that XYZ has failed to satisfy the requirements of subsections (e) through (k) of this Section, the services Jones performs for XYZ are exempt from the Act's definition of "employment".

(Source: Added at 21 Ill. Reg. 9456, effective July 2, 1997)

Section 2732.210 Mandatory Jury Service

Mandatory service on a jury shall not constitute employment under the Unemployment Insurance Act (Ill. Rev. Stat. 1987, ch. 48, par. 300 *et seq.*) Nor shall payments made for such services constitute wages subject to the payment of contributions.

Example: A county requires that all registered voters, except those exempted by law, be available to serve on juries for the county court system. The jurors are paid on a per diem basis for their services. Such services are not voluntary and are compelled by law. Therefore, pursuant to this Section, such services shall not constitute employment nor shall the per diem payments constitute wages.

(Source: Added at 13 Ill. Reg. 8864, effective May 30, 1989)

Section 2732.215 Exemption From The Definition Of Employment For Participants In The Americorps Program

Activities performed by an individual as a "participant", as that term is used in the National and Community Service Act of 1990, as amended (42 U.S.C. '12501 *et seq.*), shall not be considered to be in employment under the Act [820 ILCS 405/100 *et seq.*], and payments made to the individual for such activities shall not constitute wages subject to the payment of contributions.

(Source: Added at 21 Ill. Reg. 9456, effective July 2, 1997)

Section 2732.220 Exemption From The Definition Of Employment For Direct Sellers of Consumer Goods

a) For the purpose of applying Section 217(b) of the Act [820 ILCS 405/217(b)], the following terms have the meanings set forth below.

1) "Consumer product" means both tangible and intangible (e.g., a subscription for cable television service) personal property which is distributed in commerce and which is normally used for personal, family or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed). The term "consumer product" does not include any product used in the manufacture of another product to be distributed in commerce or any product used only incidentally in providing a service (e.g., insecticide used in a pest control service, materials used in an appliance repair business). Where the sale of the consumer product includes the sale of a service (such as installation), such installation shall be considered incidental to the sale of the consumer product, and, therefore, not effect the exemption if the value of the installation is less than 10 per cent of the cost of the total purchase price (including installation).

2) A transaction is on a "buy-sell basis" if the salesperson is entitled to retain part or all of the difference between the price at which the salesperson purchases the product and the price at which he sells the product to the consumer as part or all of the remuneration for the services.

3) A transaction is on a "deposit-commission basis" if the salesperson is entitled to retain part or all of a purchase deposit paid by the consumer in connection with the transaction as part or all of the salesperson's remuneration for services.

4) "Permanent retail establishment" is any retail business operating in a structure or facility that remains stationary for a substantial period of time to which consumers go to purchase consumer goods. Examples of these establishments are grocery stores, hardware stores, clothing stores, hotels, restaurants, drug stores and newsstands.

Example: A vendor who sells consumer products in a parking lot or other property which is near to or serving a sports arena or other amusement area pursuant to an agreement which grants to the vendor or to another entity for which the vendor provides service the right to sell consumer products on such property sells consumer products in a permanent retail establishment, regardless of whether the sale is made within a permanent structure.

b) The "written contract" requirement is not met unless the contract specifically states that the individual will not be treated as an employee for Federal tax purposes. It will not be sufficient that the contract merely state that the individual will not be treated as an employee.

c) Services provided prior to the later of the effective date or the date of execution of the written contract shall not be exempt under Section 217(b) of the Act.

d) The "substantially all the remuneration" requirement of Section 217(b) is satisfied if at least 90 per cent of the total remuneration, including advances and draws, received by the individual for the calendar year from that employing unit for performing such services is directly related to sales or other output rather than to the number of hours worked. Advance or draw shall not include monies which, pursuant to a binding written contract, must be repaid by the individual directly or indirectly (including by a debit against the individual's account with the employing unit).

(Source: Amended at 21 Ill. Reg. 9456, effective July 2, 1997)

Section 2732.225 Exemption From The Definition Of Employment For Freelance Editorial Or Photographic Work

a) For the purpose of applying Section 225(B) of the Act (Ill. Rev. Stat. 1991, ch. 48, par.335(B), as amended by P.A. 87-1178, effective September 22, 1992) (820 ILCS 405/225(B), as amended by P.A. 87-1178), the following terms have the meanings set forth below.

1) "Freelance" means that an individual has a right to make his services available to the general public on an ongoing basis as distinguished from being required to perform services exclusively for one individual or entity.

Example: Newspaper A needs a photographer to provide pictures of a presidential visit to the State Fair. The newspaper contracts with a Springfield photographer who regularly contracts with Newspaper A and other newspapers for specific assignments. This photographer is providing freelance services to this newspaper.

Example: Newspaper A contracts a former tennis pro turned sports writer to cover the U.S. Open tennis tournament. The assignment is for a three week period. Newspaper A allows the sports writer to take on assignments from other sources provided they do not interfere with his coverage of the Open. This writer is providing freelance services to this newspaper.

2) "Editorial" means work pertaining to the literary or artistic activities or contents of a newspaper as distinguished from the newspaper's business and advertising activities.

Example: Professor A is a world authority on economic theory C. Newspaper B hires professor A to write a column which explains why the President must adopt economic theory C as part of his reelection strategy. Professor A is performing editorial work for the newspaper.

Example: Newspaper A wishes to print a story about a local fair. It hires a resident of the local area to write a column about the fair. The writer of this story is performing editorial work for the newspaper.

Example: Newspaper A is considering raising its advertising rates. Therefore, it hires a consultant to examine all local media advertising rates and recommend a course of action. This consultant is not performing editorial services for the newspaper.

b) The application of Section 225(B) is limited to services performed for a newspaper. Freelance editorial or photographic services performed for a magazine do not fall within this exception.

c) Section 225(B) of the Act shall apply only to services performed on or after September 22, 1992.

(Source: Added at 17 Ill. Reg. 8809, effective June 2, 1993)

Section 2732.227 Exemption For The Delivery Or Distribution Of Newspaper Or Shopping News To The Ultimate Consumer

a) For the purpose of applying Section 225(C) of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 335(C), as amended by P.A. 87-1178, effective September 22, 1992) [820 ILCS 405/225(C), as amended by P.A. 87-11780]:

1) The "substantially all the remuneration" requirement is satisfied if at least 75 per cent of the total remuneration received by the individual for the calendar quarter from the employing unit claiming the exemption is directly related to sales, "per piece" fees or other output rather than to the number of hours worked. A "base fee" or other payment provided as a reasonable reimbursement for mileage and other expenses will not be included in calculating whether the requirement is met.

Example: An individual's compensation consists of $.05 for each newspaper that he delivers and a base fee of $50.00 per week. The individual's weekly mileage expense is approximately $25.00 and his other expenses total approximately $10.00. The base fee is a reasonable reimbursement for mileage and other expenses. Therefore, since the base fee is not considered, regardless of the number of newspapers delivered, 100 per cent, therefore, "substantially all" of the individual's remuneration is directly related to output.

Example: An individual's compensation consists of $.05 for each newspaper that he delivers and a flat fee of $100.00 per week. The individual's weekly mileage expense is approximately $20.00 and his other expenses total approximately $7.00. The fee is not a reasonable reimbursement for mileage and other expenses. The difference between the fee and the actual expenses is included in determining whether the "substantially all the remuneration" requirement is met. The individual's output based remuneration would have to be at least 75% of the individual's total pay for the exemption to apply.

2) The "written contract" requirement is not met unless the contract specifically states that the individual will not be treated as an employee for Federal tax purposes. It will not be sufficient for the contract to merely state that the individual will not be treated as an employee. Any services provided prior to the date of the execution of the required written contract shall not be exempt under Section 225(C) of the Act; whether these services constituted employment under the Act shall be determined under Section 212 of the Act.

3) Delivery or distribution to the "ultimate consumer" does not include the delivery or distribution for sale or resale, including but not limited to distribution to a newsrack or newsbox, salesperson, newsstand or retail establishment. Delivery or distribution to the "ultimate consumer" does not include the distribution for further distribution regardless of subsequent sale or resale.

Example: Delivery of a single newspaper to a restaurant owner who allows his customers to read the paper is delivery to the ultimate consumer.

Example: Delivery of several copies of a newspaper to a restaurant which provides a complimentary morning newspaper for its customers is not delivery to the ultimate consumer.

b) Section 225(C) of the Act shall apply only to services performed on or after September 22, 1992.

c) Section 225(C) of the Act shall apply to a "delivery agent" who delivers the newspaper or shopping news to the ultimate consumer through one or more agents or carriers.

Example: Newspaper A contracts with an individual to deliver its newspapers in a specified area. This individual hires several adult motor route carriers to actually deliver the newspaper. Section 225(C) applies to both the individual and the adult motor route carriers because they are delivering newspapers to the ultimate consumer.

d) For Section 225(C) of the Act to apply, the majority (more than 50%) of the individual's deliveries of the newspaper or shopping news must be to the ultimate consumer. The majority of deliveries is determined by the number of establishments where deliveries are made, not by the number of newspapers or shopping news delivered to the establishment.

Example: An individual has a large newspaper distribution route. On this route, 40% of his deliveries are to homes or apartments. The remaining 60% are delivered to stores, restaurants, newsstands and other retail establishments for retail sale. Section 225(C) does not apply to this individual.

Example: An individual delivers newspapers to twenty single family homes and to one drugstore. Each home receives one newspaper while fifty newspapers are delivered to the drugstore for resale. Because the number of establishments not the number of newspapers determines the majority of deliveries, the individual makes the majority of his deliveries to the ultimate consumer.

(Source: Added at 17 Ill. Reg. 8809, effective June 2, 1993)

Section 2732.230 Domestic Service

a) For purposes of applying Sections 211.5 and 215 of the Act (Ill. Rev. Stat. 1991, ch. 48, pars. 321.5 and 325) [820 ILCS 405/211.5 and 215], the following terms have the meanings set forth below:

1) A "private home" is the fixed place of abode of the individual or family for whom the worker is performing services. A separate and distinct dwelling unit maintained by an individual as a residence, such as a hotel room, boat or trailer, can be a "private home". A room or suite in a nursing home can be a "private home", provided that the facts and circumstances of the particular case indicate that such room or suite is, in fact, the place where the individual retains his residence. A home utilized primarily for the purpose of supplying board or lodging to the public as a business enterprise is not a "private home".

A) Example: An individual who travels to the home of the child's parents to provide babysitting services for a child is performing services in a private home, while an individual who provides babysitting services in her own home would not be performing services in a private home.

B) Example: A worker who provides cooking services in a bed and breakfast establishment wherein the owner resides is not performing services in a private home.

2) A "local college club" or "local chapter of a college fraternity or sorority" does not include an alumni club or chapter.

3) "Domestic service" means service of a household nature, including service performed by cooks, waiters, butlers, housekeepers, housemothers, governesses, maids, valets, babysitters, janitors, launderers, furnacemen, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. Service not of a household nature, such as by a private secretary, nurse, tutor, or librarian, is not "domestic" service.

Example: An individual who performs only caretaking services such as bathing the individual, combing an individual's hair, reading, arranging bedding and clothing, doing laundry and preparing and serving meals is performing "domestic" service, even though he may be characterized as a health care worker. Registered or licensed practical nurses, or individuals responsible for providing professional or semiprofessional services such as physical therapy or giving intravenous medication, are not performing "domestic" service.

b) In determining whether an employing unit has paid $1,000 or more in wages in a calendar quarter for "domestic" service in a private home, local college club or local chapter of a college fraternity or sorority, all wages paid for "domestic" service in a private home, local college club or local chapter of a college fraternity or sorority to all individuals who performed "domestic" service in a private home, local college club or local chapter of a college fraternity or sorority for the employing unit are included.

Example: Company A provides housekeepers to perform services in private homes. Each individual housekeeper is paid $250 in each calendar quarter by Company A. If 4 or more housekeepers are employed by Company A in a calendar quarter, their services will constitute "employment" under the Act. In order for the services provided to Company A to be excluded from "employment" under Section 211.5 of the Act, the total wages for domestic service paid to all of the housekeepers provided by Company A must be less than $1,000 for the quarter.

c) Domestic service which is performed in other than a private home, local college club or local chapter of a college fraternity or sorority, as described in this Section, is not subject to the provisions of Section 211.5 and 215 of the Act. However, it may be excluded from "employment" by the provisions of Section 206 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 316) [820 ILCS 405/206] if the service is not provided for an "employer" under Section 205 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 315) [820 ILCS 405/205], or it may be excluded from "employment" under Section 212 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 322) [820 ILCS 405/212].

(Source: Added at 17 Ill. Reg. 17947, effective October 4, 1993)

Section 2732.235 Effect Of Section 218 Of The Act On The Employment Status of Certain Relatives

a) In interpreting Section 218 of the Act, where the employing unit is a partnership, the term "employment" shall exclude service performed by an individual who has one of the following relationships with respect to each partner: father, mother, or spouse or a child under the age of 18.

Example: Mary Jones and Sally Johnson are partners in a cleaning service. Sam Johnson is employed by the cleaning service. While Mary Jones and Sally Johnson are unrelated, Sam Johnson is under the age of 18 and the son of Mary Jones and the husband of Sally Johnson. Because a relationship specified in Section 218 of the Act exists between Sam Johnson and each of the partners, his services are excluded from the definition of "employment."

b) For purposes of Section 218 of the Act, the terms "father" and "mother" do not include a father-in-law or a mother-in-law; the term "child" does not include a step-child or foster child; the term "child" includes only a natural or adopted child.

Example: Joe's Diner is a partnership whose partners are Joe and Stella Smith, husband and wife. Jack Jones is an employee of the partnership. He is also the father of Stella Smith. The services provided by Jack Jones to the partnership constitute "employment" under the Act. Section 218 of the Act does not apply because Jack Jones does not have one of the specified relationships with Joe Smith.

c) Section 218 does not apply to a corporation.

Example: Mrs. Murphy is the president and sole shareholder of Corporation A. Mr. Murphy, her husband, is employed by the corporation as a janitor. Section 218 of the Act does not apply to this situation because Mr. Murphy is employed by the corporation, not by his spouse, Mrs. Murphy.

(Source: Added at 18 Ill. Reg. 16355, effective October 24, 1994)

SUBPART C: DETERMINING THE EMPLOYER

Section 2732.305 Employee Leasing Companies (Repealed)

(Source: Repealed at 25 Ill. Reg. 2003, effective January 18, 2001)

Section 2732.306 Employee Leasing Company − Obligation to Report the Identities of Its Clients

a) A report submitted to the Department in the manner provided for in subsection (e), with the contents required by subsection (b), will satisfy the reporting requirement in Section 206.1(B)(4) of the Act for each month or calendar quarter, as the case may be, ending on or after the date of the report's submission. The report will also satisfy the reporting requirements for the month or calendar quarter ending immediately prior to its submission when the employee leasing company's contract with the client took effect in that month or quarter and either:

1) the report is submitted within 30 days after the effective date of the contract; or

2) the last day of the month or quarter is a day on which the Department is closed and the report is submitted on the first succeeding day on which the Department is open.

EXAMPLE: Employee Leasing Company A contracts with Client B to lease employees to Client B, effective July 1, 2001. Client B has a contribution rate of 1.0% for 2001. Employee Leasing Company A has a contribution rate of 4.0% for 2001 and its relationship with Client B meets the conditions set forth in Section 206.1(B)(1), (2) and (3) of the Act. Beginning with the report due for the third quarter of 2001, Employee Leasing Company A reports the leased employees on its wage reports and pays contributions on those wages at its contribution rate. Client B terminates its liability as of July 1, 2001 and stops filing any wage reports. However, the Employee Leasing Company does not report the leasing relationship to the Director until February 1, 2002. As a result, Employee Leasing Company A cannot report the workers in question for the third and fourth quarters of 2001 as its employees. The workers must be reported by Client B. Since timely wage reports were not filed nor were contributions paid by Client B, penalties will be assessed and interest charged. Waiver of such penalty and interest can be granted only for the reasons set forth in 56 Ill. Adm. Code 2765. Employee Leasing Company A may amend its wage reports to remove the workers and then file for a refund or adjustment as provided in Section 2201 of the Act.

b) Contents of Report

1) In order to satisfy the reporting requirement in Section 206.1(B)(4) of the Act, a report must contain:

A) the name of the client;

B) a general description of the client's business and business locations;

C) the client's unemployment insurance account number (if any); and

D) the effective date of the employee leasing company's contract with the client.

2) The report shall be accompanied by either a power of attorney to represent the client or a certification by an officer or employee of the employee leasing company that the information contained in the report is true and correct to the best of his or her knowledge.

c) Whenever the employee leasing relationship between an employee leasing company and its client is terminated, the employee leasing company must report the name of the client, the client's unemployment insurance account number (if any) and the effective date of the termination within 30 days after that date.

d) The terms used in this Section shall have the meanings set forth for them in Section 206.1 of the Act.

e) The notices required by this Section shall be mailed or sent by facsimile transmission to the Illinois Department of Employment Security, Revenue Division, 33 S. State St., 10th Floor, Chicago IL 60603, Attn: Employer Services (FAX No.: 312-793-6296). A facsimile transmission is subject to 56 Ill. Adm. Code 2712.1 with respect to the risk of nontransmission and the effect of the dates imprinted by the Department's and sender's respective telefax machines.

(Source: Amended at 37 Ill. Reg. 7440, effective May 14, 2013)

PART 2760: NOTICES, RECORDS, REPORTS
SUBPART A: GENERAL OBLIGATIONS

Section 2760.1 Posting And Maintaining Notices

a) Every employer subject to the provisions of the Unemployment Insurance Act (Ill. Rev. Stat. 1985, ch. 48, par. 300 *et seq.*), hereinafter referred to as "the Act", including every employing unit which has elected, with the approval of the Director to become an employer subject to the Act, shall post and maintain such printed notices as may be furnished by the Director for such purpose.

b) Such printed notice shall be posted in conspicuous places in all the establishments of the employer, and shall be easily accessible for examination by the worker. The Director will, upon request, supply a sufficient number of duplicate notices to assure that such notices are accessible to all workers.

Section 2760.5 Identification Of Workers Covered By The Act

a) Each employer shall ascertain the Federal Social Security Account Number of each worker employed by him in employment subject to the Act.

b) The employer shall report the worker's Social Security Account Number when making any report required by the Director with respect to the worker.

c) If an employer has in his employ a worker engaged in employment who does not have a Social Security Account Number, such employer shall request the worker to show him a receipt issued by an office of the Social Security Administration acknowledging that the worker has filed an application for an account number. Such receipt shall be retained by the worker. In making any report required by the Director with respect to such a worker, the employer shall report the date of issue of the receipt, its termination date, the address of the issuing office, and the name and address of the worker exactly as shown in the receipt.

d) If a worker fails to report to the employer his Social Security Account Number or fails to show the employer the receipt issued by an office of the Social Security Administration acknowledging that he has filed an application for an account number, the employer shall inform the worker that Regulations of the Internal Revenue Service, United States Treasury Department, 26 CFR 31.6011(b)-2, under the Federal Insurance Contributions Act, 26 U.S.C. 3101-3126, provide that:

1) Each worker shall report to every employer for whom he is engaged in employment, his Federal Social Security Account Number and his name exactly as shown on the account number card issued to him by the Social Security Administration;

2) Each worker who has not secured an account number shall file an application for a Federal Social Security Account Number on Form SS-5 of the Treasury Department, Internal Revenue Service;

A) The application shall be filed on or before the seventh day after the date on which the worker first performs employment for wages, except that the application shall be filed on or before the date the worker leaves the employ of his employer if such date precedes such seventh day.

B) Copies of Form SS-5, "Application For A Social Security Account Number," can be secured at any field office of the Social Security Administration nearest the worker's place of employment or at a local post office.

3) If, within 14 days after the date on which the worker first performs employment for wages for the employer, or on the day on which he leaves the employ of the employer, whichever is earlier, the worker does not have a Federal Social Security Account Number, and has not shown the employer a receipt issued to the worker by an office of the Social Security Administration acknowledging that he has filed an application for an account number, the worker shall furnish the employer an application of Form SS-5, completely filled in and signed by the worker.

A) If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, including the date of the statement, the worker's full name, present address, date and place of birth, father's full name, mother's full name before marriage, worker's sex and race, and a statement as to whether the worker previously filed an application on Form S-5 and, if so, the date and place of such filing.

B) Furnishing the employer with an executed Form SS-5, or statement in lieu thereof, does not relieve the worker of his obligation to make an application on Form SS-5, as required by subsection (d)(2).

e) The employer shall inform the worker, in instances in which the information is pertinent, that in accordance with 26 CFR 31.6011(b)-2, a regulation of the Internal Revenue Service, United States Treasury Department:

1) Any worker who has lost his Federal Social Security Account Number card may secure a duplicate card by applying at the field office of the Social Security Administration nearest the worker's place of employment;

2) Any worker may have his account number changed at any time by applying to a field office of the Social Security Administration and showing good reason for a change;

3) Any worker whose name is changed by marriage or otherwise, or who has stated incorrect information on Form SS-5, should report such change or correction to a field office of the Social Security Administration;

4) Any worker with more than one Federal Social Security Account Number shall report all numbers to the field office of the Social Security Administration nearest the worker's place of employment and to a local employment office.

f) If the worker fails to comply with the requirements enumerated under subsection (d), the employer shall execute a Form SS-5, "Application For A Social Security Account Number," or a statement, signed by the employer, setting forth as fully and as clearly as practicable the worker's full name, his present or last known address, date and place of birth, father's full name, mother's full name before marriage, the worker's sex and race, and a statement as to whether an application for an account number was previously filed by the worker and, if so, the date and place of such filing. This statement or executed Form SS-5, signed by the employer, shall be attached to any report required by the Director with respect to the worker.

Section 2760.10 Filing By Mail

a) Unless otherwise provided, whenever it is required under any provisions of the Act or Rule promulgated thereunder, for any form, report, notice or other document to be received by the Department, the Director, or the Board of Review within prescribed time limits, such requirement is complied with if such form, report, notice or other document is received through the United States mail and the postmark thereon bears a date within the prescribed time limits, provided that said form, report, notice or other document is addressed in accordance with the instructions provided thereon.

b) This Section shall not waive any provision of the Act or Rule promulgated thereunder which requires an individual to file claims or report to an Agency office in person.

SUBPART B: REPORTS AND RECORDS

Section 2760.100 Reports and the Report for Household Employers

a) Subject to the provisions of Sections 2760.105 through 2760.150, each employing unit shall make such reports as are prescribed, on forms issued by and required to be returned to the Director. Each employing unit shall complete the forms in accordance with the instructions accompanying the report forms, and return the completed forms to the address specified on the form. Failure to complete a report form in accordance with instructions shall be treated as a failure to complete the form.

b) For purposes of this Part, the Report for Household Employers refers to the report filed pursuant to Section 1400.2 of the Act [820 ILCS 405/1400.2].

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.105 Reports Of Employing Units As To Their Status

a) Any employing unit that commences business in any manner whatsoever, whether by purchase of a business already being operated, by starting a new business, or otherwise, shall within 30 days after such commencement, file form UI-1 "Report To Determine Liability Under the Illinois Unemployment Insurance Act", or a document that includes the same information.

b) In addition to complying with the requirements of subsection (a) where applicable, any employing unit that succeeds to substantially all of the assets of an organization, trade or business, or of a severable portion of those assets, shall file form UI-1 S&P "Report To Determine Succession" or a document that includes the same information. A report of such a sale or transfer by the successor to a severable portion of the predecessor's organization, trade or business shall not constitute a joint application for the predecessor's experience rating record unless the report also includes the additional requirements set forth in Section 1507(B)(2)-(3) of the Unemployment Insurance Act (Act).

c) The reports required under subsections (a) and (b) shall be filed with the Director of Employment Security, 33 South State Street, 10th Floor, Chicago, Illinois 60603, Attn: Revenue Division. Copies of forms UI-1 and UI-1 S&P are available at that address and at www.ides.state.il.us.

(Source: Amended at 29 Ill. Reg. 1917, effective January 24, 2005)

Section 2760.110 Employing Unit Terminating Business

a) Any employing unit that terminates business (including dissolution of a partnership), for any reason whatsoever, or transfers or sells substantially all of the assets of the organization, trade or business or a severable portion of those assets to another or changes the trade name of such business shall, within 10 days after such termination, transfer or change of name, give notice in writing of that fact to the Director.

1) If an employer dies, written notice of his death shall be given to the Director by the executor or administrator or other legal representative of his estate within 90 days after the date of death.

2) In the case of bankruptcy or receivership proceedings for the relief of a debtor who is an employing unit, the trustees in bankruptcy, receiver or person designated by order of the court as in control of the assets of the debtor shall give written notice to the Director of such proceedings within 90 days after the commencement of such proceedings.

b) The notice required under this Section shall be mailed to the Department of Employment Security, Revenue Division, 33 S. State St., 10th Floor, Chicago IL 60603. Forms for such notice shall be sent out by the Division upon request or are available on the Department's website, www.ides.illinois.gov.

c) Notwithstanding the requirements of subsections (a) and (b), an employing unit shall cease to be an employer as of the last day of a calendar quarter in which it ceases to pay wages for services in employment and ceases to have any individual performing services for it if, based on all available evidence, the Director determines that, as of the last day of that quarter, the employing unit has permanently ceased to pay wages for services in employment and permanently ceased to have any individual performing services for it. A termination of coverage under this subsection (c) shall be rescinded as of the date that the employing unit begins, later in the same calendar year or in the succeeding calendar year, to have any individual performing services for it on any part of any day. Any Determination and Assessment issued against the employing unit shall be null and void to the extent it pertains to any quarter during which the employing unit paid no wages for services in employment and had no one performing services for it, as long as that quarter is subsequent to the quarter as of the end of which the employing unit's coverage was terminated pursuant to this subsection (c) and prior to the date, if any, as of which the termination was rescinded or as of which the employing unit otherwise again became an employer.

1) EXAMPLE: Employer A (a sole proprietor) employed B (his only employee) as a word processor. B left A's employ in September 2003 and A did not hire anyone else thereafter. A filed a contribution and wage report for the third quarter of 2004, but did not file a contribution and wage report for the fourth quarter of that year. He did not file a notice requesting termination of coverage or otherwise inform the Department that he had ceased to pay wages and no longer had any individual performing services for him. In March 2004, the Department issued a Determination and Assessment against A based upon estimated wages for the fourth quarter of 2003. A failed to file a timely protest and petition for hearing to the Determination and Assessment. In June 2004, A presented evidence to the Department that, since September 2003, he had no one performing services for him

and had not paid any wages. With no evidence to suggest otherwise, the Department treated the Determination and Assessment as null and void.

2) EXAMPLE: Employer C (a sole proprietor) employed D (her only employee) as a word processor. In September 2003, C decided that D would continue the word processing work, but as an "independent contractor". C did not report D's wages to the Department, nor pay contributions on those wages, with respect to periods after the third quarter of 2003 and did not file a notice requesting termination of coverage. In March 2004, the Department issued a Determination and Assessment against C based upon estimated wages for the fourth quarter of 2003. C failed to file a timely protest and petition for hearing to the Determination and Assessment, but in June 2004, wrote the Director explaining that D was now working as an "independent contractor". As D was still performing services for C during the fourth quarter, the Director lacked the authority to terminate C's coverage. By not timely protesting the Determination and Assessment, C allowed it to become final and waived her opportunity to reach the merits of whether D was an independent contractor during the fourth quarter.

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.115 Records With Respect To Employment

a) Each employing unit shall preserve existing records with respect to employment, and shall establish, maintain and preserve such records, indicating the data herein set forth in subsection (c).

b) *Such records shall be preserved for five years after they have been made, provided that if a determination and assessment of contributions, interest and penalties is made, or an action for the collection of contributions, interest or penalties is brought, records pertaining to the period or periods covered by such determination and assessment or action shall be preserved until the determination and assessment or action has become final, or has been cancelled or withdrawn.* (Ill. Rev. Stat. 1985, ch. 48, par. 631)

c) The records set forth in subsection (a) shall show:

1) For each pay period:

A) The beginning and ending dates for such period;

B) The total amount of wages for employment paid in such pay period.

2) For each worker:

A) His name and Social Security account number, and address;

B) The dates on which he performed any service in employment;

C) The place of his employment.

i) For the purpose of this record, the place of employment of a worker shall be recorded as the city or county in which he performs his work unless a worker performs his work in more than one city or county;

ii) In such event, the place of employment shall be recorded as the city or county in Illinois in which the worker has his base of operations; or, if he has no base of operations in Illinois, as the city or county in Illinois from which his services are directed or controlled; or if the place from which his services are directed or controlled is also outside Illinois, as the city or county within Illinois in which he has his residence.

D) His wages paid for each pay period, and the date such wages were paid, showing separately:

i) Money wages;

ii) Reasonable cash value of remuneration paid by the employing unit in any medium other than cash as determined in accordance with the provisions of 56 Ill. Adm. Code 2730.100;

iii) Amount of gratuities (tips) received in the course of employment from persons other than the employing unit as determined in accordance with the provisions of 56 Ill. Adm. Code 2730.105;

iv) Special payments for employment. Records under this heading include the amount of any special payments such as bonuses, gifts, etc., paid during the pay period but which relate to employment in a prior period. Payments are regarded as special payments if: the amount thereof was not determinable; or, the person or persons to whom paid was not ascertainable at the end of the pay period or periods during which the services were performed. The date must be shown separately as to: money payments; other remunerations; the nature of such payments; and, if such special payments were made for services performed during some period, the period during which such services were performed.

E) His wage rate and scheduled or customary working hours according to the following classifications:

i) Salaried workers, including the salary rate and the pay period covered by the rate;

ii) Fixed daily wage workers, including the daily rate of pay, the actual number of days worked, and the full number of scheduled or customary working days per week in the employment in which he is engaged;

iii) Fixed hourly workers, including his hourly rate, the actual number of hours worked, and the full number of scheduled or customary working hours, if any, per week in the employment in which he is engaged;

iv) Piece rate workers, including the actual number of hours worked during each week, and the full number of scheduled or customary working hours, if any, per week in the employment in which he is engaged.

F) The date on which he was hired, rehired, or went to work after temporary layoff, and the date he was separated from employment.

d) For purposes of compliance with Section 1800 of the Act (Ill. Rev. Stat. 1985, ch. 48, par. 630), magnetic tape shall be considered another process for accurately producing an original record on a durable medium. However, if an employing unit elects to maintain its payroll records on magnetic tape, it shall be the obligation of such employing unit to reproduce such records on a media, readable by the human eye, if requested to do so by the Director, for the purpose of an audit.

Section 2760.120 Employer's Contribution and Wage Report and Report Combined Return for Household Employers

a) Except for employers that file the Report for Household Employers, as provided in Sections 2760.125 and 2760.128 and employers subject to Section 2760.140, each quarter the Department shall provide each employer subject to the Unemployment Insurance Act, including employers electing to make payments in lieu of paying contributions under Section 302, 1404 or 1405 of the Act [820 ILCS 405/302, 1404 or 1405], with a preprinted packet that includes a form Employer's Contribution and Wage Report, in part, for filing its quarterly unemployment insurance contribution report. The use of a blank (not preprinted for the employer) form will be considered an incomplete submission and be returned to the employer for resubmission. Replacement preprinted forms are available upon request (see Section 2760.125(a)(6) for extensions of the time for filing).

1) In the event that an employer files a petition in bankruptcy under the Bankruptcy Code (USC Title 11), the employer shall file two Employer's Contribution and Wage Reports or two Reports for Household Employers, as the case may be, for the quarter in which the petition is filed. An_employer subject to the mandatory electronic reporting requirement of Section 2760.140 shall file two contribution reports for the quarter in which the petition is filed and two reports pursuant to Section 2760.125(a)(1) for the third month of the quarter in which the petition is filed. One report shall address the period beginning on the first day of the quarter to, and including, the day prior to the date of the filing of the petition. The other report shall address the period beginning on the date of the filing of the petition to, and including, the last day of the calendar quarter.

EXAMPLE 1: Corporation A, which is not subject to the mandatory electronic reporting requirement of Section 2760.140, files a petition in bankruptcy on August 15, 2013. Corporation A is required to file two Employer's Contribution and Wage Reports for the third quarter of 2013, both due October 31, 2013. One will cover the period to and including August 14, 2013, and Corporation A will calculate contributions due for that period. The other report will cover the period beginning August 15, 2013 to, and including, September 30, 2013 and will reflect the contributions due for that period.

EXAMPLE 2: Employer A, which is a household annual filer, files a petition in bankruptcy on August 15, 2013. Employer A is required to file two reports for Household Employers, both due April 15, 2014. One will cover the period to and including August 14, 2013, and Employer A will calculate contributions due for that period. The other report will cover the period beginning August 15, 2013 to, and including, December 31, 2013 and will reflect the contributions due for that period.

2) In the event that an employer transfers substantially all of its employing enterprises to another employing unit but continues to be a liable employer, the employer shall file two Employer's Contribution and Wage Reports for the calendar quarter in which the transfer occurs. An employer subject to the mandatory electronic reporting requirement of Section 2760.140 shall file two contribution reports for the quarter in which the transfer occurs and two reports pursuant to Section 2760.125(a)(1) for the third month of the quarter in which the transfer occurs. One report shall address the period beginning on the first day of the quarter to, and including, the date of transfer. The other report shall address the period beginning on the first day after the date of transfer to, and including, the last day of the calendar quarter.

EXAMPLE: On August 15, 1994, Corporation A, which owns a retail establishment named the XYZ Store, and is not subject to the mandatory electronic reporting requirement of Section 2760.140, sells the entire business except the name "XYZ Store" to Corporation B. The officers of Corporation A continue to perform services and are paid wages after the transfer. Corporation A is required to file two Employer's Contribution and Wage Reports for the third quarter of 1994, both due October 31, 1994. One will cover the period to, and including, August 15, 1994, and Corporation A will calculate contributions due for that period. The other report will cover the period beginning August 16, 1994 to, and including, September 30, 1994, and will reflect the contributions due for that period.

3) The employer may obtain a second imprinted Employer's Contribution and Wage Report form or Report for Household Employers upon request (see Section 2760.125(a)(6) for extensions of time for filing).

4) In the event the employer files only one report for a quarter for which two reports are required under subsection (a)(1) or (a)(2) and provides the total and taxable wages for the entire quarter in the report, or filed only one report for a year for which two reports are required, and provides the total and taxable wages for the entire year in the report, the report will be deemed to be insufficient as provided in Section 1402 of the Act. The employer must file, within 30 days after the mailing of a notice to it of insufficiency, the two reports as required in either subsection (a)(1) or (a)(2) as applicable, or the penalties provided in Section 1402 of the Act shall apply.

5) Except as otherwise provided in this subsection (a)(5), with respect to an employer not subject to the mandatory electronic reporting requirement of Section 2760.140, the penalties provided for in Section 1402 of the Act regarding each report required under subsection (a)(1) or (a)(2) of this Section shall be calculated on the basis of the total wages paid and contributions due for the period to which that report applies. Regardless of whether the employer fails to timely file one or both of the reports, the total penalty for that failure shall not exceed $5,000 and the minimum penalty for the failure shall be $50. The minimum penalty for willful failure to pay any contribution, or part of any contribution, with intent to defraud the Director, shall be $400, regardless of whether the employer fails to make the payment for both or only one of the periods.

EXAMPLE: An employer not subject to the mandatory electronic reporting requirement of Section 2760.140 timely files a report representing the part of the quarter prior to the date of filing of the petition in bankruptcy. He or she is late in filing the report for the part of the quarter including the date the petition is filed. The penalty will be calculated only on the amount of wages paid as reflected in the report for the period including the date the petition in bankruptcy is filed.

b) In addition to the employer providing its name, address, account number and Federal Employer Identification Number on the Employer's Contribution and Wage Report or Report for Household Employers, the employer must provide the total wages paid during the quarter, the taxable wages paid during the quarter and the number of employees during the pay period that includes the 12th day of each month of that quarter. For purposes of this subsection (b), when an employer is required to file two reports pursuant to subsection (a)(1) or (a)(2), "quarter" shall mean the period required to be addressed by the report.

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.125 Employer's Wage Report

a) Filing Wage Reports

1) Except as provided in subsection (a)(4), an employer subject to the mandatory electronic reporting requirement of Section 2760.140 shall, for each of the first two months of each calendar quarter, report, in addition to the employer's name, account number and Federal Employer Identification Number (FEIN), the name and Social Security Number of each covered worker, the total wages paid to each covered worker (except as provided in Section 2760.130), and the total wages paid to all covered workers combined. Except as provided in subsection (a)(4), an employer subject to the mandatory electronic reporting requirement of Section 2760.140 shall, for the third month of each calendar quarter, submit a report (or reports if so required under Section 2760.120(a)(1) or (2)) containing the same information for the entire calendar quarter as is required pursuant to subsection (a)(2). The report required under this subsection (a)(1) for each month shall be filed on or before the last day of the calendar month next following the close of the month.

EXAMPLE: In 2011 and 2012, Employer A had more than 250 employees for the calendar year, as determined in accordance with Section 2760.140(b). Therefore, for each of January and February of 2013, Employer A is required to report its name, account number and FEIN; and also report the name, Social Security Number and total wages for the month of each covered worker (except as provided in Section 2760.130), and the total wages for the month of all covered workers combined.

A) For the purpose of calculating the monthly wages to determine any penalty for the third month of each quarter, the wages reported for the first and second months of the quarter shall be deducted from the quarterly wages reported by the employer for the third month of the quarter.

i) EXAMPLE: Employer A reports $5,000 in wages for January and $4,000 in wages for February. On the report for March, Employer A then reports $17,000 in wages for the entire first quarter. The Department will calculate March wages as follows: $17,000 – ($5,000 + $4,000) = $8,000.

ii) EXAMPLE: Employer A timely reports wages of $7,000 for July 2013 and $8,000 for August 2013. On November 3, 2013, Employer A files its wage report for September of 2013, reporting a total of $15,000 in wages paid for the quarter. Employer A will be assessed a minimum penalty of $50 for September 2013 because it filed its report for the month late, even though it apparently paid no wages for the month of September.

B) If the employer fails to file its monthly wage reports for the first two months of a quarter, for the purpose of determining the penalty to be assessed, the Department shall use the Employer's quarterly reported wages and divide by three.

EXAMPLE: Employer X fails to report monthly wages for April and May of 2013, but Employer X reports quarterly wages of $6,000 for the second quarter of 2013. The Department shall estimate monthly wages of $2,000 for April and $2,000 for May.

2) Except as provided in subsection (a)(4), every employer subject to the Unemployment Insurance Act, and not subject to the electronic reporting requirement of Section 2760.140, including employers electing to make payments in lieu of paying contributions under Section 302, 1404 or 1405 of the Act [820 ILCS 405/302, 1404 or 1405], shall file a report, or reports if so required under Section 2760.120(a)(1) or (2), each calendar quarter, listing the name and Social Security Number of each covered worker and, except as provided in Section 2760.130, the total wages paid to each worker. Except as provided in Section 2760.140, the reports shall be made on the form designated Employer's Contribution and Wage Report, which is part of a preprinted packet

provided each quarter by the Department of Employment Security (Agency) and shall be filed on or before the last day of the calendar month next following the close of the calendar quarter.

3) Except as provided in subsection (a)(4), for the quarter in which an employing unit becomes an employer, including employers electing to make payments in lieu of paying contributions under Sections 302, 1404 and 1405 of the Act, it shall file the form designated by the Director as Employer's Contribution and Wage Report (listing the information required by subsection (a)(2)). The reports due under this subsection (a)(3) shall be filed on or before whichever of the following dates is later:

   A) The 30th day following the date upon which the form designated by the Director as the Employer's Contribution and Wage Report is mailed to the employing unit for completion; or

   B) The last day of the calendar month next following the calendar quarter in which the employing unit becomes an employer.

4) For employers who have elected to file annually pursuant to Section 1400.2 of the Act, with respect to the first quarter for which the employing unit has made the election and each quarter thereafter for which the election remains in effect, it shall file the form designated as the Report for Household Employers listing the information required by subsection (a)(2). The report due under this subsection (a)(4) shall be filed on or before whichever of the following dates is later:

   A) The 30th day following the date upon which the form designated as the Report for Household Employers is mailed to the employing unit for completion; or

   B) April 15 of the calendar year immediately following the close of the quarter to which the report applies.

5) The information with respect to each worker required by subsection (a)(2) may be submitted on a form other than that designated by the Director as the Employer's Contribution and Wage Report, or the Report for Household Employers, provided that the Director has approved the use of the substitute form.

6) Upon written request filed with the Director prior to the due date of the report, the Director shall, for any reasonable cause shown, grant in writing an extension of a maximum of 15 days for the filing of any report required on a monthly basis under subsection (a)(1) and 30 days for the filing of any report required under subsection (a)(2), (a)(3) or (a)(4). A reasonable cause is when an employer cannot meet a due date through no fault of its own or because of circumstances beyond its control.

   A) The request shall make a full explanation of the reasons for the request and shall state the date to which the extension is desired.

   B) If an employer that has been granted an extension of time pursuant to this subsection (a)(6) fails to file the report on or before the extended due date, the penalty referred to in subsection (b) shall accrue from the original due date as if no extension had been granted.

b) Any employer, including an employer electing to make payments in lieu of paying contributions under Section 302, 1404 or 1405 of the Act, which, during any calendar quarter (or any calendar month, in the case of an employer subject to the mandatory electronic reporting requirement of Section 2760.140), has paid wages to any of its workers and which fails to file reports of those wages on or before the dates they are due under the provisions of this Section, shall pay penalties as set forth in Section 1402 of the Act and 56 Ill. Adm. Code 2765.

c) An extension in the period of time for filing a wage report does not extend the deadline for making payment of any required contributions.

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.126 Wage Report Filing Extension Due To Flooding (Emergency Expired)

(Source: Emergency Amendment at 17 Ill. Reg. 13798, effective August 20, 1993, for a maximum of 150 days; emergency expired January 22, 1994)

Section 2760.127 Temporary Waiver Of The Requirement For The Use Of Electronic Data Processing Media For Quarterly Reporting (Emergency Expired)

(Source: Emergency Amendment modified at 18 Ill. Reg. 7492, effective February 3, 1994, for a maximum of 150 days; emergency expired July 3, 1994)

Section 2760.128 Wage Report Filing for Employers that Employ Household Workers and Elect to Report Their Wages on an Annual Basis

a) This Section only applies to an employer who solely employs household workers with respect to whom the employer files federal unemployment taxes using Schedule H (Form 1040) or could file federal unemployment taxes using Schedule H (Form 1040) if the worker or workers were providing services in employment for purposes of the federal unemployment tax. For purposes of this Section, "household worker" has the meaning ascribed to it for purposes of Schedule H (Form 1040) and includes, but is not limited to, babysitters, cleaning people, housekeepers, nannies and maids.

1) EXAMPLE: Joe Smith employs individuals to provide maid services in the private homes of his customers. For purposes of Schedule H (Form 1040), an employee is considered a household worker only if his or her services are provided in the employer's private home. This Section does not apply to Joe Smith since he is not eligible to use Schedule H because the services of his employees are not performed in his home.

2) EXAMPLE: Jane Smith is the sole proprietor of a trucking company that employs numerous drivers and office personnel. She also employs a nanny to care for her child in her home. This Section does not apply to Ms Smith because, while the nanny is a household worker for purposes of Schedule H (Form 1040), performing her services in Ms Smith's private home, Ms Smith does not solely employ household workers.

3) EXAMPLE: George Smith employs a housekeeper who is considered self-employed for purposes of the federal unemployment tax, and whose wages, therefore, are not subject to the federal tax. However, the services are employment under Illinois' Unemployment Insurance Act [820 ILCS 405]. Since Mr. Smith could have used Schedule H (Form 1040) to file federal unemployment taxes with regard to the housekeeper's services had she not been considered self-employed for purposes of the federal tax, this Section will apply regarding her services.

b) Notwithstanding any other provisions of this Part to the contrary, if an employer to whom this Section applies notifies the Director, in writing, that he or she wishes to pay his or her quarterly contributions and submit the quarterly wage and contribution reports on an annual basis, then the due date for filing the reports shall be April 15 of the calendar year immediately following the quarters to which the reports apply. A notice pursuant to this subsection shall apply to all quarters for which a Determination and Assessment of contributions, penalties or interest due has not become final. An employer's failure to provide the notice before the reports and payments become due may result in the Department's issuance of statements of account, indicating the employer is delinquent in the filing of wage reports or the payment of contributions, or both, as well as the issuance of a Determination and Assessment of delinquent contributions, plus penalties and interest. If the employer does not protest a Determination and Assessment on a timely basis, pursuant to Section 2200 of the Act, the delinquency indicated in the Notice of Determination and Assessment will become a legally final debt of the employer's.

(Source: Added at 33 Ill. Reg. 9652, effective July 1, 2009)

Section 2760.130 Reporting "Excess" Wages

Pursuant to Section 2760.125, the employer shall enter on the wage reporting portion of its Employer's Contribution and Wage Report or Report for Household Employers, or on its monthly report of wages in the case of an employer subject to Section 2760.125(a)(1), the amount of wages (whether or not subject to the payment of contributions) paid during the calendar quarter, or month as the case may be, to each listed worker. However, in the case of an employer subject to Section 2760.125(a)(1), with regard to either of the first 2 months of the calendar quarter, if the wages paid by the employer during the month to any worker are in excess of $15,000, the employer may report only $15,000 for the worker with respect to that month. If the wages paid by the employer during a calendar quarter to any worker are in excess of $45,000, the employer may report only $45,000 for the worker with respect to that calendar quarter; provided, that the employer shall enter on its Report or Return a sum total of all excess wages and shall identify such sum as "Excess Wages Not Allocated".

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.135 Remittance of Contributions Due and Use of Transmittal Form

a) Except in the case of an employer subject to Section 2760.140, each quarter, or once a year for employers who file the Report for Household Employers, the Agency will provide each employer subject to the Unemployment Insurance Act with a preprinted packet that includes a Transmittal Form that is to be returned with a check for any unemployment insurance contributions due for the quarter covered by that packet.

   1) The Transmittal Form and check must be sent to the address indicated in the packet.

   2) A separate check, made payable to the Director of Employment Security, must accompany each Transmittal Form and the Employer's Illinois Account Number should be written on the face of the check.

b) Failure of the employer to submit a check to the address indicated on the packet will result in a return of that check to the employer for resubmission. If the resubmitted check is received at the proper address after the due date provided in Section 1400 of the Act, interest shall accrue as provided in Section 1401 of the Act. The Director shall not grant waiver for any interest so accrued.

c) Notwithstanding any other provisions to the contrary, an employer may remit payments other than by check in accordance with instructions provided on the Agency's website, www.ides.state.il.us.

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.140 Use Of Electronic Data Processing Media For Monthly or Quarterly Reporting

a) Except as provided in subsections (g) and (h), effective with the reports due for the first month of 2013, the reports required by Sections 2760.120 and 2760.125 must be filed by the use of an electronic data processing medium that meets the approval of the Director. The Director shall approve the use of electronic data processing media for reporting if he finds that:

   1) All of the data required by the Director for monthly or quarterly reporting, as the case may be, are also provided by the employer on the electronic data processing medium; and

   2) The employer's electronically data processed reports are compatible and readable by the electronic data processing equipment used by the Director without the need for any programming adjustment by the Director.

   3) In addition to any other requirements regarding electronic filing pursuant to this Section,

      A) reports submitted pursuant to this Section for any quarter ending after December 31, 2012, shall be submitted only through a file transfer protocol or through manual entry or a file import or upload onto an online system used by the Department; and

      B) reports submitted pursuant to this Section for any month after December 31, 2012, shall be submitted only through a file upload onto an online system used by the Department.

b) Subsection (a) shall only apply to an employer for a calendar year if the employer had 25 or more individuals in its employ (though not necessarily at the same time) during the prior calendar year.

EXAMPLE: During 2012, the employer has no more than 20 individuals in its employ at any one time. However, during the year, 7 of these individuals leave the employ of the employer and are replaced by 7 other individuals. Though the employer's labor force never exceeds 20 individuals at any one time, the employer had 27 individuals in its employ during 2012 and, therefore, is subject to subsection (a) for 2013.

c) The failure of an employer that is subject to subsection (a) to report in the manner required by that subsection shall subject the employer to the penalties set forth in Section 1402 of the Act.

EXAMPLE: An employer subject to the reporting requirements of subsection (a) beginning in 2013 files a report only in compliance with Section 2760.125, but not in compliance with this Section, for July of that year on August 20, 2013. On September 1, 2013, if that employer has not yet complied with subsection (a), it is delinquent in the filing of its July 2013 report, the penalty set forth in Section 1402 of the Act shall be imposed, and any payment it ultimately submits for the third quarter of 2013 shall be reallocated in accordance with Section 2765.45 to reflect the payment of the penalty and a delinquency in contributions due. If the requirements of subsection (a) have still not been complied with before October 1, 2013 and the maximum penalty has not yet been imposed, the penalty will be increased on that date and the employer's payment again reallocated to reflect payment of the increased penalty and an additional delinquency.

d) When not required by subsection (a), the reports required by Sections 2760.120 and 2760.125 may be made by the use of an electronic data processing medium that meets the prior approval of the Director. The Director shall approve the use of an electronic data processing medium for reporting if it meets the requirements of subsection(a) of this Section and if the employer agrees to file both reports by the use of an electronic data processing medium.

e) Any employer that was authorized by the Director, before December 27, 1993, to submit both of its quarterly reports on an electronic data processing medium may continue to do so without further approval by the Director, on the condition that the medium continues to meet the requirements of subsection (a) of this Section. The employer is, however, subject to the requirements of subsection (f) of this Section.

f) The first report submitted electronically pursuant to this Section for any calendar year must be accompanied by a certification, on a form provided for this purpose by the Director, signed by the owner, partner or authorized officer or official, that the information submitted is true and correct to the best of his knowledge and belief and that no part of the contribution reported was or is to be deducted from the worker's wages. This subsection (f) does not apply if the method of electronic submission being used includes the certification described in this subsection (f) as part of the report.

g) The Director shall waive the reporting requirements of this Section for an employer with respect to reports covering the subsequent calendar year when the employer demonstrates that the Commissioner of the Internal Revenue Service:

1) Has waived the electronic reporting requirements of Treasury Regulation 301.6011-2 (26 CFR 301.6011-2), as in effect on January 1, 2013, for the employer with respect to documents covering a calendar year; or

2) Would have waived those requirements for the employer had they otherwise been applicable.

EXAMPLE: In February 2013, the Commissioner of the Internal Revenue Service notifies an employer that the requirements of Treasury Regulation 301.6011-2 (26 CFR 301.6011-2), have been waived with respect to Form W-2 data covering calendar year 2012, meaning that the employer will not be required to submit the data electronically in 2013. If the employer demonstrates the waiver to the Director, the Director will waive the requirements of subsection (a) with respect to reports covering 2013.

EXAMPLE: The electronic reporting requirements of Treasury Regulation 301.6011-2 do not apply to the employer because the employer had fewer than 250 individuals in its employ in the prior year. If the employer believes, however, that it would otherwise qualify for a waiver of the Regulation's requirements, the employer may apply for a waiver from the Director, who will grant the waiver if the Director determines that the conditions for granting a waiver under the Regulation have been met.

h) When an employer was not subject to the mandatory electronic reporting requirements of this Section for any month or quarter of the prior calendar year but is subject to those requirements for the current calendar year, the employer may, for any period through the second quarter of the current calendar year, file its reports in compliance with Sections 2760.120 and 2760.125.

EXAMPLE: The employer had, in total, 240 individuals in its employ during calendar year 2011. In calendar year 2012, the employer had, in total, 260 individuals in its employ. The employer will not be required to report electronically for any period through the second quarter of calendar year 2013 but will be required to report electronically for at least all months during the third and fourth quarters of that year.

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.145 Correcting the Employer's Contribution and Wage Report or Report Combined Return for Household Employers

a) Should an employer make an error in the reporting of total or taxable wages paid during a quarter or in the calculation of its contributions due, it shall correct that error by preparation of the form Employer's Correction Report For The Quarter Ending ____. This same form shall be used to correct errors in reporting wages of individual workers. This form requires the same information as the original Report in addition to the corrected information and an explanation of the change.

b) When an employer incorrectly reports the name or Social Security Number of a worker on the wage report portion of the Employer's Contribution and Wage Report or Report for Household Employers, or, in the case of an employer subject to the mandatory electronic reporting requirement of Section 2760.140, on the report for the third month of the quarter, a correction shall be made by the use of form Social Security Number And Name Change Notice. This form requires the original information reported and the corrected information.

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

Section 2760.150 Consequences of an Error in the Preparation of the Employer's Contribution and Wage Report or Report for Household Employers

a) If an error in the preparation of the Employer's Contribution and Wage Report or Report for Household Employers results in an underreporting of contributions due, the employer shall be liable for any penalty and the delinquent contributions plus interest, calculated in accordance with Section 1401 of the Act [820 ILCS 405/1401], from the date that the original report was due.

b) Except as provided in subsection (c), if an error in the preparation of the Employer's Contribution and Wage Report or Report for Household Employers resulted in an overpayment of contributions, the employer may file a claim for an adjustment or refund. The claim must be filed within the period provided in Section 2201 of the Act. The request shall be filed on a form entitled Employer's Claim for Adjustment/Refund. The forms may be obtained by writing to the Department of Employment Security, Revenue Division, 33 S. State St., 10th Floor, Chicago IL 60603 or on-line from the Agency's website, www.ides.state.il.us. On the form, the employer must provide certain identifying information (name, account number, address and telephone number), its computation of the amount of its claim and the basis for its claim. This form must be signed by the owner, a partner, an officer of a corporation or its authorized agent who states that the information contained in the form is true and correct to the best knowledge and belief of the signer.

c) In the event that the employer is mailed a Statement of Account that indicates the employer's account has a credit balance and the employer wishes to obtain a cash refund, the employer may file for the refund within the period provided in Section 2201 of the Act, on the form, Employer Request for Refund − Statement of Account. The form may be obtained and shall be completed in the same manner as provided in subsection (b).

(Source: Amended at 37 Ill. Reg. 7451, effective May 14, 2013)

PART 2765: PAYMENT OF UNEMPLOYMENT CONTRIBUTIONS, INTEREST AND PENALTIES
SUBPART A: GENERAL PROVISIONS

Section 2765.1 Unemployment Contributions Not Deductible From Wages

Contributions or payments in lieu of contributions shall not be deducted or deductible, in whole or in part, from the wages or remuneration of individuals in the employ of either a contributing or reimbursable employer in Illinois.

Section 2765.5 Definitions

For the purposes of this Part, the following terms shall have the meaning as defined hereunder:

"Act" means the Unemployment Insurance Act [820 ILCS 405].

"Contributing employer", also known as a regular employer, pays contributions at a specified percentage of the taxable wages paid to individuals performing services in covered employment.

"FUTA" means the Federal Unemployment Tax Act, 26 USC 3301 through 3311.

"Reimbursable employer" is a nonprofit organization as defined in Section 211.2 of the Act or any local governmental entity as determined in Section 211.1 of the Act which elects to make payments in lieu of contributions.

"Unemployment taxes" are the contributions paid by contributing employers and the payment in lieu of contributions paid by reimbursable employers.

(Source: Amended at 25 Ill. Reg. 2011, effective January 18, 2001)

Section 2765.10 Payment Of Contributions

Contributions based upon taxable wages paid in a calendar quarter are payable on or before the last day of the month following the end of the quarter unless the payment period is shortened pursuant to 56 Ill. Adm. Code 2790.5.

Section 2765.11 Employers Who Employ Household Workers and Pay Contributions on an Annual Basis

Notwithstanding any other provisions of this Part to the contrary, if an employer to whom 56 Ill. Adm. Code 2760.128 applies provides the notice described in subsection (b) of that Section, then the due date for paying contributions shall be April 15 of the calendar year immediately following the quarters for which the contributions are due.

(Source: Added at 33 Ill. Reg. 9658, effective July 1, 2209)

Section 2765.15 Liability For The Entire Year

If the liability for the payment of contribution first attaches at any time during the calendar year, contributions are payable on the taxable amount of all the wages paid for the entire year. The contributions are due and payable on or before the last day of the month following the quarter in which the employer becomes liable. For example, if the 20th week in which one or more persons are employed or $1500 in wages are paid for the first time, falls in the third calendar quarter, contributions are payable on all the taxable wages paid during the first three quarters of the year and are due on or before October 31.

Section 2765.18 Liability Of A Third Party Purchaser Or Transferee For The Due And Unpaid Contributions, Interest And Penalties Of The Seller Or Transferor's Seller or Transferor

Pursuant to Section 2600 of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 750), whenever a purchaser or transferee acquires substantially all or a class of the assets (as enumerated in that Section of the Act), it shall be required to follow a procedure set forth in the Act to insure that any contributions, interest and penalties which are due and unpaid are paid. If such contributions, penalties and interest are not so paid, the purchaser or transferee become personally liable for these contributions, the interest and the penalties. Since these amounts are then the personal liabilities of the purchaser or transferee, if the purchaser or transferee then sells or transfers substantially all or a class of the assets (as enumerated in that Section of the Act), the subsequent purchaser or transferee shall also become personally liable for these same amounts if it does not follow the procedure set forth in the Act to insure that any contributions, interest and penalties which are due and unpaid are paid.

EXAMPLE: Company B purchases all of the assets of Company A which owes contributions, interest and penalties to the Director. Company B does not follow the statutory procedure to insure that such amounts have been paid. Therefore, Company B is personally liable for these amounts. Company B then sells all of its assets to Company C. Company C does not follow the statutory procedure to insure that the amounts now owed by Company B have been paid. Company C is now also personally liable for these amounts. Companies A, B and C are jointly and severally liable for the amount originally owed by Company A, and the Director may attempt collection from Company A, Company B or Company C.

(Source: Added at 14 Ill. Reg. 19886, effective Nov. 29, 1990)

Section 2765.20 Contributions Of Employers By Election

If an employing unit not otherwise liable elects to become an employer under the Act, and election is approved as of a date other than January 1 of any calendar year, the first payment shall include the contributions with respect to all wages for employment paid on or after the date stated in such approval, and up to and including the last day of the quarter in which such election is approved.

Section 2765.25 Payment In Lieu Of Contributions

The payments in lieu of contributions are equal to the amount of regular benefits paid to a reimbursable employer's employees who become claimants. If extended benefits are paid to such claimants, a non-profit organization reimburses one-half, and a local governmental entity the full amount, of the extended benefits.

Section 2765.30 When Payments In Lieu Of Contributions Payable

a) The payments in lieu of contributions are due within 30 days from the mailing date of the Statement of Amount Due for Benefits Paid (Form Ben-118R) unless the payment period is shortened pursuant to 56 Ill. Adm. Code 2790.5. The Ben-118R shows the amount of benefits paid and is mailed as soon as practicable to the reimbursable employer after the end of the calendar quarter to which it refers.

b) Whenever the total amount due on the Statement of Amount Due for Benefits Paid (Ben-118R) is less than $1.00, such amount may be disregarded. Any amount disregarded pursuant to this subsection shall be deemed paid for all other purposes under the Act. However, nothing in this subsection is intended to relieve any employer from filing reports required by the Act or rules promulgated thereunder.

(Source: Amended at 11 Ill. Reg. 3972, effective February 23, 1987)

Section 2765.35 Payments When Reimbursable Employer Becomes Contributory

A reimbursable employer which changes from payments in lieu of contributions to payment of contributions shall start paying contributions in the first calendar quarter of the year in which the change is effective. Payments shall be made in the manner provided in 56 Ill. Adm. Code 2765.10. The employer remains liable to reimburse any benefits paid to claimants on or after the effective date of the change on the basis of wages paid to such claimants when the employer was on the reimbursable basis.

Section 2765.40 Payments When Contributory Employer Becomes Reimbursable

An election by an eligible contributing employer to make payments in lieu of contributions shall not terminate any liability incurred by the employer for the payment of contributions, interest or penalties with respect to any calendar quarter which ends prior to the effective date of the election. The change becomes effective beginning with January 1 of the next calendar year.

Section 2765.44 Fee For Not Sufficient Funds (NSF) Checks

An employer that attempts to pay amounts due under this Part with a check returned to the Department because of insufficient funds (NSF) in its bank account to cover the amount of the check will be charged a fee of $20.00.

(Source: Added at 18 Ill. Reg. 14952, effective September 27, 1994)

Section 2765.45 Application of Payment

a) When the employer makes a payment, and it is accompanied by a letter, Employer's Contribution Report or a Statement of Account, the money received shall be applied to the quarter or quarters indicated by such employer.

b) If no designation is made for the application of the remittance, or if the payment received is more than sufficient to cover the quarter to which it applies, the remittance or the excess shall be applied beginning with the oldest or earliest unpaid quarters of the employer, if any.

c) The application of remittance within a quarter is not subject to designation. Except for the second quarter of 1991, when payment must first be applied to the Temporary Administrative Funding required by Section 1506.3B of the Act, all remittance shall be applied first to the NSF fee required by Section 2765.44 of this Part, then to the penalties, interest and unemployment contributions, in that order.

EXAMPLE: An employer owes $200 in contributions and $50 in interest for the first quarter of 1993. The employer remits $100 and asks that it be credited to the unpaid contributions due for the first quarter of 1993. $50 will be credited to the accrued interest for the first quarter of 1993, and $50 will be credited to the unpaid contributions due for the first quarter of 1993.

(Source: Amended at 18 Ill. Reg. 14952, effective September 27, 1994)

Section 2765.50 Accrual of Interest

a) The contributions or payments in lieu of contributions (reimbursements) shall bear interest from the day following the due date of such contributions or reimbursements, up to and including the day payment is made, as shown by the date of the postmark thereon, if mailed; except that, after December 31, 1987, payments received more than 30 days after the due date shall deemed to have been received on the last day of the month preceding the month in which such payment is received. For example, a payment which was due on April 30, 1988, but received on July 14, 1988, shall be deemed, for the purpose of calculating interest, to have been received on June 30, 1988. Interest accrues at the rate of 1% per month and 1/30 of 1% per day or fraction thereof through December 31, 1981. After 1981, such interest will accrue at the rate of 2% per month, calculated at 12/365 of 2% for each day.

b) The Director may waive interest for good cause as provided in this Part.

(Source: Amended at 17 Ill. Reg. 308, effective December 28, 1992)

Section 2765.55 Imposition Of Penalty

a) The penalty for late filing of the "Employer's Contribution and Wage Report" provided in Section 1402B of the Act shall be a sum equal to the lesser of $5 for each $10,000 or fraction thereof of the total wages for insured work paid during the period or $2,500, for each month or part thereof of such failure to file the report. In no case, however, will the penalty be less than $50 nor more than the lesser of $10 for each $10,000 or fraction thereof of the total wages for insured work paid during the period or $5,000.

b) If a timely wage report is deemed insufficient (see Section 2760.120(a)) by the Director, the employer has 30 days after the mailing of the notice of such insufficiency to the employer within which to file a corrected and sufficient wage report without penalty.

c) A penalty may be waived for good cause shown as provided in Sections 2765.65 and 2765.68.

(Source: Amended at 16 Ill. Reg. 2131, effective January 27, 1992)

Section 2765.56 Imposition of Late Reporting Penalty for Employers Who Employ Household Workers and Elect to File Reports on an Annual Basis

When an employer to whom 56 Ill. Adm. Code 2760.128 applies and who provides the notice described in subsection (b) of that Section does not submit all quarterly reports of wages paid to household workers during the calendar year, along with all quarterly reports of contributions due with respect to those wages, by April 15 of the immediately following calendar year, the Director shall impose the statutory penalty on the employer. The minimum penalty shall be $50, irrespective of the number of quarters for which the employer filed after April 15.

a) EXAMPLE: John Smith has notified the Director that he wishes to file his quarterly wage and contribution reports on an annual basis for 2008. He files his reports for the first, second and third quarters of 2008 on April 15, 2009. However, he does not file his fourth quarter report until April 20, 2009. The minimum penalty to be assessed for the delinquent fourth quarter report is $50.

b) EXAMPLE: John Smith has notified the Director that he wishes to file his quarterly wage and contribution reports on an annual basis for 2008. He files his reports for the first and second quarters of 2008 on April 15, 2009. However, he does not file his third and fourth quarter reports until April 20, 2009. The minimum penalty to be assessed for the delinquent third and fourth quarter reports combined is $50.

c) EXAMPLE: Joe Smith has notified the Director that he wishes to submit his quarterly wage and contribution reports on an annual basis. However, he fails to submit his reports for 2008 by April 15, 2009. He submits his reports for the first, second and third quarters of 2008 on September 15, 2009, but does not submit his report for the fourth quarter of 2008 until October 1, 2009. The minimum penalty to be assessed for the delinquent first, second, third and fourth quarter reports combined is $50.

(Source: Added at 33 Ill. Reg. 9658, effective July 1, 2009)

Section 2765.60 Payment Or Filing By Mail

Where the payment of contributions or filing wage reports is received through the United States mail and the postmark thereon bears a date within the prescribed time limits, the contributions or wage reports shall be considered timely paid or filed, as the case may be.

(Source: Amended at 16 Ill. Reg. 2131, effective January 27, 1992)

Section 2765.61 Waiver of Interest and Penalty for Employers Who Employ Household Workers and Who File Reports and Pay Contributions on an Annual Basis (Repealed)

(Source: Repealed at 33 Ill. Reg. 9658, effective July 1, 2009)

Section 2765.62 Temporary Waivers of Penalty for Employers With More Than 25 but Fewer Than 250 Individuals in Their Employ

a) For January and February of 2013 and for April and May of 2013, subject to subsection (d), the penalties set forth in Section 1402 of the Act shall be conditionally waived for an employer who had 25 or more but fewer than 250 individuals in its employ in 2012, as determined in accordance with 56 Ill. Adm. Code 2760.140(b).

1) EXAMPLE: During 2012, the employer had 250 or more individuals in its employ, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). The employer is not eligible for a conditional waiver pursuant to this subsection (a).

2) EXAMPLE: During 2012, the employer had 125 individuals in its employ, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). The penalties set forth in Section 1402 of the Act are conditionally waived for January and February of 2013 and for April and May of 2013.

b) For July and August of 2013 and for October and November of 2013, subject to subsection (d), the penalties set forth in Section 1402 of the Act shall be conditionally waived for an employer who had 25 or more but fewer than 100 individuals in its employ in 2012, as determined in accordance with 56 Ill Adm. Code 2760.140(b).

1) EXAMPLE: During 2012, the employer had 125 individuals in its employ, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). The employer is not eligible for a conditional waiver pursuant to this subsection (b).

2) EXAMPLE: During 2012, the employer had 90 individuals in its employ, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). The penalties set forth in Section 1402 of the Act are conditionally waived for July and August of 2013 and for October and November of 2013.

c) For January and February of 2014 and for April and May of 2014, subject to subsection (d), the penalties set forth in Section 1402 of the Act shall be conditionally waived for an employer who had 25 or more but fewer than 50 individuals in its employ in 2012, as determined in accordance with 56 Ill. Adm. Code 2760.140(b).

1) EXAMPLE: During 2012, the employer had 52 individuals in its employ, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). The employer is not eligible for a conditional waiver pursuant to this subsection (c).

2) EXAMPLE: During 2012, the employer had 25 individuals in its employ, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). The penalties set forth in Section 1402 of the Act are conditionally waived for January and February of 2014 and for April and May of 2014.

d) The Director shall waive a penalty that has been conditionally waived for the first 2 months of a calendar quarter pursuant to subsection (a), (b) or (c), if the employer timely submits the report required pursuant to 56 Ill. Adm. Code 2760.125(a)(1) for the third month of the quarter in compliance with 56 Ill. Adm. Code 2760.140. It is not necessary for the employer to apply for a waiver pursuant to this subsection (d).

1) EXAMPLE: Employer Smith had 27 individuals in its employ during 2012, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). Employer Smith fails to file its required reports for January or February 2013. Employer Smith, however, files its required report for March 2013 prior to May 1, 2013, in an electronic form approved by the Director. Employer Smith does not have to apply for a waiver of penalties for January or February 2013, and the Director shall waive all late reporting penalties for those months as long as Employer Smith's report for March 2013 is in accordance with 56 Ill. Adm. Code 2760.125(a)(1).

2) EXAMPLE: Employer Jones had 27 individuals in its employ during 2012, as determined in accordance with 56 Ill. Adm. Code 2760.140(b). Employer Jones fails to file its required reports for January or February 2013. Employer Jones fails to file its required report for March 2013 prior to May 1, 2013, in an electronic form approved by the Director. Employer Jones is subject to the penalties set forth in Section 1402 of the Act for failing to file the January, February and March 2013 reports as required. The minimum penalty for failing to file timely is $50 for each of the 3 months.

(Source: Added at 37 Ill. Reg. 7471, effective May 14, 2013)

Section 2765.63 When Payment Due And Consequences Of Upward Revision In Employer's Contribution Rate

a) Whenever an employer receives notice of a revised contribution rate which is higher than the rate given by the immediately preceding regular or revised rate notice, the employer shall have 30 days from the date of mailing of this revised rate notice to pay the additional amount of contributions due for that calendar year. This 30 day period shall be available to an employer whether or not the employer exercises its right to appeal this revised rate under Section 1509 of the Act

.b) If an employer pays an additional amount of contributions due as a result of an upward revision of its contribution rate within 30 days of the date of mailing of such revised rate notice, the employer shall be deemed to have paid this additional amount of contributions on the date(s) that its original contributions for that calendar year were paid in full. The payment of additional contributions within 30 days of the date of mailing of a higher revised contribution rate notice by an employer under this Section has three consequences:

1) No interest shall accrue on the employer's account from the date(s) of the original payment(s) in full to the date the additional amount of contributions for that calendar year are received;

2) The employer shall receive full "wages on which" credit under Section 1503 of the Act as of the date(s) the original payment(s) in full were made, to the extent that such "wages on which" credit is used in computing the employer's contribution rate;

3) The employer's additional payment will be credited for FUTA purposes as of the date(s) the original payment(s) in full were made.

c) If an employer fails to pay the full amount of additional contributions due as a result of an upward revision to its contribution rate within 30 days of the date of mailing of such revised rate notice, the additional contributions due as a result of this higher rate shall accrue and become payable on the date the original contributions for that calendar year accrued and became payable in accordance with Section 1400 of the Act. Two results follow from an employer's failure to pay the additional contributions due under a revised higher contribution rate notice within 30 days of the date of mailing as provided under this Section.

1) Interest shall accrue on the unpaid balance of the employer's account from the date that the original contributions accrued and became payable.

2) The employer's FUTA credit will be adjusted downward as of the date the original contributions accrued and became payable.

(Source: Added at 11 Ill. Reg. 12882, effective July 22, 1987)

Section 2765.64 Consequences Where An Employer Leasing Company Has Erroneously Reported Wages And Paid Contributions Which Wages Should Have Been Reported And Contributions Paid By Its Client

Where wages should have been reported and contributions paid by a client, but the wages were erroneously reported and the contributions paid by an employee leasing company, the Director shall, upon joint request of the client and the employee leasing company, on a form available from the Director, transfer such contributions from the account of the employee leasing company to the account of the client, effective as of the dates that the report was submitted and the contributions paid by the employee leasing company, respectively. As a result, interest shall be due only to the extent that the amount due from the client exceeds the amount paid by the employee leasing company.

Example: Employee Leasing Company X erroneously reports the wages of certain workers on its Wage Report and pays the contributions due on these wages. It is determined that such wages should have been reported instead by its client, Company Y. The Director shall, upon the joint request of Employee Leasing Company X and Company Y, transfer the payment made by Employee Leasing Company X to the credit of Company Y. As a result, Company Y will only owe any additional contributions due, if any, to the extent that the amount due from it exceeds the amount paid by the employee leasing firm. To the extent that the payment by the employee leasing company was untimely or not sufficient to cover the amount due, interest shall accrue. If the amount paid by the employee leasing company exceeds the amount due from Company Y, Company Y may file a request for an adjustment or a refund of the overpayment to the extent and within the time allowed by Section 2201 of the Act.

(Source: Added at 17 Ill. Reg. 308, effective December 28, 1992.)

Section 2765.65 Waiver Of Interest Or Penalty

a) The Director is authorized to waive the payment of all or part of any interest or penalty upon proposed application and showing of good cause that consists of any or all of the following:

1) Where the delay was caused by the death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report or for making the payment.

2) Where the delay was caused by the destruction of the employer's business records by fire or other casualty without fault.

3) Where the Agency, in its written communication or through a specifically identified employee in oral communication directed to a specific employer account has affirmatively misled the employer as to its duties and obligations such that the charging of interest to the employer would violate the principle of equitable estoppel.

4) For the purposes of waiver of interest only: Where the employer relied to its detriment on a certificate issued by the Director pursuant to Section 2600 of the Act and the Director agrees, at a later date, that the certificate was issued in error, such waiver shall be granted from the date the erroneous certificate was issued to a date 30 days after notice that the original certificate was issued in error.

b) Where a delinquent employer enters into a Repayment Agreement and demonstrates to the Director the financial inability to pay an additional interest during the period of the Repayment Agreement, the Director may waive the interest which would have accrued during the period of the Repayment Agreement. The employer shall submit as evidence of his inability to pay:

1) Where available, a certified audit and statement of financial condition; or,

2) A copy of the latest one year tax return and sworn statement regarding inability to pay and financial condition of business; and,

3) A statement that the financial condition could not have been controlled through reasonable business judgment and the evidence supporting this statement; and,

4) Evidence that he has paid all contributions accrued to date not subject to the Repayment Agreement.

c) The Director is authorized to grant a waiver of such additional interest for the period of the Repayment Agreement if his review of the evidence indicates that the payment of the additional interest imposed will force the employer to default on the agreement or force the employer into bankruptcy. If the employer fails to make the required payment of accrued contributions, interest and penalty during the period of the Repayment Agreement, such waiver of the additional interest is withdrawn.

d) The penalty for willful failure to pay contributions with intent to defraud cannot be waived by the Director for any cause.

(Source: Amended at 11 Ill. Reg. 12882, effective July 22, 1987)

Section 2765.66 Waiver Of Interest Accruing Because Of Certain Types Of Employees For Periods Prior To January 1, 1988

a) The Director shall find good cause for the waiver of all interest, accrued upon unpaid contributions which are due and owing for any period prior to January 1, 1988, if the contributions were based on the payment of wages in employment to an individual where:

1) The employer or its predecessor has not treated any individual holding a substantially similar position as an employee for purposes of the Act, or for Federal Unemployment Tax Act (FUTA), Internal Revenue Code or Social Security Act purposes, and;

2) The employer's treatment of such individual was in reasonable reliance upon:

A) A judicial precedent or an Internal Revenue Service letter ruling for the employer; or,

B) A past agency audit of such employer where there was no assessment attributable to the treatment of individuals holding positions substantially similar to the position held by such individual; or,

C) A long-standing industry practice recognized by a significant segment of the industry in which such individual or employer is engaged.

3) Example: Pursuant to this subsection, an employer requests a waiver of interest on contributions which were due and owing for the first quarter of 1987. Contributions for the first quarter of 1987 became due and owing on April 30, 1987 but had not been paid because the employer appealed a determination and assessment covering this period. The waiver, if granted would cover all interest which accrued from May 1, 1987 through the date that payment of the contributions was made. The employer must pay all contributions due for the first quarter of 1987 as a condition precedent to the granting of waiver.

b) The provisions of Section 2765.74 shall not be applicable to requests for waiver under this Section.

c) The payment of all contributions assessed, within 30 days from the effective date of this Section or within 30 days from the date that such assessment becomes final, if such date is later, is a condition precedent to an application for waiver (see Section 2765.75) pursuant to this Section.

1) Example: During the course of a hearing pursuant to 56 Ill. Adm. Code 2725.200 *et seq.*, the employing unit requests, on the record, that, if the subject assessment is affirmed, in full or in part, it be granted waiver pursuant to this Section. If it is recommended that the assessment be affirmed, in full or in part, the Director's Representative shall also recommend a decision with respect to the request for waiver. If such recommendation is to deny, objections may be filed in the same manner and within the same time limits as set forth in 56 Ill. Adm. Code 2725.275. If the request for waiver is granted, but the contributions assessed are not paid within 30 days from the date that the assessment becomes final, then the request for waiver shall be deemed to have been denied as of the date of the decision which had granted the waiver.

2) Example: An employer meets the requirements for waiver pursuant to subsection (a) with respect to wages for services which were the subject of a determination and assessment which became final on February 13, 1988. If this employer has not yet paid this assessment, it has 30 days from the effective date of this rule to pay the contributions due and file its application for waiver.

3) Example: An employer meets the requirements for waiver pursuant to subsection (a) with respect to wages for services which are the subject of a determination and assessments which becomes final after the effective date of this rule. This employer has 30 days from the date that this assessment becomes final to pay the contributions due and file its application for waiver.

d) Notwithstanding any other provisions of this Part, no employer shall be entitled to a refund or credit of any interest paid prior to the adoption of this Section.

(Source: Added at 17 Ill. Reg. 308, effective December 28, 1992)

Section 2765.67 Partial Waiver Of Interest Where An Employer Has Erroneously Reported Wages To The Wrong State

Where wages should have been reported to Illinois, but the employer has erroneously reported these wages to another state, if such employer makes payment of all contributions, penalties and interest (except the amount of interest that is subject to waiver under this Section) due within 30 days after the date that notice of its erroneous reporting is mailed to the employer, the Director shall waive interest to the extent that the amount of interest due exceeds the amount of interest that would have been due if the rate of interest imposed were the same as the rate of interest paid by the Secretary of Treasury on amounts held by the Secretary in the federal Unemployment Trust Fund during the same period.

Example: Employer A erroneously reports the wages of certain workers on its Iowa Unemployment Insurance Contributions Reports. It is determined that such wages should have been reported under the Illinois Unemployment Insurance Act. If this employer pays all contributions, penalties and interest due under the Illinois Act within 30 days after being notified of its erroneous reporting, the Director will waive any interest in excess of the amount of interest that would have been credited to Illinois if the employer=s contributions had been credited to this State=s account in the federal Unemployment Trust Fund as of the date that the contributions were due.

(Source: Added at 16 Ill. Reg. 12165, effective July 20, 1992)

Section 2765.68 Waiver Of Penalty For Certain Employers For 1987 And Thereafter Wage Reports

a) Notwithstanding any other provisions of this Part to the contrary, the Director shall waive the reporting penalty provided in Section 1402 of the Act for 1987 and for any calendar year thereafter, if the employer, within 30 working days of the date of mailing of the notice from the Agency that its report is delinquent, shows that:

1) The total amount of contributions due for the calendar quarter of such report is less than $500; and

Example: Employer A is required to file two reports for a quarter pursuant to 56 Ill. Adm. Code 2760.120. The total amount of contributions attributable to the first report is $400. The total amount of contributions attributable to the second report is $200. Employer A will not be entitled to waiver of penalty under this Section with respect to either report because the total amount of contributions due for the quarter is more than $500.

2) This delinquent report is the employer's first such late report during the last 20 calendar quarters, including such quarters during which the employer was not required to file reports under the Act.

b) The employer's application for this waiver shall be made in the form provided in Section 2765.75, except that it need not be sworn and instead of stating the "good cause applicable," the employer shall state that it met the requirements of subsections (a)(1) and (2) of this Section. In support of its statement that it met the requirements of subsection (a)(1) above, the employer shall attach a copy of its Contribution and Wage Report for such calendar quarter.

c) If the employer is required to file two reports pursuant to 56 Ill. Adm. Code 2760.120 and both reports are filed untimely, for the purposes of subsection (a)(2) above, both reports will be deemed to be a single delinquent report.

(Source: Amended at 18 Ill. Reg. 14952, effective September 27, 1994)

Section 2765.69 Partial Waiver Of Interest Where An Employer Has Erroneously Paid Its Federal Unemployment Tax Act (FUTA) Tax In Full But Has Failed To Pay Its Illinois Unemployment Insurance Contributions

Where an employer has erroneously failed to pay its Illinois Unemployment Insurance contributions when due but instead timely paid the full amount of its Federal Unemployment Tax Act (FUTA) liability (6.2% for 1990) and that employer pays the full amount of any contributions, penalties and interest (except the amount of interest that is subject to waiver under this Section) due within 30 days after the date that notice of its failure to pay its Illinois Unemployment Insurance contributions is mailed to the employer, the Director shall grant a partial waiver of interest from the date that the employer made its FUTA payment. The extent of that waiver shall be the amount by which the amount of interest due exceeds the amount of interest that would have been due if the rate of interest imposed were the same as the rate of interest paid by the Secretary of Treasury on amounts held by the Secretary in the federal Unemployment Trust Fund during the same period.

Example: On January 31, 1990, Employer A erroneously pays the full FUTA amount on all of the wages that it paid in 1989 which were subject to that Act. On March 31, 1990, the Director notifies this employer that it has failed to pay Its Illinois Unemployment Insurance contributions for 1989. If this employer pays the full amount of contributions, penalties and interest due in this matter by April 30, 1990, the Director will waive the interest due for the period from January 31, 1990 to the date of payment, to the extent that the amount of interest due exceeds the amount of interest that would have been due if the rate of interest imposed were the same as the rate of interest paid by the Secretary of Treasury on amounts held by the Secretary in the federal Unemployment Trust Fund during the same period.

(Source: Added at 16 Ill. Reg. 12165, effective July 20, 1992)

Section 2765.70 Waiver Of Interest For Certain Nonprofit Organizations Or Local Governmental Entities

a) The Director shall waive interest on any unpaid contributions for a nonprofit organization, as defined in Section 211.2 of the Act, or a local governmental entity, as determined under Section 211.1 of the Act, if:

1) The organization or entity had never filed any of the reports or forms required of it under the Act; and

2) No unemployment insurance claims had been filed for which it is determined that the organization or entity was the chargeable employer as that term is used in Section 1502.1 of the Act; and

3) The chief operating officer of the organization or entity files an affidavit with the Director in which he states that, upon learning of the organization or entity's liability under the Act, he took immediate action to bring the organization or entity into compliance.

Example: Nonprofit organization A was created in 1985. Because it is not liable under the Federal Unemployment Tax Act (FUTA), it believed that it was not liable for state unemployment insurance contributions. As a result of an audit in 1992, it is determined the organization was liable since 1985 and owes unpaid contributions since 1989. If the organization had never filed any reports or forms required of it under the Act, if it had never been found to be a chargeable employer and if the chief operating officer tenders the appropriate affidavit, any interest on the unpaid contributions will be waived.

b) Any waiver of interest under this Section shall cover the period up to sixty days after the date that the organization or entity became aware of its liability under the Act. To stop further interest from accruing after that time, the organization or entity must pay the contributions due in full. However, nothing in this Section shall be interpreted as prohibiting an employer from seeking waiver of any additional interest under the other provisions of this Part.

(Source: Section repealed, new Section adopted at 17 Ill. Reg. 308, effective December 28, 1992)

Section 2765.71 Waiver Of Interest Accruing Due To A Delay In The Issuance Of A Decision On A Protested Determination And Assessment

a) The Director shall find good cause for the waiver of all interest accrued upon unpaid contributions which are due and owing pursuant to a Determination and Assessment for any period from the 181st day after the date on which the employer filed its sufficient Petition in protest to such Determination and Assessment (see 56 Ill. Adm. Code 2725.110) to 60 days after the date of the Decision of the Director in the matter (see 56 Ill. Adm. Code 2725.280), but only to the extent that the delay was not caused by the employer or its agent.

1) Example: The employer files its sufficient Petition to protest a Determination and Assessment on March 1, 1993. After completion of the administrative process within the Department, a Decision of the Director, affirming the Determination and Assessment, is issued on October 15, 1993. Pursuant to this subsection, this employer will be entitled to a waiver of interest from August 29, 1993 (the 181st day after the date on which the employer filed its Petition) to December 14, 1993.

2) Example: The employer files a sufficient Petition to protest a Determination and Assessment on March 1, 1993. A hearing is scheduled for April 1, 1993. The employer's accountant is not available on April 1, 1993, so the employer requests a continuance until April 5, 1993. Because the Director's Representative already has hearings scheduled for the month of April, a continuance is granted until May 12, 1993, the next available hearing date. After completion of the administrative process within the Department, a Decision of the Director, affirming the Determination and Assessment, is issued on October 15, 1993. Pursuant to this subsection, this employer will be entitled to a waiver of interest from October 9, 1993 (the 181st day after the date on which the employer filed its petition plus the 41 day delay attributable to the employer's request for a continuance) to December 14, 1993.

3) Example: An employer association requests that the Director not make any decisions on Determination and Assessments based on a particular issue while the legislature is discussing a possible change in the statute on that issue. Any delays in issuing decisions on that particular issue caused by the Director agreeing to hold such cases are not attributable to the employer or its agent.

4) Example: On March 1, 1993, an employer files a sufficient Petition to protest a Determination and Assessment. A hearing is held on April 1, 1993. At the conclusion of the hearing, the employer's attorney requests 45 days in which to submit a brief in support of its position. Because this additional delay is attributable to the agent of the employer, these additional days are added in determining the extent of waiver to be granted to this employer.

b) The provisions of Section 2765.74 shall not be applicable to requests for waiver under this Section.

c) The payment of all contributions assessed, all penalties due and any interest not subject to waiver, within 60 days from the date of the Decision of the Director, is a condition precedent to a waiver of interest pursuant to this Section.

Example: The Director issues a Decision affirming the Determination and Assessment on March 1, 1993. In this Decision, the Director grants conditional waiver pursuant to this Section from October 15, 1992 to April 30, 1993. If this employer has not yet paid this assessment, it has until April 30, 1993 to pay the contributions due. If the contributions are not paid by April 30, 1993, the condition precedent is not met, and the employer is not entitled to waiver under this Section.

d) The granting of waiver under this Section does not foreclose the granting of waiver to the employer under another Section of this Part for another period.

e) In a case where no objection is filed to the Recommended Decision of the Director's Representative and that Recommended Decision becomes the Decision of the Director pursuant to Section 2725.270(d), the date of the Director's Decision shall be the date on which the Recommended Decision of the Director's Representative becomes the Decision of the Director.

Example: The Recommended Decision of the Director's Representative is issued on October 1, 1993. If no objections are filed by October 21, 1993, the Recommended Decision becomes the Decision of the Director on October 22, 1993. October 22, 1993 is the date of the Decision of the Director.

(Source: Added at 17 Ill. Reg. 10275, effective June 29, 1993)

Section 2765.72 Conditional Waiver of Penalty for Failing to File a Monthly Wage Report for January, 2013, EMERGENCY

Subject to subsection (b), the penalties set forth in Section 1402 of the Act shall be conditionally waived for an employer that failed to file or filed late its monthly wage report for January of 2013.

The Director shall waive a penalty that has been conditionally waived pursuant to subsection (a), if the employer timely submits the report required pursuant to paragraph (1) of subsection (a) of Section 2760.125 for March of 2013 in compliance with Section 2760.140. It is not necessary for the employer to apply for a waiver pursuant to this subsection.

(Source: Added by Emergency Rulemaking at 37 Ill. Reg. , effective February 11, 2013 through June 30, 2013)

Section 2765.73 Waiver Of Interest For Certain Nonprofit Hospitals

(a) Upon application of an employer, the Director shall grant a conditional waiver of any interest owed by the employer with respect to contributions due for quarters specified in the conditional waiver, where the employer is a nonprofit organization, as that term is used in Section 211.2 of the Act [820 ILCS 405/211.2], operating as a hospital and the following conditions are met:

(1) the employer has experienced a year-end loss of more than $1,000,000 in each of at least three of the employer's fiscal years during the period in which the interest has accrued; and

(2) the losses described in paragraph (1) are established by certified, audited statements of the financial condition of the employer.

(b) The Director shall waive interest covered by a conditional waiver granted under subsection (a) upon payment, within four years after the date on which the conditional waiver is granted, of the full amount of all contributions due for the quarters specified in the conditional waiver.

(c) A conditional waiver granted under subsection (a) shall be revoked by the Director where payment of the contributions due for the quarters specified in the conditional waiver is to be made pursuant to a deferred payment

agreement and the employer commits a substantial breach of that agreement or where the employer fails to timely pay contributions due for quarters not specified in the conditional waiver.

(d) Notwithstanding subjection (a), the Director shall not grant more than one conditional waiver of interest with respect to contributions due for the same quarter.

(Source: Adopted Amendment at 20 Ill. Reg. 4307, effective February 29, 1996)

Section 2765.74 Time For Paying Or Filing Delayed Payment Or Report

In order to obtain a waiver of all or part of any interest or penalty, the employer must (in addition to filing an application for waiver as provided in Section 2765.75) either make, except if the ground for waiver is Section 2765.65(c), the late payment of all contributions due or file the delayed report, as the case may be, within 30 days from the date of the resolution of the occurrence or event relied upon as a ground for waiver.

(Source: Added at 17 Ill. Reg. 308, effective December 28, 1992)

Section 2765.75 Application for Waiver

The employer must file a sworn written application for waiver of the interest or penalty, or both, with the Revenue Division, 33 South State Street – 10th Floor, Chicago, Illinois 60603, within the time limits set forth in Section 2765.74. An application is not complete unless it contains the name and address of the employer, the U.I. account number, the period involved and the good cause applicable. The late payment or missing report, as provided in Section 2765.74, must accompany the application.

(Source: Amended at 33 Ill. Reg. 9658, effective July 1, 2009)

Section 2765.80 Approval For Application For Waiver

If the good cause relied upon in the application is sufficiently demonstrated by verifiable facts and circumstances, or supported by documentary evidence, such as a medical doctor's certificate, death certificate, or photocopies of the proof of casualty, the Director shall approve the application and issue an order granting the waiver.

Section 2765.85 Insufficient Or Incomplete Application

If the application contains an allowable good cause but otherwise is insufficient or incomplete in other respects, the employer has fifteen days from the date of the Director's notice of application deficiency within which to file an amended application based on the same ground. An amended application that alleges a different good cause is to be stricken and the Director shall order the original application disapproved.

Section 2765.90 Disapproval Of Application Conclusive

An order disapproving an application for lack of good cause, because the amended application alleges a good cause not timely alleged in the original application or because the application fails to meet the requirements for waiver set forth in section 2765.68 shall be final and conclusive upon the employer unless he shall file an appeal therefrom with the Revenue Division within twenty days from the date of mailing of the order.

(Source: Amended at 12 Ill. Reg. 20484, effective November 28, 1988)

Section 2765.95 Appeal And Hearing

The conduct of the appeal and hearing will be the same as that provided for Determination And Assessment under 56 Ill. Adm. Code 2725.

(Source: Amended at 11 Ill. Reg. 12882, effective July 22, 1987)

SUBPART B: EXPERIENCE RATING

Section 2765.200 Effect Of A Successor Employing Unit's Failure To Notify The Director Of Its Succession

a) Pursuant to 56 Ill. Adm. Code 2760.105(b) and Section 1507 of the Act, any employing unit which succeeds to substantially all of the employing enterprises of another employing unit or which desires to acquire or retain a distinct, severable portion of the employing enterprises of an employing unit shall notify the director within 120 days of such succession, acquisition or retention.

b) Any employing unit which fails to comply with the provisions of subsection (a) shall not be entitled to the experience rating record of the predecessor except where such transfer would result in a higher revised contribution rate for the successor in the year of the succession. In the situation where the employing unit fails to give notice of the succession as required by subsection (a), but where the transfer would result in a higher revised contribution rate for the successor in the year of the succession, the entire experience rating record of the predecessor shall be transferred to the successor.

(Source: Added at 12 Ill. Reg. 17342, effective October 12, 1988)

Section 2765.210 Prohibition On Withdrawal Of Joint Application For Partial Transfer Of Experience Rating Record

A joint application for partial transfer of the predecessor's experience record, pursuant to Section 1507B of the Act (Ill. Rev. Stat. 1989, ch. 48, par. 577B), cannot be withdrawn after it has been submitted to the Director.

a) Example: After filing a joint application for partial transfer of the predecessor's experience rating record, one of the applicants determines that the partial transfer will result in an increase in its contribution rate. Notwithstanding the increase in its contribution rate, the applicant cannot request to withdraw its joint application for the partial transfer of the predecessor's experience rating record.

b) Example: After the filing of a joint application for partial transfer of the predecessor's experience rating record, the Agency determines that the provisions of Section 1507B of the Act are met but that an affiliation (as described in the last paragraph of Section 1507B of the Act) exists, an applicant cannot request to withdraw its joint application for the partial transfer of the predecessor's experience rating record.

(Source: Added at 14 Ill. Reg. 19886, effective November 29, 1990)

Section 2765.220 Determination Of Benefit Wage And Benefit Ratio

In determining the benefit wage or benefit ratio referred to in Sections 1503 and 1503.1 of the Act for any calendar year, the resulting percentage shall be increased or reduced, as the case may be, to the nearer multiple of one-ten thousandth of one percent. If such number is equally near to 2 multiples of one-ten thousandth of one percent, it shall be increased to the higher multiple of one-ten thousandth of one percent.

Example: An employer has incurred liability for the payment of contributions within each of the three calendar years immediately preceding calendar year 1991. Its benefit charges for the 12 consecutive month period ending on June 30, 1990 are $1,659.00. The benefit conversion factor for this period is 139 percent. The product of its benefit charges times the benefit conversion factor for this period is $2,306.01. Its taxable wages for this period are $340,590.00 Its benefit ratio determined by dividing $2,306.01 by $340,590.00 equals .67706% when calculated to one-hundred thousandths of one percent. Under the rounding rule set forth in this section, its benefit ratio is increased to .6771%.

(Source: Added at 15 Ill. Reg. 11122, effective July 19, 1991)

Section 2765.225 Requirement For Privity In Order To Have A Predecessor Successor Relationship

In order for a predecessor successor relationship to exist under Section 1507 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 577), there must be privity between the predecessor employing unit and the successor employing unit.

a) Example: AAA Oil Company, which owns all the equipment and inventory at a gas station, leases the station to Company B which becomes a liable employer under the Act. When Company B's lease expires, AAA Oil Company refuses to renew the lease and, instead, leases the station to Company C. Company C is not a successor to Company B because there is no privity between Company B and Company C.

b) Mr. Johnson operates a restaurant. Bank A has a chattel mortgage on the fixtures of the restaurant and Bank B has a mortgage on the building that houses the restaurant. Both Bank A and Bank B foreclose on their mortgages and Mr. Johnson goes out of business. The banks sell their interests in the restaurant fixtures and building to Mr. Moore who opens another restaurant at this same location. Mr. Moore is not a successor to Mr. Johnson because there is no privity between Mr. Moore and Mr. Johnson.

(Source: Added at 16 Ill. Reg. 12165, effective July 20, 1992)

Section 2765.228 No Requirement For Continuous Operation In Order For A Predecessor Successor Relationship To Exist

The employing enterprise which forms the basis for a predecessor successor relationship under Section 1507 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 577) is not required to be operated without interruption during the time that predecessor employing unit is succeeding to the employing enterprises in order for the relationship to exist. However, any interruption in operations must be reasonable in light of the particular industry and, under no circumstances may exceed one year.

a) Example: In April, 1991, Mr. Stella purchases a cafe owned by Ms. Pauli. Mr. Stella decides that the cafe must be remodeled prior to his operating the business. Such remodeling takes three months. This three month gap in the operation of the cafe does not preclude Mr. Stella from being the successor to Ms. Pauli if the three month remodeling period is not unreasonable in the restaurant industry.

b) Example: In February, 1991, S Company purchases the concession business at a county fair grounds from P Company. This business normally operates between May and September. The gap between the date of purchase and the time that the business begins to operate in May will not preclude S Company from being found to be a successor to the employing enterprise of P Company.

(Source: Added at 16 Ill. Reg. 12165, effective July 20, 1992)

Section 2765.230 Effect Of A Transfer Of Physical Assets On A Finding That A Predecessor Successor Relationship Exists

In order for a predecessor successor relationship under Section 1507 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 577) to exist, it is not necessary that there be a transfer of physical assets from one employing enterprise to another. However, when only physical assets are transferred, without the transfer of good will, the assumption of obligation or the continuation of the enterprises, no predecessor successor relationship exists.

a) Example: Abe and Bill operate a partnership, known as A & B House Painters, which is an employer under the Act. When the partnership dissolves, Abe retains title to the physical assets which he then sells. Bill, now a sole proprietor, continues to operate the employing enterprise by continuing to service the customers of the partnership. Even though he received none of its physical assets, Bill is a successor to the partnership.

b) Example: Alice and Bert operate a partnership, known as A & B House Painters, which is an employer under the Act. When the partnership dissolves, Alice retains title to the physical assets which she then sells to Clyde who also operates a house painting business. Clyde does not obtain any of the good will of A & B nor does he service any of its customers. Clyde is not a successor to A & B.

(Source: Added at 16 Ill. Reg. 12165, effective July 20, 1992)

SUBPART C: BENEFIT CHARGES

Section 2765.325 Application Of "30 Day" Requirement For Determining The Chargeable Employer Pursuant To Section 1502.1 Of The Act

a) Except as provided in the other subsections of this Section and in Sections 2765.326, 2765.332, 2765.333 and 2765.334, the last employer prior to the beginning of the individual's benefit year (which is defined at Section 242 of the Act) for whom the individual provided services during at least 30 days beginning with the first day of the individual's base period (which is defined at Section 237 of the Act) but prior to the beginning of his benefit year shall be liable for the benefit charges or payments in lieu of contributions, as the case may be, which result from any benefits paid to that individual.

1) Example: Immediately prior to filing his claim for unemployment benefits, the individual provides services to Company A, a liable, contributing employer, for 20 days. Prior to this period, he provides services to Company B, a liable, contributing employer, for 30 days. Prior to working for Company B and throughout his base period, the individual has provided at least 10 days of service to Company A. In this example, Company A will be the chargeable employer and will be liable for any benefit charges which might accrue as a result of any benefits paid to this individual. This is because the individual's last employer prior to the beginning of his benefit year is Company A and he provided services to Company A during at least 30 days during the period from the beginning of the individual's base period to the beginning of his benefit year. Pursuant to Section 1502.1 of the Act, it is not necessary for the 30 days of services by the individual to be consecutive.

2) Example: Prior to the beginning of his benefit year, the individual provides services only to Company A, a liable, contributing employer, for over ten years. Company A will be this individual's chargeable employer with respect to this individual's entire benefit year because Company A is the individual's last employer of at least 30 days prior to the beginning of his benefit year. If, after claiming benefits for a few weeks, this individual is employed by Company B, a liable, contributing employer, for six months, is laid off by Company B and files an additional claim, Company A will still be the chargeable employer of this individual with respect to any benefit charges which might accrue with respect to the additional claim. Company A remains liable for the benefit charges which accrue during the entire benefit year regardless of the number of times that the individual is laid off and becomes reemployed.

3) Example: Prior to the beginning of his benefit year, the individual is employed on an as-needed basis (some weeks the individual might work four days, other weeks he might not work at all) for Company A, a liable, contributing employer. While so employed by Company A, the individual is also employed on a full time basis for Company B, a liable, contributing employer. The individual is laid off by Company B and is offered two days of work by Company A. After working for these two days, no other work is currently available with Company A, and the individual files a claim for benefits. If the individual had been employed by Company A for at least 30 days from the beginning of his base period to the beginning of his benefit year, Company A will be liable for any benefit charges which might accrue as a result of any benefits which might be paid to this individual. This is because, despite the individual's full time employment with Company B, the individual's last employer for whom he provided services of at least 30 days during the applicable period was Company A, and it was his separation from Company A that caused the individual to become "unemployed."

4) Example: Assume the same facts as in subsection (a)(3), except that, instead of being an as-needed employee, the individual continues to provide less than full time services to Company A and earns less than his weekly benefit amount. In that case, Section 2765.326 shall apply, and Company B will be the chargeable employer because it caused this individual to become unemployed as defined in Section 239 of the Act.

5) Example: The individual is a substitute teacher. Whenever she is available to teach, she calls in for assignments with her school district, a local governmental entity which has elected to make payments in lieu of contributions. During the first semester of the school year, she teaches only 32 days. She, however, did not work for the school district during her base period. If she now files a claim for benefits, her school district will be liable for 50% of any payments in lieu of contributions which would result if she would be paid benefits. This is because, despite her services being performed over a five month period, the school district is the last employer prior to the beginning of her benefit year and she has provided the required 30 days of services during the applicable period. The employer is only liable for 50% of the amount of the benefits paid because the individual performed no services for this employer during her base period (see Section 1405(B) of the Act).

6) Example: The individual is employed for 25 days during his base period for City A, a local governmental entity which has elected to make payments in lieu of contributions. He then works for Company B, a liable, contributing employer for approximately ten months. After being laid off by Company B, he is again employed by City A which then lays him off after five days. City A will be liable for payments in lieu of contributions equal to 100% of the benefits paid to this individual. This is because City A is the individual's last employer prior to the beginning of his benefit year, and this individual was employed for at least 30 days beginning with the start of his base period and prior to the beginning of his benefit year. City A is liable for 100% of the benefits paid because, in addition to being the chargeable employer as provided in this subsection, the individual also provided services for this employer during his base period. If this employer had met the requirements to be the chargeable employer but this individual had not provided services to this employer during his base period, then this employer would have been liable for only 50% of the payments in lieu of contributions made to this individual as in subsection (a)(5).

7) Example: The individual is employed by several different employers from the beginning of his base period until he first files a claim for benefits. However, he does not provide services for at least 30 days to any single employer during this period. Therefore, there is no chargeable employer, and no employer will be liable for either the benefit charges or payments in lieu of contributions as a result of payments made to this individual during this claim for benefits.

8) Example: An individual is employed during his entire base period for Company A, a liable, contributing employer. After being laid off by Company A, he works for at least 30 days for the State of Illinois, which makes payments in lieu of contributions pursuant to Section 1403 of the Act. If this individual files a claim for benefits, the State of Illinois will be liable for an amount equal to 50% of the benefits paid to this individual since the State of Illinois is the chargeable employer but not a base period employer.

b) If the last organization or person for whom the individual provided at least 30 days of service is not an employer, as defined by Section 205 of the Act, then no employer shall be the chargeable employer, and any benefit charges or payments in lieu of contributions which accrue as a result of benefits paid to the individual shall not become the benefit charges or the amounts due of any employer. Whether the last organization or person for whom the individual provided at least 30 days of service is an employer, as defined by Section 205 of the Act, is determined as of the effective date of the claim and is unaffected by a later determination of liability based on events which occur after the effective date of the claim.

1) Example: An individual is employed during his entire base period for Company A, a liable, contributing employer. He then leaves Illinois and obtains work in California for at least 30 days for an organization which is not liable under the Act. If this individual is laid off from his California job and files a claim against Illinois based on his Illinois base period wages, no employer shall be liable for any benefit charges for any benefit payments made to this individual. This is because the California organization is not an employer under the Act and, therefore, cannot be the chargeable employer under this Section.

2) Example: An individual is employed during his entire base period for Company A, a liable, contributing employer. After being laid off by Company A, he works for at least 30 days for the U. S. Postal Service, which is not an employer under the Act and for which reimbursement for any benefits paid is determined pursuant to Federal Regulations. He is then laid off by the Postal Service. If this individual files a claim for benefits, no employer shall be liable for any benefit charges for any benefit payments made to this individual. This is because the U. S. Postal Service is not an employer under the Act and, therefore, cannot be the chargeable employer under this Section.

3) Example: An individual files a claim for benefits, effective March 11, 1990, after having last been employed by Company A which began business as of January 1, 1990. As of March 11, 1990, Company A is not an employer under the Act because it has not yet had one or more employees in each of twenty or more weeks nor has it paid at least $1,500 in wages in a calendar quarter. However, as of September 10, 1990, it has one or more employees in each of twenty or more weeks, and, therefore, its liability is made retroactive to January 1, 1990. In this case, Company A will not be the chargeable employer because its liability is a result of a retroactive determination based on events subsequent to the effective date of the individual's claim.

4) Example: An individual files a claim for benefits, effective March 11, 1990, after having last been employed by Company A which claims that it is not liable under the Act because it has no employees. On September 10, 1990, there is a determination and assessment, which becomes final, which holds that Company A is liable for unpaid contributions on the wages of workers whom Company A had not considered employees. This is not a retroactive determination, and Company A can be held to be the chargeable employer of this individual.

c) Notwithstanding any other provision of this Subpart, no employer shall be the chargeable employer of an individual who was either discharged for misconduct connected with the work or voluntarily left such employer without good cause or refused to accept an offer of or to apply for suitable work from that employer without good cause. Unless the next subsequent employing unit, if it is an employer under the Act and paid the individual an amount equal to his weekly benefit amount in each of four weeks after the beginning of the individual's benefit year, any payments which might result in benefit charges will be pooled and not charged to any employer. However, if the circumstances of the voluntary quit are those described in Section 601(B)(1) or Section 601(B)(2) of the Act, then, any payments which might result in benefit charges will become pooled costs and not be charged to any employer.

1) Example: The individual quits Company A where he was employed for at least 30 days. He then accepts employment with Company B where he works for two weeks and earns in excess of his weekly benefit amount. He is then laid off and files a claim for benefits. Pursuant to Section 601(B)(2) of the Act, this individual is not ineligible for benefits. However, if it is decided that the individual quit this job without good cause, no employer will be charged for the benefits paid to the individual. This is because the individual quit his job with Company A without good cause but under the circumstances described in Section 601(B)(2) of the Act.

2) Example: The individual is held to be ineligible for benefits by the claims adjudicator, Referee, Board of Review or court as a result of his discharge for misconduct by Company A, a liable, contributing employer. Thereafter, he returns to work and performs services for Company B, a liable, contributing employer, for three days per week for three weeks and is then laid off. However, he does earn an amount in excess of his weekly benefit amount in each of these weeks. He then performs services for Company C for one week and earns in excess of his weekly benefit amount before being laid off for lack of work. The individual is eligible for benefits because he met the requalification requirements of Section 602 of the Act. No employer will be the chargeable employer of this individual because he was discharged for misconduct connected with his work and because the next subsequent employing unit after his discharge did not pay him an amount equal to or in excess of his weekly benefit amount in each of four weeks.

3) Example: The individual is discharged from Company A, files a claim for benefits and is determined to be ineligible under Section 602 of the Act. He then returns to work for Company B, a liable, contributing employer, and earns in excess of his weekly benefit amount in each of four weeks. He is then laid off by Company B. Thereafter he is employed by Company C before being laid off. Company B will be this individual's chargeable employer because it was the individual's single employer following his discharge for misconduct from Company A, is an employer under the Act, paid the individual an amount necessary to requalify for benefits and the requalification occurred after the beginning of the individual's benefit year.

4) Example: Assume the same facts as in subsection (c)(3) except that Company B discharged the individual for misconduct connected with his work. In this case, no employer will be the chargeable employer because Company B cannot be the chargeable employer of an individual if it discharged him for misconduct connected with his work and, though Company C was the individual's next subsequent employer following his discharge for misconduct from Company B and paid the individual the amount necessary to requalify for benefits and the requalification occurred after the beginning of the individual's benefit year, the disqualifying event occurred after the beginning of the individual's benefit year.

5) Example: Assume the same facts as in subsection (d)(3) except that Company B is not an employer under the Act. In this case, no employer will be charged as a result of any benefits paid to this individual. This is because the individual was discharged for misconduct connected with his work by Company A and earned an amount equal to or in excess of his weekly benefit amount in each of four weeks after the beginning of his benefit year from Company B, an organization which is not subject to the Act. However, because it is not an employer under the Act, it cannot be charged and, therefore, the charges will be pooled.

6) Example: An individual is employed by Company A for several months before being laid off for lack of work. The individual does not file a claim for benefits immediately but goes on vacation. When he returns from vacation, Company A offers the individual a suitable job which he refuses without good cause. However, during that same week, he is hired by Company B where he then works less than 30 days but earns in excess of his weekly benefit amount in each of four weeks. When he is laid off by Company B, the individual files a claim for benefits and is not subject to disqualification for his refusal of work from Company A because he has had sufficient earning from Company B to purge any possible disqualification. Company A will not be charged for benefit charges which result from payments to this individual because the individual refused the Company's offer of suitable work without good cause. Company B will not be charged either because it paid this individual the amounts necessary to purge the possible disqualification before the beginning of the individual's benefit year. Therefore, in this case, no employer will be the chargeable employer, and the benefit charges will be pooled.

d) If no employer meets the requirements of this Subpart to be the chargeable employer for the second of two consecutive benefit years but there was a chargeable employer for the first benefit year, that employer will be the chargeable employer for that second benefit year.

Example: The individual is discharged for misconduct connected with his work by Company A, files a claim for benefits and is held ineligible pursuant to Section 602 of the Act. He then returns to work for Company B, a liable and contributing employer, and earns an amount equal to or in excess of his current weekly benefit amount in each of four calendar weeks, which is sufficient to requalify for benefits. He is then laid off by Company B and is now eligible for benefits. Under these circumstances, Company B will be charged for any benefit charges which accrue because it was the single employer which paid the individual the amount necessary to requalify for benefits and the requalification occurred after the beginning of the individual's benefit year. If this individual later files a second benefit year claim, Company B did not employ the individual for at least 30 days and paid the amount necessary for the individual to requalify prior to the beginning of the second benefit year. However, Company B will be the chargeable employer because there is no other employer that meets the requirements for chargeability and because it was the chargeable employer for the individual's first benefit year.

e) Whether the last employer for whom the individual provided at least 30 days of service is the chargeable employer is determined based on the circumstances as of the effective date of the initial claim for that benefit year and is unaffected by events which occur after that date.

Example: Company A is determined to be the chargeable employer of an individual who is laid off for lack of work and has filed an initial claim for unemployment insurance benefits. After a few weeks, this individual is recalled to work by Company A. A few months later, he quits his job with Company A and files an additional claim. Company A is still the chargeable employer since chargeability is determined based on the circumstances as of the effective date of the initial claim and is unaffected by the separation which occurred after that date.

f) Notice that a claim for benefits has been filed will be sent by the Agency to every employing unit for whom the individual provided services, subsequent to the services provided to the chargeable employer, prior to the beginning of the individual's benefit year.

(Source: Amended at 16 Ill. Reg. 12165, effective July 20, 1992)

Section 2765.326 Requirement For A Separation Or A Reduction In The Work Offered In Determining The Chargeable Employer Pursuant To Section 1502.1 Of The Act

There must be either a separation from the employer or a reduction in the work offered which causes the individual to become unemployed, as defined in Section 239 of the Act, for the employer to be the chargeable employer under Section 1502.1 of the Act.

Example: For six months, an individual is employed on a full time basis for Company A and, at the same time, works part time for Company B, both liable, contributing employers. The individual is laid off by Company A but does not have sufficient base period earnings to immediately file a valid claim for unemployment benefits. He remains employed on a less than full time basis by Company B for several months until the base periods change. He now meets the requirements of Section 500E of the Act for establishing a valid claim based on his base period earnings from both Company A and Company B. If the individual continues to work, without a reduction in the work offered by Company B and earns less than his weekly benefit amount, even though he has not worked for Company A for several months, Company A will be held to be liable for any benefit charges which might accrue as a result of benefit payments to this individual. This is because Company B, while it meets the 30 day requirement, did not cause the individual to become unemployed because it neither caused his separation nor reduced the work offered to him.

(Source: Added at 13 Ill. Reg. 17410, effective October 30, 1989)

Section 2765.328 What Constitutes A Day For Purposes Of The "30 Day" Requirement In Section 1502.1 Of The Act

a) The 30 day requirement, set forth in Section 2765.325, shall include any day on which any services are actually performed for the employer by the individual prior to the date of separation. The 30 day requirement, set forth in Section 2765.329, shall include any day on which any services are actually performed for the employer by the individual prior to the first of the week (Sunday) with respect to which the chargeable employer is being determined. If a shift covers two calendar days, only one day shall be included in determining whether the 30 day requirement has been met. The day included is the one on which the individual's shift begins. Paid sick days, vacation days, holidays or other similar paid, non-working days (e.g. "show-up" or stand-by pay days) shall not be counted toward meeting the 30 day requirement. Payments for wages in lieu of notice, pension or other retirement type payments or for severance pay also do not meet the requirements of this Section.

1) Example: The individual works a shift which begins at 10 pm on Monday and ends at 7 am on Tuesday. While this individual performs services for this employer on two calendar days, for the purpose of determining whether the 30 day requirement set forth in Section 1502.1 of the Act has been met, the individual's shift counts as only one day of service, Monday.

2) Example: The individual begins his shift at noon but becomes ill fifteen minutes later. Since the individual performed services for the employer for fifteen minutes, one day is counted toward meeting the 30 day requirement.

3) Example: The individual is scheduled to work on a certain day but fails to report for work because he is ill. Even if the employer provides paid sick leave to the individual for that day, it will not be counted toward the 30 day requirement.

4) Example: The individual receives paid sick leave from Company A, a nonprofit corporation, which elects to make payments in lieu of contributions, for 35 days during his base period. He has no other employment with Company A during his base period. He also performs services during his base period for Company B, a liable, contributing employer. After being laid off by Company B, he returns to Company A for 30 days before being again laid off. Company A will be liable for an amount equal to 100% of the benefits paid to this individual as payments in lieu of contributions. This is because Company A is the last employer of this individual; the 30 day requirement is met by the individual's employment; and the paid sick leave constitutes wages for insured work paid during the individual's base period.

5) Example: Upon the permanent layoff of an individual, the employer pays that individual for any unused, accrued vacation time that the individual is due and grants him severance pay in the amount of one day's pay for each year of continuous service. These payments are not included for the purpose of determining whether this employer has met the 30 day requirement.

6) Example: The individual works a four day work week, that is, instead of working eight hours per day, five days per week, he works ten hours per day, four days per week. Even if the individual's ten hour shift extends over two calendar days, each shift still counts as only one day, and this individual will have worked only four days in a normal work week.

7) Example: The individual had filed a new benefit year claim, effective January 10, 1993. He then works on Thursday, January 21, 1993, Friday, January 22, 1993, Saturday, January 23, 1993, and Sunday, January 24, 1993, for Company A before being laid off for lack of work. He files a claim for and is paid benefits for the week ending January 30, 1993. In determining the chargeable employer for that week, Sunday, January 24, 1993, is not counted in determining if this individual performed service for Company A for 30 days. This is because Sunday January 24, 1993, does not occur prior to the beginning of the week with respect to which a chargeable employer is being determined.

b) Overtime work or working additional shifts shall not be included in determining whether the 30 day requirement has been met unless there is at least 6 hours between the beginning of the overtime work or the additional shift and the end of the prior shift and the overtime work or additional shift does not occur on a day which will be otherwise be included in meeting the 30 day requirement.

1) Example: The individual's normal shift ends at 3 am, and he is asked to work the next shift which begins at 4 am. Even if he works both shifts, since there is not at least 6 hours between the shifts, only one day will be counted toward meeting the 30 day requirement.

2) Example: The individual's shift ends at 3 am on Saturday, and he is asked to return to work for an additional overtime shift from 9 am until 2 pm. He must then return to work at 7 pm to work his regular shift. This overtime work does not count as an additional day toward meeting the 30 day requirement because his regular shift begins that same day and would already be included in meeting the 30 day requirement.

3) Example: The individual's normal shift begins at 3 pm and ends at 11 pm. However, he is required to work four hours of overtime every day so that he does not complete his shift until 3 am. This shift still counts as only one day toward the 30 day requirement.

(Source: Amended at 17 Ill. Reg. 614, effective January 4, 1993)

Section 2765.329 Application Of "30 Day" Requirement For Determining The Chargeable Employer Pursuant To Section 1502.1 Of The Act For Benefit Years Beginning On Or After January 1, 1993

a) Effective with benefit years beginning on or after January 1, 1993, except as provided in the other subsections of this Section and in Sections 2765.326, 2765.330, 2765.332, 2765.333 and 2765.334, the last employer, prior to the beginning of each week claimed by the individual, for whom the individual provided services during at least 30 days beginning with the first day of the individual's base period (which is defined at Section 237 of the Act) but prior to the beginning of the week claimed shall be liable for the benefit charges or payments in lieu of contributions, as the case may be, which result from any benefits paid to that individual for that week of unemployment. Unless stated to the contrary, each of the examples in this Section assumes a benefit year beginning date on or after January 1, 1993.

1) Example: Prior to the beginning of the week beginning on January 24, 1993, the individual provides services only to Company A, a liable, contributing employer, for over ten years. Company A is this individual's chargeable employer with respect to this individual for the week ending January 30, 1993 because Company A is the individual's last employer of at least 30 days prior to the beginning of the week beginning on January 24, 1993. If, after claiming benefits for a few weeks, this individual provides services to Company B, a liable, contributing employer, for six months, is laid off by Company B and files an additional claim, Company B will be the chargeable employer of this individual with respect to any benefit charges which might accrue with respect to weeks which are paid to the individual after the effective date of the additional claim.

2) Example: Immediately prior to filing his claim for unemployment benefits for the week beginning on January 24, 1993, the individual provides services to Company A, a liable, contributing employer, for 20 days. Prior to this period, he provides services to Company B, a liable, contributing employer, for 30 days. Prior to working for Company B and throughout his base period, the individual has provided at least 10 days of service to Company A. Company A is the chargeable employer and is liable for any benefit charges which might accrue as a result of any benefits paid to this individual for the week ending January 30, 1993. Company A is the individual's last employer prior to the beginning of the week beginning on January 24, 1993 because he provided services to Company A during at least 30 days during the period from the beginning of his base period to the beginning of the week beginning on January 24, 1993. Pursuant to Section 1502.1 of the Act, it is not necessary for the 30 days of services by the individual to be consecutive.

3) Example: The individual is employed on an as-needed basis (some weeks the individual might work four days, other weeks he might not work at all) for Company A, a liable, contributing employer. While so employed by Company A, the individual is also employed on a full time basis for Company B, a liable, contributing employer. The individual is laid off by Company B and is offered two days of work by Company A. After working for these two days, no other work is currently available with Company A, and the individual files a claim for benefits for the week ending January 23, 1993. If the individual has provided services to Company A for at least 30 days since the beginning of his base period, Company A will be liable for any benefit charges which might accrue as a result of any benefits which might be paid to this individual for this week. This is because, despite the individual's full time employment with Company B, the individual's last employer for whom he provided services of at least 30 days during the applicable period was Company A, and it was his separation from Company A that caused the individual to become "unemployed."

4) Example: Assume the same facts as in subsection (a)(3), except that, instead of being an as-needed employee, the individual continues to provide less than full time services to Company A and earns less than his weekly benefit amount. In that case, Section 2765.326 shall apply, and Company B will be the chargeable employer because it caused this individual to become unemployed as defined in Section 239 of the Act.

5) Example: The individual is a substitute teacher. Whenever he is available to teach, he calls in for assignments with his school district, a local governmental entity which has elected to make payments in lieu of contributions. During the first semester of the school year, he teaches only 32 days. He, however, did not work for the school district during his base period. If he now files a claim for benefits, his school district will be liable for 50% of any payments in lieu of contributions which would result if he would be paid benefits. This is because, despite his services being performed over a five month period, the school district is the last employer prior to the first day of the week with respect to which he is claiming benefits and he has performed the required 30 days of services during the applicable period. The employer is only liable for 50% of the amount of the benefits paid because the individual performed no services for this employer during his base period (see Section 1405(B) of the Act).

6) Example: The individual performed services for 25 days during his base period for City A, a local governmental entity which has elected to make payments in lieu of contributions. He then performs services for Company B, a liable, contributing employer, for approximately ten months. After being laid off by Company B, he is again employed by City A which then lays him off after he has performed services five days. City A will be liable for payments in lieu of contributions equal to 100% of the benefits paid to this individual. This is because City A is the individual's last employer prior to the first day of the week with respect to which the individual claimed benefits, and this individual performed services for at least 30 days beginning with the start of his base period and prior to the beginning of the week with respect to which the individual claimed benefits. City A is liable for 100% of the benefits paid because, in addition to being the chargeable employer as provided in this subsection, the individual also provided services for this employer during his base period. If this employer had met the requirements to be the chargeable employer but this individual had not provided services to this employer during his base period, then this employer would have been liable for only 50% of the payments in lieu of contributions made to this individual as in subsection (a)(5). Should this individual return to work for Company B and again become eligible for benefits, Company B would be the chargeable employer with respect to any weeks which occur after this subsequent separation.

7) Example: The individual is employed by several different employers from the beginning of his base period until the beginning of the first week with respect to which he claims benefits. However, he does not perform services for at least 30 days for any single employer during this period. Therefore, there is no chargeable employer for that week or for any subsequent weeks, and no employer will be liable for either the benefit charges or payments in lieu of contributions as a result of payments made to this individual until such time as the claimant has performed services for an employer for at least 30 days.

8) Example: An individual is employed during his entire base period for Company A, a liable, contributing employer. After being laid off by Company A, he performs services for at least 30 days for the State of Illinois, which makes payments in lieu of contributions pursuant to Section 1403 of the Act. If this individual files a claim for benefits, the State of Illinois will be liable for an amount equal to 50% of the benefits paid to this individual since the State of Illinois is the chargeable employer but not a base period employer.

9) Example: An individual files a claim with a benefit year which begins on December 1, 1992. Company A is determined to be the chargeable employer with respect to this claim. The individual returns to work on January 5, 1993, and performs services for 30 days for Company B before being laid off and filing an additional claim. Despite having worked for Company B for 30 days, Company A remains the chargeable employer in this case because the benefit year began prior to January 1, 1993.

10) An individual is laid off of work by Company A and files a new claim, effective January 24, 1993. Company A is found to be the chargeable employer. Thereafter, the individual obtains a part time job with Company B and works four days each week. However, she never earns over her weekly benefit amount in any week. Even after working for Company B for more than 30 days, Company A remains the chargeable employer. This is because Company B has not separated this individual nor caused her to become unemployed as a result of a reduction of the work offered, as required by Section 1502.1.

11) An individual is employed by Easy Living Realty as a secretary for 45 days during his base period. He leaves Easy Living Realty and obtains work as a secretary for Victorian Realty for 10 days. He is then promoted to being a real estate salesman, paid solely by commission. After working as salesman for several months, he is laid off from this job. He then files a claim for benefits. Easy Living Realty is the chargeable employer in this case. The time that this individual spent as a real estate salesman for Victorian Realty is not included in determining whether he was employed for 30 days for that employer because such services do not constitute employment under the Act.

12) An individual is employed by Company A for 29 days before being laid off from his job. He then files an unemployment insurance claim with a benefit year beginning date of January 24, 1993. On February 15, 1993, this individual returns to work for Company A and works only one day. For any weeks beginning after February 15, Company A meets the requirements to be the chargeable employer.

b) If, with respect to a week, the last organization or person for whom the individual provided at least 30 days of service is not an employer, as defined by Section 205 of the Act, then no employer shall be the chargeable employer for that week, and any benefit charges or payments in lieu of contributions which accrue as a result of benefits paid to the individual for that week shall not become the benefit charges or the amounts due of any employer. Whether the last organization or person for whom the individual provided at least 30 days of service is an employer, as defined by Section 205 of the Act, is determined as of the last day of the week for which the claim is made and is unaffected by a later determination of liability based on events which occur after that week. However, if it is later determined that the organization or person has become an employer under the Act, the organization or person can be the chargeable employer for any weeks occurring after the date on which the organization or person became liable.

1) Example: An individual is employed during his entire base period for Company A, a liable, contributing employer. He then leaves Illinois and performs services in California for at least 30 days for an organization which is not liable under the Act. If this individual is laid off from his California job and files a claim against Illinois based on his Illinois base period wages, no employer shall be liable for any benefit charges for any benefit payments made to this individual with respect to weeks for which the California organization was the last entity to employ the individual. This is because the California organization is not an employer under the Act and, therefore, cannot be the chargeable employer under this Section. However, if this individual would return to work for Company A and then again become eligible for benefits, Company A would be the chargeable employer with respect to any weeks which occur after this later separation from Company A.

2) Example: An individual is employed during his entire base period for Company A, a liable, contributing employer. After being laid off by Company A, he performs services for at least 30 days for the U. S. Postal Service, which is not an employer under the Act and for which reimbursement for any benefits paid is determined pursuant to Federal Regulations. He is then laid off by the Postal Service. If this individual files a claim for benefits, no employer shall be liable for any benefit charges for any benefit payments made to this individual. This is because the U. S. Postal Service is not an employer under the Act and, therefore, cannot be the chargeable employer under this Section. However, if this individual would return to work for Company A and then again become eligible for benefits, Company A would be the chargeable employer with respect to any weeks which occur after this later separation from Company A.

3) Example: An individual files a claim for benefits, effective March 28, 1993, after having last been employed by Company A which began business as of January 1, 1993. As of March 28, 1993, Company A is not an employer under the Act because it has not yet had one or more employees in each of twenty or more weeks nor has it paid at least $1,500 in wages in a calendar quarter. However, as of September 4, 1993, it has one or more employees in each of twenty or more weeks, and, therefore, its liability is made retroactive to January 1, 1993. In this case, Company A will be the chargeable employer only with respect to any weeks which begin after September 3, 1993, because, while the effective date of its liability is January 1, 1993, it did not meet the criteria for liability under the Act until September 4, 1993.

4) Example: An individual files a claim for benefits for the week ending January 23, 1993, after having last been employed by Company A which claims that it is not liable under the Act because it has no employees. On September 10, 1993, there is a determination and assessment, covering all of 1992 and the first two quarters of 1993, which becomes final and which holds that Company A is liable for unpaid contributions on the wages of workers whom Company A had not considered employees. This determination is not based on events which occurred prior to the week beginning January 17, 1993. Therefore, Company A can be held to be the chargeable employer of this individual for the week ending January 23, 1993.

c) Notwithstanding any other provision of this Subpart, with respect to a week of benefits claimed, no employer shall be the chargeable employer of an individual who was either discharged for misconduct connected with the work or voluntarily left such employer without good cause or refused to accept an offer of or to apply for suitable work from that employer without good cause. Unless a subsequent employer paid the individual an amount equal to his weekly benefit amount in each of four weeks after the beginning of the week in question, any payments which might result in benefit charges for that week will be pooled and not charged to any employer. However, if the circumstances of the voluntary quit are those described in Section 601(B)(1) or Section 601(B)(2) of the Act, then, any payments which might result in benefit charges will become pooled costs and not be charged to any employer.

1) Example: The individual quits Company A where he performed services for at least 30 days to accept employment with Company B where he works for two weeks and earns in excess of his weekly benefit amount. He is then laid off and files a claim for benefits for the week ending January 23, 1993. Company A is the individual's last employer prior to the beginning of the week ending on January 23, 1993, and the individual provided services to Company A during at least 30 days during the period from the beginning of the individual's base period to the beginning of the week beginning on January 17, 1993. Pursuant to Section 601(B)(2) of the Act, this individual is not ineligible for benefits. However, no employer will be charged for the benefits paid to the individual for the week ending January 23, 1993. This is because the individual quit his job with Company A without good cause but under the circumstances described in Section 601(B)(2) of the Act.

2) Example: The individual is held to be ineligible for benefits by the claims adjudicator, Referee, Board of Review or court as a result of his discharge for misconduct by Company A, a liable, contributing employer. Thereafter, he returns to work and performs services for Company B, a liable, contributing employer, for three days per week for three weeks and is then laid off. However, he does earn an amount in excess of his weekly benefit amount in each of these weeks. He then performs services for Company C for one week and earns in excess of his weekly benefit amount before being laid off for lack of work and claims benefits for the week ending March 6, 1993. The individual is eligible for benefits because he met the requalification requirements of Section 602 of the Act. No employer will be the chargeable employer of this individual for the week ending March 6, 1993 because he was discharged for misconduct connected with his work and because, after his discharge, there was no single employer which paid him an amount equal to or in excess of his weekly benefit amount in each of four weeks. However, if this individual later returns to work for Company B and performs services for an additional 21 days before being laid off, Company B could be the chargeable employer with respect to any weeks which occur subsequent to this separation.

3) Example: The individual is discharged from Company A, files a claim for benefits for the week ending January 23, 1993 and is determined to be ineligible under Section 602 of the Act. He then returns to work for Company A and earns in excess of his weekly benefit amount in each of four weeks. He is then laid off by Company A. Thereafter, he performs services for Company B for less than 30 days before being laid off. Company A will be this individual's chargeable employer with respect to any weeks subsequent to this second separation from it because it was the individual's single employer following his discharge for misconduct, is an employer under the Act and paid the individual an amount necessary to requalify for benefits. If this individual had performed services for Company B for 30 days, then it would be this individual's chargeable employer.

4) Example: Assume the same facts as in subsection (c)(3) except that, after performing services 30 days for Company B, the individual was discharged for misconduct connected with his work. In this case, no employer will be the chargeable employer with respect to this subsequent separation because Company B cannot be the chargeable employer of an individual if it discharged him for misconduct connected with his work.

5) Example: Assume the same facts as in subsection (c)(3) except that Company B, which employed the individual for 30 days, is not an employer under the Act. In this case, no employer will be charged as a result of any benefits paid to this individual after his second separation (unless a later chargeable employer is found for subsequent weeks). This is because, even though the individual requalified for benefits by earning an amount equal to or in excess of his weekly benefit amount in each of four weeks from Company A, he was subsequently employed for 30 days by Company B, an organization which is not subject to the Act.

6) Example: An individual is employed by Company A for several months and performs services for Company A for at least 30 days before being laid off for lack of work. The individual does not file a claim for benefits immediately but goes on vacation. When he returns from vacation, Company A offers the individual a suitable job which he refuses without good cause. However, during that same week, he is hired by Company B where he then performs services for less than 30 days but earns in excess of his weekly benefit amount in each of four weeks. When he is laid off by Company B, the individual files a claim for benefits for the week ending January 23, 1993. He is not subject to disqualification for his refusal of work from Company A because he has had sufficient earnings from Company B to purge any possible disqualification. Company A will not be charged for benefit charges which result from payments to this individual because the individual refused the Company's offer of suitable work without good cause. Company B is not the employer which paid the claimant earnings which allowed him to requalify because the individual was never disqualified. Company B did not employ this individual for at least 30 days. Therefore, in this case, no employer will be the chargeable employer for the week ending January 23, 1993 and thereafter until such time as there is an employer which meets the requirements of the Act to be chargeable.

d) If no employer meets the requirements of this Subpart to be the chargeable employer for the second of two consecutive benefit years, then no employer will be the chargeable employer for that second benefit year (effective with benefit years beginning on or after September 22, 1992).

Example: The individual files a claim after being employed at several temporary jobs. Company A employed this individual for 30 days during the first quarter of his base period. No subsequent employer employed this individual for 30 days. Company A is the chargeable employer. This individual then files a second benefit year claim. His employment with Company A occurred prior to the base period of the second benefit year claim, and no subsequent employer employed him for at least 30 days. Therefore, no employer will be chargeable for this claim. However, if the second benefit year began after January 1, 1993, while no employer might initially be liable for any benefit charges, should this individual become employed and then later unemployed, a subsequent employer could be liable for any charges which might accrue after that period of unemployment.

e) Notice that a claim for benefits has been filed will be sent by the Agency to every employing unit for whom the individual provided services, subsequent to the services provided to the chargeable employer.

(Source: Added at 17 Ill. Reg. 614, effective January 4, 1993)

Section 2765.330 Chargeability Where The Individual Is Discharged As A Result Of His Incarceration

Effective with respect to the payment of benefits for weeks which begin after September 22, 1992, an employer shall not be the chargeable employer, if that employer would otherwise be the chargeable employer but the individual is separated from that employer as a result of the individual's detention, incarceration or imprisonment under State, local or federal law. The benefit charges or payments in lieu of contributions with respect to this individual for this period shall be pooled and not chargeable to any employer.

a) Example: An individual is arrested on his way to work. He calls the employer to inform it that he cannot make bail so he cannot report to work. The employer replaces the individual because it needs to continue its production uninterrupted. The charges are later dismissed against the individual, and he files a new benefit year claim effective November 1, 1992. Because he was discharged for a reason other than misconduct connected with his work, the individual is eligible for benefits. It is determined that the employer would otherwise be the chargeable employer. Any benefit charges or payments in lieu of contributions as a result of benefits paid to this individual shall be pooled and not chargeable to any employer.

b) Example: The individual informs his employer that he has been sentenced to jail for 30 days for a non-work related offense. He requests a leave of absence for this period, but it is denied because he does not meet the employer's criteria for such a leave. While the claimant is in jail, the employer, Company A, replaces the individual. After he is released from jail, the individual returns to the employer, but no work is available. He then files a new benefit year claim effective January 10, 1993. The individual is eligible for benefits, and is paid for the period from January 17, 1993 through January 30, 1993, when he goes to work for another employer, Company B. Any benefit charges or payments in lieu of contributions as a result of benefits paid to this individual for the period from January 17, 1993 through January 30, 1993 shall be pooled and not chargeable to any employer. If this individual is subsequently separated from Company B and if Company B is determined to be the chargeable employer for any subsequent weeks, any benefit charges or payments in lieu of contributions as a result of benefits paid to this individual for the subsequent weeks will be charged to Company B. However, if Company A would otherwise be the chargeable employer with respect to this subsequent period, any benefit charges or payments in lieu of contributions as a result of benefits paid to this individual for this subsequent period shall be pooled.

c) Example: An individual is arrested on his way to work. He calls the employer to inform it that he cannot make bail so he cannot report to work. The employer replaces the individual because it needs to continue its production uninterrupted. The charges are later dismissed against the individual, and he files a new benefit year claim effective March 1, 1992. Because he was discharged for a reason other than misconduct connected with his work, the individual is eligible for benefits. It is determined that the employer is the chargeable employer. However, any benefit charges or payments in lieu of contributions as a result of benefits paid to this individual for weeks beginning on or after September 22, 1992 shall be pooled and not chargeable to any employer. This employer remains the chargeable employer for weeks beginning prior to September 22, 1992.

(Source: Added at 17 Ill. Reg. 614, effective January 4, 1993)

Section 2765.332 Effect Of Ineligibility Under Section 602(B) On Chargeability Under Section 1502.1 Of The Act

Pursuant to Section 602(B) of the Act, whenever it is determined that an individual has been discharged for the commission of a felony or theft connected with his work and that the employer has met certain conditions set forth in that subsection of the Act, all wages earned by the individual prior to the date of discharge shall be cancelled, thus making the individual ineligible for benefits on the basis on such wages. An employer cannot be the chargeable employer pursuant to this Subpart on the basis of wages earned prior to the date of the discharge. However, if that employer were to reemploy the individual after the date of discharge, such employer could be the individual's chargeable employer pursuant to this subpart if the requirements of the Subpart are met based only on the period of employment following the date of the discharge for the felony or theft.

(Source: Added at 13 Ill. Reg. 17410, effective October 30, 1989)

Section 2765.333 Effect Of Ineligibility Under Section 612 On Chargeability Under Section 1502.1 Of The Act

Whenever the individual's last employer is an educational institution or is an educational service agency, then such educational institution or educational service agency shall not be liable for benefit charges on the basis of benefits paid to that individual during the period between two consecutive academic years or terms if such individual has a reasonable assurance that he will perform service in any capacity for any educational institution or educational service agency in the second of such academic years or terms. In such instances, it is not necessary that the individual be ineligible under Section 612 of the Act if Section 612 would have applied if the individual had had wages from an educational institution or educational service agency during his base period. This Section shall also apply to payments in lieu of contributions.

a) Example: An individual is employed as a teacher for a public school. However, during his base period, he earned sufficient wages from a non-educational employer to qualify for benefits. If this individual is held to be ineligible during a period between academic terms on the basis of his wages from the public school, he could still qualify for benefits based on his wages from the non-educational employer. Even if the public school would otherwise be the individual's last employer pursuant to this Subpart, the public school will not be liable for any benefit charges which might accrue as a result of payments to that individual during his period of ineligibility under Section 612 of the Act.

b) Example: The individual is employed by a private employer during his entire base period. Thereafter he obtains work as a teacher for a public school. When he is off of work during the summer, the individual applies for unemployment insurance benefits. If this individual has a reasonable assurance in the second academic year or term, then the public school is the last employer during this period, but it will not be liable for any benefit charges or payments in lieu of contributions which might accrue as the result of payments made to this individual. In such case, any benefit charges will be pooled.

c) Example: The individual is employed by a private employer during his entire base period. Thereafter he obtains work as a teacher for a public school. He is discharged by the school for non-disqualifying reasons and files a new claim with a benefit year beginning January 10, 1993. He is then paid benefits for the period from January 10, 1993 through January 30, 1993, at which time he is rehired by this same public school. If the school meets the other requirements for chargeability, it will be liable for any benefit charges or payments in lieu of contributions which accrue for this period. However, if this same individual is then off of work during the summer and has a reasonable assurance of similar employment in the second academic year or term, while the public school would otherwise be the chargeable employer during this period, it will not be liable for any benefit charges or payments in lieu of contributions which might accrue as the result of payments made to this individual during the period. In such case, any benefit charges will be pooled. However, this pooling occurs only for the period of ineligibility or potential ineligibility under Section 612 of the Act.

d) Example: Assume the same facts as in (c) above, except that the individual is later laid off for lack of work by the school district for the week ending October 16, 1993. The school district will be the chargeable employer for this week.

e) Example: The individual is employed by Company A for 2 years until his layoff in May, 1993. He is then employed for 20 days by a public school district as a teacher. He is laid off for the summer vacation but has a reasonable assurance of reemployment by the school district when the new academic year or term begins. The individual is not ineligible for benefits under Section 612 of the Act because he was not employed by the school district during his base period. Because Company A is the last employer for whom this individual performed services for at least 30 days, it is the chargeable employer for any weeks paid to this individual during the summer period. Section 1502.1A(3)(a)(ii)(5) of the Act does not apply to this situation because Company A is not the employer that laid the individual off between academic years or terms.

(Source: Amended at 17 Ill. Reg. 614, effective January 4, 1993)

Section 2765.334 Effect Of Ineligibility Under Section 614 On Chargeability Under Section 1502.1 Of The Act

Pursuant to Section 614 of the Act, an individual shall be ineligible, on the basis of wages earned during his base period unless he was either lawfully admitted to this country for permanent residence or otherwise was permanently residing in this country under color of law. Because this ineligibility could affect some, but not all, of the individual's base period wages, it is possible that the individual could be held ineligible under Section 614 of the Act but still qualify for benefits based on base period wages paid after he was either lawfully admitted to this country for permanent residence or otherwise was permanently residing in this country under color of law. In determining whether an employer is the individual's chargeable employer under this Subpart, no day on which the individual was not either lawfully admitted to this country for permanent residence or otherwise was permanently residing in this country under color of law will be counted in determining whether the individual performed services for the employer for at least 30 days.

a) Example: The individual applied for and was granted permanent resident status on July 1, 1988. He worked for Company A, a liable, contributing employer, continuously from January 1, 1988, to the date of his separation on May 1, 1989. His base period began on January 1, 1988. Under Section 614 of the Act, the individual is not eligible for benefits based on the wages paid prior to July 1, 1988, because he was not either lawfully admitted to this country for permanent residence or otherwise was permanently residing in this country under color of law during this time. However, he might still be eligible for benefits based on his earnings during the third and fourth quarters of 1988. Company A will be the individual's chargeable employer under this Subpart because, even not counting the days of employment from January 1, 1988 to June 30, 1988, the individual performed services for Company A for 30 days from the beginning of his base period to the beginning of his claim for unemployment insurance benefits.

b) Example: The individual applied for and was granted permanent resident status on July 1, 1992. He worked full time for Company A, a liable, contributing employer, continuously from January 1, 1988, to the date of his separation on April 30, 1993. He filed his new benefit year claim, beginning May 2, 1993. His base period began on January 1, 1992. Under Section 614 of the Act, the individual is not eligible for benefits based on the wages paid prior to July 1, 1992, because he was not either lawfully admitted to this country for permanent residence or otherwise was permanently residing in this country under color of law during this time. However, he is eligible for benefits based on his earnings during the third and fourth quarters of 1992, and he is paid benefits from May 2, 1993 through May 29, 1993. Company A will be the individual's chargeable employer under this Subpart because, even not counting the days of employment from January 1, 1988 to June 30, 1992, this individual performed services for Company A for 30 days from the beginning of his base period to the beginning of the week with respect to which he files a claim for unemployment insurance benefits.

c) Example: The individual applied for and was granted permanent resident status on July 1, 1992. He worked full time for Company A, a liable, contributing employer, continuously from January 1, 1988, to the date of his separation on June 30, 1992. He then worked for Company B for the period from July 1, 1992 to the date of his separation on March 15, 1993. He then returned to work for Company A and performed services for this employer for five weeks (25 days). He filed his new benefit year claim, beginning May 2, 1993. His base period began on January 1, 1992. Under Section 614 of the Act, the individual is not eligible for benefits based on the wages paid prior to July 1, 1992, because he was not either lawfully admitted to this country for permanent residence or otherwise was permanently residing in this country under color of law during this time. However, he is eligible for benefits based on his earnings during the third and fourth quarters of 1992, and he is paid benefits from May 2, 1993 through May 29, 1993. Company B will be the individual's chargeable employer under this Subpart because this individual performed services for Company B for 30 days from the beginning of his base period to the beginning of the week with respect to which he files a claim for unemployment insurance benefits. Company A cannot be the chargeable employer with respect to these weeks because the individual had not performed services for it for 30 days since the days on which he performed services prior to July 1, 1992 cannot be counted in determining whether the individual performed services for 30 days. However, if this individual would return to work for Company A and perform services for an additional 5 days, Company A would be the chargeable employer for any weeks which begin after the individual performed services for these additional days.

(Source: Amended at 17 Ill. Reg. 614, effective January 4, 1993)

Section 2765.335 Procedural Requirements And Right Of Appeal

a) Pursuant to Section 701 of the Act, whenever the Claims Adjudicator decides that an employer is the "last employer" of an individual (employer subject to benefit charges or payments in lieu of contributions) as provided in this Subpart, he shall promptly notify the employer of this decision. With respect to benefit years beginning on or after January 1, 1993, such decisions shall apply to the week beginning with the effective date of the claim and each week thereafter until the claims adjudicator finds that the individual is no longer unemployed.

Example: An individual files a claim with a benefit year beginning date of January 10, 1993, and Company A is notified that it is the "last employer". The employer fails to file a timely request for reconsideration of this decision. The individual is then paid benefits for the period from January 10, 1993 through January 30, 1993. Company A is the chargeable employer for this period. The individual returns to work for Company A and earns over his weekly benefit amount for the week ending February 6, 1993. He is then laid off of work and files an additional claim beginning February 7, 1993. Company A is notified that it is the "last employer" with respect to this claim. Company A can file a timely request for reconsideration of this decision. However, this request will affect only weeks after February 6, 1993.

b) If the employer disagrees with the decision of the claims adjudicator that he is the "last employer," the employer must file a written request for reconsideration of this decision within 10 days of the date of mailing of the decision.

c) A request for reconsideration of the decision of the claims adjudicator must comply with the requirements of 56 Ill. Adm. Code 2720.130 and specify the full name and social security number of the individual and the reasons why the employer believes that it is not the chargeable employer under this Subpart.

d) After reviewing the allegations of the employer and any other relevant facts in the record, the claims adjudicator shall issue a reconsidered decision. If the employer disagrees with the reconsidered decision of the claims adjudicator that he is the chargeable employer, the employer must file a written appeal of this reconsidered decision within 30 days of the date of mailing of the reconsidered decision or that reconsidered decision will become final.

e) An Application made pursuant to Section 1508 of the Act and 56 Ill. Adm. Code 2725.100 regarding revision of the "Statement of Benefit Charges," which includes benefit charges which the employer believes are incorrect because it is not the chargeable employer shall be sufficient only if such Application contains a reference to and a copy of the decision which reverses the claims adjudicator and holds that the employer is not the chargeable employer. These same requirements must be met by an employer which is questioning payments in lieu of contributions on its "Statement of Amount Due for Benefits Paid."

f) Unless the employer has filed a timely request for reconsideration of the decision that the claims adjudicator has found it to be the chargeable employer, pursuant to this Subpart, such employer shall not be entitled to a revision of its "Statement of Benefit Charges" under 56 Ill. Adm. Code 2725.100 nor shall it be entitled to a revision of the amounts shown on its "Statement of Amount Due for Benefits Paid" for payments in lieu of contributions.

Example: Employer A is notified that it is the chargeable employer with respect to a week paid to an individual in a benefit year beginning on or after January 1, 1993. The employer does not request reconsideration of this decision. Several weeks later, this employer is served with its "Statement of Benefit Charges" for the weeks paid to this individual. At this time, the employer requests a revision of the "Statement" on the grounds that this individual did not perform services for it for 30 days prior to the beginning of the weeks for which it is being charged. This employer shall not be entitled to a revision of these charges because it failed to file a timely request for reconsideration of the initial decision that it was the chargeable employer.

g) Appeals of decisions under this Section shall be filed with the local office where the original decision was made.

h) The conduct of the hearing shall be the same as that provided under Section 2200 of the Act and 56 Ill. Adm. Code 2725.

(Source: Amended at 17 Ill. Reg. 614, effective January 4, 1993)

PART 2770: DETERMINATION OF UNEMPLOYMENT CONTRIBUTIONS
SUBPART A: INDUSTRIAL CLASSIFICATIONS

Section 2770.100 Pre 2003 Industrial Classification (Repealed)

(Source: Repealed at 32 Ill. Reg. 156, effective January 1, 2008)

Section 2770.101 Post 2002 Industrial Classification

a) Each employer subject to the Act shall be assigned an industrial classification number based on its primary activity.

1) Each employer shall be assigned to a major Economic Sector based on the first two digits of the industrial classification number:

Digits	Economic Sector
11	Agriculture, Forestry, Fishing and Hunting
21	Mining
22	Utilities
23	Construction
31-33	Manufacturing
42	Wholesale Trade
44-45	Retail Trade
48-49	Transportation and Warehousing
51	Information
52	Finance and Insurance
53	Real Estate and Rental and Leasing
54	Professional, Scientific and Technical Services
55	Management of Companies and Enterprises
56	Administrative and Support and Waste Management
61	Educational Services
62	Health Care and Social Assistance
71	Arts, Entertainment and Recreation
72	Accommodation and Food Services
81	Other Services (except Public Administration)
92	Public Administration
99	Unclassified

2) The methodology for the classifications in subsection (a)(1) shall be based upon the North American Industry Classification System Manual, U. S. Office of Management and Budget (2002), which shall be incorporated and adopted by reference.

3) The general classifications to be used shall be those set forth in the above cited Manual.

b) Each employer not eligible for an experience rate and in an Economic Sector where the mean average contribution rate for experience rated employers is greater than the rates set forth in Section 2770.106(a)(1) or (2) or (3), as applicable, shall be notified in writing of its industrial classification and rate of contribution.

c) An industrial classification that is properly assigned pursuant to subsection (a)(2) at the beginning of each calendar year or the date of liability, whichever is later, shall be final and conclusive for rate determination purposes for that entire calendar year.

d) This Section shall apply with respect to the calculation of contribution rates for calendar year 2003 and each calendar year thereafter.

(Source: Added at 27 Ill. Reg. 2600, effective February 1, 2003)

Section 2770.105 Pre 2003 Contribution Rate for Non-Experience Rated Employers (Repealed)

(Source: Repealed at 32 Ill. Reg. 156, effective January 1, 2008)

Section 2770.106 Post-2002 Contribution Rate for Non-Experience Rated Employers

a) For calendar year 2003 and each calendar year thereafter, the contribution rate under Section 1500(B) of the Act, for each employer who has not incurred liability for the payment of contributions within each of the three calendar years immediately preceding the calendar year for which a rate is being determined, shall be the greater of:

1) 2.7%, plus any applicable fund building rate, as imposed by Section 1506.3 of the Act [820 ILCS 405/1506.3]; or

2) 2.7%, multiplied by the adjusted State experience factor, plus any applicable fund building rate, as imposed by Section 1506.3 of the Act; or

3) The employer's contribution rate calculated pursuant to Sections 1501 through 1507 of the Act [820 ILCS 405/1501 through 1507], but only if this employer has had at least 13 consecutive months experience with the risk of unemployment by the June 30 preceding the calendar year for which a rate is being determined, plus any applicable fund building rate, as imposed by Section 1506.3 of the Act; or

4) The mean average contribution rate of all experience rated employers within the specific Economic Sector, plus any applicable fund building rate, as imposed by Section 1506.3 of the Act.

A) The mean average contribution rate for an Economic Sector shall be determined by adding the rates of all experience rated employers in that sector and dividing the sum by the number of the employers. The rate computation shall be made for each of the applicable years as of July 31 of the preceding year. Any change in the industrial classification or the contribution rate of the experience rated employers made after the date of computation shall not affect the established average rate for the Economic Sector.

B) Experience rated employers whose liability was terminated on or before July 31 of the calendar year used in the computation in subsection (a)(4)(A) shall be included for computation purposes, unless prior to such date, a successor has succeeded to the experience rating record of the employer. In these instances, only the successor rate shall be used.

b) The mean average contribution rate for each Economic Sector, determined pursuant to subsection (a)(4)(A) and (B), shall be announced annually by the Director, during the last quarter of the year preceding the applicable year. For calendar year 2009 and each calendar year thereafter, the Director shall announce the contribution rate calculated for an Economic Sector pursuant to subsection (a)(4) by posting it on the Department's website, www.ides.state.il.us, during the last quarter preceding the applicable year, and not by rulemaking.

c) Appeals from any determinations under Section 2770.101 or 2770.106 shall be taken pursuant to and governed by Section 1509 of the Act.

(Source: Amended at 32 Ill. Reg. 18966, effective December 1, 2008)

Section 2770.110 Average Contribution Rates By Standard Industrial Classification (SIC) Codes (Repealed)

(Source: Repealed at 32 Ill. Reg. 156, effective January 1, 2008)

Section 2770.111 Average Contribution Rates By North American Industry Classification System (NAICS) Assignment

a) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set forth in Section 1506.3 of the Act, for calendar year 2003, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:

Digits	Economic Sector	Rate
11	Agriculture, Forestry, Fishing and Hunting	1.5%
21	Mining	3.1%
22	Utilities	1.2%
23	Construction	2.7%
31-33	Manufacturing	1.7%
42	Wholesale Trade	1.3%
44-45	Retail Trade	1.0%
48-49	Transportation and Warehousing	1.8%
51	Information	1.3%
52	Finance and Insurance	0.9%
53	Real Estate and Rental and Leasing	1.0%
54	Professional, Scientific and Technical Services	1.0%
55	Management of Companies and Enterprises	1.3%
56	Administrative and Support and Waste Management	2.0%
61	Educational Services	0.8%
62	Health Care and Social Assistance	0.7%
71	Arts, Entertainment and Recreation	1.5%
72	Accommodation and Food Services	0.8%
81	Other Services (except Public Administration)	0.9%
92	Public Administration	0.8%
99	Unclassified	1.1%

b) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set forth in Section 1506.3 of the Act, for calendar year 2004, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:

Digits	Economic Sector	Rate
11	Agriculture, Forestry, Fishing and Hunting	1.7%
21	Mining	2.9%
22	Utilities	1.5%
23	Construction	3.0%
31-33	Manufacturing	2.4%
42	Wholesale Trade	1.7%
44-45	Retail Trade	1.2%
48-49	Transportation and Warehousing	2.2%
51	Information	1.9%
52	Finance and Insurance	1.2%
53	Real Estate and Rental and Leasing	1.2%
54	Professional, Scientific and Technical Services	1.4%
55	Management of Companies and Enterprises	1.7%
56	Administrative and Support and Waste Management	2.5%
61	Educational Services	1.0%
62	Health Care and Social Assistance	0.9%
71	Arts, Entertainment and Recreation	1.7%
72	Accommodation and Food Services	1.0%
81	Other Services (except Public Administration)	1.1%
92	Public Administration	0.9%
99	Unclassified	1.2%

c) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set forth in Section 1506.3 of the Act, for calendar year 2005, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:

Digits	Economic Sector	Rate
11	Agriculture, Forestry, Fishing and Hunting	2.1%
21	Mining	3.2%
22	Utilities	1.9%
23	Construction	3.8%
31-33	Manufacturing	3.2%
42	Wholesale Trade	2.3%
44-45	Retail Trade	1.6%
48-49	Transportation and Warehousing	2.8%
51	Information	2.4%
52	Finance and Insurance	1.5%
53	Real Estate and Rental and Leasing	1.6%
54	Professional, Scientific and Technical Services	1.8%
55	Management of Companies and Enterprises	2.2%
56	Administrative and Support and Waste Management	3.2%
61	Educational Services	1.4%
62	Health Care and Social Assistance	1.2%
71	Arts, Entertainment and Recreation	2.1%
72	Accommodation and Food Services	1.3%
81	Other Services (except Public Administration)	1.4%
92	Public Administration	1.2%
99	Unclassified	1.7%

d) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate as set forth in Section 1506.3 of the Act, for calendar year 2006, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:

Digits	Economic Sector	Rate
11	Agriculture, Forestry, Fishing and Hunting	2.5%
21	Mining	3.8%
22	Utilities	2.3%
23	Construction	4.4%
31-33	Manufacturing	3.8%
42	Wholesale Trade	2.8%
44-45	Retail Trade	2.0%
48-49	Transportation and Warehousing	3.4%
51	Information	2.8%
52	Finance and Insurance	2.0%
53	Real Estate and Rental and Leasing	1.9%
54	Professional, Scientific and Technical Services	2.3%
55	Management of Companies and Enterprises	2.7%
56	Administrative and Support and Waste Management	3.8%
61	Educational Services	1.8%
62	Health Care and Social Assistance	1.6%
71	Arts, Entertainment and Recreation	2.5%
72	Accommodation and Food Services	1.7%
81	Other Services (except Public Administration)	1.7%
92	Public Administration	1.5%
99	Unclassified	2.1%

e) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate set forth in Section 1506.3 of the Act, for calendar year 2007, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:

Digits	Economic Sector	Rate
11	Agriculture, Forestry, Fishing and Hunting	2.2%
21	Mining	3.4%
22	Utilities	2.2%
23	Construction	4.0%
31-33	Manufacturing	3.1%
42	Wholesale Trade	2.4%
44-45	Retail Trade	1.8%
48-49	Transportation and Warehousing	2.9%
51	Information	2.4%
52	Finance and Insurance	1.8%
53	Real Estate and Rental and Leasing	1.7%
54	Professional, Scientific and Technical Services	1.9%
55	Management of Companies and Enterprises	2.3%
56	Administrative and Support and Waste Management	3.4%
61	Educational Services	1.6%
62	Health Care and Social Assistance	1.5%
71	Arts, Entertainment and Recreation	2.2%
72	Accommodation and Food Services	1.5%
81	Other Services (except Public Administration)	1.6%
92	Public Administration	1.4%
99	Unclassified	1.8%

f) The average contribution rate for each Economic Sector in the North American Industry Classification System (NAICS), excluding the fund building rate set forth in Section 1506.3 of the Act, for calendar year 2008, as determined by the application of Section 2770.106(a)(4) of this Part, shall be:

Digits	Economic Sector	Rate
11	Agriculture, Forestry, Fishing and Hunting	1.8%
21	Mining	3.0%
22	Utilities	1.7%
23	Construction	3.4%
31-33	Manufacturing	2.4%
42	Wholesale Trade	1.9%
44-45	Retail Trade	1.6%
48-49	Transportation and Warehousing	2.4%
51	Information	1.9%
52	Finance and Insurance	1.5%
53	Real Estate and Rental and Leasing	1.4%
54	Professional, Scientific and Technical Services	1.5%
55	Management of Companies and Enterprises	1.8%
56	Administrative and Support and Waste Management	2.9%
61	Educational Services	1.3%
62	Health Care and Social Assistance	1.2%
71	Arts, Entertainment and Recreation	1.9%
72	Accommodation and Food Services	1.2%
81	Other Services (except Public Administration)	1.3%
92	Public Administration	1.2%
99	Unclassified	1.6%

(Source: Amended at 32 Ill. Reg. 156, effective January 1, 2008)

SUBPART B: ALTERNATIVE BENEFIT WAGE RATIO (Repealed)

Section 2770.150 Eligibility To Elect The Alternative Benefit Wage Ratio (Repealed)

(Source: Repealed at 14 Ill. Reg. 18280, effective October 30, 1990)

Section 2770.155 Approval Of Election Of Alternative Benefit Wage Ratio (Repealed)

(Source: Repealed at 14 Ill. Reg. 18280, effective October 30, 1990)

Section 2770.160 Adjustment Of Benefit Wage Charges And The Determination Of The Alternative Benefit Wage Ratio (Repealed)

(Source: Repealed at 14 Ill. Reg. 18280, effective October 30, 1990)

Section 2770.165 Revocation Of Election Of Alternative Benefit Wage Ratio (Repealed)

(Source: Repealed at 14 Ill. Reg. 18280, effective October 30, 1990)

Section 2770.170 Appeals (Repealed)

(Source: Repealed at 14 Ill. Reg. 18280, effective October 30, 1990)

SUBPART C: TRANSFER OF BENEFIT WAGES FROM BASE PERIOD TO SUBSEQUENT EMPLOYER (Repealed)

Section 2770.400 Definitions (Repealed)

(Source: Repealed at 15 Ill. Reg. 8553, effective May 24, 1991)

Section 2770.405 Application Of Base Period Wages (Repealed)

(Source: Repealed at 15 Ill. Reg. 8553, effective May 24, 1991)

Section 2770.410 Restriction On Benefit Wage Transfers Section (Repealed)

(Source: Repealed at 15 Ill. Reg. 8553, effective May 24, 1991)

Section 2770.415 Benefit Wage Transfer Procedural Requirements (Repealed)

(Source: Repealed at 15 Ill. Reg. 8553, effective May 24, 1991)

Section 2770.420 Petition For Hearing (Repealed)

(Source: Repealed at 15 Ill. Reg. 8553, effective May 24, 1991)

SUBPART D: BENEFIT WAGE CANCELLATIONS

Section 2770.501 Effective Date Of Benefit Wage Cancellations Pursuant To Section 1508.1 Of The Act

The provisions of Section 1508.1 of the Act shall apply only to benefit wages which result from the payment of benefits with respect to a benefit year which begins on or after January 1, 1987.

(Source: Amended at 12 Ill. Reg. 12473, effective July 15, 1988)

Section 2770.Table A General SIC Classifications (Repealed)

(Source: Repealed at 32 Ill. Reg. 155, effective January 1, 2008)

SUBCHAPTER d: COLLECTION AND REFUND

PART 2790: COLLECTION OF UNEMPLOYMENT CONTRIBUTIONS
SUBPART A: GENERAL PROVISIONS

Section 2790.1 Collection Remedies The Same For Contributions And Payment In Lieu Of Contributions

All the remedies available to the Director for collecting unpaid contributions are also available for collecting payments in lieu of contributions payable by a reimbursable employer.

Section 2790.5 When Collection In Jeopardy, Payment Period Shortened

a) In every case where the collection of the full amount of the accrued contributions or payments in lieu of contributions may be jeopardized by delay, the Director may at any time, in writing, demand and enforce payment of any such contributions, or reimbursements, without waiting for the last day of the month next following the calendar quarter for which the contributions have accrued, or the last day of the thirty days from the mailing date of the statement of amounts of the benefits to be reimbursed.

b) Examples of when the Director may shorten the payment period in case of jeopardy are when an employer voluntarily or involuntarily ceases business, liquidates, transfers his assets, merges or consolidates with some other individual or employing unit, assigns for benefit of creditors, or is adjudicated bankrupt, or in case of death of the proprietor or dissolution of the employing unit.

Section 2790.10 Cases When Collection May Be Deferred

The Director may desist from collecting an unpaid account if from all the facts presented to him, it is shown that the amount that can be realized is not commensurate with the cost of collection. He may also defer collection if upon proper application and showing of all pertinent facts , a nonprofit organization or governmental entity proves to the satisfaction of the Director that collection enforcement at a particular time would make its continued operation not possible. The Director shall deny the application to defer collection if the collection of taxes will be jeopardized by delay.

Section 2790.15 Contributions Of Less Than $1.00 Deemed Paid

If the total amount of quarterly contributions plus interest, if any, is payable and that amount is less than one dollar ($1.00) and there is no penalty for late filing of the applicable report provided in Section 1402 of the Act, the payment of such total amount shall be excused. For experience rating and certification purposes, such excused non-payment of contributions shall be considered as paid.

Section 2790.20 No Refund Of Contributions Deemed Paid

No refund or adjustment under Section 2201 of the Act will be granted for the amount deemed paid but not actually paid pursuant to 56 Ill. Adm. Code 2790.15.

SUBCHAPTER e: RIGHTS AND DUTIES OF EMPLOYEES

PART 2815: EMPLOYEES' GENERAL RIGHTS AND DUTIES
SUBPART B: DEDUCTION OR ASSIGNMENT OF BENEFITS

Section 2815.100 Benefit Rights Not Subject to Waiver, Transfer, or Claims of Creditors

The right to receive unemployment benefits cannot be waived, transferred, or released by agreement. Neither can it be the subject of assignment, pledge, encumbrance, or claim of creditors. Any such agreement is against public policy and void. However, where the agreement to deduct from benefits or the assignment of benefits is made under the conditions provided in Section 2815.105 of this Part, such agreement or assignment may be enforced pursuant to the provisions of Section 1300 of the Unemployment Insurance Act [820 ILCS 405/1300] (Act).

(Source: Amended at 33 Ill. Reg. 9668, effective July 1, 2009)

Section 2815.105 Deductions from Unemployment Benefits for Past Due Child Support

a) Whenever the Director is served by the Illinois Department of Healthcare and Family Services with a copy of a court or administrative order for withholding of income on behalf of the persons specified in subsection (c), the Director shall deduct from an individual's benefits past due child support in the designated amount.

b) Whenever an individual enters into an agreement for the deduction of a specified sum from his benefits under the Act in order to pay past due child support, this agreement may be enforced by the Illinois Department of Healthcare and Family Services by presenting to the Director the original of the agreement and requesting that the support payments sought to be satisfied be deducted out of the benefits payable to an individual required to provide support. The agreement must be signed by the individual and state clearly the amounts to be deducted from his benefits, in whose favor the support payments are payable, during which periods the deductions are to be made, and by what authority the individual is required to make support payments. If the Director is satisfied that the agreement meets the requirements of this subsection (b), deductions shall be made in the amounts specified in the agreement.

c) The Illinois Department of Healthcare and Family Services may enforce and collect from the Director any assignment of benefits to, or agreement for deductions for the benefit of, the following persons:

1) Those receiving a grant of financial aid under Article IV of the Illinois Public Aid Code [305 ILCS 5/Art. 4];

2) Those whose application for support services under Section 10-1 of the Illinois Public Aid Code [305 ILCS 5/10-1] has been approved; and

3) Those receiving public aid or support services from other states.

d) In every case where there is a court-ordered assignment of wages for past due child support, this assignment of wages shall also be considered an order for withholding of income which can be enforced for collection under subsection (a).

(Source: Amended at 33 Ill. Reg. 9668, effective July 1, 2009)

Section 2815.110 Deductions from Benefits to be Paid to the Illinois Department of Healthcare and Family Services

All deductions authorized under Section 2815.105 shall be paid to the Illinois Department of Healthcare and Family Services. These payments are considered constructively made to the individual and they shall be defense to the Director against claims of the individual whose benefits have been reduced by the deductions taken.

(Source: Amended at 33 Ill. Reg. 9668, effective July 1, 2009)

Section 2815.115 Illinois Department of Healthcare and Family Services Acting for the Director

In order to insure prompt action on all orders for withholding of income or agreements to deduct referred to in Section 2815.105 and to insure speedy review of the Director's orders granting deductions, the Director appoints the Division of Child Support, Illinois Department of Healthcare and Family Services, as the Director's agent to act for and on behalf of the Director in the following cases:

a) To receive service of the court or administrative order for withholding of income or to accept the presentation of an agreement to deduct from the Illinois Department of Healthcare and Family Services required in Section 2815.105(a) and (b);

b) To determine the sufficiency of the order or the agreement in accordance with the requirements provided in Section 2815.105;

c) To design and adopt a compatible program that could be entered in the Agency's computer system and enable the Director:

d) To receive all filings of appeals connected with the Director's order granting the deduction from benefits and forward them to the Appeals Division, 33 South State Street, 8th Floor, Chicago, Illinois 60603;

e) To receive and respond to all inquiries relating to the implementation of orders to stop further deductions, the enforcement and collection of orders for withholding of income or agreements to deduct, and the procedure for making an appeal from an order granting deductions. The inquiries shall be addressed to: Division of Child Support, Illinois Department of Healthcare and Family Services, P.O. Box 19405, Springfield, Illinois 62794.

(Source: Amended at 33 Ill. Reg. 9668, effective July 1, 2009)

Section 2815.120 Order Of Deductions From Benefits

After the Division of Child Support has made a determination that the order or the agreement meets the requirements in Section 2815.105 and that the subject of the order or the party to the agreement is a claimant receiving benefits under the Act, it must recommend to the Director the issuance of an order of deduction from benefits and certify as to its correctness. The Division of Child Support shall not initiate a deduction from benefits unless and until such an order has been issued by the Director.

(Source: Amended at 11 Ill. Reg. 7270, effective April 3, 1987)

Section 2815.125 Notice of Deductions and Right of Appeal

a) The Director shall give notice to the individual whose benefits will be affected by the Director's order of deduction at the same time that the order for withholding or the agreement to deduct is entered into the Director's computer system by the Division of Child Support of the Illinois Department of Healthcare and Family Services. The notice shall state the amount of deductions, the authority for the deductions, and the claimant's right to appeal the order of deduction in the same manner as appeals under Sections 800 and 803 of the Act [820 ILCS 405/800 and 803], and of 56 Ill. Adm. Code 2720. The appeal shall be filed pursuant to Section 2815.115 of this Part. However, deductions shall continue during the pendency of the appeal.

b) At the hearing on appeal, the only issue to be resolved is the validity of the order or deduction agreement. If there has been a previous proceeding conducted by the Illinois Department of Healthcare and Family Services for this purpose, the claimant contesting the validity of the order or the agreement must show why the decision of the Illinois Department of Healthcare and Family Services should not be given full faith and credit.

(Source: Amended at 33 Ill. Reg. 9668, effective July 1, 2009)

Section 2815.130 Improper Deductions from Benefits

When in the appeal process or in any proceedings, it is found that deductions from the claimant's benefits pursuant to Section 2815.105 are improper or not in accordance with the law, the Director shall, after due notice to all parties, stop further deductions. Requests for reimbursements of improper deductions must be directed to the Illinois Department of Healthcare and Family Services, Division of Child Support, at the address specified in Section 2815.115(e).

(Source: Amended at 33 Ill. Reg. 9668, effective July 1, 2009)

PART 2830: PAYMENT OF BENEFITS
SUBPART A: GENERAL PROVISIONS

Section 2830.10 Mailing Address For Benefit Checks

a) Benefit checks shall be mailed to the address provided by the claimant to the local office where the claim is filed. Envelopes in which benefit checks are mailed shall advise the United States Postal Service that such checks shall be returned to the Agency, as defined in 56 Ill. Adm. Code 2720.1, if delivery cannot be made at the address indicated on the envelope.

b) Benefit checks shall not be mailed to a Post Office Box unless the claimant provides the local office with home address and an explanation of why he wants his checks sent to a Post Office Box.

c) Benefit checks shall not be mailed to an address outside of the United States or Canada unless the claimant provides a reason which indicates only a temporary absence from this country or Canada.

(Source: Added at 14 Ill. Reg. 9101, effective May 23, 1990)

Section 2830.50 Calculating The "National Average Of This Ratio" Under Section 401 Of The Act

Section 401 of the Act (Ill. Rev. Stat, 1989, ch. 48, par. 401) provides that, if certain factors occur, the "Statewide average weekly wage" will be frozen for a particular benefit period. One of these factors involves a determination of whether the *average contribution rate for all employers in this State for the calendar two years prior to the benefit period, as a ratio of total contribution payments (including payments in lieu of contributions) to the total wages reported by employers in this State for that same period is 0.2% greater than the national average of this ratio*. For purposes of calculating the "national average of this ratio":

a) Payments in lieu of contributions shall be included in the total contribution payments;

b) Contribution payments made by workers shall be included in the total contribution payments;

c) Contribution payments and total wages reported in Puerto Rico, the Virgin Islands and the District of Columbia shall be included.

(Source: Added at 15 Ill. Reg. 16960, effective November 12, 1991)

SUBPART B: PAYMENT TO DECEASED CLAIMANTS

Section 2830.200 Payment Of Benefits Due A Deceased Claimant or Comatose Claimant

a) In the event that an individual dies or becomes comatose before receiving benefits to which he or she is entitled, the benefits shall be paid over to the person or persons determined to be entitled to receive those benefits, in accordance with Section 2830.205 or 2830.206 of this Part. However, any benefit checks previously issued to the individual that have not been presented for payment must be returned to the Director, or an affidavit must be submitted stating that the benefit checks were lost, stolen, or destroyed.

b) In the case of a claimant who became and remains comatose or who died prior to certifying for benefits, a completed certification form must be submitted by an individual with first hand knowledge of the matters asserted in the certification, together with an affidavit attesting that the individual has first hand knowledge and that the matters asserted are true to the best of his or her knowledge. Under no circumstances shall the claimant's eligibility extend beyond the date that he or she entered the comatose state or died.

(Source: Amended at 32 Ill. Reg. 18972, effective December 1, 2008)

Section 2830.205 Order Of Payment To Survivors Of A Deceased Claimant

Benefits which are payable, but as yet unpaid or not yet presented for payment, to a deceased individual shall be paid over to the persons claiming such benefits on behalf of the deceased claimant in the following order:

a) The administrator or executor of the decedent's estate;

b) The decedent's surviving spouse;

c) The surviving children in equal shares, if the decedent has no surviving spouse;

d) The surviving parents in equal shares, if no spouse or child survives the decedent;

e) Such brothers or sisters who survive the decedent in equal shares, if no spouse, child or parent survives the decedent;

f) Such other relatives, either by blood or marriage, who have paid the funeral expenses connected with the last illness of the decedent, in such shares as may be equitable, depending on the proportional contribution of said relative to said expenses, if no spouse, child, parent, sister or brother survives the decedent.

Section 2830.206 Order of Payment on Behalf of a Comatose Claimant

Benefits that are payable, but as yet unpaid or not yet processed for payment, to a comatose individual shall be paid over to the persons claiming the benefits on behalf of the comatose claimant in the following order:

a) The guardian of his or her estate, if one has been appointed;

b) The living spouse;

c) The living children in equal shares, if the claimant has no living spouse;

d) The living parents in equal shares, if there is no living spouse or living child of the claimant;

e) The living brothers or sisters of the claimant in equal shares, if there is no living spouse, child or parent of the claimant; or

f) Other relatives, either by blood or marriage, who have paid the expenses connected with the claimant's care in his or her comatose state, in such shares as may be equitable, depending on the proportional contribution of the relative to the expenses, if there is no living spouse, child, parent, sister or brother of the claimant.

(Source: Added at 32 Ill. Reg. 18972, effective December 1, 2008)

Section 2830.210 Payment to a Minor Survivor of a Deceased Claimant or to a Minor When the Claimant is Comatose

Whenever any share of benefits payable to a deceased or comatose claimant is payable to a person who has not attained majority age, the payment shall be paid to the person legally entitled to receive the payment on behalf of the minor for his or her use and for the benefit of the minor without further responsibility on the part of the Director as to its actual distribution.

(Source: Amended at 32 Ill. Reg. 18972, effective December 1, 2008)

Section 2830.215 Time and Manner for Claiming Benefits Due a Deceased or a Comatose Claimant

a) Any individual specified in Section 2830.205 or 2830.206 of this Part who wishes to make application for any benefits due a deceased or comatose claimant must do so within nine months after the date of death or entry into the comatose state, as the case may be, or within nine months after the date when the payment is finally authorized, whichever is later.

1) The application shall be made to the local unemployment office where the deceased or comatose claimant last filed his or her claim for benefits or serving the geographic area in which the claimant resides or resided.

2) The application shall be made either in person or by certified mail and shall be supported by an affidavit setting forth the relationship to the deceased or comatose claimant, along with the names, addresses and relationship of all other living relatives in the order specified in Section 2830.205 or 2830.206 of this Part, and shall be accompanied by a certified copy of the death certificate for the deceased claimant or, in the case of a comatose claimant, the statement of a licensed and practicing physician indicating the date as of which the claimant became comatose. The application forms shall be available at the local unemployment offices.

b) Unless the application is received within the time limits specified in subsection (a), any benefits due the deceased claimant shall revert to and be returned to the State's unemployment trust fund.

(Source: Amended at 32 Ill. Reg. 18972, effective December 1, 2008)

Section 2830.220 Right of Appeal

Whenever an individual claiming a share of benefits payable to a deceased or comatose claimant is denied that share because of the provisions of Section 2830.205 or 2830.215 of this Part, the individual shall be notified in writing and have the right to appeal the determination in accordance with the provisions of Section 800 of the Unemployment Insurance Act [820 ILCS 405/800].

(Source: Amended at 32 Ill. Reg. 18972, effective December 1, 2008)

SUBPART C: REISSUANCE OF BENEFIT CHECKS, MISDIRECTED PAYMENTS OR LOST OR STOLEN DEBIT CARDS

Section 2830.300 Requests For Reissuance Of Checks Or Replacement Of Electronic Payments

a) If the claimant is filing an intrastate claim (see 56 Ill. Adm. Code 2714 for interstate claims), his or her request for the reissuance of a payment must be made in person at the claimant's local office. Such request shall be made in writing on a form provided by the Department.

1) If the original check has already been processed by the payor bank, the claimant will be sent instructions as outlined in Section 2830.305.

2) If the original check has been returned to the Agency by either the individual or the Post Office, it shall be immediately reissued to the individual.

3) If the original check has not been processed by the payor bank, the Department will submit a stop payment order. After confirmation that the stop payment order has been processed, a replacement check will immediately be issued.

b) Requests by a second endorser for replacement of a benefit check that has not already been processed by the payor bank shall be made in writing to Accounting Services Division, Trust Fund Subdivision, 33 S. State St., Chicago, IL 60603.

1) If the original benefit check was lost, mutilated or stale-dated after receipt by the second endorser, and if proof of that action is provided to the Department, disbursement of the funds to cover the check will be made to the second endorser.

2) If the original benefit check was subject to a stop payment order initiated by the claimant pursuant to subsection (a)(3), the matter will be sent to the Benefit Payment Control Division for an interview pursuant to Section 2830.310.

(Source: Amended at 32 Ill. Reg. 13183, effective July 24, 2008)

Section 2830.303 Lost Or Stolen Debit Cards

A claimant must report a lost or stolen debit card immediately to the financial institution that issued the card by calling the telephone number provided on the cardholder agreement provided by the financial institution. The telephone number will also be available on the Department's website. A replacement card will be issued in accordance with the terms and conditions of the cardholder agreement.

(Source: Added at 32 Ill. Reg. 13183, effective July 24, 2008)

Section 2830.305 Where Original Benefit Check Has Been Processed By The Payor Bank Or Where Direct Deposit Has Been Established Without Authorization

a) When a request for reissuance of a payment is made by a claimant pursuant to Section 2830.300 and it is determined that the check has already been processed by the payor bank or when the payment has been directly deposited into a financial institution account the claimant asserts he or she did not authorize pursuant to 56 Ill. Adm. Code 2720.11, the claimant will be sent a copy of the check or the Direct Deposit Authorization/Change Form and an Affidavit of Non-Endorsement or an Affidavit of Non-Authorization for Direct Deposit. If the claimant believes that neither the claimant nor the claimant's authorized agent endorsed the check or completed the direct deposit authorization, within 30 days after the mailing of the copy of the check or Direct Deposit Authorization/Change Form, the claimant must file the completed Affidavit of Non-Endorsement or Affidavit of Non-Authorization for Direct Deposit, as appropriate, at the local office where the claimant last filed a claim for benefits.

b) When a request for reissuance of a benefit check is made by a second endorser and the original benefit check has been processed by the payor bank, the request must be made within 90 days after the date that the check was paid by the payor.

(Source: Expedited Correction at 32 Ill. Reg. 19178, effective July 24, 2008)

Section 2830.310 Check Or Direct Deposit Authorization Forgery Investigation

a) When a forgery investigation is to be conducted because the claimant claims he or she did not receive the proceeds of a payment, all materials relevant to the matter shall be forwarded to the Department's Benefit Payment Control Subdivision where a special agent shall investigate the matter and prepare a recommendation as to whether to reissue the payment to the claimant.

b) If the recommendation of the special agent is not to reissue the payment, the special agent shall set the matter for a forgery interview pursuant to Section 2830.315.

c) Prior to the forgery interview provided in Section 2830.315, the special agent who conducted the initial investigation shall prepare a form, SI-1F, Report of Forgery Investigation, and record the results of the following in chronological order:

1) Any contact with the second endorser or payor of the check. Any relevant information or evidence, such as check cashing registration cards or direct deposit information, should be noted and included in the file;

2) Contact with additional witnesses as might be deemed necessary by the special agent;

3) Any contact with the claimant, including any background information that might have been discovered; and

4) A summary of all relevant facts and the basis for the decision not to reissue the payment.

(Source: Amended at 32 Ill. Reg. 13183, effective July 24, 2008)

Section 2830.315 Notice Of Interview

a) Written notice of the date, time and place of the forgery interview will be mailed to the claimant at least 10 days prior to the date of the interview.

b) The notice of interview shall identify the facts and issues to be covered by the interview.

c) The notice of interview shall be sent to the claimant at the address shown on the Affidavit of Non-Endorsement or Affidavit of Non-Authorization for Direct Deposit, as the case may be.

(Source: Amended at 32 Ill. Reg. 13183, effective July 24, 2008)

Section 2830.320 Continuances

The special agent to whom the matter is assigned shall grant continuances only for good cause shown. When a continuance is granted, the interview shall be rescheduled at the earliest possible time convenient to all parties. All parties shall be informed of the date, time and place of the rescheduled interview either orally or in writing.

(Source: Added at 14 Ill. Reg. 9101, effective May 23, 1990)

Section 2830.325 Check Or Direct Deposit Authorization Forgery Interview

a) A special agent other than the special agent who conducted the investigation will control the interview, which will be limited to the issues set forth in the notice of interview;

b) All testimony at the interview shall be made under oath or affirmation;

c) At the interview, the special agent shall:

1) Inform the parties of the purpose of the interview and of their rights under the Act and the rules promulgated thereunder;

2) Present to the claimant all relevant material obtained during the investigation;

3) If the second endorser is present, take any testimony that he or she can offer on the cashing of the benefit check;

4) Provide the claimant with an opportunity to explain any reasons or to present any evidence that would show that the signature on the benefit check or direct deposit authorization form is not his or hers, and then allow the claimant to cross-examine any witnesses at the hearing or rebut any other evidence presented; and

5) Issue his or her decision on the available facts, even if the claimant does not appear at the interview (there shall be no defaults for want of prosecution, though the claimant may withdraw his or her request for reissuance).

(Source: Amended at 32 Ill. Reg. 13183, effective July 24, 2008)

Section 2830.330 The Record

A complete record shall be maintained of the interview before the special agent. The record will consist of the special agent's written summary of the testimony of the parties and their witnesses and copies of all documents, reports, briefs, motions and findings in the matter.

(Source: Added at 14 Ill. Reg. 9101, effective May 23, 1990)

Section 2830.335 Decision

a) A decision shall be made in writing, shall separately state findings of fact and conclusions of law and shall be mailed to the parties thereto;

b) A decision to allow or deny a claim for reissuance of a benefit check under this Subpart shall be based on the testimony and evidence in the record and not solely on an analysis of the claimant's handwriting. The formal rules of evidence shall not, however, apply in these matters;

c) No decision shall be based solely on unobjected to hearsay testimony where the claimant has testified to the contrary under oath unless the special agent finds that the claimant's testimony is incredible, inconsistent or inherently improbable.

d) No decision shall be based on evidence which the claimant has not had an opportunity to review and rebut. The claimant shall be deemed to have waived his right to review and rebut when he fails to appear at the scheduled hearing.

(Source: Added at 14 Ill. Reg. 9101, effective May 23, 1990)

Section 2830.340 Appeals

The decision of the special agent shall constitute a final administrative decision, subject to review under the State's Administrative Review Law.

(Source: Added at 14 Ill. Reg. 9101, effective May 23, 1990)

PART 2835: RECOVERY OF BENEFITS
SUBPART A: GENERAL PROVISIONS

Section 2835.1 Recovery of Benefits by Recoupment

a) The Director may recover by recoupment any unemployment insurance benefits that are determined to have been overpaid to an individual. Recoupment is a method by which the Director deducts from any benefits payable to a claimant the amounts of benefits he was found not entitled to receive under the law.

b) The recoverable amounts may be either regular or extended benefits paid under either the Unemployment Insurance Act [820 ILCS 405] (Act), or the Federal Unemployment Compensation Act for Federal Employees (5 USC 8501 et seq.) or Ex-Servicemen (5 USC 8521 et seq.) (UCFE and UCX) programs administered by the Director or any other federal unemployment insurance program administered by the Director (see Table A).

(Source Amended at 32 Ill. Reg. 18978, effective December 1, 2008)

Section 2835.5 Amounts Recoverable by Recoupment

a) Benefits paid under state law subject to recoupment:

1) The entire amount of benefits previously paid to a claimant later found ineligible pursuant to a reconsidered Finding or reconsidered Determination, or pursuant to a Decision of a Hearings Referee or of the Director under Section 604 of the Act, which modifies or sets aside a Finding or Determination or a reconsidered Finding or reconsidered Determination. To the extent allowed by law, such benefits will be recouped from future State or federal benefits payable to a claimant as set forth in Table A. For purposes of this Section only, if the Board of Review remands a case to the Hearing Referee who then decides that the claimant is ineligible for benefits, such Decision shall make any benefits for which the claimant is then ineligible subject to recoupment.

EXAMPLE: The Referee affirms a Determination by an Adjudicator holding a claimant eligible for benefits which have been paid to the claimant. Upon appeal, the Board of Review remands the case back to the Referee who then sets aside the Adjudicator's Determination and holds the claimant ineligible. The benefits for which the claimant was overpaid are now subject to recoupment.

2) Benefits paid to a claimant for weeks with respect to which he or she received wages by reason of a back pay award made by a governmental agency or pursuant to arbitration proceedings or by reason of payment of wages wrongfully withheld by an employing unit.

b) Benefits paid under federal programs subject to recoupment:

1) Benefits paid to UCFE-UCX claimants who have been found ineligible to receive such benefits in a reconsidered Finding or Determination, or in a Decision of a Hearings Referee or the Director, may be recouped from either future UCFE-UCX benefits, or State or other federally funded benefits payable to such claimant.

2) Recoupment of benefits paid to ineligible claimants under other federal programs administered by the Director shall be governed by the applicable federal law.

c) Waiver of Recoupment − Recoupment from future benefits referred to in subsections (a) and (b) may be waived from week to week in the manner provided in Section 2835.30 of this Part.

(Source: Amended at 32 Ill. Reg. 18978, effective December 1, 2008)

Section 2835.10 Time Limits Within Which to Recoup Benefits

a) Benefits obtained by means of fraud: When the claimant knowingly makes a false statement or knowingly fails to disclose a material fact in order to receive regular or extended benefits to which he or she is ineligible, such benefits may be recouped at any time from future benefits payable to the claimant. See Table A for the time limits regarding recoupment of benefits obtained by means of fraud under federal programs, including UCFE-UCX and special programs.

b) Benefits obtained without fraud: When a claimant has been found ineligible to receive regular or extended benefits for any reason other than reasons stated in subsection (a), the benefits received may be recouped within five years from the date the claimant was found ineligible by a Claims Adjudicator, Hearings Referee or by the Director. The same time limit of five years shall apply to the recoupment of regular or extended UCFE-UCX benefits paid to ineligible claimants for any reason other than the reason stated in subsection (a).

c) With respect to other federally funded benefits administered by the Director, the provisions of the appropriate federal law shall be applicable.

(Source: Amended at 32 Ill. Reg. 18978, effective December 1, 2008)

Section 2835.15 Extent of Recoupment

a) Benefits recoverable under Section 2835.5(a) shall be recouped in full or to the extent of the benefits payable to the claimant, subject to the time limits provided in Section 2835.10.

1) The amount to be recouped in any particular week shall not exceed 25% of the claimant's weekly benefit amount provided that the recoverable benefits were not obtained by fraudulent means stated in Section 2835.10(a). The same limitation on the amount of recoupment shall apply to UCFE-UCX and Trade Readjustment Allowance (TRA) benefits (see 19 USC 2291-2298).

2) With respect to other federally funded benefits administered by the Director, the provisions of the appropriate federal law shall be applicable.

b) If the claimant knowingly makes a false statement or knowingly fails to disclose a material fact in order to receive benefits to which he or she is not entitled, the entire weekly benefit amount payable to the claimant is subject to recoupment until the full amount of the recoverable benefits has been completely recovered.

c) The extent and period of time for recoupment, as defined in Section 2835.10 and this Section, except for TRA benefits, shall be as set forth in Table A.

(Source: Amended at 32 Ill. Reg. 18978, effective December 1, 2008)

Section 2835.20 Notice Of Recoupment Decision

The individual whose benefits have been decided by the Claims Adjudicator to be the subject of recoupment shall be given prompt notice of the decision, which shall state the reason for recoupment, the weeks with respect to which the sum was received by the individual, the time within which the benefits may be recouped, and the right to seek waiver of recoupment and the grounds for such waiver.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.25 Reconsideration Or Appeal of Recoupment Decision

a) The individual who has received a notice of recoupment decision may ask for a reconsideration of this decision by the Claims Adjudicator at any time within one year from the date of the decision, or appeal the decision to a Hearings Referee within thirty days after it has been delivered to him or mailed to his last known address.

b) The reconsidered decision, if any, is also appealable to a Hearings Referee within thirty days after it has been delivered to him or mailed to his last known address.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.30 Waiver Of Recoupment

a) Recoupment from benefits payable to an individual for any week may be waived as to that week, upon the claimant's request in writing.

1) The application for waiver shall identify the recoupment decision provided in 56 Ill. Adm. Code 2835.20, or shall have attached to it a copy of the recoupment decision.

2) The application shall state the circumstances that would cause the claimant extreme financial hardship, provided in 56 Ill. Adm. Code 2835.45, if the recoupment decision is enforced.

3) The claimant shall produce to the Claims Adjudicator any evidence in his possession that would establish the basis for the waiver of recoupment.

b) The Director shall approve the request for waiver of recoupment from benefits for a week or weeks for which the claimant certified as to his eligibility if the benefits have not been paid and if the claimant is able to prove that he received the recoverable benefits without fault, and recoupment in the week(s) would be against equity and good conscience pursuant to 56 Ill. Adm. Code 2835.45.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.33 Waiver of Recovery (TRA)

The Agency shall waive the recovery of any overpayment of TRA benefits, to the extent authorized to do so under 20 CFR 617.55, as it is on December 1, 2008 without regard to any later amendments.

(Source: Added at 32 Ill. Reg. 18978, effective December 1, 2008)

Section 2835.35 Benefits Received With Fault

If, as a result of a reconsidered finding or reconsidered determination, or a decision of a Hearings Referee or of the Director, the claimant is denied benefits for which he had previously been held to be eligible because he was found to have fraudulently obtained such benefits as provided in 56 Ill. Adm. Code 2835.10(a), such reconsideration or decision shall be conclusive proof that the claimant received the recoverable benefits with fault.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.40 Benefits Received Without Fault

The receipt of any sum paid to a claimant as benefits, due to agency error, is without fault. A good faith mistake of fact by the claimant in the filing of his claim for benefits which results in an overpayment of benefits does not constitute fault.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.45 Recoupment Against Equity and Good Conscience

a) Recoupment will be considered to be against equity and good conscience if the recoupment would cause the individual extreme financial hardship. For this purpose, extreme financial hardship shall mean the inability to meet vital financial obligations which cannot be deferred. Such obligations include:

1) Rent, if the individual has received an eviction notice or five day notice from the landlord;

2) Utility bills, if the individual has received a utility cutoff notice;

3) Unexpected medical bills not covered by insurance; and

4) Other debts incurred for essential living expenses, the payment of which cannot be deferred.

b) The decision whether the recoupment would cause an individual extreme financial hardship shall be based on an assessment of the individual's complete financial situation. Factors, such as the extent of an individual's savings, his or her eligibility for welfare or other forms of public assistance, shall be relevant in making this decision.

c) Notwithstanding subsections (a) and (b), whenever an individual is overpaid a sum as benefits and the payment of such sum was the result of the individual having claimed a dependent, under Section 401 of the Act, when a dependent child of that same parent had already been claimed as a dependent by the other parent who was also entitled to claim the dependent and the individual had responded negatively to the question on this subject on the form BIS-0030, Unemployment Claim Application, or the Internet Claim Application, because the other parent who claimed the dependent had returned to work, recoupment of such sum shall be deemed to be against equity and good conscience.

(Source: Amended at 32 Ill. Reg. 18978, effective December 1, 2008)

Section 2835.50 Request For And Decision Regarding Waiver Of Recoupment

a) The initial request for waiver of recoupment must be made in person by the claimant requesting such waiver, unless he is physically unable to appear at the local unemployment office closest to his place of residence.

1) The request must be made prior to submitting the certification for benefits form (BIS-0653) for the week recoupment is scheduled to begin.

2) The certification form must be brought to the local unemployment office when making the request for waiver.

b) The local unemployment office shall decide promptly whether or not to approve the request for waiver of recoupment. The claimant whose request for waiver of recoupment has been disapproved shall be promptly informed, in writing, of the reasons for the denial of the waiver.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.55 Reconsideration Or Appeal Of Denial Of Request For Waiver

a) A denial of the request for waiver of recoupment may be considered by the Claims Adjudicator within one year from the date of the decision.

b) The decision denying waiver of the reconsideration thereof, is also appealable to a Hearings Referee within thirty days after it has been delivered to the claimant or mailed to his last known address.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.60 Periods When Waiver Of Recoupment Allowed

a) Recoupment waiver may be allowed or denied for weeks for which the claimant has certified and has been found to have met the eligibility requirements for the payment of benefits which have not yet been paid.

b) If the Director is satisfied that recoupment would cause extreme financial hardship over a number of weeks, he may authorize that a request for waiver filed for a particular week be approved for up to a period of two weeks plus any prior weeks for which benefits have not yet been paid.

c) If the conditions which qualified the claimant for a waiver persist beyond the end of the waiver period approved by the Director, the claimant must request waiver for the new period.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

Section 2835.65 Waiver Certifications By Mail

In situations where the individual seeking waiver or recoupment shows that the grounds for waiver relied on under 56 Ill. Adm. Code 2835.30 are of a continued nature, or where the claimant's reporting in person works a hardship on the claimant, as indicated in 56 Ill. Adm. Code 2835.50, the Claims Adjudicator may permit the claimant requesting periods of waiver under 56 Ill. Adm. Code 2835.50 to certify his eligibility for waiver by submitting the required information by mail.

(Source: Added at 7 Ill. Reg. 383, effective December 23, 1982)

SUBPART B: DETECTION OF OVERPAYMENTS

Section 2835.100 Cross-Matching

The Department regularly matches its benefit payments records against the Illinois Directory of New Hires and the Department's own wage record system. Where the cross-matches suggest the possibility that a claimant has worked during the period for which he or she was claiming benefits, the Department will investigate further.

Example: An individual receives regular State benefits for the week beginning January 18, 2009, continuing through April 18, 2009. In certifying to his/her continued eligibility for benefits for those weeks, the individual indicates he/she did not work during any of those weeks. A December 2009 cross-match against the Department's wage records for the first quarter of 2009 indicates the individual worked and was paid wages during that quarter. The follow-up investigation results in a determination, dated December 14, 2009, that the individual fraudulently claimed benefits for the week beginning January 18, 2009 through April 18, 2009, a total of 13 weeks, and the determination becomes legally final. The individual files a new claim for benefits, effective January 24, 2010, without yet having repaid any of the benefits he/she fraudulently obtained. The individual will not receive any benefits until he/she repays the entire amount fraudulently received. After repaying the benefits, the individual will remain ineligible for benefits under Section 901 of the Act [820 ILCS 405/901] until he/she has served 26 "penalty weeks" or December 18, 2011, whichever occurs first. A penalty week is a week in which the claimant is otherwise eligible to receive benefits but is precluded from doing so because of a fraud determination. Six penalty weeks are assessed for the first week for which a claimant fraudulently obtained benefits, and two penalty weeks are assessed for each week thereafter for which the claimant fraudulently obtained benefits, up to a maximum of 26 penalty weeks. There is no durational limit on an individual's liability to repay fraudulently obtained benefits. The individual is also subject to criminal prosecution under the State Benefits Fraud Act [720 ILCS 5/17-6] for the fraudulent receipt of benefits. A conviction for State benefits fraud can result in imprisonment for generally up to five years and a fine of generally up to $25,000. The individual is also subject to a civil lawsuit for recovery of the overpayments.

(Source: Added at 34 Ill. Reg. 8515, effective June 16, 2010)

Section 2835.Table A Recoupment Matrix

OVERPAID UNDER THE PROGRAMS LISTED BELOW			% OF BENEFITS RECOUPABLE FROM BENEFITS PRESENTLY PAYABLE UNDER PROGRAMS AND SUBPROGRAMS						
			STATE		UCX/-UCFE	STATE/-UCX/UCFE	FAC	TRA	
PROGRAM	SUB-PROGRAM	TYPE OF OVER-PAYMENT	REG	EB	REG/EB	FED FUND EXTEN			LENGTH OF RECOUPMENT PERIOD
STATE	REG/EB	NONFRAUD SEC. 900A2	25	25	25	25	0	25	5 Years From Determination Date
STATE	REG/EB	FRAUD	100	100	100	100	0	100	Indefinite
UCX/UCFE	REG/EB	NONFRAUD SEC. 900A2	25	25	25	25	0	25	5 Years From Determination Date
UCX/UCFE	REG/EB	FRAUD	100	100	100	100	0	100	2 Years From Determination Date
STATE UCX/UCFE	FEDERALLY FUNDED EXTENSION	FRAUD	100	100	100	100	0	100	3 Years From Payment Date
STATE UCX/UCFE	FEDERALLY FUNDED EXTENSION	NONFRAUD	25	25	25	25	0	25	3 Years From Payment Date
FAC		NONFRAUD	25	25	25	25	25	25	3 Years From Payment Date
FAC		FRAUD	50	50	50	50	50	50	3 Years From Payment Date
TRA		FRAUD	50	50	50	50		0-I	Indefinite
TRA		NONFRAUD	25	25	25	25	0	25	5 Years From Determination Date

KEY TO RECOUPMENT MATRIX

25 = 25% Weekly Benefit Amount may be withheld for recoupment.

50 = 50% of Weekly Benefit Amount may be withheld for recoupment.

100 = 100% of benefits payable may be withheld for recoupment.

O-I = Recoupment is not allowable:

a) If the week claimed ends prior to fraud determination date, claimant receives all benefits payable for the week;

b) If the week claimed ends on or after fraud determination date, claimant is ineligible to receive any benefits for the week.

UCX = 5 U.S.C. 8521 *et seq.*, Unemployment Compensation for Ex-Servicemen.

UCFE = 5 U.S.C. 8501 *et seq.*, Unemployment Compensation for Federal Employees.

EB = 820 ILCS 405/, Extended Benefits.

Sec. 900A2 = 820 ILCS 405/900A2.

FED FUND EXT = Supplemental Appropriations Act, 2008. Title IV – Emergency Unemployment Compensation, Public Law 110-252 and its amendments or any prior federally funded programs that have expired.

FAC = Federal Additional Compensation, sec. 2002 of Division B, Title II of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 and its amendments.

TRA = Trade Act of 1974, as amended, 19 USC 2271-2322.

(Source: Amended at 35 Ill. Reg. 6148, effective March 25, 2011; Amended at 36 Ill. Reg. 12310, effective July 19, 2012)

SUBCHAPTER f: CLAIMANT'S REASON FOR SEPARATION FROM WORK

PART 2840: CLAIMANT'S REASON FOR SEPARATION FROM WORK
SUBPART A: MISCONDUCT

Section 2840.25 What Is Meant By "Harm"

The phrase *"...has harmed the employing unit or other employees"* in Section 602A of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 432A) [820 ILCS 405/602A] includes, but is not limited to:

a) physical or quantitatively measureable damage or injury;

b) other damage or injury to other employees' well-being or morale or to the employer's property, operations or goodwill;

1) Example: An individual is dissatisfied because he does not receive a raise. He confronts his supervisor and threatens to injure him, if not immediately, at some time soon. The threat itself, even in the absence of a physical assault resulting in a tangible injury, constitutes harm.

2) Example: Without authorization, an individual enters the company president's office, opens a desk drawer and removes and photocopies trade secrets. Even if the individual decides not to pass along this information to others, the removal and photocopying of trade secrets constitutes harm.

3) Example: An employer has a point system for evaluating tardiness and absence. When the worker exceeds the allotted number of points in a particular period, he is subject to discharge. Absences and tardiness always cause harm to the employer, even if a worker is allowed to make up the time. This is because absences and tardiness cause disruption to the general operations of any business. However, even before reaching the question of harm, the worker's reason for his last tardiness or absence must be reviewed in order to determine if the worker's conduct was willful.

c) damage or injury that could be reasonably foreseen to occur but for the individual being prevented from either carrying out his act or continuing to work;

1) Example: At the end of her shift, a grocery store checker is stopped at the exit by a security guard. The security guard removes from the checker's purse a can of fruit cocktail and a package of sandwich cookies belonging to the employer. Because the checker was caught, the employer was not deprived of its property. Still, this constitutes harm.

2) Example: An individual applies for a job which requires that he have a valid driver's license. On his application, he fails to disclose that his driver's license had been suspended. One year later, the employer learns of the suspension. Although the individual has not yet been involved in any accidents on the employer's premises, it is reasonable to foresee that one may occur and that the employer's insurance company would deny liability because of the individual's omission. The individual's omission on his application constitutes harm.

3) Example: Federal law provides that a commercial carrier may not permit its vehicles to be operated by an individual if there is, within the individual's system, the presence of unlawful, controlled substances beyond a particular level. The presence of such a substance during working hours within the system of a commercial driver employed by the carrier constitutes harm to the carrier. To continue to employ the individual as a driver would result in the carrier's violating federal law.

4) Example: The individual is driving a forklift truck through the employer's warehouse at excessive speeds. It is reasonably foreseeable that such conduct could result in both injuries and property damage. Even if the conduct is stopped before such injuries or damage occur, there is still harm to the employer.

d) It should be noted that harm is only one element of the definition of misconduct and that all of the elements set forth in the Act must be analyzed before a finding of misconduct can be made.

SUBPART B: VOLUNTARY LEAVE

Section 2840.101 General Principles for Interpreting Section 601 of the Act [820 ILCS 405/601]

a) For an individual's separation from work to be a voluntary leaving, the individual must have the option to remain employed by the employing unit. The separation is a discharge if the individual does not have the option to remain employed by the employing unit. Notwithstanding any other provision to the contrary, when obtaining or maintaining a "tool of the trade" necessary to perform a job, including but not limited to an occupational or other license required by federal or State law, is within an individual's control, a work separation that results from the individual's failure to obtain or maintain the tool of the trade is a voluntary leaving. An individual who is allowed to resign in lieu of discharge is considered as having been discharged.

1) Example: The individual is told that he/she will be discharged because of his/her poor attendance. However, in order to avoid having a discharge on his/her record, he/she is allowed to submit a resignation. This separation is not a voluntary leaving because the individual does not have the option to remain employed.

2) Example: The employing unit tells the individual that his/her position on the second shift has been eliminated. However, a position is available to the claimant on the first shift. The individual leaves rather than accept the first shift. This is a voluntary leaving.

3) Example: An individual is involved in an automobile accident, will be unable to work until released by his/her doctor and so advises his/her employer. The employing unit advises the individual that it cannot offer him/her a leave of absence and cannot keep his/her job open. This is a discharge because the employing unit has not given the individual the option of remaining employed.

4) Example: On Day 1, upon returning home from work, an individual is advised by his/her babysitter that, effective immediately, the sitter can no longer watch the individual's two pre-school children. Before work on Day 2, the individual telephones his/her employer to advise it of the situation and says he/she may need a few days to find a new sitter. The employer indicates that he/she must come to work that day or it will consider him/her as having resigned. On Day 3, he/she telephones the employer to advise that he/she has some leads for a new sitter, but will need a few more days. He/she is advised the employer has accepted his/her resignation. The individual was discharged. By presenting the individual with the choice between keeping his/her job and ensuring his/her two preschool children were properly attended, the employer did not provide the individual with the opportunity to remain employed.

5) Example: Upon returning home from work, an individual is advised by his/her babysitter that, effective immediately, the sitter can no longer watch the individual's two pre-school children. Before work the next day, the individual telephones his/her employer to advise it of the situation. The employer acknowledges the importance of finding a sitter with whom the individual is comfortable, indicates the company will work around his/her absence while he/she looks for a sitter and instructs him/her to telephone it at the end of two weeks if he/she still has not found a sitter. Without contacting the employer in the interim, he/she reports to work at the employer's premises one month later. He/she is advised that the employer assumed he/she was no longer interested in the job and hired a replacement, and there is no work available to him/her. The individual left work voluntarily. He/she had the option to remain in contact with his/her employer and thereby preserve the possibility of returning to work but did not avail himself/herself of that option.

6) Example: An individual's job requires that he/she maintain a valid driver's license. After learning that the individual's driver's license has been suspended because of traffic violations, the employing unit instructs the individual that it no longer needs his/her services. The separation is considered a voluntary leave. The individual failed to maintain a tool of his/her trade, in this case, a valid driver's license.

7) Example: An individual is hired with the understanding that he/she must pass a State mandated licensing test within one year of his/her date of hire. The individual takes all of the training courses available to prepare for the test but still fails it on three occasions. The individual is told that his/her services are no longer needed as a result of his/her failure to obtain the required license by the one-year deadline. The resulting separation is not a voluntary leaving because the individual made a reasonable and substantial effort to obtain the required license. Obtaining the license was not within his/her control, and he/she did not have the option to remain employed by the employing unit.

8) Example: Pursuant to the terms of the collective bargaining agreement governing labor-management relations at the individual's workplace, the payment of union dues was a condition of employment. The individual refused to pay the dues, although he/she was financially able to do so. After the individual ignored warnings from the employer that he/she needed to pay the dues, the employer indicated that it was no longer able to employ him/her. The separation was a voluntary leave. The individual had the option of remaining employed by paying the dues, which he/she had the means to do, but failed to avail himself/herself of that option.

9) Example: Rumors of a shutdown circulate within a plant, although the employer has not given any indication that it intends to close the plant or lay off any employees. After hearing the rumors, a worker at the plant quits to begin looking for work elsewhere, indicating he/she is not going to wait around to find out what happens at the plant. The separation was a voluntary leave, since the worker had the option of remaining at the plant.

10) Example: An individual becomes temporarily bed ridden after contracting the flu on a Sunday. When he/she telephones the employer the following day (Monday) to indicate that he/she is unable to go to work, the employer indicates that if he/she is not at work by the next day (Tuesday), he/she will be considered as having resigned. The individual is unable to return to work on Tuesday. When he/she calls the employer on Tuesday to indicate he/she is still unable to go to work, the employer indicates that it has accepted the individual's resignation. The individual was discharged. He/she did not have the option of remaining employed by the employer.

b) An individual has good cause for leaving work when there is a real and substantial reason that would compel a reasonable person who was genuinely desirous of remaining employed to leave work and the individual has made a reasonable effort to resolve the cause of his/her leaving, when such effort is possible.

1) Example: When hired, the individual commuted 5 miles each way to work. The employing unit then relocated its plant to a town over 150 miles from the individual's residence, causing a substantial increase in the individual's commuting costs and commuting time. As a result, the individual leaves his/her job. The individual had good cause for leaving work.

2) Example: An individual retires at the same time a coworker retires, because he/she believes work would not be as enjoyable without the coworker. The individual does not have good cause for leaving the job.

3) Example: An individual's paychecks are repeatedly returned due to insufficient funds, despite the individual's numerous complaints to the employer. Upon having yet another paycheck returned due to insufficient funds, the individual resigns. The individual has good cause for leaving the job.

4) Example: When hired, the individual was able to walk to work from his/her home in 15 minutes. Thereafter, the employing unit relocates to a distance approximately 5 miles from the individual's home, requiring the individual to use public transportation. The commute on public transportation is approximately 45 minutes each way. The individual quits his/her job because of the increase in commuting time. The individual does not have good cause for quitting.

c) To be attributable to an individual's employing unit, his or her reason for leaving work must be within the control of the employing unit. Situations in which the reason for leaving is attributable to the employer include, but are not limited to, situations in which the employing unit has implemented a substantial change in the conditions of employment.

1) Example: The individual relocates to a town over 150 miles from the job site. Because the commute would take more than 2 hours each way, the individual resigns. The individual's reason for leaving is not attributable to the employing unit because the employing unit had no control over where the individual chose to reside.

2) Example: When hired, the individual commuted 5 miles each way to work. The employing unit then relocated its plant to a town over 150 miles from the individual's residence, causing a substantial increase in the individual's commuting costs and commuting time. As a result, the individual leaves his/her job. The reason for his/her leaving is attributable to the employing unit since the employing unit changed the conditions of employment by moving its plant to a location substantially farther from the individual's residence.

3) Example: An individual concludes he/she is not living up to his/her full potential in his/her present job and quits to return to school. The employer has made no changes in the terms or conditions of his/her employment and has not given the individual any reason to suspect any such changes are forthcoming. The individual's reason for leaving is not attributable to the employing unit.

4) Example: An individual quits his/her job to work for a different employer. The employing unit that the individual leaves has made no changes in the terms or conditions of his/her employment and has not given the individual any reason to suspect any such changes are forthcoming. The individual's reason for leaving is not attributable to the employing unit.

5) Example: The employer announces that, as a result of a loss of a major client, hourly wages will be reduced from $15 to $10, whereupon an employee quits. The employee's reason for leaving is attributable to the employer, since the reduction is a substantial change in working conditions. The employee will still have to demonstrate that there was good cause for leaving.

6) Example: An individual quits work because his/her supervisor is demeaning and abusive to him/her, but he/she has not complained to higher management about the supervisor even though the employer has a policy encouraging employees to report abusive supervisors, and higher management is not otherwise aware of the supervisor's conduct. The individual's leaving is not attributable to his/her employer. Since higher management was not aware of the supervisor's conduct, the reason for the individual's leaving was not within the employer's control.

7) Example: An individual assigned to clean an area in the facility where he/she works objects to the odor of the cleaning fluid the employer provides and requests the employer to switch to a fluid the individual considers preferable. The employer denies the request, stating that there is no indication the fluid it uses is unsafe, and no one else has objected to the odor. The individual quits because the request is denied. The type of cleaning fluid used is within the employer's control, so the reason for quitting is attributable to the employer. However, to avoid disqualification, the individual will have to demonstrate he/she had good cause for quitting.

d) Subsection B of Section 601 of the Act [820 ILCS 405/601B] lists situations in which an individual will not be disqualified from receiving unemployment benefits even though he or she has left work voluntarily for a reason that is not necessarily attributable to his or her employer. The following provides examples of some of those situations, but is not an exhaustive list of circumstances, in which subsection B would apply:

1) Example: The individual is employed as a full time bank teller. His/her spouse develops a serious medical condition that requires constant supervision. A friend can watch the claimant's spouse each morning. The individual asks if he/she can work mornings only so that he/she can be home to watch his/her spouse during the afternoon. The employer indicates that it is unable to switch the individual to part time hours. If the claimant leaves work to care for his/her spouse, he/she is not subject to disqualification because his/her case falls within the exception provided at Section 601B(1).

2) Example: The individual works the third shift. The individual's spouse becomes ill and needs 24-hour assistance. The individual is able to obtain county services to care for the spouse during the day, but the only option for nighttime care is prohibitively expensive. The employer indicates that it is unable to move the individual to the first shift. If the individual leaves work to care for his/her spouse, he/she is not subject to disqualification because his/her case falls within the exception set forth in Section 601B(1).

3) Example: The individual is a skilled metalworker. He/she quits his/her job to start his/her own metal working business. For a few weeks, the business is quite successful, and he/she earns over his/her weekly benefit amount in each of at least two weeks. However, after a while, business falls off substantially. He/she files a claim for unemployment insurance benefits. He/she is not subject to disqualification because his/her case falls within the exception provided at Section 601B(2).

4) Example: An individual complains to his/her supervisor about persistent sexual advances by a coworker. The supervisor takes no further action believing the individual can take care of himself/herself. The advances continue causing the individual to quit his/her job. The individual is not subject to disqualification because his/her case will fall within the exception at Section 601B(4) since the employer knew of the harassment and failed to take any action.

5) Example: An individual's ex-boyfriend/girlfriend periodically waits outside his/her job site and threatens him/her when he/she arrives and leaves work. Fearing for his/her safety, he/she stops coming to work, informing the employing unit of his/her reason for leaving and providing the Department with a copy of a letter signed by the individual's social worker, indicating the individual is receiving domestic violence services. His/her case falls within Section 601B(6).

6) Example: An individual who works nights lives with his/her 17-year-old child. His/her child's ex-boyfriend/girlfriend has been harassing the child, repeatedly following the child in public and making threatening telephone calls to the child at his/her home at night. Fearing for the child's safety, the individual quits his/her job to be home at night with the child. He/she informs the employer of his/her reason for quitting and provides the Department with a copy of the police report regarding the threatening calls. His/her case falls within Section 601B(6).

7) Example: An individual's ex-boyfriend/girlfriend periodically waits outside his/her job site and threatens him/her when he/she arrives and leaves work. Fearing for his/her safety, he/she stops coming to work. He/she informs the employer of his/her reason for leaving but fails to provide the Department with any of the evidence enumerated in Section 601B(6) as acceptable proof of domestic violence. His/her case will not fall within Section 601B(6).

8) Example: An individual lives and works in Chicago with his/her spouse. The spouse accepts a new job in Los Angeles, CA, and the individual and his/her spouse both agree they will move to Los Angeles together. The individual leaves his/her job when it is time to move to Los Angeles. The individual is not disqualified for leaving the job. It would be impractical for him/her to commute from Los Angeles to his/her job in Chicago, and his/her case, therefore, falls within Section 601B(7) of the Act.

9) Example: An individual's drive to work from Lincoln to Bloomington took about 45 minutes. The individual moved to Decatur when his/her spouse was transferred to that city. The individual quits his/her job to look for work in Decatur, although there is no reason that he/she could not have continued driving to work in Bloomington as the drive to Bloomington would only have been 15 minutes longer from Decatur. The individual's case does not fall within Section 601B(7) because commuting from Decatur to Bloomington would not be impractical.

10) Example: An individual's commute to work within the City of Chicago by bicycle took about 45 minutes. The individual and his/her spouse move to Skokie, a Chicago suburb, when his/her spouse is transferred to Buffalo Grove, another Chicago suburb. While the individual's commute time by automobile would still be about 45 minutes, the individual refuses to use an automobile even though one is available to him/her. Leaving under these circumstances would not fall within the exception in Section 601B(7) of the Act [820 ILCS 405/601B(7)] because commuting would not be impractical. Bicycling is the individual's personal preference.

(Source: Added at 34 Ill. Reg. 8520, effective June 16, 2010)

Section 2840.125 Early Retirement Or Employment Buyout Packages

a) An individual who accepts his employer's offer of an early retirement or employment buyout package and leaves work according to the terms and conditions of the offer is ineligible under Section 601 of the Act unless, at the time the offer is accepted:

1) the individual knows or reasonably believes that, within the proximate future, his employment will be terminated by the employer under terms and conditions substantially less favorable than the terms and conditions of the offer, or

2) the individual knows or reasonably believes that his employment will continue, in the proximate future, but under terms and conditions substantially less favorable than the terms and conditions of his employment immediately prior to the offer, or

3) the individual knows that a layoff will follow if a sufficient number of employees do not accept the offer of an early retirement or employment buyout package and the individual accepts the offer to avoid the layoff of another employee.

b) The circumstances under which an individual may be found to have the reasonable belief required by subsection (a)(1) or (a)(2) above include but are not limited to circumstances in which the individual seeks but does not receive assurances from the employer that his employment will not in the proximate future be terminated under terms and conditions substantially less favorable than the terms and conditions of the offer or that the terms and conditions of his employment will not in the proximate future become substantially less favorable than the terms and conditions immediately prior to the offer, as the case may be.

1) Example: An employer operates a plant that has consistently earned a profit. The employer offers an early retirement package. There is no indication from the employer that the offer is intended to avert layoffs and there are no rumors to that effect within the plant. An employee at the plant accepts the offer and applies for unemployment benefits after separating from the employer. These facts alone do not establish the reasonable belief required by subsection (a)(1) or (a)(2); the individual is ineligible under Section 601.

2) Example: An employer who operates a plant with 800 employees offers an early retirement plan on October 1 and indicates that, if by December 31 of the same year fewer than 150 employees have accepted the offer, the employer may begin laying off "nonessential" employees in no particular order of seniority, with no benefits. On October 2 of that year an employee at the plant seeks but does not receive assurances from the employer that she is considered "essential," whereupon she accepts the offer. Without other evidence to the contrary, these facts establish the reasonable belief required by subsection (a)(1); the individual is not ineligible under Section 601.

3) Example: An employer who operates a plant with 900 employees announces it intends to downsize by 25 percent and offers an early retirement package on October 15. Rumors circulate through the plant that, if a sufficient number of employees do not accept the offer by the end of the year, layoffs will follow, with no benefits, although the employer has made no announcement to that effect. The employer is aware of the rumors and does not take any action to dispel them. An employee seeks but does not receive assurances from the employer that he would not be laid off. Without other evidence to the contrary, if the employee accepts the offer, these facts establish the reasonable belief required by subsection (a)(1); the employee is not ineligible under Section 601.

4) Example: An employer operates a plant with 1,000 employees. On September 15, the employer offers an early retirement package to its most senior workers. Thereafter, rumors circulate throughout the plant that the employer is considering eliminating and restructuring jobs. In conversation with the employer, a senior employee is assured the employer has no plans to eliminate or restructure his job. However, the employer does observe that, if the next few years are as unprofitable as the current one, everybody's job could be at risk and the employer might not be able to offer early retirement packages as generous as the one now being offered. Troubled by the employer's observation, the employee accepts the offer. These facts alone are not sufficient to establish the reasonable belief required by subsection (a)(1); the employee is ineligible under Section 601. An employer's abstract statement of concern over what the future may bring is too speculative to establish a reasonable belief that the employee's job will be affected in the proximate future.

5) Example: An employer asks for "volunteers" to be laid off, explaining that each volunteer will receive two months of wages and extended health insurance coverage upon separation. The employer indicates that, if 250 volunteers are not found, it will lay off, with no benefits, a number of employees equal to the difference between 250 and the number of volunteers, irrespective of seniority. An employee volunteers after seeking but not receiving assurances from the employer that he would not be laid off. Without other evidence to the contrary, these facts establish the reasonable belief required by subsection (a)(1); the employee is not ineligible under Section 601.

6) Example: On January 2, an employer offers an employee an early retirement package. The offer is effective through April 15 of the same year. There is no indication from the employer that the offer is intended to avert layoffs and there are no rumors to that effect within the workplace. The package would provide the employee with a greater pension than would otherwise have been available to her had she immediately retired and would provide the employee with the same medical benefits that are currently provided to her as a full time employee, including full medical insurance for the employee's sick husband. The employer indicates to the employee that, if she does not accept the offer, the employer will, as of April 16, discontinue medical insurance for the husband. The employee accepts the offer. These facts establish the reasonable belief required by subsection (a)(2); the employee is not ineligible under Section 601.

7) Example: On January 2, an employer offers an employee an early retirement package. The offer is effective through April 15 of the same year. There is no indication from the employer that the offer is intended to avert any layoffs and there are no rumors to that effect within the workplace. The package would provide the employee with a greater pension than would otherwise have been available to her had she immediately retired and would provide full medical insurance for the employee and her sick husband, even though the employer does not currently provide medical insurance for employees, retirees or the families of employees or retirees. There is no indication that the terms and conditions of the employee's employment will change if she does not accept the offer, although by not accepting the offer, she will forego any medical insurance furnished by the employer. The employee accepts the offer. These facts do not establish the reasonable belief required by subsection (a)(2); the employee is ineligible under Section 601.

8) Example: An employer who operates a plant with 1,000 employees asks for "volunteers" to be laid off, explaining that each volunteer will receive two months of wages and extended health insurance coverage upon separation. The employer indicates that, if 250 volunteers are not found, it will lay off, with no benefits, a number of employees equal to the difference between 250 and the number of volunteers. An individual who, because of his seniority, knows he will not be laid off, volunteers to be laid off in place of his son, who has little seniority. According to subsection (a)(3), the individual is not ineligible under Section 601.

c) An individual who accepts his employer's offer of an early retirement or employment buy-out package and leaves work according to the terms and conditions of the offer and is not ineligible under Section 601 of the Act may still be ineligible under other provisions of the Act.

1) Example: An employer announces it intends to downsize by 25 percent and offers an early retirement package which includes a generous pension package financed solely by the employer. Rumors circulate through the plant that, if a sufficient number of employees do not accept the offer by the end of the year, layoffs will follow, with no benefits, although the employer has made no announcement to that effect. The employer is aware of the rumors and does not take any action to dispel them. An employee seeks but does not receive assurances from the employer that he would not be laid off. Without other evidence to the contrary, if the employee accepts the offer, these facts establish the reasonable belief required by subsection (a)(1); the employee is not ineligible under Section 601. However, because the individual's retirement pension is financed solely by the employer, it will be 100% disqualifying income for each week for which the individual qualifies for the pension.

2) Example: An employer announces it intends to downsize by 25 percent and offers an early retirement package. Rumors circulate through the plant that, if a sufficient number of employees do not accept the offer by the end of the year, layoffs will follow, with no benefits, although the employer has made no announcement to that effect. The employer is aware of the rumors and does not take any action to dispel them. An employee seeks but does not receive assurances from the employer that he would not be laid off. Without other evidence to the contrary, if the employee accepts the offer, these facts establish the reasonable belief required by subsection (a)(1); the employee is not ineligible under Section 601. However, the individual decides that he will retire from the labor force and relocate to Florida. This individual will be ineligible for each week during which he is not able to, available for or actively seeking work.

(Source: Adopted at 17 Ill. Reg 17929, effective October 4, 1993)

PART 2865: CLAIMANT'S AVAILABILITY FOR WORK, ABILITY TO WORK
SUBPART A: GENERAL PROVISIONS

Section 2865.1 Definitions

All other terms used in this Part shall have the meaning set forth in definitions, Sections 200 through 247 of the Unemployment Insurance Act (Ill. Rev. Stat. 1991, ch. 48, pars. 310 through 372) [820 ILCS 405/200 through 247], unless the context requires otherwise. Throughout this Part, the use of terms imparting the masculine gender shall also apply to the feminine gender.

"Act" means the Unemployment Insurance Act (Ill. Rev. Stat. 1991, ch. 48, pars. 300 *et seq.*) [820 ILCS 405].

"Agency" means the Department of Employment Security.

"Claimant" means a person who applies for benefits under the Act.

"Customary occupation" means the work in which the individual was last engaged or the occupation for which he is best qualified by training, experience and education.

"Employing unit" shall have the same meaning as that set forth in Section 204 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 314) [820 ILCS 405/204].

"Full-time work" is the number of hours a class of workers would customarily work if the employing unit had all of the work it could handle without working overtime. Except where the contrary is provided by a collective bargaining agreement or company policy, full time work is customarily 40 hours per week. For example, 37.5 hours per week is full time work for Illinois state employees because it is so provided by state personnel policy.

"Local office" means the office of the Agency servicing claimants who live in a specific geographical area.

"Regular employing unit" is either the employing unit for which an individual expects to continue working and to work full time if business warrants it, or any employing unit for which the individual worked full time for nine consecutive weeks during the preceding 52 weeks.

"Temporary help firm" means an employing unit that hires its own employees and assigns them to clients to support or supplement the client's workforce in work situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects.

(Source: Amended at 17 Ill. Reg. 17917, effective October 4, 1993)

Section 2865.50 Union Registration in Satisfaction of Active Search Provisions

a) Upon request, a claimant will satisfy the active search for work provisions of Section 500(C) of the Act by registering for work with a union qualified under Section 2865.55.

   1) A claimant who is unemployed, belongs to the job classification of workers represented by the union and reports periodically (but not less than monthly), as required by the union, to his or her local union placement service, shall meet the work search requirements of Section 500(C) of the Act.

   2) Meeting the requirements set forth in subsection (a)(1) shall not relieve the claimant from satisfying all other requirements of the Act regarding eligibility for benefits, including the additional work search requirements of Section 409(K) of the Act.

b) The Agency shall maintain an updated listing of all unions qualified under Section 2865.55.

c) Any local union certified by the Director before July 1 1986 shall continue to be certified, without further action on its part, so long as it continues to meet the requirements of Section 2865.55(a).

(Source: Amended at 35 Ill. Reg. 6154, effective March 25, 2011)

Section 2865.55 Requirements For Union Local Certification

a) To meet the placement service requirements of Section 2865.50(a)(1), a union local must establish that:

1) It maintains a placement service which is available during all reasonable hours, and is available to Agency personnel for information regarding such workers;

2) It maintains accurate records of a claimant's original registration, referrals to work, refusal of work with reasons therefor, and records of job orders and their status; and,

3) All employers which are contractually bound to that local must fill all of their job openings by first hiring from that local's placement service. In such a situation, that local then controls referral to all the job opportunities in that designated locale in the trade or occupation, as though the users of its placement service personally visited each of these contractually bound employers.

4) In the absence of such contractual obligation, a local may still be approved upon showing that it does, as a practical matter, fill substantially all of the job openings in the designated locale.

b) If a union local fails to maintain any of the above requirements of this Section, it shall lose its certified status until such time as it requalifies under the procedures set forth in Section 2865.60.

c) After being granted certified status, such local shall submit, not more than annually, such information maintained in writing pursuant to Section 2865.55(a)(2) that will show that the union local still meets the requirements of subsection (a).

Section 2865.60 Procedures for Approval as a Certified Union

a) Any union local may seek approval under Section 2865.55 by requesting from the local office or the Adjudication Section of Field Operations a Union Registration and Placement Questionnaire, (Ben-629), which requests the information necessary to insure compliance with the requirements on placement services in Section 2865.55. The form shall be completed and returned to:

Field Operations, Adjudication Section
Illinois Department of Employment Security
33 South State Street – 9th Floor Wabash
Chicago, Illinois 60603

b) If a union local is disapproved, written notice of the reasons for the disapproval shall be provided to the union local. All inquiries for supplementary information, explanations or assistance shall be directed to the Adjudication Section of Field Operations, which shall:

1) Explain the basis for disapproval;

2) Advise the union local regarding any adjustments in record keeping that may be necessary to meet the standards for approval under Section 2865.55(a).

c) If a union local is approved, it shall be advised in writing and added to the listing set forth in Section 2865.50(b).

d) Since disapproval of a union local under subsection (b) does not adversely affect its rights under the Act, there is no right of administrative review within the Agency under the Act. However, if an individual claimant is denied benefits under Section 500 of the Act, the individual, in his appeal under Section 800 of the Act may raise the wrongful disapproval of his or her union local as an issue in an appeal.

(Source: Amended at 35 Ill. Reg. 6154, effective March 25, 2011)

SUBPART B: REGULAR BENEFITS

Section 2865.100 Work Search Requirements For Regular Unemployment Insurance Benefits

a) Unless otherwise instructed, the claimant must establish that he or she is able to work, available for work and actively seeking work during each week for which he or she is claiming benefits.

1) The claimant must register with the Illinois Employment Service unless otherwise instructed by the local office for one of the following reasons:

A) The claimant's unemployment is due to a labor dispute at his or her last employing unit even if the claimant is not involved in the dispute;

B) The claimant's unemployment is due to a temporary lay-off not exceeding 10 weeks in duration;

C) The claimant is a member of a labor union whose placement service has been certified by the Agency under this Part;

D) The claimant is still attached to a regular job but he or she is only partially employed due to a temporary reduction in hours;

E) The claimant is a seasonal worker who is between seasons and has a reasonable expectation of returning to the same job in the next succeeding season. For example, park, golf course and landscape workers would fall within this subsection (a)(1)(E) during a winter shutdown;

F) The claimant is an academic worker, such as a teacher or school administrator, or a non-academic employee, such as a food service worker or school bus driver, who is seeking work at an educational institution or for a company that contracts with an educational institution during a period between academic years or terms;

G) The claimant is a construction worker seeking construction work, whether or not he or she belongs to a union that operates a hiring hall defined in Section 2865.50;

H) The claimant is enrolled and participating in training, whether or not that training is approved under Section 500(C)(5) of the Act;

I) The claimant is a resident of a state that borders Illinois and has filed a claim in this State;

J) The Agency determines that, based on local labor market information, registration with the Illinois Employment Service would not increase the likelihood of the claimant's return to work.

2) The claimant must show that he or she is conducting a thorough, active and reasonable search for appropriate work on his or her own by keeping records of what he or she is doing to find work, including:

A) The names and addresses of the employing units contacted and the names of the specific persons contacted, if possible;

B) The dates, methods and results of the contacts;

C) The types of work that the claimant has been seeking, including wages and hours requested or desired; and

D) Any other information regarding work search efforts.

b) The claimant shall provide the written records required by this Section to the Agency whenever requested, pursuant to Section 2720.112(f) or 2720.115, or, in the event of a Claims Adjudicator's interview, an appeal or a hearing in which work search is an issue. Even if the claimant has been denied benefits, he or she must either file by telephone (see Section 2720.112) or complete and file the Claim Certification (BIS-653) every 2two weeks and meet the eligibility requirements of the Act for each week for which he or she expects payment upon reversal of that denial.

(Source: Amended at 35 Ill. Reg. 6154, effective March 25, 2011)

Section 2865.105 Able To Work

a) An individual is able to work when he is physically and mentally capable of performing work for which he is otherwise qualified.

b) The focus is upon the individual's condition; the employers' willingness to hire him is not relevant.

1) Example: An individual is 60 years old, worked as a warehouseman for 40 years and is physically able to continue doing so. Employers' reluctance to hire him, because of his age, does not render him unable to work.

2) Example: An individual tests positive for tuberculosis, a contagious disease, and, by law, is not permitted to continue working as a school teacher. He applies for jobs as a school teacher. It is the individual's condition, not school districts' unwillingness to hire him, that renders him unable to work.

3) Example: The individual has been discharged from numerous jobs because of repeated absenteeism due to habitual alcohol and drug use. When he reports to his local office, he reeks of alcohol and slurs his words. This individual will be determined to be unable to perform any type of work. It is his condition, not an employer's unwillingness to hire him, that renders him unable to work.

c) The focus is upon any work for which the individual is qualified, not limited to his or her usual or most recent job.

Example: An individual, who is 7 months pregnant, quits her job as an assembler because the job is strenuous and requires her to be constantly on her feet. She applies for desk work as a telephone receptionist, a job for which she is qualified. She would be determined to be able to work.

d) The best evidence that an individual with a disability is able to work in a particular occupation is that he has actually performed such work.

Example: An individual has cerebral palsy, which impairs his bodily functions and reduces his work output. However, he has training and experience as a computer operator and has shown that he is capable, within his physical limitations, of performing such work. He would be determined to be able to work.

(Source: Added at 14 Ill. Reg. 18466, effective November 5, 1990)

Section 2865.110 Available For Work

a) An individual is available for work - even if he imposes conditions upon the acceptance of work - unless a condition so narrows opportunities that he has no reasonable prospect of securing work.

Example: An individual who lives in a remote, rural area limits his availability to jobs within walking distance of his home. If few jobs for which he is qualified are located within walking distance of his home, it could be found that he has no reasonable prospects of securing such work and, therefore, would not be available for work.

b) If domestic circumstances prevent an individual from working during the normal days and hours that exist in his occupation (or other work for which he is qualified), he is unavailable for work.

1) Example: An individual, who was employed as a security guard, has children who require full-time care. The individual is able to obtain child care during evenings only, leaving him free to work nights only. Because there is a labor market for night-shift security guards, he would be determined to be available for work.

2) Example: An individual and her husband obtain a divorce, and she is awarded custody of their children. She then quits her job as a hospital respiratory therapist because she is required to work rotating shifts and be on emergency call and because she wishes to spend all nights and weekends with her children. She states that she still applies for work as a respiratory therapist, but has had to eliminate from her list most hospitals because they will not guarantee day-shift work, the only time for which she will arrange child care. She would be determined to be unavailable for work.

3) Example: When the individual is laid off from her job as a bank teller, she, in turn, lays off her babysitter, who is not needed so long as the individual is at home. She states that, if she is offered a job, she will rehire her babysitter. Despite the fact that she currently has no babysitter, this individual would be determined to be available for work.

c) If the individual demands a wage that is unreasonable and, thereby, prices himself out of the labor market, he is unavailable for work. Whether a wage demand is unreasonable is determined by factors including, but not limited to: the individual's prior wages and qualifications, the prevailing wage, labor laws, union agreements, and the length of unemployment; generally, the individual must lower his wage demand the longer he is unemployed.

1) Example: An individual worked for 25 years as a bookkeeper for a small but prosperous business that was eventually bought out. She last earned $600 per week. Upon re-entering the labor market, she discovers that her wage demand - inflated by her many years of service - is much greater than that most employers are willing to pay. In the early weeks of unemployment, she may seek work paying $600 per week, based upon her prior wages and her qualifications. In ensuing weeks, she must lower her wage expectations. As her unemployment approaches 26 weeks (or the time when an "extended benefits" period might begin), she must further lower her wage expectations. If, as time goes by, she adapts her wage expectations to meet market conditions, she would be determined to be available for work.

2) Example: The individual is a union electrician. After 20 weeks of unemployment, he still insists upon the wage he was last paid, which is union scale. He explains that the union has agreements affecting a substantial percentage of the jobs in his locality and, were he to accept a job paying below union scale, he would be disciplined by being denied future job opportunities. His insistence upon union scale is not unreasonable. However, if he is seeking work in another locality, where his union is not active, his wage demand with respect to that locality is unreasonable.

3) Example: The individual worked as a fast food counter clerk, earning $0.50 above minimum wage. During the first weeks of unemployment, he sought work paying that same wage. For the next few weeks, he sought work paying minimum wage. Even though he has now been unemployed for 25 weeks, he has not reduced his wage expectation any further. This is not unreasonable: to require him to seek work paying less than minimum wage would violate minimum wage laws.

d) If there are no work opportunities that an individual can reach from his home, he is unavailable for work. If the individual unreasonably restricts the distance or time he will travel to work, he is unavailable for work. Reasonableness is determined by factors including, but not limited to: where work opportunities are located, the customs of workers similarly situated (as to location or occupation), the types and costs of transportation, physical capabilities, and the length of unemployment; generally, an individual is expected to extend the area in which he will seek work the longer he is unemployed. Generally, in metropolitan areas, 1 1/2 hours, each way, is not an unreasonable travel time.

1) Example: An individual owns no car, and there is no public transportation near his home. He used to obtain work through a temporary help service that transported him to clients' job sites. He no longer works as a temporary. He states that he will work for any employer, provided it will furnish transportation to the job. He would be determined to be unavailable for work since the majority of employers do not furnish transportation for their employees.

2) Example: The individual resides in a suburb 30 miles northwest of downtown Chicago. He was last employed as an attorney, working in a small practice in that suburb, where his travel time to work was 10 minutes. In the first weeks of unemployment, he unsuccessfully sought work in his community and neighboring suburbs. Although he has now been unemployed for 2 months, he still does not seek work in downtown Chicago, to which most attorneys commute, because rush hour travel time would be nearly 1 1/2 hours each way. He would be determined to be unavailable for work, because he has not extended the area in which he will seek work, commuting to downtown Chicago is customary for workers in his occupation, and 1 1/2 hours travel time is not unreasonable.

3) Example: Although the individual is mentally retarded, she is capable of working in certain unskilled occupations. At her last job, she swept floors in a local drug store. Her father testifies that she must work within walking distance of home, because, if she rides public transportation, she becomes confused and lost. In this case, the individual's restriction upon distance to work is reasonable, provided that work opportunities continue to exist within walking distance of her home, in which case she will be determined to be available for work.

e) If an individual's personal habits are inconsistent with the type of work he or she is seeking, he or she is unavailable for work.

Example: The individual, a punch press operator, was discharged because she would not cut her waist-length hair or wear a hair net or remove oversized rings she wore on her fingers; her hair and rings are considered safety hazards. She states that she is seeking work as a punch press operator, but that she will not work for any employer who requires her to cut her hair or wear a hair net or remove her rings. She would be determined to be unavailable for work.

f) An individual shall not be held unavailable for work on the basis of refusing to consider particular work that he honestly believes would violate sincere religious or moral convictions. However, an individual shall be held unavailable if his convictions eliminate virtually all of the labor market.

Example: For many years, an individual was a hot dog vendor, working in sports stadiums on Saturdays and Sundays. The individual states that he will no longer work in the food service industry, nor will he work on Sunday. He explains that he has recently married and that his wife has introduced him to religion. Among the tenets of his religion are strict dietary laws, forbidding even handling of many commonplace foods; also, Sunday is prescribed as a day of rest. If it is determined that his religious convictions are sincere, he would not be held unavailable for work solely on the basis of refusing to consider food service or Sunday work, even though these may have been suitable previously. Still, he must demonstrate that he is available for other types of work at other times.

g) If the individual is self-employed, availability depends upon the nature and extent of that self-employment; whether the individual's investment of time or capital prevents him from accepting other work in the labor market.

Example: The individual worked as a secretary in a real estate agency. When she was laid off, she grew depressed, until she watched a cable television show. The host explained how to buy property without making down payments and how to enhance cash-flow. It sounded so easy that she immediately rearranged the den in her house to serve as an office. In the morning, she would read newspapers and make telephone calls. She went to foreclosure sales and auctions. Most afternoons and evenings, she would inspect properties. She also applied for jobs in her usual occupation, secretary. This individual would be determined available for work, if the trier of fact finds that she had not yet made a substantial commitment to her own business. If, however, she had purchased properties, and was involved in the management of those properties to the extent that it would conflict with normal working hours, she would be determined to be unavailable for work.

h) Whether a seasonal worker is available for work during the off-season is determined by whether there is some prospect of obtaining work in his customary occupation. If there is no prospect of obtaining such work, the individual must seek other work for which he is qualified.

Example: The individual is a golf course maintenance man. The courses at which he works are open from April through October. He has never been employed during the off-season. On his certification form, for weeks in

January, he indicates that he is seeking work in the field of lawn care and maintenance, for which there are no prospects of work. He would be determined unavailable for work.

i) Whenever an individual appears to be imposing a condition upon his acceptance of work, it is essential to establish whether he is merely expressing a preference as opposed to actually imposing a condition.

Example: The individual last earned $4.50 per hour, the prevailing wage in her occupation. On a questionnaire, she writes that she will accept $6 per hour, for similar work. On a claim certification form - applicable to the same weeks as the questionnaire - she lists job contacts, for work paying closer to $4.50 than $6. This might indicate that $6 was a preference, not a condition. Therefore, she would be determined to be available for work.

j) The best evidence that an individual is "available for work" is that he readily secures work, despite the imposition of a condition.

Example: The individual is laid off from her job in an occupation that ordinarily provides daytime work only. She files a claim for benefits, and, on an initial questionnaire, she writes that she will work nights only, because her child care arrangements have changed. That week, she makes employer contacts for night-shift work. As a result of that work search, she readily secures work beginning the next week. She will be determined to be available for work for the prior week.

(Source: Added at 14 Ill. Reg. 18466, effective November 5, 1990)

Section 2865.115 Actively Seeking Work

a) An individual is actively seeking work when he makes an effort that is reasonably calculated to return him to the labor force. Reasonableness is determined by factors including, but not limited to: the individual's physical and mental abilities, his training and experience, the employment opportunities in the area, the length of unemployment, and the nature and number of work search efforts in light of the customary means of obtaining work in the occupation.

b) An individual is not actively seeking work if he seeks work that is unrealistic in light of his physical or mental limitations.

Example: The individual, seven months pregnant, quit her job as an assembler because it was strenuous and required her to be constantly on her feet. She applies for work at a factory, as an assembler, under conditions essentially the same as those of her last job. She would be determined to be not actively seeking work.

c) The individual is not actively seeking work if he seeks work that is unrealistic in light of his training or experience.

Example: The individual has always wanted to be a real estate agent; this requires a license he does not possess. To the extent that he only seeks work as a real estate agent, he would be determined to be not actively seeking work.

d) Whether an individual is actively seeking work is determined in part by comparing his occupation with labor market conditions in the locality. In some cases, an application for work can have a continuing effect.

Example: The individual is a waitress, just laid off by one of three restaurants in her community. During her first two weeks of unemployment, she applies for work at the other two restaurants and awaits the results of her efforts. She would be determined to be actively seeking work for that period.

e) As the period of unemployment lengthens, the individual should intensify his efforts to find work in his usual occupation, or, he should pursue work in another occupation for which he is qualified.

1) Example: After being laid off from his job as a parking lot attendant, the individual sought similar work at other parking lots within his community, without success. As time passes, he must seek work outside his community (within reasonable commuting distance).

2) Example: Same facts as in example above but, prior to working as a parking lot attendant, the individual worked as a short-order cook. In addition to, or instead of, seeking work as a parking lot attendant, he should seek work as a short-order cook, or other work for which he is qualified; otherwise, he would be determined to be not actively seeking work.

f) Whether or not the individual is actively seeking work is determined by the quality of his efforts; although the quantity of job contacts should be considered, it is not necessarily determinative of an active search for work. The methods that the individual uses to contact employers should be examined in light of those customarily used to obtain work in the occupation.

1) Example: The individual seeks work as a retail sales clerk. On a Monday morning, she visits a shopping mall, where she applies for work at seven stores and is rejected by each. For the rest of the week, she makes no effort to find work. This individual would be determined to be not actively seeking work, despite having made seven job contacts in one day.

2) Example: The individual, a cash-flow specialist, last worked for a major corporation, and was directly accountable to the highest corporate officers. After being unemployed for one month, she contacts a friend who works for a company located in Woonsocket, Rhode Island. On Monday, the claimant travels to Woonsocket. On Tuesday, she begins the interviewing process, meeting the manager of human resources. On Wednesday morning, she is interviewed by a budget analyst. That evening, there is a dinner-interview with two vice-presidents, who tell her they will speak with the president, then get back to her the next day or the day after. The claimant stays in Woonsocket until Friday, at which time she is told she will not be offered a job. The claimant would be determined to have been actively seeking work, despite this being her only job contact.

3) Example: The individual states that he is currently seeking work as a day laborer or in food service. He contacts prospective employers by telephone, exclusively. Because, as a practical matter, many day laborer and food service positions are filled by persons making applications in-person, this individual would be determined to be not actively seeking work.

g) The best evidence that an individual is "actively seeking work" is that he readily secures work, based upon his efforts.

Example: The individual last worked as assistant manager of a shoe store. During his first week of unemployment, he prepares a resume and mails 100 copies to retail establishments. The next week, he mails another 100 resumes. As a result of his mailings, and no other efforts, he readily obtains work. This individual would be determined to have been actively seeking work during the weeks under review.

h) There is a rebuttable presumption that an individual is not actively seeking work if he was last employed by a "temporary help firm," as defined in Section 2865.1, and the temporary help firm submits a notice of possible ineligibility (see Section 2720.130) alleging that, during the week for which he claimed benefits, the individual did not contact the temporary help firm for an assignment. The presumption is rebutted if the individual shows that he did contact the temporary help firm or that he had good cause for his failure to contact the temporary help firm for an assignment.

1) Example: An individual completes an assignment on Friday and does not contact the temporary help firm during the next week, for which he claims benefits. The individual states that he did not contact the temporary help firm because he did not remember the firm's telephone number, even though the number was listed in the telephone book. This is not good cause. On the basis of his failure to contact the temporary help firm, he is not actively seeking work.

2) Example: An individual completes an assignment on Monday, reports to his Local Office on Tuesday, and does not contact the temporary help firm the remainder of the week. The individual did not contact the temporary help firm because he had already accepted an assignment from the temporary help firm for the following Monday and had been told by the temporary help firm that there were no other assignments until then. This is good cause and he is not ineligible on the basis of not contacting the temporary help firm.

3) Example: An individual completes an assignment on Friday and does not contact the temporary help firm during the next week, for which he claims benefits. The individual did not contact the temporary help firm because his wife was hospitalized and he was solely responsible for caring for his infant daughter at home. Although this is good cause, the claimant is ineligible because he is unavailable for work (see Section 2865.110(b)).

(Source: Amended at 17 Ill. Reg. 17917, effective October 4, 1993)

Section 2865.120 Suitability Of Work - Labor Standards

a) An individual must be able to, available for, and actively seeking "suitable" work.

b) Whether work is suitable for the individual is determined by factors including, but not limited to, those set forth in Section 603 of the Act (including its references to labor standards under Section 3304(a)(5) of the Federal Unemployment Tax Act).

(Source: Added at 14 Ill. Reg. 18466, effective November 5, 1990)

Section 2865.125 Availability For Part-Time Work Only

The requirement that a claimant shall be able and available for full-time work shall not be applied to a claimant who can prove by a preponderance of the evidence that for him only part-time work, defined in Section 2720.1, is suitable because:

a) He restricts his availability to part-time work due to:

1) Circumstances which are beyond his own control, such as, the advice of his physician that full-time work would adversely affect his health; or,

2) The kind of work suitable to his skill, training or experience is available only on a part-time basis, and he is not reasonably qualified for available full-time work; and,

b) He is seeking work in an area where a labor market for the part-time work applicable to him and suitable to his skill, training or experience normally exists; and,

c) He has a reasonable possibility of securing that part-time work suitable to his skill, training or experience.

Example: The claimant is the single parent of a school age child. While otherwise suitable, full-time work exists for a person with his skill, training or experience, the claimant believes that it is in the best interest of his child that he be with the child when the child is not in school. This claimant would not be eligible for benefits, for he unduly restricts his availability to part-time work based on a personal preference. The alternative of child care arrangements would allow this claimant to work full-time.

(Source: Added at 14 Ill. Reg. 18466, effective November 5, 1990)

Section 2865.130 Director's Approval of Training

Section 500(C)(5) of the Act provides that *an individual shall not be deemed unavailable for work or to have failed actively to seek work with respect to any week, because he is enrolled in and is in regular attendance at a training course approved for him by the Director*.

a) The following criteria must be satisfied in order for a training course to be approved for an individual by the Director:

1) The training course shall relate to an occupation or skill for which there are, or are expected to be in the immediate future, reasonable work opportunities in the locality. This means that:

A) The training course must be vocational or provide the individual with skills essential for the performance of work in a specific occupation; and

Example: The Director shall not approve classes designed solely to provide an individual with a high school equivalency diploma since this would not enhance opportunities in a specific occupation. However, the Director shall approve courses of study that include some purely academic courses if that course work is secondary to the vocational aspects.

B) The course must be designed to facilitate the individual's reemployment in a reasonably expeditious manner; however, the Director shall not approve courses of study of more than one year in duration unless the course is approved under 56 Ill. Adm. Code 2620; and

C) The course must focus on providing the individual with the competency necessary for securing entry level employment in the selected occupation; and

Example: The Director shall not approve training for the purpose of allowing an individual to improve his marketability, i.e., a bookkeeper who wishes to become an accountant. If there exists a reasonable job market for bookkeepers in the individual's locality, the Director will not approve training that enhances the claimant's already marketable skills.

D) The course must consist of at least 12 hours per week of instruction from a competent and reliable training agent. This minimum of 12 hours of instruction must include contact between the student and the instructor. The contact could result from classroom training, laboratory instruction or tutoring.

2) The training course must be offered by a competent and reliable agency, educational institution or employing unit.

3) Work opportunities for which the individual is qualified by training and experience are limited or do not exist in the individual's locality.

Example: If the individual is a trained and certified nurse's aide, the Director shall not approve training to become a registered nurse if reasonable openings exist in the individual's locality for nurse's aides, even if the individual is dissatisfied with her present occupation.

4) The individual has the qualifications and aptitude to complete the course successfully.

5) The enrollee is not a recipient nor eligible for subsistence payments or similar assistance under any public or private retraining program.

b) Notwithstanding subsection (a), a training course is approved for an individual by the Director for the purposes of Section 500(C) of the Act if:

1) both the training course and the individual's participation in the training course are approved under Title I of the federal Workforce Investment Act (29 USC 2801-12945)by a One Stop Delivery System (see 20 CFR 662.100); and

2) the course is part of a program authorized pursuant to the Workforce Investment Act or other federal legislation establishing an employment and training program; and

3) the criteria on the basis of which a One Stop Delivery System approves the course under Title I of the Workforce Investment Act include criteria consistent with Section 500(C)(5)(a)(2) and (3) of the Act; and

4) the criteria on the basis of which a One Stop Delivery System approves an individual's participation under Title I of the Workforce Investment Act in the course include criteria consistent with Section 500(C)(5)(a)(1) and (2) of the Act; and

5) the course is not disapproved by reason of Section 500(C)(5)(a)(5) of the Act.

(Source: Amended at 29 Ill. Reg. 1927, effective January 24, 2005)

Section 2865.135 Availability For Work And Active Search For Work: Attendance At Training Courses

a) An individual enrolled and in regular attendance at a training course approved by the Director shall not be required to make an active job search or to be available for work. This exemption applies to individuals applying for both regular and extended benefits.

b) In addition, an individual shall not be deemed to have been unavailable for work or to have failed actively to seek work for regular or extended benefits purposes with respect to any week because he is in training approved under Section 236(a)(1) of the Federal Trade Act of 1974 (19 U.S.C. 2296(a)(1)), as provided at Section 500C(6) of the Act.

(Source: Added at 14 Ill. Reg. 18466, effective November 5, 1990)

Section 2865.140 Regular Attendance In Approved Training

For the purposes of Section 2865.135, "in regular attendance" means that the individual has attended every scheduled session of the training course approved for him by the Director, and presents an attendance report from a responsible person connected with the training course. If the individual misses any scheduled class session on a particular day, the individual shall be deemed to have failed to meet the requirements of Section 500C of the Act with respect to that day.

Example: An individual in Director approved training is scheduled to attend 2 training sessions daily from Monday through Friday until the course is completed. The individual misses one session on Wednesday because of illness. This individual shall be deemed to have failed to meet the requirements of being "in regular attendance" on Wednesday, and the individual's weekly benefit amount shall be reduced by one-fifth for that week.

(Source: Added at 14 Ill. Reg. 18466, effective November 5, 1990)

Section 2865.145 Ineligibility To Receive Benefits For Failure To Participate In Reemployment Services

a) Unless no longer obligated to participate pursuant to Section 2865.150(e), an individual who is referred by the Department pursuant to Section 2865.150 to reemployment services and is determined by the claims adjudicator to have failed without justifiable cause, as defined in subsection (c), to participate in such services shall be ineligible for benefits for the week in which he fails to participate in the scheduled services.

Example: In the fourth week of his benefit year, an individual is issued his first payment of regular benefits. Notice of referral to reemployment services is sent to him during the fifth week of the benefit year, indicating he is scheduled for an orientation meeting to take place in the sixth week of the benefit year. He fails, without justifiable cause, to report to the orientation meeting. The individual will be ineligible for benefits for the sixth week of his benefit year.

b) Subsection (a) shall not apply if the individual has completed substantially similar reemployment services or he is participating in substantially similar services.

c) There is justifiable cause for an individual's failure to participate in reemployment services if the individual is acting as a reasonable person would act under the circumstances, taking into account the fact that the individual has been identified as likely to exhaust regular benefits and need job search assistance.

1) Example: An individual who has been referred to reemployment services pursuant to Section 2865.150 fails to report for his scheduled orientation meeting with the reemployment service provider because the individual has a job interview scheduled for the same time. The individual has justifiable cause for failing to report for the meeting. A reasonable person in this situation could be expected to prefer the immediate job opportunity over reemployment services.

2) Example: An individual who has been referred to reemployment services pursuant to Section 2865.150 fails to report for his scheduled reemployment service orientation meeting because he forgot about the meeting. When he becomes aware he has forgotten the meeting, he requests that the meeting be rescheduled. He fails to report for the rescheduled meeting because he again forgot about the meeting. The repeated failure to include the meeting in his schedule does not reflect the behavior of a reasonable person under the circumstances. On the basis of these facts alone, there would not be justifiable cause for the individual's failure to participate in the rescheduled meeting.

3) Example: An individual who has been referred to reemployment services pursuant to Section 2865.150 fails to report for his scheduled reemployment service orientation meeting. During the week for which the meeting was scheduled, however, the individual is enrolled in and in regular attendance at a training course approved for him by the Director under Section 500C of the Act. A reasonable person in this situation could be expected to prefer the training program over reemployment services.
4) Example: An individual who has been referred to reemployment services pursuant to Section 2865.150 fails to report to his scheduled reemployment service orientation meeting because he is attending GED classes at the same time. The individual has justifiable cause for failing to report for the meeting. A reasonable person in this situation could be expected to attend the GED classes.

d) The individual's obligation to participate in reemployment services to which he is referred pursuant to Section 2865.150 is in addition to the individual's other obligations under the Act.

e) Issues arising under this Section concerning an individual's eligibility for regular benefits shall be adjudicated and notice of such issues provided in the same manner and subject to the same procedures as all the other issues concerning eligibility for regular benefits, except issues arising under Section 604 of the Act.

(Source: Added at 19 Ill. Reg. 6555, effective April 28, 1955, 1995)

Section 2865.150 Profiling/Referral To Reemployment Services

a) To determine the likelihood that the individual will exhaust regular benefits and will need job search assistance, the Department will profile each individual who files an initial claim for regular benefits. Each claimant profile will be based on information contained in the claimant's initial combined application for regular benefits and Job Service registration.

1) Except as otherwise provided in subsection (a)(2), as part of the profiling process, the Department will assign each individual an exhaustion probability score, which measures the likelihood that the individual will exhaust regular benefits and need job search assistance. The score will be calculated according to a statistical model developed by the Department based on criteria approved by the United States Department of Labor including industry or occupation.

2) No exhaustion probability score will be assigned an individual if he:

A) has not been issued his first payment of regular benefits by the fourth week following the week in which he files his initial claim for regular benefits, or

B) satisfies the union hiring hall procedures set forth in Section 2865.50, or

C) has a definite date of recall to work, or

D) is unemployed as the result of a labor dispute, or

E) has left work voluntarily.

b) Each claimant who is assigned an exhaustion probability score shall be entered by the Department into a selection pool for the substate area in which the individual resides or a subdivision of that area where the Substate grantee for the area has established subdivisions. The Substate grantee will each week select individuals in the selection pool for referral to available reemployment services in descending order of their exhaustion probability scores. Where two or more individuals in a selection pool have the same score and reemployment services are not available for all of them, the Substate grantee will select for referral a number of them equal to the number of individuals for whom reemployment services are available, selecting the individuals whose initial applications for regular benefits have the earlier filing dates. Where two or more individuals in a selection pool have the same score and filed their initial applications for regular benefits on the same date and reemployment services are not available for all of them, the Substate grantee will randomly select for referral a number of them equal to the number of individuals for whom reemployment services are available. Whenever the availability of certain reemployment services is lawfully limited to individuals meeting specific characteristics, such as where the services are offered through a program established pursuant to Section 141(d)(2) of the Job Training Partnership Act or are offered as part of an effort to assist in the

location or expansion of an employer within the State, selections for referral to the services will be made as though individuals in the selection pool who do not meet those characteristics were not in the selection pool.

c) The reemployment services to which an individual is referred pursuant to this Section will in all instances include an orientation meeting with an entity providing reemployment services within the substate area in which the individual resides. Following the orientation meeting, reemployment services may also include: assessments; counseling; job placement services and referrals to employers; job search work shops or job clubs; and referral to more intensive services, such as training. Where an individual is initially referred by the Department to a reemployment service orientation meeting and then scheduled for reemployment services by an entity providing such services on behalf of the Substate grantee that initially selected the individual for referral, the individual is considered as having been referred to the reemployment services by the Department, except where the entity indicates participation in the reemployment services is optional.

d) The Department will send each individual selected for referral to reemployment services a referral notice, which will include a statement regarding the obligation to participate in reemployment services and the potential consequences of failing to participate in the services, as well as all information necessary for the individual to report to the orientation meeting.

e) The Department will remove from the selection pool any individual who, within four weeks after the week in which he is issued his first payment of regular benefits, is not sent a notice of referral to reemployment services. After being removed from the selection pool, an individual may still be referred to reemployment services, but he shall no longer be obligated to participate in reemployment services.

f) For the purposes of this Section, "substate area" refers to an area established by the Governor pursuant to Section 312 of the Job Training Partnership Act; "Substate grantee" refers to the entity designated as such for a substate area pursuant to that Section.

(Source: Added at 19 Ill. Reg. 6555, effective April 28, 1995)

SUBPART C: EXTENDED BENEFITS

Section 2865.205 Applicability Of Rules For Eligibility For Regular Benefits

Except where inconsistent with Section 409 of the Act or with this Subpart, all of the provisions of the Act and the rules adopted thereunder shall be applicable to eligibility for extended benefits.

a) Example: A claim for extended benefits shall be filed in the same manner and in the same location as one would file for regular benefits.

b) Example: If an individual, who meets all of the other requirements for receipt of extended benefits, is discharged from a job, he would be subject to the ineligibility provisions of Section 602 of the Act if it is determined that the discharge was for misconduct connected with his work.

c) Example: An individual demands a wage that is unreasonable. He is unavailable for work pursuant to Section 2865.110(c) of this Part and would, therefore, be subject to the ineligibility provisions of Section 500C of the Act since neither is inconsistent with Section 409 of the Act. Therefore, this individual would be ineligible for extended benefits even if he meets the other requirements for receipt of such benefits.

(Source: Added at 14 Ill. Reg. 18466, Effective November 5, 1990)

Section 2865.210 Systematic And Sustained Search For Work

a) An individual shall be deemed to have made a systematic and sustained search for work if he can present the tangible evidence, described in subsection (b), to the local unemployment office that he was engaged in such an effort to find work during a week of unemployment.

b) The tangible evidence required by subsection (a) shall consist of, but not be limited to, all of the following:

1) A showing that the individual persistently reviewed the newspaper advertisements for work and made an effort to contact the employers placing the advertisements, on each working day during every week for which he is applying for extended benefits;

2) A showing that the individual actually made significant (at least five per week) personal contacts with prospective employers and applied for work on at least three working days during each week for which he is applying for extended benefits;

3) A showing that he had been frequently contacting his union hall for information regarding work prospects, if applicable; and

4) Registration with the State Job Service.

c) If the failure to make a showing of sustained and systematic job search on a particular day or days by the means indicated in subsection (b) is due to attending interviews, taking tests and/or physical examinations or commuting from one place to another to search for work or engaging in any other similar undertaking, he shall not be determined to have failed to meet the requirements of subsection (a) for that particular day or days.

d) This Section shall not apply to weeks beginning on or after March 7, 1993 and before January 1, 1995.

(Source: Amended at 17 Ill. Reg. 17917, effective October 4, 1993)

Section 2865.215 When An Individual's Prospects For Finding Work Shall Be Deemed To Be Good

a) An individual filing for extended benefits who has a definite date to return to work for a former employer or who has a bona fide offer of work to begin within four weeks shall be classified as having good prospects for returning to work in his customary occupation. This means that should this individual refuse an offer of work, such refusal shall be adjudicated pursuant to Section 603 of the Act, and Section 409K(3)(d)(iii) shall not apply to this individual.

b) Whether an individual's prospects of finding work in his customary occupation are good shall be determined at the time that he files his initial claim for extended benefits. However, such classification shall be included in any determination of refusal of work under Section 409K(3)(d) of the Act, and at that time, shall be subject to review.

Example: An individual files a claim for extended benefits and reports that he will return to his former employer on March 31. He does not return to work for his former employer on March 31 and then refuses an offer of work on April 14. This refusal of work shall be adjudicated in accordance with the provisions of Section 409K(3)(d) because the individual's prospects of returning to his customary occupation were not good because he did not return to work for his former employer as scheduled.

c) If the claimant does not start work on the designated date, then his prospects of finding work in his customary occupation shall no longer be considered good.

d) The individual must provide the name, address and starting date of employment for any employer whom the individual claims as a basis for having his prospects of finding work in his customary occupation found to be good.

e) An individual can also show that his prospects of finding work in his customary occupation are good by showing that he was recently employed in his customary occupation, that he recently completed training in that occupation or that new opportunities for employment in his customary occupation recently became available.

f) This Section shall not apply to weeks beginning on or after March 7, 1993 and before January 1, 1995.

(Source: Amended at 17 Ill. Reg. 17917, effective October 4, 1993)

PART 2875: SUPPLEMENTAL FEDERAL BENEFITS (Repealed)

(Source: Repealed at 15 Ill. Reg. 10414, effective June 27, 1991)

SUBCHAPTER g: INELIGIBILITY FOR BENEFITS

PART 2905: ALIEN STATUS
SUBPART A: GENERAL PROVISIONS

Section 2905.1 Unemployment Benefits To Aliens

An alien can establish monetary eligibility (see 56 Ill. Adm. Code 2720.1) to receive unemployment insurance benefits only to the extent and on the basis of wages that he earned during his base period while he was lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law, as provided in 56 Ill. Adm. Code 2905.10 or 2905.15, as the case may be.

Example: An individual illegally enters the United States in 1981 and begins work at that time. He applies for and is granted permanent residence status as of May 1, 1988. Only those wages that this individual earns on or after May 1, 1988, may be used to establish his monetary eligibility for benefits.

(Source: Amended at 13 Ill. Reg. 11502, effective June 29, 1989)

Section 2905.5 Definitions

For the purposes of 56 Ill. Adm. Code 2905, the terms hereunder shall be defined as follows:

a) "Alien" means any person not a citizen or national of the United States as provided in Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

b) "Immigrant" is an alien who has been accorded by the United States the privilege of entering the country for permanent residence and of becoming a citizen of the United States under the conditions provided in the Immigration and Nationality Act.

Section 2905.10 When Is An Alien Lawfully Admitted For Permanent Residence

An alien is considered lawfully admitted for permanent residence in the United States if he is given the status of an immigrant; provided, however, that the Canadians and Mexicans who are allowed to enter the United States for daily or seasonal work shall likewise be considered as lawfully admitted for permanent residence.

Section 2905.15 Permanent Residence Under Color Of Law

a) An alien is considered permanently residing in the United States under color of law if his presence in this country is presumptively legal because:

1) He has entered the United States prior to June 30, 1906; or,

2) He is presumed lawfully admitted under an erroneous name or due to other error in accordance with 8 C.F.R. 101.2 (January 1, 1988), no later amendments or editions are included; or

3) He has been given "refugee" or "asylee" status by the United States Attorney General pursuant to Section 207 or Section 208, respectively, of the Immigration and Nationality Act (8 U.S.C. 1157 and 1158); or,

4) He has been given parole into the United States by the United States Attorney General pursuant to Section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182).

b) The mere fact that a particular individual, group or class of individuals is temporarily not subject to deportation does not mean that the individual or members of that group or class are permanently residing in the United States under color of law. In such circumstances, in order to establish that he is permanently residing in the United States under color of law, the individual or group or class member must show that the Immigration and Naturalization Service (INS) has provided written notification that he may remain in the United States for an indefinite period of time.

(Source: Amended at 13 Ill. Reg. 11502, effective June 29, 1989)

Section 2905.20 Evidence Of Eligibility

A claimant who indicates in his claim for benefits that he is an alien must produce evidence that he is not ineligible under the provisions of 56 Ill. Adm. Code 2905.25. The presentation of a valid U.S. INS Form I-151, commonly known as the "green card", or other similar documents issued by the Immigration and Naturalization Service, will be sufficient for a finding that the alien is eligible under Section 614 of the Unemployment Insurance Act and 56 Ill. Adm. Code 2905.5. Without the presentation of these documents, the burden of coming forth with evidence of eligibility is upon the alien. Documents tending to show eligibility for benefits under this Section may be submitted for verification or clarification to the Immigration and Naturalization Service or any other appropriate office; however, benefits shall not be withheld pending such verification unless the claimant admits that he is not legally in the United States or unless the documents appear to be altered.

Section 2905.25 Ineligibility On The Basis Of Alienage (Repealed)

(Source: Repealed at 13 Ill. Reg. 11502, effective June 29, 1989)

Section 2905.30 Information Regarding Claimants' Status

Any data or information required under 56 Ill. Adm. Code 2905 shall be requested or utilized by the Director without regard to the ethnic, racial or linguistic characteristics of the claimant.

Section 2905.35 Evidence Of Ineligibility Because Of Alienage

When a determination is made that a claimant is not entitled to unemployment benefits because he does not meet the requirements provided in Section 614 of the Unemployment Insurance Act, and 56 Ill. Adm. Code 2905.5, such determination must be supported by a preponderance of the evidence.

Section 2905.40 Legal Authorization To Work

In order to be eligible to receive benefits, an individual must be available to work (Section 500C of the Act, Ill. Rev. Stat. 1987, ch. 48, par. 420C). In order to meet this availability requirement, an alien must be legally authorized to work in the United States. An alien without current authorization to work from the Immigration and Naturalization Service (INS) or who is not in a status which automatically permits the alien to work, is not legally available for work and not eligible for benefits, even if the alien meets the monetary eligibility requirements of Section 500E of the Act (Ill. Rev. Stat. 1987, ch. 48, par. 420E).

(Source: Added at 13 Ill. Reg. 11502, effective June 29, 1989)

PART 2910: ATHLETES
SUBPART A: GENERAL PROVISIONS

Section 2910.1 Ineligibility Of Professional Athletes And Ancillary Personnel During Periods Between Sports Seasons

An individual who derives 90% or more of his total wages received from all sources, athletic or non-athletic, during his base period from participating or training or preparing to participate in sports or athletic events shall be ineligible to receive benefits, based upon his total base period wages or any portion thereof, for any week commencing during the period between the two successive sport seasons or similar periods if:

a) He is engaged in sports or athletic events as a professional athlete or ancillary personnel for wages; and,

b) He performed such service in his applicable base period; and,

c) He has a reasonable assurance that he will perform services in the next season after the intervening period comes to an end.

Section 2910.5 Definitions

For the purposes of 56 Ill. Adm. Code 2910.1, the following terms shall have the meaning given hereunder:

a) "Sports" or "athletics" is an activity involving an individual or group of individuals who participate in any competitive play, game, or contest that requires either physical or mental ability, or both.

b) "Participate" shall mean taking part in sports or athletic events as an individual competitor or as a member of a team, or as a participant in the training or preparing to so participate.

c) "Sports season" is that part of the calendar year when according to the established practice or tradition of a particular sport or game, the team players or individual competitors are actively involved in participating in sports or athletic events or in training or preparing to so participate.

d) "Professional athlete"

1) "Professional athlete" is a claimant whose occupation is participating in athletic or sporting events as:

A) A regular player or team player; or,

B) An alternate player or team member; or,

C) An individual in training to become a regular player or team member; or,

D) An individual who, although performing no active services, is retained as a player or team member while recuperating from illness or injury.

2) A semiprofessional athlete is within the scope of the term "professional athlete" if he is paid for participating in sports or athletic events.

e) "Ancillary personnel" is a claimant who, without being a professional athlete, participates, or trains or prepares to so participate in sporting or athletic events. It includes:

1) Coaches;

2) Trainers;

3) Referees.

Section 2910.10 Presumption Of Reasonable Assurance

A reasonable assurance that the claimant will perform services in sports or athletic events in a subsequent season is presumed to exist if:

a) He has an expressed or implied multiyear contract which extends into the subsequent sports season; or,

b) He is free to negotiate with other teams or employers for employment as a participant in the subsequent sport season; and,

1) There is reason to believe that one or more employers of participants in athletic events are considering or would be desirous of employing the claimant in an athletic capacity in the subsequent sport season; and,

2) He is not clearly and affirmatively withdrawn from participating in remunerative and competitive sports or athletic events.

Section 2910.15 Reasonable Assurance Not Fulfilled

When the reasonable assurance provided in 56 Ill. Adm. Code 2910.10 fails to materialize, the denial of benefits to the professional athlete or ancillary personnel is still effective until the date when it is established that the assurance no longer exists. Following this date, benefits will be paid if the individual is otherwise eligible.

Section 2910.20 Sports Seasons And Period Between Seasons Determined

The beginning and ending dates of any sports season and the beginning and ending dates of the intervening time period between two successive sports seasons shall be determined by the Director after taking into consideration factors of custom and practice within a particular sport, published dates for beginning and ending a season and any other information bearing upon such determination.

PART 2915: ACADEMIC PERSONNEL
SUBPART A: GENERAL PROVISIONS

Section 2915.1 Definitions

All other terms in this Part shall have the meaning set forth in definitions, Sections 200 through 247 of the Unemployment Insurance Act (Ill. Rev. Stat. 1983, ch. 48, pars. 300 through 372), hereinafter referred to as "the Act.". Throughout this Part, the use of terms imparting the masculine gender shall also apply to the feminine gender.

"Act" means the Unemployment Insurance Act, as amended, Ill. Rev. Stat. 1983, ch. 48, pars. 300 *et seq.*

"Educational Institution" under Section 211.1 or 211.2 of the Act (Ill. Rev. Stat. 1983, ch. 48, pars. 321.1 and 321.2) has for its primary function the presentation of formal instruction and normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

"Educational Service Agency" has the meaning given to it in Section 612 of the Unemployment Insurance Act (Ill. Rev. Stat. 1983, ch. 48, par. 442).

"Instructional service" is performed for an educational institution or educational service agency either on a full-time or part-time basis and consists of teaching in formal classroom or seminar situations, tutoring, or lecturing for the purpose of imparting knowledge, or counseling, advising, or otherwise determining curriculum, courses, and academic pursuits for students.

"Principal administrative capacity" is a service performed by individuals who are officers of the educational institution or educational service agency, and perform the duties of president, members of the board of directors, business managers, deans and associate deans, university public relations directors, comptrollers, development officers, chief librarians, registrars, superintendents or principals or others not given such official titles but actually serving in a similar principal administrative capacity. The duties performed by the individual rather than the title held determine whether or not the individual may be considered to be in a principal administrative capacity.

"Reasonable assurance" is an inference or expectation based upon a sequence of previous conduct, practice, or course of dealing, within an industry or field of service, which is fairly to be regarded as establishing a common basis of understanding that the individual working in one year, term, or season, or prior to a vacation period or holiday recess may be expected, under normal conditions, to have continued employment in the next year, term, or season, after an "off-term" or "off-season" interruption, or at the conclusion of the vacation period or holiday recess.

"Research service" for an educational institution, educational service agency or educational unit consists of careful and systematic study and investigation in a field of science or knowledge, undertaken to establish facts or principles. The work performed is in a predominantly intellectual field or artistic endeavor which is varied in character and requires the constant exercise of discretion and judgment in performance. The work further requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study. It does not include individuals who provide supportive services for research, such as typists and clerks.

Section 2915.5 Ineligibility Between Academic Years Or Terms, Vacation Period Or Holiday Recess

a) When an individual has employment in an educational institution or educational service agency in the first of two successive academic years or terms or prior to a vacation period or holiday recess, the individual shall be ineligible to receive benefits during the intervening period between academic years or terms, or during the vacation period or holiday recess, under the conditions provided in Sections 2915.10 and 2915.15.

b) The ineligibility between academic years or terms, or during vacation periods or holiday recesses, stated in subsection (a) applies only when the claim for benefits is based on wages received from an educational institution or an educational service agency. Benefits will be paid with respect to weeks of unemployment between academic years or terms, or during vacation periods or holiday recesses, if the claimant has sufficient wages for insured work in non-educational employment during the applicable base period if the individual is otherwise eligible.

c) The ineligibility stated in subsection (a) applies to employees of an educational service agency only when their services are primarily provided at the facilities of an educational institution.

(Source: Amended at 11 Ill. Reg. 19101, effective November 4, 1987)

Section 2915.10 Ineligibility Of Academic Personnel

a) Where the service of an individual in an educational institution described in Section 2915.1, or for an educational service agency, during the first of two successive years or academic terms, or prior to a vacation period or holiday recess is performed in any capacity, such individual shall be ineligible for benefits during the intervening period:

1) Between two successive academic years; or,

2) Between two regular terms, whether or not successive; or,

3) On paid sabbatical leave provided in the individual's contract; or,

4) During the period of an established and customary vacation period or holiday recess;

b) If there is a contract or a reasonable assurance, as defined in Section 2915.1, that the individual will perform services in any such capacity in the second of such academic years or terms, or at the conclusion of the vacation period or holiday recess, for any educational institution or educational service agency.

Section 2915.15 Period Between Academic Years Or Terms, Vacation Period Or Holiday Recess

a) The intervening period between two academic years or terms, whether or not successive, is the time span when an individual is not required either by contract or customary practice in educational institutions or educational service agencies to perform the services assigned to him. Such period is usually defined by the beginning and end of classes.

b) The period of an established and customary vacation period or holiday recess includes Christmas break or any other religious holiday season or spring vacation when they occur during the academic year or term.

Section 2915.20 Presumption Of Reasonable Assurance Of Continued Employment

The reasonable assurance referred to in Section 2915.10 shall be presumed if such individual has a written, verbal, or implied agreement that covers or extends into the second academic year or term, or after the vacation period or holiday recess, to perform for any educational institution or educational service agency, academic or non-academic services. Continuation of service in the second academic year or term or after the vacation period or holiday recess is implied if there has been a pattern of such continuation from one academic year or term to another or following vacation periods or holiday recesses over a number of years or when the individual has not been given a notice of termination by the educational institution or educational service agency providing employment in the first of the two academic years or terms or prior to the vacation period or holiday recess.

Section 2915.25 Rebuttal Of The Presumption Of Reasonable Assurance Of Continued Employment

The individual employed by the educational institution or educational service agency must establish by a preponderance of the evidence that such individual no longer has a reasonable assurance of continued employment, in order to be eligible for benefits under this Part. Such evidence may include a written notice of dismissal from the employer, a written statement under oath or such other evidence which tends to show that the presumption provided in Section 2915.20 is without basis. In the event, however, that the educational institution or educational service agency files a protest to the claim and gives additional assurance that the individual will continue to be employed in the next academic year or term or following the vacation period or holiday recess, then the presumption of reasonable assurance of continued employment remains unless and until the educational institution or educational service agency either gives a definite notice of termination or does not receive such individual back to work, whichever occurs first, or until the individual presents additional evidence to rebut the employer's statement.

Example: Notices of dismissal are routinely sent out to employees at the end of the academic year or term, simply as a precaution on the chance that the budget may not be approved. The individual submits this notice in evidence when filing a claim for benefits, but the educational institution affirmatively asserts in its response to the notice that a claim for benefits has been filed that the individual still has a reasonable assurance of continued employment. Such individual shall be denied benefits because the presumption of his returning to work remains in effect.

Section 2915.30 Date Benefit Ineligibility Ceases To Apply

a) If the individual overcomes the presumption of reasonable assurance of continued employment provided in Section 2915.20, the ineligibility to receive benefits set forth in Section 2915.10 shall cease to apply to such individual, effective with the week for which the individual filed a claim for benefits, if it has been found by the Agency, in any proceeding, that as of that week such individual had no reasonable assurance of continued employment.

b) If the additional assurance given by the educational institution or educational service agency described in Section 2915.25 fails to result in continued employment, the presumption becomes no longer effective from the date specified by the educational institution or educational service agency in its subsequent notice of dismissal to the individual or from the date the individual was scheduled to report back to work but the educational institution or educational service agency fails to take him back to service, whichever occurs first. Except as provided in subsection (c), the ineligibility to receive benefits provided in Section 612 of the Act (Ill. Rev. Stat. 1983, ch. 48, par. 442) and Section 2915.10 of this Part shall cease to apply to such individual on the date the presumption is determined to have become no longer effective.

c) Notwithstanding (a) and (b), if such reasonable assurance fails to materialize and the individual was previously employed in a position other than that of one in an instructional, administrative or research capacity, the individual, who has filed his claim in accordance with the provisions of 56 Ill. Adm. Code 2720.110 through 2720.125, shall be entitled to a retroactive payment of benefits if he is otherwise eligible for benefits.

Section 2915.35 Benefits To Insured Workers In Educational Institutions

Benefits based on wages for services performed by an individual in the employ of an educational institution or educational service agency operated by a governmental entity or nonprofit organization provided in Sections 211.1 and 211.2 of the Act (Ill. Rev. Stat. 1983, ch. 48, pars. 321.1 and 321.2), respectively, shall be payable in the same amount, on the same terms, and subject to the same conditions, as any other benefits payable under the Act, except that such individual may be ineligible for benefits for the intervening period between academic years or terms provided in Section 2915.5 of this Part.

Section 2915.40 Ineligibility Of Employees Working In One Capacity For An Academic Employer Who Cross Over Within Years Or Terms To Work In Another Capacity For The Same Type of Academic Employer

a) For the purposes of this Subpart, an individual can perform services for an academic employer in either or both of two capacities: professional or non-professional. "Professional" means services performed in an instructional, research, or principal administrative capacity as these terms are defined by Section 2915.1. "Non-professional" means all other services.

b) For the purposes of this Subpart, there are two types of academic employers. The first type is an educational institution as defined by Section 2915.1 as well as an institution of higher education and an institution of higher learning. The second type is an educational service agency as defined in Section 2915.1.

c) If an individual performs services for one type of academic employer in one capacity during the period before a vacation period or holiday recess within an academic year or term, and there is a reasonable assurance that the individual will perform services in a different capacity for the same type of academic employer for the period immediately subsequent to such vacation period or holiday recess, the individual shall be ineligible for benefits under Section 612 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 442) [820 ILCS 405/612] during such vacation period or holiday recess.

Example: If a teacher employed by an educational institution receives assurance that at the end of the Christmas holidays his employment with that educational institution will continue in January but in the capacity of a security guard rather than as a teacher, the individual has crossed over from one capacity to another and shall be ineligible for benefits under Section 612 of the Act during that period.

(Source: Added at 18 Ill. Reg. 4154, effective March 3, 1994)

Section 2915.43 Eligibility of Employees Working For An Academic Employer Who Cross Over Within An Academic Year Or Term To Work For A Non-Academic Employer Or For Another Type Of Academic Employer

If an individual crosses over from an academic employer, as defined by Section 2915.40(b), to a non-academic employer, or from one type of academic employer to another, following a vacation period or holiday recess within an academic year or term, the ineligibility imposed by Section 612 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 442) (820 ILCS 405/612) does not apply. This is true no matter in what capacity the individual performs services after the vacation period or holiday recess within an academic year or term for the subsequent employer.

Example: If a teacher employed by an educational institution receives assurance that at the end of the Christmas holidays his services as a teacher will continue in January in the employ of an educational service agency, the ineligibility imposed by Section 612 does not apply because the services performed immediately subsequent to the vacation period are not performed for the same type of academic employer.

(Source: Added at 18 Ill. Reg. 4154, effective March 3, 1994)

Section 2915.45 Eligibility Of Employees Working For One Type Of Academic Employer Who Cross Over Between Years Or Terms To Work For Another Type Of Academic Employer

Whenever an individual performs services in the employ of one type of academic employer as defined by Section 2915.40(b) during an academic year or term and there is reasonable assurance that the individual will perform services in the employ of another type of academic employer for a subsequent academic year or term, the individual shall not be ineligible under Section 612 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 442) (820 ILCS 405/612) during the period between the two academic years or terms.

Example: If a teacher employed by an educational institution receives assurance that at the end of the academic year his employment will continue for the next year for an educational service agency, the individual shall not be ineligible during that period under Section 612 of the Act.

(Source: Added at 18 Ill. Reg. 4154, effective March 3, 1994)

Section 2915.47 Eligibility Of Employees Working In One Capacity Who Cross Over Between Years Or Terms To Work In Another Capacity

Whenever an individual performs services in one capacity during an academic year or term and there is reasonable assurance that the individual will perform the services in a different capacity for a subsequent academic year or term, the individual shall not be ineligible under Section 612 of the Act (Ill. Rev. Stat. 1991, ch. 48, par. 442) (820 ILCS 405/612) during the period between the two academic years or terms.

Example: If a typist receives assurance that at the end of the academic year his employment will continue for the next year but in the capacity of a teacher, the individual shall not be ineligible during that period under Section 612 of the Act.

(Source: Added at 18 Ill. Reg. 4154, effective March 3, 1994)

PART 2920: DISQUALIFYING INCOME AND REDUCED BENEFITS
SUBPART A: GENERAL PROVISIONS

Section 2920.1 Definitions

"Act" means the Unemployment Insurance Act, as amended (Ill. Rev. Stat. 1989. ch. 48, pars. 300 *et seq.*).

"Employer" shall have the same meaning as provided in Section 205 of the Act.

"Employing unit" shall have the same meaning as provided in Section 204 of the Act.

"Full-time work" refers to the number of hours or days a class of workers would work if the employing unit had all the business it could handle without overtime. Except where the contrary is provided by a collective bargaining agreement or company policy, full time work is customarily 40 hours per week.

"Layoff" occurs when work is no longer available for the individual for a definite or indefinite period of time, but there is no intention to permanently sever the employer-employee relationship.

"Normal workday" is a day during which work is ordinarily performed at the worker's customary place of employment.

"Pay in lieu of vacation" refers to amounts paid to an employee in addition to regular wages when the employee works instead of taking the period of vacation to which the individual is entitled.

"Residual payments" are amounts paid to a performer for the continued use of radio and television commercials in which he performed.

"Separation" refers to the situation that exists when an employee has either:

Voluntarily terminated employment; or,

Been permanently discharged from employment by the employer; or,

Been indefinitely suspended from employment by the employer on grounds other than lack of work at the place of employment.

"Services performed by an individual in self-employment" means those services which would be excluded from covered employment under Section 212 of the Act.

"Shutdown for inventory purposes" occurs whenever the employer suspends all or a unit of its operations for an announced period in order to count or to inspect the property in the employer's possession.

"Shutdown for vacation purposes" occurs whenever the employer suspends all, or a unit of, its operations for an announced period in order to grant its employees a period of rest and recreation, conduct maintenance or re-tooling operations, or for any reason except lack of business.

"Standby pay" refers to amounts paid or payable to an employee either for an employee's readiness to perform services for an employer or amounts paid or payable to an employee for the purpose of maintaining the employer-employee relationship during any work cessation not related to a labor dispute in which the individual is directly involved.

"Vacation pay" refers to amounts paid or payable to an employee for the purpose of granting him a period of rest and recreation. The term "vacation pay" includes what is commonly referred to as "personal holiday" pay, "earned bonus hours," and other amounts payable for the purpose of rest and recreation regardless of how they are characterized.

"Vacation pay allowance" refers to amounts paid or payable to an employee as vacation pay without regard to the period of vacation leave to which the employee is entitled. For example, an employee may be entitled to two weeks of vacation leave but be paid an allowance which is greater or less than the wages for two weeks of normal work. Thus, if an employee was entitled to receive a vacation pay allowance equal to 5% of his annual salary of $20,000, the employee's vacation pay allowance would be $1,000.

"Wages for less than full time work" refers to every form of remuneration for personal services, including salaries, commissions, bonuses, gratuities received from third parties which are reported as wages under Section 234 of the Act, and the reasonable money value of all remuneration in any medium other than cash received by an individual for less than full time work.

"Weekly benefit amount" means the amount defined by Section 401 of the Act.

(Source: Amended at 15 Ill. Reg. 11416, effective July 30, 1991)

Section 2920.5 Ineligibility To Receive Benefits Due To Performing Full-Time Work Or Due To The Receipt Of Various Income Whose Sum Is Equal To Or Greater Than The Individual's Weekly Benefit Amount

a) An individual shall be ineligible for benefits with respect to any week for which the individual receives or is entitled to receive any of the following payments whose aggregate amount is equal to or exceeds such individual's weekly benefit amount:

1) Payments made during an announced shutdown for inventory or vacation purposes which are treated as wages under Section 2920.25;

2) Payments made in connection with any separation or layoff as, or in the nature of, vacation pay, vacation pay allowance, or pay in lieu of vacation treated as wages under Section 2920.30 which are made during a period designated by the employer;

3) Holiday pay treated as wages under Section 2920.35;

4) Wages for services performed by an individual for any week of less than full time work except those wages for "services performed by an individual in self-employment" as defined by Section 2920.1.

A) Example 1: An individual files for benefits after a layoff and the weekly benefit amount is $130.00. The individual is eligible to receive 3 days of vacation pay at $50.00 per day during the week in question, an amount which would be treated as wages under Section 2920.25. The individual is ineligible to receive benefits or waiting week credit under this subsection with respect to that week because the entitlement to $150.00 in vacation pay treated as wages under Section 2920.25 exceeds the weekly benefit amount.

B) Example 2: An individual files for benefits after a layoff. The weekly benefit amount is $130.00. The individual performs services which are not employment under Section 212 of the Act. Even if the individual receives or is entitled to receive payments for these services in amounts in excess of the weekly benefit amount, the individual is not ineligible for benefits under this subsection because the services performed by the individual were in self-employment and hence the remuneration received for these services does not render the individual ineligible for benefits under subsection (a)(4). The individual may, however, be ineligible under Section 500 of the Act, if he is not able to, available for, or actively seeking work.

C) Example 3: An individual files for benefits after a layoff. The weekly benefit amount is $130.00. With respect to the week in question, the individual is entitled to receive 1 day of holiday pay of $50.00 per day, an amount which would be treated as wages under Section 2920.35, and 2 days of vacation pay at $50.00 per day, an amount which would be treated as wages under Section 2920.30. The individual is ineligible to receive benefits during that week under this subsection because the entitlement to the sum of $150.00 in holiday and vacation pay exceeds the weekly benefit amount.

D) Example 4: An individual files for benefits after a layoff. The weekly benefit amount is $130.00. The individual is entitled to receive $100.00 in vacation pay treated as wages under Section 2920.30 for that week and also receives $50.00 in wages for services performed in employment during that week. The individual's services are for less than full-time work. The individual is ineligible for benefits for that under this subsection because the entitlement to $100.00 in vacation pay plus the receipt of $50.00 in wages for performing services for less than full-time work equals $150.00, an amount which exceeds the weekly benefit amount.

b) In addition to the ineligibility for benefits imposed by the provisions of subsection (a), an individual shall be ineligible for benefits with respect to any week in which he performs full-time work regardless of whether the amount of wages received during that week equal or exceed the weekly benefit amount because the individual is not unemployed as required by Section 239 of the Act.

Example: An individual receives $137.00 in wages for performing services in full-time work. His weekly benefit amount is $150.00. The individual is ineligible for benefits under subsection (b) even though the wages are less than his weekly benefit amount because such individual is performing full-time work. The individual would also not be eligible for reduced benefits under Sections 2920.10 and 2920.15.

c) An individual shall be ineligible for benefits with respect to any of the following payments whose aggregate amount is equal to or exceeds his weekly benefit amount. Mere entitlement to such payment shall not render the individual ineligible under this subsection.

1) Disqualifying retirement pay under Section 611 of the Act.

Example: An individual receives a weekly pension of $200.00, all of which is disqualifying under Section 611 of the Act. The individual's weekly benefit amount is $130.00. The individual is ineligible to receive benefits under this subsection because the receipt of $200.00 in disqualifying retirement pay exceeds his weekly benefit amount.

2) Workers' compensation paid for temporary disability arising out of or in connection with employment under the laws of Illinois, of another state, or of the United States, as defined by Section 606 of the Act.

d) In addition to the ineligibility for benefits imposed by the provisions of subsections (a), (b), and (c), an individual shall be ineligible for benefits with respect to any week or weeks in which the aggregate amount of any payments treated as wages referred to in subsections (a)(1), (2) and (3), plus any of the disqualifying payments referred to in subsection (c), is equal to or exceeds such individual's weekly benefit amount.

1) Example 1: An individual receives workers' compensation payments of $60 per week for temporary disability, and the disability does not render the individual unable to or unavailable for work. The individual is also entitled to receive two days of vacation pay at $50 per day with respect to that week. The individual's vacation pay is treated as wages under Section 2920.30. The individual's weekly benefit amount is $130. This individual is ineligible for benefits under subsection (d) because the aggregate amount of the disqualifying payments for that week ($60 + $100 = $160) exceeds his weekly benefit amount.

2) Example 2: An individual receives $60 per week of retirement pay all of which is disqualifying under Section 611 of the Act and is also entitled to receive 1 day of vacation pay at $50 per day treated as wages under Section 2920.30 with respect to that week. The individual also receives $65 in wages for performing less than full-time work during that week. The individual's weekly benefit amount is $130. Since the aggregate of his disqualifying retirement pay and his vacation pay ($60 + $50 = $110) is less than the individual's weekly benefit amount of $130, the individual is not ineligible for benefits under this subsection. Amounts paid or payable to an individual as wages for performing services for less than full-time work referred to in subsection (a)(4) do not make the individual ineligible to receive benefits in this situation because, when added to the individual's vacation pay, they do not exceed the individual's weekly benefit amount as required by subsection (a). Rather these amounts reduce the individual's benefits in accordance with the formula given in Section 2920.10. Similarly, since the individual's receipt of $60 in retirement pay is disqualifying but is not considered wages under Section 611 of the Act, these amounts reduce the individual's benefits in accordance with the formula given in Section 2920.10, but do not make the individual entirely ineligible to receive any benefits under this subsection.

3) Example 3: An individual wins a lottery prize of $1000. Since lottery prizes are not awarded for services performed by the individual for an employer, this amount would not constitute disqualifying income under this Section.

(Source: Emergency Amendment at 13 Ill. Reg. 11899, effective July 1, 1989, for a maximum of 150 days)

Section 2920.10 Reduction In Benefits Due To Receipt Of Vacation Pay, Holiday Pay, Retirement Pay, And Workers' Compensation Whose Sum Is Less Than The Individual's Weekly Benefit Amount

Provided that an individual is not ineligible for benefits under Section 2920.5, whenever an individual receives or is entitled to receive any vacation pay treated as wages under Sections 2920.25 or 2920.30, holiday pay treated as wages under Section 2920.35 or receives any disqualifying retirement pay under Section 2920.70 or workers' compensation during a week or weeks, and the aggregate amount of such payments is less than the individual's weekly benefit amount, the individual shall be eligible to receive with respect to such week or weeks, benefits in an amount equal to the weekly benefit amount reduced by the sum of these payments. The reduction in benefits given by this Section does not apply in the situation where the individual receives wages for less than full-time work as defined by Section 2920.5(a)(4). In such cases, the individual's eligibility and amount of reduced benefits, if any, shall be calculated in accordance with the formula given by Section 2920.15.

a) Example 1: An individual received $60 in disqualifying retirement pay per week. He also receives $60 in vacation pay with respect to that week. If the weekly benefit amount was $130, he would be eligible to receive $10 in reduced benefits with respect to that week.

b) Example 2: Assume the situation described in Example 1 with the exception that the individual's disqualifying retirement pay with respect to that week is $70 instead of $60. Because the sum of the individual's retirement pay and his vacation pay equals his weekly benefit amount, the individual is ineligible to receive reduced benefits under this Section because he is ineligible to receive any benefits under Section 2920.5(d).

Section 2920.15 Reduction In Benefits Due To Receipt Of Wages For Less Than Full-Time Work

a) Whenever an individual receives or is entitled to receive an amount of wages for less than full-time work as defined by Section 2920.5(a)(4) with respect to a week which is less than the individual's weekly benefit amount and does not receive any other disqualifying payment referred to by Section 2920.10, the individual shall be eligible to receive with respect to such week, benefits equal to the individual's weekly benefit amount reduced by that part of the wages for less than full-time work, if any, which are in excess of 50% of the individual's weekly benefit amount. Whenever benefits reduced under this section do not constitute a multiple of $1.00, the reduced benefit amount shall be raised to the next higher multiple of $1.00.

1) Example 1:

A) If the individual's weekly benefit amount is.....$130.00
B) 50% of that amount is $65.00
C) If the individual's wages for less than full-time work under Section 2920.5(a)(4) are.....$86.00
D) The amount by which the wages given in line 3 exceed 50% of the individual's weekly benefit amount given in line 2 is $21.00
E) The difference between the individual's weekly benefit amount given in line 1 .....$130.00
and the amount given in line 4 .....$21.00
is.....$109.00

The amount of $109.00 represents the reduced benefits the individual is eligible to receive for that week under this subsection.

2) Example 2:
   A) If the individual's weekly benefit amount is.....$130.00
   B) 50% of that amount is $65.00
   C) If the individual's wages for less than full-time work under Section 2920.5(a)(4) are.....$65.00
   D) Because the individual's wages given in line 3 do not exceed 50% of the individual's weekly benefit amount given in line 2, the difference between the amount given in line 3 and the amount given in line 2 is $0.00
   E) The difference between the individual's weekly benefit amount given in line 1.....$130.00
   and the amount given in line 4 .....<u>.00</u>
   is.....$130.00

The amount of $130.00 represents the benefits which the individual is eligible to receive for that week under this subsection.

b) Provided that an individual is not ineligible for benefits under Section 2920.5, whenever an individual receives wages for less than full-time work as defined by Section 2920.5(4) and, in addition to these wages, also receives any of the disqualifying payments referred to by Section 2920.10, the reduced weekly benefit amount calculated according to the formula given by subsection (a) with respect to that week shall be further reduced by the sum of such additional disqualifying payment, provided, however, that if the sum of these additional disqualifying payments plus that part of the wages for less than full-time work referred to by Section 2920.5(a)(4) which is in excess of 50% of the individual's weekly benefit amount is greater than or equal to the individual's weekly benefit amount, the individual shall be ineligible for any benefits.

1) Example 1:
   A) If the individual's weekly benefit amount is.....$130.00
   B) 50% of that amount is $65.00
   C) If the individual's wages for less than full-time work under Section 2920.5(a)(4) are.....$75.50
   D) The amount by which the wages given in line 3 exceed 50% of the individual's weekly benefit amount given in line 2 is $10.50
   E) The difference between the individual's weekly benefit amount given in line 1.....$130.00
   and the amount given in line 4 .....<u>$10.50</u>
   is.....$119.50
   F) Since the amount given in line 5 is not a multiple of $1, it is raised to the next higher multiple of $1.....$120.00
   G) Amount of any vacation pay treated as wages which the individual receives with respect to that week is $40.00
   H) The difference between the amount of reduced benefits the individual would be eligible to receive receive with respect to that week given in line 6.....$120.00
   and the amount of vacation pay treated as wages with respect to that week given in 7 ..... <u>-$40.00</u>
   is.....$80.00

The amount of $80.00 represents the reduced benefits the individual is eligible to receive under this subsection.

2) Example 2:
   A) If the individual's weekly benefit amount is.....$150.00
   B) 50% of that amount is $75.00
   C) If the individual's wages for less than full-time work under Section 2920.5(a)(4) are.....$82.00
   D) The amount by which the wages given in line 3 exceed 50% of the individual's weekly benefit amount given in line 4 is $7.00
   E) The difference between the individual`s weekly benefit amount given in line 1.....$150.00
   and the amount given in line 4 .....$7.00
   is.....$143.00
   F) Amount of any vacation pay treated as wages which the individual receives with respect to that week is.....$40.00
   G) Amount of disqualifying retirement pay which the individual receives during that week is $60.00
   H) The difference between the amount of reduced benefits the individual would be eligible to receive with respect to that week given in line 5 .....$143.00
   and the sum of vacation ..... -$40.00
   and retirement pay with respect to that week given in lines 6 and 7 ..... -$60.00
   is.....$ 43.00

   The amount of $43.00 represents the reduced benefits which the individual is entitled to receive under this subsection.

3) Example 3: Assume the facts as in Example 2 with the exception that the individual's wages for less than full-time work under Section 2920.5(a)(4) are $120.00 instead of $82.00. Since the sum of his wages for less than full-time work plus the individual's vacation pay equals $160.00 which is greater than the individual's weekly benefit amount of $150.00, the individual is ineligible to receive any reduced benefits under this Section because of the ineligibility provisions of Section 2920.5(a).

4) Example 4: Assume the same facts as in Example 2 with the exception that the individual's retirement pay is $105.00. The individual's wages for less than full-time work is $82.00, the individual's vacation pay is $40.00, and the individual's weekly benefit amount is $150.00. Although the sum of the individual's wages for less than full-time work and the vacation pay ($82.00 + $40.00 = $122.00) is less than the individual's weekly benefit amount ($150.00) and hence does not make the individual ineligible for benefits as in Example 3 and although the sum of the vacation pay and the retirement pay ($40.00 + $105.00 = $145.00) is also less than the individual's weekly benefit amount, the individual is nonetheless ineligible for benefits under subsection (b) because the sum of the vacation pay and retirement pay ($40.00 + $105.00 = $145.00) plus that part of the wages for less than full-time work which is in excess of 50% of the individual's weekly benefit amount ($82.00 - $75.00 = $7.00) is greater than the individual's weekly benefit amount ($145.00 + $7.00 = $152.00).

Section 2920.18 Voluntary Withholding for Federal and/or State of Illinois Income Tax

a) Whenever an individual voluntarily elects, pursuant to Section 1300 of the Act [820 ILCS 405/1300], to have monies withheld from his or her unemployment insurance benefits to cover possible federal and/or State of Illinois income tax liability, the amount of benefits subject to such income tax withholding is the sum of the individual's weekly benefit amount (WBA), following any of the mandatory deductions from unemployment benefits set forth in subsections (a)(1), (2), and (3), plus any spouse or dependents' allowance payable under the Act. The following are the mandatory deductions:

   1) disqualifying income, including vacation pay, holiday pay, retirement pay, and workers' compensation, under Section 2920.10;

2) wages for less than full time work payable to him or her with respect to that week that are in excess of 50% of his weekly benefit amount;

3) one-fifth of the individual's WBA for each day that the individual was unable or unavailable for work as required by Section 402 of the Act.

b) Whenever an individual has voluntarily elected, pursuant to Section 1300 of the Act, to have monies withheld for federal and/or State of Illinois income tax from his or her unemployment benefits for a period covered by a benefit payment, the Department shall, when withholding for federal income tax, withhold 10% of the amount of benefits that are subject to withholding under subsection (a rounded (if not already a multiple of one dollar) to the nearest dollar and, when withholding for State of Illinois income tax, withhold a percentage of the amount of benefits that are subject to withholding under subsection (a) equal to the tax rate for individuals pursuant to the Illinois Income Tax Act, rounded (if not already a multiple of one dollar) to the nearest dollar. If the product is equally near 2 multiples of one dollar, it shall be rounded to the higher multiple of one dollar. If the individual's benefits for a week, less amounts subject to recoupment under Section 2835.15 and less any involuntary deductions for child support pursuant to Section 2815.105, are less than the amount that would otherwise be withheld pursuant to this subsection, the entire amount of the benefits remaining shall be withheld. If the individual elects to have both federal and State of Illinois income taxes withheld and the amount remaining is insufficient to cover both taxes, the entire amount of State of Illinois tax shall be withheld before any federal tax is withheld.

1) Example: The individual elects both federal and State of Illinois income tax withholding. The individual's WBA for each of the weeks ending February 5, 2011, and February 12, 2011, is $251. The individual receives a dependents' allowance of $81 for each week. The Department will deduct for federal income tax withholding 10% of $332 for each week which equals $33.20, which, rounded to the nearest dollar, is $33. Additionally, the Department will deduct for State of Illinois income tax withholding 5% (the tax rate for individuals pursuant to the Illinois Income Tax Act for the 2 weeks in question) of $332, which equals $16.60 for each week, which, rounded to the nearest dollar, is $17. Accordingly, the individual will receive $564 in benefits for the 2 week period after having $66 deducted for federal income tax withholding and $34 deducted for State of Illinois income tax withholding.

2) Example: The individual elects both federal and State of Illinois income tax withholding. The individual's WBA for each of the weeks ending February 5, 2011 and February 12, is $129. The individual receives a dependents' allowance of $42 for each week.

For the first week of the payment period, the individual has $90 in disqualifying vacation pay, but in the second week the individual does not have any disqualifying vacation pay.

The amount of benefits subject to federal and State of Illinois income tax withholding for the first week is $129 less $90 in vacation pay, which equals $39 plus his or her dependents' allowance of $42, which totals $81. Because the individual did not receive any disqualifying vacation pay for the second week of the period, the amount of benefits subject to federal and State of Illinois income tax withholding attributable to the second week is $129 plus his or her dependents' allowance of $42, which totals $171.

The Department will deduct for federal income tax withholding 10% of $81 for the first week, which equals $8.10, which, rounded to the nearest dollar, is $8. The Department will deduct for State of Illinois income tax withholding 5% (the tax rate for individuals pursuant to the Illinois Income Tax Act for the 2 weeks in question) of $81, which equals $4.05, which, rounded to the nearest dollar, is $4.

The individual will receive $69 for the first week after having $8 deducted for federal income tax withholding and $4 deducted for State of Illinois income tax withholding.

The Department will deduct for federal income tax withholding 10% of $171 for the second week, which equals $17.10, which, rounded to the nearest dollar, is $17. The Department will deduct for State of Illinois income tax withholding 5% of $171, which equals $8.55, which, rounded to the nearest dollar, is $9. The individual will receive $145 for the second week after having $17 deducted for federal income tax withholding and $9 deducted for State of Illinois income tax withholding. The individual's payment for the two week period will be $214.

3) Example: The individual's WBA for each of the weeks ending February 5, 2011 and February 12, 2011 is $129. The amount of benefits subject to federal and State of Illinois income tax withholding for each week of the two week period is $129.

   10% of $129 equals $12.90, which, rounded to the nearest dollar, is $13. 5% of $129 equals $6.45, which, rounded to the nearest dollar, is $6.

   In this example, assume that the individual has elected both federal and State of Illinois income tax withholding, that the individual is also subject to recoupment for both weeks in an amount up to 25% of his or her WBA, which amount is $32.25 for both weeks, and that the individual is subject to a withholding order of $100 for child support for the first week.

   For the first week, the Department will first recoup the entire amount of $32.25 due for that first week. $129 minus $32.25 equals $96.75. Because the individual does not have sufficient benefits to cover the full amount of child support due for that first week, the Department will deduct $96.75, the amount of benefits available for that week. The individual's payment for the two week period will not include any benefits with respect to that first week.

   For the second week of the payment period, the individual is not subject to a withholding order for child support. Accordingly, the individual is eligible to receive $96.75 for the second week, the difference between the benefits payable to him or her for that week ($129) and the amount recouped ($32.25). Because the individual has elected both federal and State of Illinois income tax withholding for the period covered by the payment, the Department will deduct $13 for federal income tax withholding and $6 for State of Illinois income tax withholding from the individual's benefits and pay the individual the remaining $77.75.

4) Example: Assume the same situation described in subsection (b)(3), except that the individual's withholding for court ordered child support is $90 for each week. The amount of benefits subject to federal and State of Illinois income tax withholding for the two week period remains the same.

   The individual has sufficient benefits for the Department to recoup the maximum amount and to deduct for child support in full for both weeks. If the individual had not elected to withhold federal and State of Illinois income tax, the individual would have received $13.50, the sum of $6.75 and $6.75 for each week. Because the individual has elected federal and State of Illinois income tax withholding for this period and because the benefits for the period after recoupment and child support are less than 10% plus 5% of the amount subject to withholding, the Department will deduct the entire $13.50 for income tax withholding ($12 for State of Illinois income tax withholding ($6 in each week) and the remaining $1.50 for federal income tax withholding ($.75 in each week)) and not pay the individual any benefits for this period.

c) An individual's election and his or her revocation of his or her election to have monies withheld from his or her benefits for possible federal and/or State of Illinois income tax liability shall be prospective only. Any decision made by the Department as to whether an individual has, under the Act, elected withholding or revoked a withholding election shall constitute a final administrative decision, subject to review under the Administrative Review Law [735 ILCS 5/Art. III].

EXAMPLE: Upon filing an additional claim during his or her benefit year, an individual elects to have federal and State of Illinois income tax withheld from his or her unemployment benefits paid in 2006. His or her first benefit check covers the two-week period beginning January 8, 2006 and ending January 21, 2006. His or her WBA is $250, and the amount subject to withholding for the period is $65 (10% and 3% of $500). For each week, he or she is subject to recoupment of 25% of his or her WBA and a withholding order of $100 for child support. Consequently, his or her benefit check for the two-week period is for $110. When he or she receives his or her benefit check, he or she asks to revoke the elections, explaining he or she thought the income tax withholding would be based on a percentage of his or her WBA after recoupment and child support. While the Department, if he or she desires, will revoke his or her elections to withhold with respect to a period that has not yet ended, it will not retroactively revoke his or her elections with respect to January 8 through January 21. Elections and revocations can only operate prospectively.

(Source: Amended at 35 Ill. Reg. 8467, effective May 20, 2011)

Section 2920.20 Reduced Benefits: Payment Of Dependents' Allowance Or Spouse's Allowance

An individual who is eligible to receive reduced benefits with respect to any week under the provisions of Section 2920.10 or Section 2920.15 shall, in addition to such benefits, be eligible to receive the full amount of any dependents' or spouse's allowance to which such individual may be entitled under Section 401 of the Act.

a) Example 1: An individual is eligible to receive $84.00 in reduced benefits with respect to a particular week under the provisions of Section 2920.10 and a dependents' allowance of $30.00. Since the individual is eligible for reduced benefits, such individual is also entitled to receive $30.00 in dependents' allowance for that week.

b) Example 2: An individual receives $140.00 in payments with respect to a week treated as wages or otherwise disqualifying under Section 2920.5. The individual's weekly benefit amount is $130.00. Since such individual is ineligible to receive any benefits, such individual is not entitled to receive any dependents' or spouse's allowance.

Section 2920.25 Payments Made During Shutdown For Inventory or Vacation Purposes

a) Amounts that an employer pays or holds himself liable to pay an individual as vacation pay or allowance, or as pay in lieu of vacation, or as standby pay during an announced period of shutdown for inventory or vacation purposes shall be treated as wages in amounts equal to the individual's wages for a normal work day defined in Section 2920.1. Such amounts treated as wages under this Section shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent work day in such period, except paid holidays, until the amount so paid or owing is exhausted. If a paid holiday occurs during the announced shutdown period, this period shall be extended by such paid holiday.

b) An employer shall announce the period of shutdown for inventory or vacation purposes by posting a notice at the place of employment or by giving other reasonable notice to its employees and the collective bargaining representative, if any, of the period during which the place of employment will be shut down for vacation or inventory. Such notice must be given at least 2 working days prior to the commencement of the shutdown.

c) An employer's announced purpose of the shutdown may be disputed by evidence showing that the shutdown was for purposes other than vacation or inventory. In such case, a determination will be made after a full investigation with respect to the disputed issue, taking into consideration the reasonableness of the period of the announced shutdown, the vacation period prevailing in the industry, the bargaining agreement, if any, and the length of previous shutdowns for vacation or inventory purposes. If it is shown that the shutdown was for purposes other than vacation or inventory, then the amounts that an employer pays or holds himself liable to pay an individual as vacation pay or allowance, or as pay in lieu of vacation, or as standby pay shall not be treated as wages under this Section. Amounts which do not qualify as wages under this Section may qualify as wages under Section 2920.30, because they are made in connection with a separation or layoff.

d) In deciding whether amounts paid or payable to the individual shall be treated as vacation pay under this Section, the actual amount of vacation leave available to the individual at the time of the shutdown is not material.

e) The fact that the period of announced shutdown for vacation or inventory purposes covered under this Section is preceded or followed by a layoff due to lack of work or a period of vacation or holiday covered under Sections 2920.30 or 2920.35 does not affect the treatment of the payments received under this Section. The existence of the situations described in subsections (d) and (e) might be relevant evidence, however, in deciding whether the announced shutdown was truly for vacation or inventory purposes under subsection (c).

1) Example 1: The employer announced a one week shutdown for inventory purposes on June 1, effective for the week beginning June 20. The individual was laid off for lack of work on May 3. If the employer's payments to the individual for the week beginning June 20, otherwise satisfy the requirements of this Section, the fact that the announced period of shutdown for inventory purposes follows a period of layoff due to lack of work does not affect the status of those payments as wages under this subsection.

2) Example 2: Assume the same situation given in the preceding example except for the additional fact that the individual is able to introduce evidence that the shutdown for the week beginning June 20, was not intended for inventory purposes but rather was scheduled because of lack of work. In this situation, the provisions of subsection (c) control in deciding whether the employer's payments to the individual are treated as wages under this Section.

Section 2920.30 Payments Made In Connection With Separation or Layoff As, Or In The Nature Of Vacation Pay, Vacation Pay Allowance Or As Pay In Lieu Of Vacation

a) In situations other than those described in Section 2920.25, amounts that an employer pays, becomes obligated to pay, or holds itself ready to pay the individual as, or in the nature of vacation pay, or vacation pay allowance, or as pay in lieu of vacation shall be treated as wages provided that all of the following conditions are satisfied:

1) Such amounts are paid or payable "in connection with" the separation or layoff of the individual. Amounts are paid or payable "in connection with" the separation or layoff of the individual for the purposes of this Section whenever there is a relationship between such payments and the separation or layoff. Evidence of a relationship is provided by the employer's pay plan or by the labor-management agreement.

A) Example 1: The individual is entitled to receive two weeks of vacation pay on the anniversary date of employment which occurs on June 1. The employer is required to make payment for that date. The individual along with other employees is laid off for an indefinite period beginning June 1. The individual files for benefits for the week beginning on June 1 and the employer files a timely protest contending under Section 610(B) of the Act that its liability to pay the individual's two weeks of vacation pay renders the individual ineligible to receive benefits with respect to that two week period. The individual is not ineligible to receive benefits under this subsection because the employer's liability to make such vacation payments is not "in connection with" the layoff. No relationship exists between the employer's liability to make vacation payments and the individual's layoff. The connection that does exist is purely fortuitous.

B) Example 2: Under the terms of the labor - management agreement, the individual is entitled to receive two weeks of vacation pay on June 1. The labor-management agreement also provides that in the event of any layoff or separation which occurs prior to June 1, the employer's liability for accrued vacation pay shall be accelerated to the period immediately subsequent to the effective date of the individual's layoff or separation. The individual along with other employees is laid off for an indefinite period beginning May 15th. If the protest is timely, the individual is ineligible to receive benefits under this subsection with respect to the two week period beginning May 15, because the employer's liability to make vacation allowance payments is "in connection with" the individual's layoff. The labor - management agreement regarding the acceleration of vacation payments is conditioned upon the individual's layoff or separation. The occurrence of the layoff on May 15 fulfills this condition. Accordingly, a connection exists between the employer's liability to make accelerated vacation payments and the layoff of the individual, a connection which is not merely fortuitous unlike the situation described in example 1.

2) Within 10 calendar days of the date the notice of the filing of an individual's claim for benefits is mailed or within 10 calendar days of the date such vacation pay is paid or payable, the employer notifies the Director by submitting either a "Notice of Possible Ineligibility" (BIS 0022) or a letter in lieu thereof which:

A) Designates the period for which the payments shall be allocated; and,

B) Specifies the amount of vacation pay allocated to the designated period.

Example: The individual is laid off on June 1. Under the employer's pay plan, the individual receives his vacation pay two weeks after his last day of work. The notice of the filing of the individual's claim for benefits is mailed on June 4. The individual's vacation pay is received on June 15. The employer files a BIS-22 on June 20. Although the BIS-22 was not filed within ten calendar days of the mailing of the notice of the individual's claim for benefits, it is still timely under this subsection because it was filed within ten calendar days of the date the individual's vacation pay was paid.

3) There must be a reasonable relationship between the period of vacation designated by the employer and the amount of vacation pay allocated to that period. The relationship shall be considered reasonable if:

A) The period designated by the employer immediately follows the last day worked by the individual; or,

B) The period designated by the employer immediately follows the date of the individual's claim for benefits; or,

C) It is usual and customary as a matter of company policy for the vacation payments to accrue during the period designated, even when such period does not immediately follow the last day worked; or,

D) The allocation of vacation payments to the period designated is pursuant to a collective bargaining agreement with the employer; or,

b) Amounts that an employer pays, becomes obligated to pay, or holds itself ready to pay the individual as, or in the nature of vacation pay, or vacation pay allowance, or as pay in lieu of vacation which constitute wages under subsection (a) shall be treated as wages in sums equal to the individual's wages for a normal workday. Such amounts treated as wages under this Section shall be attributed to, or deemed to be payable to the individual with respect to, the first and each subsequent workday in such period, except paid holidays, until the amount so paid or owing is exhausted. An employer's allocation of such amounts in a manner different from that set forth in this subsection shall be ineffective. If an individual is entitled to receive and does receive pay for a holiday for any work day in the period designated by the employer under subsection (a)(2), such period shall be extended by such paid holiday.

c) If the employer fails to comply with the conditions set forth in subsection (a), amounts paid or payable to an employee during a period of vacation shall not be treated as wages with respect to any week after such separation or layoff unless these payments shall satisfy the requirements for vacation pay during shutdown for inventory or vacation purposes treated as wages under Section 2920.25.

Section 2920.35 Holiday Pay

a) Amounts which an individual is entitled to receive and receives for a holiday shall be treated as wages.

b) For the purposes of this Section, a holiday is defined as a day of public commemoration or celebration during which the employee performs no services pursuant to the employer's pay plan or labor-management agreement. A holiday is not limited to official legal holidays.

c) Unless the labor-management agreement or employer's pay plan stipulates otherwise, such holiday pay shall be attributed to, or deemed to be payable with respect to, the week in which the holiday occurs or is celebrated. The date on which such pay is received does not affect its allocation to the week in which the holiday occurs or is celebrated.

d) Unless the labor-management agreement stipulates otherwise, whenever the holiday falls within:

1) An announced vacation or inventory period as provided by Section 2920.25; or,

2) A designated vacation period in connection with a separation or layoff as provided by Section 2920.30;

an individual who receives holiday pay shall be deemed to have received wages for a normal work day on the day the holiday occurs or is celebrated.

Example: For the week ending November 14, an individual is entitled to 5 days of vacation pay and 1 day holiday pay for Veterans Day which occurs on November 11. The vacation pay for 4 days and the holiday for November 11 shall be deducted from the benefit week ending November 14. The vacation period, however, is extended to the next week by one day. Vacation pay for the day shall be deducted in full from the benefits for the week ending November 21.

Section 2920.40 Payments In Lieu Of Notice Of Separation Or Layoff

a) Wages

1) Amounts paid or payable by an employing unit to an individual in lieu of notice of separation or layoff, except for payments related to an employer=s violation of the Illinois Worker Adjustment and Retraining Notification Act [820 ILCS 65] or the federal Worker Adjustment and Retraining Notification Act (29 USC 2101 et seq.), shall be treated as wages with respect to the period of notice provided that the following conditions are met:

(A) There must be an employment agreement or a uniformly applied company policy that requires that the employing unit give the employee a definite period of notice before a layoff or separation;

(B) The employee must be laid off or separated without the required notice; and,

(C) The employing unit must pay the employee a sum equal to his regular wages, or an amount computed in accordance with a formula based on the employee's past earnings, for the required period of the notice.

2) If the amounts treated as wages in lieu of notice with respect to a week pursuant to this subsection (a) exceed the individual=s weekly benefit amount, the individual shall be ineligible to receive benefits with respect to that week.

b) Severance Payments. Amounts paid or payable by an employing unit to an individual in lieu of notice of separation or layoff that do not satisfy the conditions set forth in subsection (a) shall be treated as severance pay described in Section 2920.45 except for payments that qualify as vacation pay in connection with a layoff or separation, as provided in Section 2920.30 and are not related to an employer's violation of the Illinois Worker Adjustment and Retraining Notification Act or the federal Worker Adjustment and Retraining Notification Act.

(Source: Amended at 29 Ill. Reg. 1935, effective January 24, 2005)

Section 2920.45 Severance Pay

a) Amounts paid or payable to an individual for past services rendered by the individual to an employer or amounts paid or payable to an individual for pension or seniority rights lost upon separation or layoff shall be considered severance pay. Such pay shall not be considered wages payable or attributable with respect to the period subsequent to the individual's separation or layoff. Amounts paid or payable to the individual as severance pay shall not render the individual ineligible to receive benefits under Section 2920.5. The nature and purpose of such payments, rather than their characterization, shall determine whether or not such payments are considered severance pay under this Section.

b) For the purpose of this Section, the status of payments as severance pay is not altered by the fact that:

1) Such payments are voluntary; or that,

2) Such payments are made periodically rather than in the form of a lump sum.

A) Example 1: An employer's separation pay program provides for a lump sum payment based on the length of service. The purpose of the payment is to allow the individual to maintain his standard of living while he seeks other work. The individual performs no services after his date of separation. This lump sum payment constitutes severance pay under this Section and hence is not disqualifying.

B) Example 2: The individual was notified that he was to be terminated from employment on April 17. The individual worked on the employer's premises until April 6 but performed incidental services to the employer from April 6 through April 17 by telephone in training a replacement. The wages received from April 6 through April 17 are not severance pay. Because the individual performed some services and received wages for the period April 6 through April 17, he was not unemployed under Section 239 of the Act and hence not eligible for benefits under the Act.

Section 2920.48 Residual Payments

Residual payments constitute remuneration for personal services and, therefore, must be deducted from unemployment insurance benefits as provided in Section 402 of the Act. However, residual payments are attributable only to the weeks in which the personal services were actually performed and, therefore, are deductible only from those weeks.

Example: During the week ending March 2, 1991, an individual performs in a commercial. This commercial is scheduled to air on television every Friday from March 8, 1991 until May 24, 1991. As compensation for his performance, the individual will receive residual payments every time that the commercial is aired. These residual payments constitute remuneration for personal services for the week ending March 2, 1991 only. If this individual claims unemployment insurance benefits for that week, the residual payments shall be deducted from his benefits as provided in Section 402 of the Act.

(Source: Added at 15 Ill. Reg. 11416, effective July 30, 1991)

Section 2920.49 Payments For National Guard Or Air National Guard Service

NOTE: The above section number, which appears in the Table of Contents, has never existed. (The Table of Contents, as it appears, is part of the official record on file with the Secretary of State.)

Section 2920.50 Back Pay Awards

a) An individual who receives a "back pay award" as a result of a decision by the National Labor Relations Board, a court of law, any other governmental agency, in accordance with the employer's grievance procedure, or in voluntary settlement of any "back pay" dispute is considered to have received wages for services under the Act and hence is ineligible for benefits during any week of the period covered by the "back pay award" in which the amount of the back pay award equals or exceeds the individual's weekly benefit amount. If the amount of "back pay" attributable to any week covered by the "back pay award" is less than the individual's weekly benefit amount, such individual may be eligible for reduced benefits as provided by Section 2920.10.

b) Whenever an individual's "back pay award" is accompanied by any additional amounts awarded as a penalty, such amounts are not considered wages and do not affect an individual's eligibility for benefits under this Part.

(Source: Amended at 12 Ill. Reg. 16066, effective September 23, 1988)

Section 2920.55 Receipt Of Or Filing For Unemployment Insurance Benefits Under The Laws Of Another State, Canada, Or The United States

a) An individual shall be ineligible to receive benefits with respect to any week or weeks for which such individual received unemployment insurance benefits under the laws of the United States, another state, or Canada.

b) Subject to subsection (c), an individual shall also be ineligible to receive benefits with respect to any week or weeks for which such individual is seeking unemployment insurance benefits under the laws of the United States, another state, or Canada.

c) An individual who is ineligible for benefits under subsection (b) becomes eligible to receive benefits with respect to any week or weeks for which such individual has sought benefits under the laws of the United states, another state, or Canada once the unemployment insurance administration agency of the United States, another state, or Canada where the individual's claim for benefits was filed makes a final determination that the individual is not entitled to receive unemployment insurance benefits under their laws.

Section 2920.60 Supplemental Unemployment Benefits (SUB Pay)

Supplemental unemployment benefits paid or payable to individuals laid off by an employer under a plan intended to augment unemployment insurance benefits received under the Act shall not render the individual to whom such supplemental benefits are paid or payable ineligible to receive benefits, provided that all of the following conditions are satisfied:

a) The individual is otherwise eligible to receive benefits under the Act; and,

b) Payment of supplemental benefits is made under a trust agreement or other contractual plan which grants the individual a vested right to receive these supplemental payments once the conditions set forth in the trust agreement or contractual plan have been satisfied; and,

c) The trust agreement or plan treats each individual of a class of employees similarly.

Section 2920.65 Retirement Pay

a) For the purposes of this Part, retirement pay is defined as any pension, annuity, or other similar payment made to an individual:

1) Which is either paid or could have been paid on a periodic basis on account of the individual's separation from an employing unit;

2) Under a plan maintained or contributed to by an organization or individual, for which organization or individual the individual performed services during his base period or which organization or individual, including those which have elected to make payments in lieu of paying contributions, is chargeable, pursuant to Section 1502.1 of the Act for any benefit payments made to the individual.

b) Nothing in this Section shall prohibit payments from a plan maintained and operated by a union from constituting retirement pay provided that such payments otherwise satisfy the requirements of subsection (a).

c) A lump sum payment to an individual on account of his separation from an employing unit shall constitute retirement pay as defined by this Section if this lump sum payment could have been paid on a periodic basis at the option of the individual provided; however, that the individual's receipt of such a lump sum payment also satisfies the requirements of subsection (a)(2).

Example: A lump sum payment made to an individual on account of his separation shall not constitute retirement pay under this Section where the individual did not have the option to receive such payments on a periodic basis. It should be noted, however, that under Section 2920.70(c), such lump sum payments shall be considered disqualifying income with respect to the week in which they are paid.

(Source: Amended at 18 Ill. Reg. 4166, effective March 3, 1994)

Section 2920.66 Payments To An Election Judge

The compensation paid to an election judge by a Board of Elections constitutes remuneration for personal services and, therefore, must be deducted from unemployment insurance benefits as provided in Section 402 of the Act, and service as an election judge also constitutes bona fide work for the purpose of Section 607 of the Act.

(Source: Added at 15 Ill. Reg. 11416, effective July 30, 1991)

Section 2920.68 Payments By A Labor Union

a) Payments made by a labor union to an individual for picketing at an employing unit's place of business or for conducting negotiations on behalf of the labor union are wages under Section 234 of the Act (Ill. Rev. Stat. 1987, ch. 48, par. 344) because the individual is performing a service for the labor union.

Example: A labor union is engaged in a labor dispute with a certain employer. Because this particular union represents only a small portion of the employer's total work force and because of the vast size of the employer's facility, it is not possible for the union's own members to set up a meaningful picket line at this facility. For this reason, the union hires non-members to assist in picketing the facility. Those non-members are providing a service to the union and their remuneration constitutes wages under Section 234 of the Act. However, the union does not pay its own member for picketing; instead, they receive what is called "strike pay." However, this is money which is available to members to sustain them during the labor dispute and is not tied to the amount of time that they spend on the picket line. This money is not wages under Section 234 of the Act.

b) Strike benefits or welfare fund payments made to members of a labor union during a labor dispute in order to sustain the members during the period of the dispute are not wages as they are not payments for services performed for the labor union.

(Source: Added at 13 Ill. Reg. 5936, effective April 18, 1989)

Section 2920.69 Jury Service

a) Compensation paid for mandatory jury service (see 56 Ill. Adm. Code 2732.210) is not remuneration for personal services and, therefore, shall not constitute wages for the purpose of Section 402 of the Act nor shall mandatory jury service constitute bona fide work for the purpose of Section 607 of the Act.

b) Compensation paid for voluntary jury service, such as for a Coroner's jury, is remuneration for personal services and, therefore, does constitute wages for the purpose of Section 402 of the Act. Such voluntary service also constitutes bona fide work for the purpose of Section 607 of the Act.

(Source: Added at 15 Ill. Reg. 11416, effective July 30, 1991)

Section 2920.70 Retirement Pay Considered Disqualifying Income

a) The entire amount of payments made to an individual constituting retirement pay under Section 2920.65 shall be considered disqualifying income if:

1) These payments are from any individual or organization or its successor, for which individual or organization or its successor the individual performed services during his base period or which is chargeable, pursuant to Section 1502.1 of the Act, including those organizations which have elected to make payments in lieu of paying contributions, for any benefit payments made to the individual, and which has paid all of the cost of the individual's retirement pay; or,

2) These payments are from a trust, annuity or insurance fund or under an annuity or insurance contract to or under which any individual or organization or its successor, for which individual or organization or its successor the individual performed services during his base period or which is chargeable, pursuant to Section 1502.1 of the Act, including those organizations which have elected to make payments in lieu of paying contributions, for any benefit payments made to the individual, pays or has paid all of the premiums or contributions.

b) One-half of payments made to an individual constituting retirement pay under Section 2920.65 shall be considered disqualifying income if the individual or organization or its successor has paid some, but not all, of the cost of the individual's retirement pay.

1) Example 1: Payments from independent pension plans established and funded entirely by the individual such as individual retirement accounts (IRA) or Keogh plans are not disqualifying within the meaning of this Section because the employer pays no part of the cost of the IRA or Keogh plan.

2) Example 2: The individual contributes to a retirement plan at a fixed rate of 25%. The employing unit contributes the remaining 75%. Since part of the total contributions to the plan is provided by the employer, 50% of each retirement payment is disqualifying income.

3) Example 3: The individual and the employing unit made variable contributions to a retirement plan. However, upon maturity of the plan, the individual has contributed 40% of all of the contributions and the employing unit has contributed the remaining 60%. Since part of the total contributions to the retirement plan is provided by the employer, 50% of each retirement payment is disqualifying income.

4) Example 4: The individual belongs to a retirement plan maintained and operated by the union. The employer contributes 60% of the cost of maintaining and operating the plan, the union contributes 5%, and the individual contributes the remaining 35%. Since part of the total contributions to the retirement plan is provided by the employer, 50% of each retirement payment is disqualifying income.

5) Example 5: The individual retires from Company A in 1981 when he reaches the age of 65. At this time, he does not continue to work, and he will be entitled to full social security benefits available to an individual of his age. However, he is later employed by Company B and collects no more social security benefits until he reaches the age of 70, when he is allowed to continue to work and also to collect his full social security. If the individual is laid off by Company B, one-half of his social security benefits will be disqualifying income if his wages from Company B are subject to social security contributions, even though the additional contributions do not increase his social security benefits.

c) Notwithstanding subsections (a) and (b), lump sum payments made on account of retirement which the individual had no option to receive on a periodic basis or those lump sum payments which the individual had an option to receive on a periodic basis but of which the employer fails to notify the Director as required under Section 2920.75 (d) shall be considered disqualifying income under this Section with respect to the week in which they are paid.

(Source: Amended at 18 Ill. Reg. 4166, effective March 3, 1994)

Section 2920.75 Allocation Of Retirement Pay

a) Whenever an individual has received or will receive amounts as retirement pay as defined by Section 2920.65 for a half month period, an amount shall be deemed to have been paid the individual for each day equal to one-fifteenth of such amounts.

b) Whenever an individual has received or will receive amounts as retirement pay as defined by Section 2920.65 for a one month period, an amount shall be deemed to have been paid the individual for each day equal to one-thirtieth of such amounts.

c) Whenever an individual has received or will receive amounts as retirement pay as defined by Section 2920.65 for any other period, an amount shall be deemed to have been paid the individual for each day in the period equal to the amounts of retirement pay divided by the number of days in the period.

d) Whenever an individual has received or will receive a lump sum amount which constitutes retirement pay under Section 2920.65, and if the retirement pay could have been received on a periodic basis at the option of the individual, an amount shall be deemed to have been paid the individual for each day in the period for which a periodic payment could have been received, provided that the employer has satisfied the notice requirement of this subsection. The amount deemed to have been paid shall be allocated in accordance with the formulas in subsections (a), (b) or (c) above, as appropriate. Within 10 calendar days after notification of the filing of the individual's claim for benefits, the employer must designate by notice to the Director the periodic basis on which the individual could have received the retirement pay, the amount that the individual could have received each period and the duration for which periodic payments could have been made. Failure to so notify the Director shall result in such lump sum payment being treated as disqualifying only for the week in which it was paid under Section 2920.70(c).

Example 1: An individual retires from Company A. In accordance with the company's retirement plan, the individual has the option to receive a lump sum payment of $300,000.00 or a monthly annuity of $3,000.00 for the rest of his life. The individual chooses to receive the lump sum. The individual then files a claim for benefits. If the company notifies the Director within 10 calendar days after notification of the individual's claim for benefits, designating the periodic basis on which the individual could have received retirement payments, the amount the individual could have received each period, and the duration for which the individual could have received the periodic payments, the individual's $300,000.00 lump sum retirement payment will be deemed to have been received in monthly installments of $3,000.00 and will be allocated in accordance with subsection (b).

Example 2: The same situation as that given in the preceding example except that the company fails to notify the Director within 10 calendar days after notification of the individual's claim for benefits of the individual's option to receive periodic retirement payments. The company's failure to give such notice results in the individual's receipt of the lump sum retirement payment being treated as disqualifying only for the week in which it was paid.

(Source: Amended at 18 Ill. Reg. 4166, effective March 3, 1994)

Section 2920.80 Miscellaneous Forms of Retirement Pay

a) On the basis of the definitions and principles concerning retirement pay set out in Sections 2920.65 and 2920.70, an individual's receipt of payments from the following sources shall be considered 100% disqualifying income:

1) All profit sharing plans funded entirely by the individual or organization for whom the individual performed services which constitute retirement pay under Section 2920.65;

2) All Federal military service pensions if the United States military service paid wages to the individual during his base period;

3) All pensions under the Railroad Retirement Act of 1974 (45 U.S.C. 231-231t) if an organization covered under that Act paid wages to the individual during his base period.

b) On the basis of the definitions and principles relating to retirement pay set out in Sections 2920.65 and 2920.70, an individual's receipt of payments from the following sources shall be considered 50% disqualifying income:

1) Social Security retirement pensions and disability payments based on the individual's employment, including those based on self-employment;

2) Federal civilian employment pensions if the individual was paid for Federal civilian services during his base period;

3) All State of Illinois or local government retirement or disability pensions if the individual performed services during his base period for the State of Illinois or the local governmental entity which funded the pension or if the State of Illinois or the local governmental entity is chargeable, pursuant to Section 1502.1 of the Act, including an entity which has elected to make payments in lieu of paying contributions, for any benefit payments made to the individual.

c) On the basis of the definitions and principles concerning retirement pay set out in Sections 2920.65 and 2920.70, an individual's receipt of payments from the following sources shall not be considered disqualifying income:

1) An independent pension or retirement plan which was fully paid for by the individual;

2) Social Security benefits payable to a surviving spouse or dependent, not attributable to the previous work of the surviving spouse or dependent;

3) Veterans Administration compensation payments which are not federal military service pensions;

4) Any federal (military service or civilian employment) disability payments if they are not part of a retirement plan;

5) Payments from Individual Retirement Accounts (IRA) and Keogh Accounts;

6) A pension or retirement plan funded by an individual or organization, including one which has elected to make payments in lieu of contributions, which is neither chargeable, pursuant to Section 1502.1 of the Act, for any benefits paid to the individual nor for which the individual performed services during his base period.

(Source: Amended at 13 Ill. Reg. 17402, effective October 30, 1989)

Section 2920.85 Conformity With Federal Unemployment Tax Act

In order to assure full state tax credit against the tax imposed by the Federal Unemployment Tax Act, (26 U.S.C. 3301 et seq) the rules relating to retirement pay shall be interpreted in conformity with the requirements of the Federal Unemployment Tax Act as interpreted by the U.S. Secretary of Labor or other appropriate Federal agency.

SUBCHAPTER h: JOB SERVICE

PART 2960: GENERAL PROVISIONS
SUBPART B: INFORMATION OBTAINED PURSUANT TO ADMINISTRATION OF THE STATE EMPLOYMENT SERVICE

Section 2960.100 Disclosure Of Information

a) General labor market information obtained pursuant to the administration of the Illinois Employment Service, including but not limited to information concerning employment opportunities, employment levels and trends, and labor supply and demand, may be published and released to applicants registered for work by the Employment Service, to employing establishments, and to the public; provided, that such publication or release does not include information identifiable to specific applicants or employing establishments.

b) An applicant registered for work by the Employment Service, or an employing establishment, shall be supplied with information obtained pursuant to the administration of the Employment Service to the extent necessary for the proper and efficient performance of recruitment, placement, employment counseling and other functions of the Employment Service.

c) A claimant for benefits, training allowances, or other payments under a State or Federal law relating to a system of unemployment insurance, vocational training or trade readjustment allowances, or his or her duly authorized representative, shall be supplied with information from the files and records of the Employment Service to the extent necessary for the proper presentation of his or her claim or determination of his or her present or prospective rights to such payments.

d) Information obtained pursuant to the administration of the Employment Service shall be made available to:

The United States Secretary of Labor, or other appropriate Federal agency administering the Social Security Act, the Area Redevelopment Act, the Job Training Partnership Act, the Trade Expansion Act, the Workforce Investment Act or any other Federal Act relating to the vocational training of unemployed or underemployed workers;

The Railroad Retirement Board;

The Internal Revenue Service of the United States Department of Treasury; and,

The Department of Revenue of the State of Illinois.

Information obtained pursuant to the administration of the Employment Service shall be furnished, if permitted under Section 1900 of the Act [820 ILCS 405/1900], to any public officer or public agency of this or any other State or the Federal government dealing with the administration of a law in relation to:

Relief or public assistance;

Unemployment Insurance;

A system of public employment offices;

Fair employment practices;

Wages and hours of employment;

A program of public works;

A pension or retirement system;

Vocation rehabilitation.

Information received pursuant to the administration of the Employment Service shall be furnished to:

An official or officer of a public school, college or university, or a placement official of a private college or university, but only to the extent necessary for the efficient employment counseling, vocational guidance and placement, of an applicant registered for work by the Employment Service;

A private social or welfare agency, but only if such information has a direct bearing upon the vocational adjustment or employability of an applicant registered for work by the Employment Service, and only to the extent necessary for the proper and efficient discharge of the placement and counseling functions of the Employment Service.

(Source: Amended at 24 Ill. Reg. 15049, effective September 28, 2000)

Section 2960.105 Disclosure of Information For Use In Employment, Training And Educational Programs Administered By State And Local Governmental Social Welfare Agencies

a) For the purposes of implementing and administering employment, training, educational and social welfare programs, any agency of this State, as defined by Section 3.01 of the Illinois Administrative Procedure Act (II. Rev. Stat. 1987, ch. 127, par. 1003.01) or any other State, any local government of this State, as defined by Section 3(a) of the State Mandates Act (Ill. Rev. Stat. 1987, ch. 85, par. 2203(a)) or any agency of the Federal government, as defined by Section 551(1) and 552(f) of the federal Administrative Procedures Act (5 U.S.C. 551(1) and 552(f)) which trains, educates, grants funds for training or education, engages in research for educational or training purposes, places in employment, provides social welfare services, or any other related service of the State shall be deemed to be a *Public agency of this or any other State or the Federal Government dealing with the administration of relief,... public assistance, ..., a system of public employment offices...,* as provided in Section 1900 of the Act (Ill. Rev. Stat. 1987, ch. 48, par. 640).

b) Pursuant to Section 1900 of the Act, the Director shall provide such agencies and local entities, information from the files of the Department as the Director deems proper (Ill. Rev. Stat. 1987, ch. 48, par. 640), based upon the written request (i.e. purpose under the law, format or forms of data and schedule for delivery of data) of the agency or entity, to be helpful to them to provide outreach and recruitment, assist in intake, determine eligibility, monitor program outcome or evaluate the success of the various services delivered by their employment, training, educational or social welfare programs.

1) Example 1: A state economic development agency administers the Federal employment training funds received by this State under the federal Job Training Partnership Act (29 U.S.C. 1501 *et seq.*) (JTPA). These funds are subgranted to units or combinations of units of local government called Service Delivery Areas (SDA's) which recruit, assess, train and place disadvantaged individuals in unsubsidized jobs. In order to assist in performing these functions, the Director, upon written request, will provide the State economic development agency with identifying information about individuals who qualify for the services that it and its subgrantees can provide. The State economic development agency can provide this information to its subgrantees (SDA's).

2) Example 2: Public education institutions and public training institutions might be in need of accurate data to help them determine the relative success of their educational and training programs. Upon written request, the Director shall provide to these institutions such data as is available to determine increases or decreases in individual wages, duration of employment, if and when the individual filed for unemployment insurance or other educational or training related factors.

3) Example 3: A State economic development agency seeks to attract new manufacturers to this State. This agency requests current information on the number, size and type of major potential suppliers and subcontractors in a given geographical area. Upon written request, the Director will provide such data to the agency.

4) Example 4: The Illinois Department of Rehabilitation Services is attempting to contact specific groups of potential employers for their newly trained handicapped clients. Upon written request, the Director can provide this Department with a mailing list of companies which are experiencing growth or whose records indicate other factors which might lead to the hiring of the handicapped workers. A similar outreach effort could be made on behalf of welfare recipients, ex-offenders, youth or the aging.

c) General administrative data and labor market information, including but not limited to information concerning employment opportunities, levels and trends, labor supply and demand and related statistical data, shall be available to both private and public agencies and individuals. Except as provided in subsections (a) and (b),such information shall not allow for the identification of a specific employing unit or individual.

d) Unless statutorily excluded, the Director shall require payment of the costs incurred in providing such requested information if the Director incurs additional costs in processing the information which are greater than the cost of recovery and the Department does not receive some offsetting benefit (see example) from providing the data.

Example: A local government, upon written request, asks the Director to provide a mailing list of all unemployed individuals in its service area who might meet certain eligibility criteria for a training program it will sponsor. Since such mailing lists are not regularly prepared by the Director, the Director may negotiate with the entity regarding the reimbursement of costs for preparing the list without charge if, for example, the local entity would agree to provide similar data and/or services in return.

(Source: Amended at 13 Ill. Reg. 5940, effective April 18, 1989)

Section 2960.110 Disclosure Of Information For Use By Governmental Agencies Participating In Public Works And Related Programs

a) For the purposes of a governmental public works program, any State agency, as defined by Section 3.01 of the Illinois Administrative Procedure Act (Ill.Rev.Stat.1987, ch. 127, par. 1003.01) and/or Federal agency, as defined by Sections 551(1) and 552(f) of the federal Administrative Procedure Act (5 U.S.C. 551(1) and 552(f) or local government, as defined in Section 3(a) of the State Mandates Act (Ill. Rev. Stat. 1987, ch. 85, par. 2203(a) receiving public works funding shall be deemed to be a *Public agency of this or any other state ..., dealing with ... a public works program...* as provided in Section 1900 of the Act (Ill. Rev. Stat. 1987, ch. 48, par. 640).

b) Pursuant to Section 1900 of the Act, the Director shall provide such agencies and local entities, upon their written request (i.e. purpose under the law, format or form of data and schedule for delivery of data), such information as the Director deems proper (Ill. Rev. Stat. 1987, ch. 48, par. 640) based upon the written request for planning, development, administration, participation, operation, monitoring and evaluation of a public works or related program.

1) Example 1: The Illinois Department of Transportation is attempting to determine where the growth of industry will occur in a region the State and the nature of that industry for the purpose of road repair/construction and related infrastructure improvements. This data will be incorporated into a community/county profile currently developed by a regional planning commission comprised of units of local government.

The commission will use the profile to enhance the area's image with potentially new and expanding businesses as well as its efforts to obtain federal public works funding. Upon written request from either the commission or the Department of Transportation, the Director will provide information to chart the growth and decline of specific types of employers in the region including their migration from the urban central city to the suburban areas and the recently developing exurban communities.

2) Example 2: A county housing authority is preparing a grant application for federal funds to rehabilitate existing low income housing and expand available housing through new construction in scattered sites. Upon written request from the authority, the Director will provide wage data for specific construction and other occupations to be used in preparing the grant application and also data on the available labor pool, the severity of unemployment and a profile of the unemployed in the area.

3) Example 3: A state university has been placed under contract by a State legislative commission to evaluate whether or not major state infrastructure improvement legislation should be reauthorized and its appropriation maintained or decreased. The university must be able to trace the impact of public works funding to increased number of jobs, business expansion and productivity and an overall trend toward higher paying and more skilled jobs. Upon written request, the Director shall supply whatever data the Department might have which would assist the university in completing its analysis.

c) General labor market information, including but not limited to information concerning employment opportunities, levels and trends, labor supply and demand as well as similar statistical data shall be available upon written request to both public and private participants involved in public works and related programs. Except as provided in subsections (a) and (b), information and data shall not allow for the identification of a specific employing establishment or individual.

d) Unless statutorily excluded, the Director shall require payment of costs incurred in providing the requested information if the Director incurs additional costs in processing such information which are greater than the cost of recovery and the Department does not receive some offsetting benefit (see example in Section 2960.105(d) from providing the data. (See example following Section 2960.105(d)).

(Source: Added at 12 Ill. Reg. 13596, effective August 5, 1988)

Section 2960.115 Disclosure Of Identifying Information For Job Orders Posted On The Internet

a) The Department shall provide an individual with identifying information regarding an employing establishment through an Internet-based labor exchange system if the employing establishment agrees that the information may be disclosed and if the information is obtained in the administration of the Employment Service and:

1) the Department maintains the system, and the system indicates that the individual's qualifications match the requirements for filling a job opening with the employing establishment; or

2) the system is maintained by an entity other than the Department, and the employing establishment has a job opening posted on the system.

b) The Department shall provide an employing establishment with identifying information regarding an individual through an Internet-based labor exchange system if the individual agrees that the information may be disclosed and if the information is obtained in the administration of the Employment Service and:

1) the Department maintains the system, and the system indicates that the individual's qualifications match the requirements for filling a job opening with the employing establishment; or

2) the system is maintained by an entity other than the Department, and the individual is registered on the system.

(Source: Added at 24 Ill. Reg. 15049, effective September 28, 2000)

Section 2960.120 Disclosure Of Information To One-Stop Partners

The Department shall provide a one-stop partner under Section 121 of the federal Workforce Investment Act of 1998 with information obtained in the administration of the Employment Service, to the extent the partner is providing services through a one-stop delivery system in Illinois or participating in the operation of such a system in Illinois.

(Source: Added at 24 Ill. Reg. 15049, effective September 28, 2000)

SUBPART C: VETERANS EMPLOYMENT ACT PROGRAM

(Transferred to the Department of Commerce and Economic Opportunity)

Section 2960.210 Definitions (Deleted)

Section 2960.220 Designation of Multi-Purpose Service Centers (Deleted)

Section 2960.230 Target Groups (Deleted)

Section 2960.240 (Deleted)

Section 2960.250 (Deleted)

Section 2960.260 (Deleted))

ILLINOIS UNEMPLOYMENT INSURANCE LAW HANDBOOK

DIGEST OF ADJUDICATION PRECEDENTS

The *Digest of Adjudication Precedents* is an exclusive publication of the Illinois Department of Employment Security. It consists of summarized versions of Board of Review and circuit and appellate court decisions. Unabridged versions of Board of Review decisions can be found in the *Complete IDES Board of Review Reporter* available in microfiche at document depository libraries and other selected public libraries throughout the State and at the IDES library located at 33 South State Street, Ninth Floor South, Chicago, IL 60603. Subsequent court and Board of Review decisions may affect the applicability of summaries found in the *Digest*.

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MISCONDUCT

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Bandemer v. IDES*, 562 N.E. 2d 6 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition (Potential Harm)**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant was sales manager for a retail store. She had the keys and was responsible for opening the store at 9:30 a.m. The employer had a rule requiring the claimant to call in if she would be absent. One morning, the claimant felt ill. She failed to contact the employer and the store did not open for business when scheduled.

The claimant argued that her actions did not constitute misconduct, because, among other elements of misconduct, the employer did not prove that it suffered any harm.

HELD: Potential financial loss caused by the conduct of an employee is harmful to an employer. Here, because of the claimant's actions, the employer was unable to open the store as scheduled and potential customers were therefore unable to shop at the store resulting in financial loss.

The statutory element of harm was proven.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Employment Division v. Smith*, 110 S. Ct. 1595 (1990)**
AUTHORITY	**Section 602A of the Act`**
TITLE	**Misconduct**
SUBTITLE	**Religious Practice that Violates Criminal Law**
CROSS REFERENCE	**MC 270.05, Intoxicants; MC 490.05, Violation of Law**

The claimants were discharged from their jobs at a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug. Generally, the use of peyote violated Oregon's controlled substance law. However, the claimants ingested the drug for sacramental purposes in connection with their Native American Church.

The question presented to the United States Supreme Court was whether the claimants could be disqualified for unemployment benefits for misconduct, or whether such a disqualification would violate the First Amendment's Free Exercise Clause.

HELD: Unemployment insurance benefits cannot be denied when the denial is specifically directed at religious beliefs (see, e.g., MC 5.05, Hobbie; RW 90.05, Frazee). However, benefits can be denied when there is a neutral, across-the-board, criminal prohibition on a particular form of conduct. Here, based upon Oregon's drug law, unemployment benefits could be denied.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**ABR-85-8467/5-22-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition of Misconduct**
CROSS REFERENCE	**None**

The claimant worked for a commercial laundry. During the course of his employment he had received 1 oral warning and 1 written warning for his behavior. He was discharged as a result of the following incident: Upon being instructed by the plant foreman to perform a certain task, the claimant lost his temper and kicked a laundry cart with sufficient force that it caused a noise that could be heard above all the other noise normally present in the laundry when it caromed into a washer.

The claimant contended that his discharge was wrongful because, prior to discharge, the employer, per its procedures, was supposed to have issued 2 written warnings.

In his decision, a Referee stated:

> The claimant's discharge was not based upon misconduct...the employer having failed to follow required disciplinary procedures.

HELD: In determining whether or not a discharge is for misconduct, the employer's right to discharge a worker should never influence an Adjudicator or Referee to conclude that because the employer had the right to discharge the worker, the worker's action constituted misconduct. Similarly, in determining whether or not a discharge is for misconduct, Adjudicators and Referees should not be constrained by procedural rules which employers may prescribe. The focus must always be upon the act for which the claimant was discharged. Analyses of employers' procedural rules and concepts such as wrongful discharge are for another forum, and not for determining eligibility for benefits.

In the instant case, analyzing the conduct of the claimant which led to his discharge, the claimant engaged in an act of insubordination, manifested by kicking a cart into a washer, which could have damaged both the cart and the washer. A person who deliberately engages in conduct which can damage the employer's property should reasonably foresee that it will result in his discharge (and not, in anticipation of another warning, that he will be given a free pass).

The Agency's sole responsibility in this case was to determine whether the claimant became unemployed due to economic conditions beyond his control, or whether he bore responsibility for his unemployment. The claimant bore responsibility for his unemployment. He was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Hobbie v. Unemp. Appeals Comm'n*, 107 S. Ct. 1046 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Conscientious Objection**
CROSS-REFERENCE	**MC 255.303, Insubordination, Refusal to Work**

The claimant was employed as Assistant Manager of a retail jewelry store. In April, 1984, she informed her immediate supervisor that she was to be baptized into the Seventh-Day Adventist Church and that, for religious reasons, she would no longer be able to work on her Sabbath, from sundown on Friday to sundown on Saturday. Her supervisor agreed to substitute for her whenever she was scheduled to work on a Friday evening or Saturday; in return, the claimant agreed to work other evenings and Sundays.

In June, 1984, the general manager of the jewelry store learned of this arrangement and advised the claimant that she could either work her scheduled shifts or resign. When the claimant refused to do either, she was discharged. When she filed for unemployment benefits, she was disqualified on the basis that she had been discharged for misconduct connected with her work. This denial of benefits was affirmed by the Florida Unemployment Appeals Commission and the Florida Fifth District Court of Appeal. The United States Supreme Court agreed to hear the case directly from the Court of Appeal.

HELD: The Supreme Court ruled that the denial of benefits to the claimant violated the Free Exercise Clause of the First Amendment, as applied to Florida through the Fourteenth Amendment. The Court quoted the following passage:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, *or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs*, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.
>
> *Thomas v. Review Board of Indiana Employment Security Div.*, 450 U.S. 707 (1981). (Emphasis in original).

The Florida Appeals Commission had argued that the claimant caused the conflict between work and religious belief, by being the "agent of change," and, as a result, neither the employer nor the state imposed a burden upon free exercise:

> (I)t is...unfair for an employee to adopt religious beliefs that conflict with existing employment and expect to continue the employment without compromising those beliefs.

The Court rejected that argument, declining to single out the religious convert for different, less favorable treatment than that given an individual whose adherence to his or her faith preceded employment. The Court concluded that the timing of the claimant's conversion was immaterial to a determination that her free exercise of her rights had been burdened: the salient inquiry under the Free Exercise Clause was the burden involved, period. The claimant was forced to choose between fidelity to religious belief and continued employment; the forfeiture of unemployment benefits for choosing the former over the latter brought unlawful coercion to bear on the claimant's choice.

The claimant's refusal to work under the conditions set forth by her employer did not constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**84-BRD-2756/2-28-84**
AUTHORITY	**1./S-601B and S-602A**
TITLE	**Misconduct - General**
SUBTITLE	**Distinguishing The Issue**
CROSS-REFERENCE	**VL 5.05, General under Voluntary Leaving**

The claimant was given an indefinite leave of absence to care for her mother who was seriously ill. Four months later, the claimant's sister became available to care for the mother, and she notified the employer that she could return to work. The company told her work was slow and asked her to check back with them in a month. She was subsequently placed on layoff without returning to work.

HELD: The claimant's separation was neither a voluntary leaving nor a discharge but was due to lack of work. In the absence of any disqualifying issue, the claimant cannot be subject to a disqualification for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	**ABR-86-1890/7-24-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Distinguishing the Issue (Discharge vs. Lay-off)**
CROSS-REFERENCE	**MC 440.05, Termination of Employment**

On October 25, the claimant, a truck driver, was involved in an accident with the employer's truck, for which he was ticketed.

On October 26, for economic reasons, the employer reduced its work force; the claimant was one of the workers laid-off. The employer's terminal manager later testified that, since the day after the claimant's accident, there was no work available to assign to the claimant.

On October 29, the employer sent to the claimant a notice of suspension, pending investigation of the October 25 accident. The employer's policy provided for a such a suspension whenever a driver was involved in an accident for which he was ticketed.

On November 13, the claimant received a notice of discharge.

HELD: There cannot be a discharge from non-existing work. As soon as there is a work separation due to a lay-off, any subsequent action by the employer during the course of that lay-off is irrelevant.

In this case, the claimant was separated from work due to a lack of work resulting in an indefinite lay-off. By reason of that lay-off, the employer's subsequent review of the claimant's accident and the suspension and discharge were irrelevant.

The claimant was not subject to disqualification under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 5.05**
DOCKET/DATE ***Cetnar v. Board of Review*, 495 N.E. 2d 1128 (1986)**
AUTHORITY **Section 602 of the Act**
TITLE **Misconduct**
SUBTITLE **Sole Accountability**
CROSS-REFERENCE **MC 602-05, Felony or Theft**

The employer discovered that a large-scale construction project was being carried out at the residence of its maintenance superintendent, and that employees were working on that project on company time, using materials transported from the employer's plants. The claimant, a Maintenance Electrician, was discharged for his part in what was deemed the misappropriation of company property (theft).

In his written statement to the Adjudicator, the claimant stated that on certain occasions his general foreman would send him out of the employer's plant to work on private property and would tell him what materials he needed for the job. The claimant would punch out for the day, then give his timecard to the foreman. The claimant maintained that he was given authorization by his foreman to remove materials from the plant and specifically stated, "I have not taken any materials from (the employer) without authorization." The claimant stated that it was customary for maintenance department workers to perform work at the residences of management personnel, and testified that in the early years of his employment he had performed such work at the home of the company's owner.

The claimant's testimony was unrebutted.

HELD: Before any form of behavior is determined to be an act of misconduct, it must be clearly established as factual that the discharge was due to the worker's behavior for which the employer was not at fault. Moreover, Section 602B clearly requires that in cases involving a discharge based upon job-related theft, there be a demonstration that the employer was in no way responsible for the theft.

In the instant case, the facts led to the conclusion that the employer countenanced the claimant's activities. The claimant's sole accountability for his actions was not established. The act(s) for which he was discharged did not fall within the definition of misconduct in general, under Section 602A, or theft, under Section 602B.

ISSUE/DIGEST CODE **Misconduct/MC 5.05**
DOCKET/DATE **ABR-80-10604/10-18-85**
AUTHORITY **Section 602A of the Act**
TITLE **None**
SUBTITLE **Misconduct**
CROSS-REFERENCE **Distinguishing the Issue MC 440.05 Expiration of Contract**

The claimant, a Roman Catholic, worked for a Roman Catholic school, as a Teacher. In November, 1979, she married a divorced man of the Methodist faith. The marriage ceremony was not performed in the Roman Catholic Church and was not recognized as valid by that Church. One week later, the employer became aware of the claimant's marriage, and concluded that, by entering into the marriage, the claimant had breached her employment contract, which provided, in pertinent part: "(T)he teacher agrees to ... act in accordance with the doctrine and precepts of the Catholic Church." However, rather than discharge the claimant immediately, the employer decided to permit her to continue teaching until June, 1980, the end of the academic year, at which time also the claimant's employment contract would expire. The employer decided not to renew the claimant's contract.

HELD: A work separation which is based upon the expiration of a contract does not fall within the purview of Section 602A of the Act. In the instant case, the claimant became an unemployed individual by operation of law, because her contract had expired, and for no other reason. This rendered any consideration of the misconduct issue moot; and, similarly, any reason the employer might have had for deciding not to renew the claimant's contract was irrelevant.

ISSUE/DIGEST CODE **Misconduct/MC 5.05**
DOCKET/DATE **ABR-85-6617/2-28-86**
AUTHORITY **Section 601A and Section 602A of the Act**
TITLE **Misconduct**
SUBTITLE **Distinguishing the Issue**
CROSS-REFERENCE **None**

While driving to work, the claimant saw a woman jogger at the roadside. He stopped his car, then proceeded to physically assault the woman. After that assault, but before he reached work, the claimant was apprehended by the police, arrested, and jailed. After the claimant had been in jail for several days, a representative of the employer visited him, and informed him that, due to his consecutive days' absences, he had been deemed to have abandoned his job and to have voluntarily resigned.

HELD: It often occurs that a party will incorrectly characterize a work separation issue. Therefore, it is the Agency's responsibility to determine the correct issue. In the instant case, despite the employer's characterization of the issue as "job abandonment" or "voluntary leaving," the facts indicated that the employer - not the claimant - decided to terminate the work relationship. The claimant was discharged.

ISSUE/DIGEST CODE **Misconduct/MC 5.05**
DOCKET/DATE ***Barry Pesce v. Board of Review*, No. 86-2049 (1987)**
AUTHORITY **Section 602A of the Act**
TITLE **Misconduct**
SUBTITLE **Definition**
CROSS-REFERENCE **MC 300.1, Manner of Performing Work**

The claimant was employed as a driver in a medicar used to transport patients to and from hospitals and nursing homes. During the 3-1/2 months he was employed he was involved in 4 accidents with the employer's vehicle. Each of these accidents occurred while the claimant was backing up and resulted in the claimant's vehicle striking a stationary object. There were no patients in the medicar at the time of these accidents and none of the accidents caused severe damage.

The employer had a rule that 2 accidents with the employer's vehicle would result in discharge; but, because the employer did not know how many of the accidents might have been the claimant's fault, the employer did not discharge him until after his 4th accident.

The Board of Review stated that the claimant was discharged due to his inability to back up the employer's vehicle. The Board then went on to equate the claimant's inability to back up the vehicle with gross indifference to the interests of the employer, because, if the claimant had continued on that course, there was the potential of the claimant injuring or aggravating an existing injury of one of the patients who relied on him for transportation. The Board concluded that this was misconduct.

The claimant contended that, even if he may have been properly and justifiably discharged, his actions did not constitute misconduct.

HELD: Every justifiable discharge does not disqualify the discharged employee from receiving unemployment benefits. An employee's conduct may be such that the employer may properly discharge him. Such conduct might not, however, constitute "misconduct connected with the work."

Misconduct is defined as conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of its employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability.

In this case, the record showed that the claimant had 4 accidents with stationary objects while backing up in the employer's vehicle. But, there was no evidence of deliberate conduct or a willful or wanton disregard of the employer's interests. Similarly, there was no evidence, other than the fact that the accidents occurred, to indicate that the claimant's conduct could be characterized as carelessness or negligence of such a degree or recurrence as to manifest equal culpability. In short, there was no showing of an unreasonable and improper course of conduct from which could be imputed a lack of proper regard for the employer's interests.

The claimant was allowed benefits without disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Frederick Siler v. IDES*, No. 1-89-0149 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition**
CROSS-REFERENCE	**MS 95.2, Construction of Statutes, Legislative Intent**

The claimant was a maintenance worker for 7-1/2 years. During the last 1-1/2 years, his work performance deteriorated. Despite warnings, he continued to violate his employer's sanitation and safety rules, until he was fired.

Neither the Referee nor Board of Review made a finding that the violations were deliberate or willful. Still, both held that "not following correct procedures" and "disregarding the employer's requirements" constituted misconduct.

The claimant sought judicial review.

HELD: Effective January 1, 1988, a definition of misconduct was added to Section 602A of the Act. That definition provides, in pertinent part: "Misconduct" means the deliberate and willful violation of a reasonable rule or policy.

The definition includes the terms "deliberate" and "willful" and makes no reference to "carelessness or negligence" of any degree. This indicates that the legislature intended that persons discharged for incapacity, inadvertence, negligence or inability to perform assigned tasks should receive benefits.

Terms such as "not following correct procedures" or "disregarding the employer's requirements" do not suffice to comply with the statutory definition. It is necessary to show that a worker's non-compliance was deliberate and willful.

In this case, there being no finding of any "deliberate" or "willful" violation of rules, there could be no misconduct under Section 602A. Benefits were allowed without disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Winklmeier v. Board of Review*, 450 N.E. 2d 353 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Definition of Misconduct**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MS 95.4, Constr. of Statute**

Over a two-year period, the claimant submitted 13 medical insurance claims to his employer. Each claim was for medical treatment for his wife. On each claim he knowingly and falsely stated that his wife was unemployed and had no insurance of her own. His practice of filing false claims could result in higher insurance costs to his employer.

HELD: As opposed to mere insufficiency, ordinary negligence, or good-faith errors in judgment, misconduct is a deliberate act or gross negligence that manifests an intent to disregard employee responsibilities.

Here, the claimant's actions were deliberate and in total disregard of the standard of behavior expected of an employee. His actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 5.05**
DOCKET/DATE **ABR-95-6086/8-2-95**
AUTHORITY **Section 602A of the Act**
TITLE **Misconduct**
SUBTITLE **Definition (Intent or Lack of Intent to Harm)**
CROSS-REFERENCE **None**

The claimant had been warned about leaving work early. When she next sought permission to leave work early, permission was denied. Despite this, she arranged for another worker to cover her shift, and she left anyway. She was discharged. The claimant contended that this could not be misconduct, because, by arranging to have someone cover her shift, she did not intend to harm her employer.

HELD: The test is not whether an individual intends to harm her employer, but whether the individual intends to do the act that causes harm or violates prior warnings. Here, the claimant intended to do the act (leaving work early) that violated a prior warning. Therefore, her action constituted misconduct.

ISSUE/DIGEST CODE **Misconduct /MC 5.05**
DOCKET/DATE ***Brodde v. Didrickson*, 645 N.E. 2d 990 (1995)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS REFERENCE **MC 485.8, Violation of Company Rule**

When a carton-opening machine jammed, the claimant, a production supervisor, out of frustration at not meeting her production schedule, bypassed the machine's safety system by deactivating its safety shield, then reached into the machine with her hands, while it was still operating. She was advised this was a rules violation, but responded it was her safety alone at stake. The claimant suffered no injuries from her actions but was fired anyway.

HELD: Section 602A defines "misconduct" as the deliberate and willful violation of an employer's work rule which harms the employer. Here, the employer's rule was reasonable (designed to safeguard employees). The claimant's violation of the rule was deliberate (irrespective of her intent not to cause anyone else injury). Although the claimant escaped actual harm, the term "should be viewed in the context of potential harm and not in the narrow context of actual harm." The claimant could have been injured, and, by her example, she suggested to subordinates that safety rules could be ignored, which could also result in harm. This was misconduct under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 5.05-1**
DOCKET/DATE ***Mattson v. Dept. of Labor*, 455 N.E. 2d 278 (1983)**
AUTHORITY **Section 602A of the Act**
TITLE **Misconduct**
SUBTITLE **Discharge (as opposed to Suspension)**
CROSS-REFERENCE **MS 95.4, Construction of Statutes**

The claimant was employed as a maintenance worker in a hospital. On August 29, 1981, he appeared on the employer's premises after hours and under the influence of alcohol. On September 3, he was warned that if there was another such incident he would be discharged. On September 30, the claimant was seen, after hours, departing the kitchen of the hospital's dietary department, where the freezer had been tampered with and meat had been left sitting outside a food locker. The claimant's hasty exit had been observed by a security guard. It was also reported that the claimant had been drinking that night. The following day, October 1, the claimant was arrested at work on a theft charge. He was also suspended from duty and advised that he would not be allowed to return to work, pending the outcome of court action.

While the court action was still pending, on October 18, the claimant filed an application for unemployment insurance benefits. The claimant had not yet returned to work when, on January 22, 1982, he was tried and acquitted by a jury on the theft charges. Still, he was told he could not return to work, pending the employer's internal investigation. On February 18, a Claims Adjudicator issued a determination which disqualified the claimant for benefits, not on the basis of theft, but for misconduct connected with his work, because the claimant had been in an unauthorized area outside of his usual working hours and under the influence of alcohol. On March 9, a Referee issued a decision which affirmed the Claims Adjudicator's determination, that the claimant had been discharged for misconduct connected with his work. On July 16, the Board of Review affirmed the Referee's decision.

The claimant appealed, pointing out that Section 602A of the Act imposed a disqualification only when an individual had been "discharged" for misconduct connected with his work, and that, during the period in question, he had been serving a suspension -- which was not tantamount to a discharge. The Agency's policy was that a suspension from work for 7 or more days, or of indefinite duration, was tantamount to a discharge.

HELD: Although Section 602A is not ambiguous on its face, its literal application could lead to an ambiguous result: If "discharge" is not read to include "suspension," then an employee could commit an act of work connected misconduct and be compensated for it.

Courts will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with its administration and enforcement. In the instant matter, the Agency's policy was that a suspension from work of 7 or more days, or of indefinite duration, was a discharge, and, whether such suspension constituted a discharge for misconduct connected with work was decided by principles generally applicable to discharges. The Agency policy of including suspensions within the term "discharge" for the purpose of benefits disqualification did not extend the statute beyond its fair and reasonable meaning.

Because the record supported a finding of misconduct by the claimant, and because the claimant's indefinite suspension was tantamount to a discharge within the reasonable meaning of Section 602A, the Board of Review was correct in determining that the claimant had been discharged for misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 5.05**
DOCKET/DATE	***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.2d 1082 (Table) (11/25/09)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 190.05, Evidence, general; PR 195.05, Fair Hearing and Due Process; PR 400.05 Representation, By a Non-Attorney**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.

The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court first noted that hearsay is admissible in an unemployment compensation hearing. More importantly, this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

ISSUE/DIGEST CODE	**Misconduct/MC 15.05**
DOCKET/DATE	**84-BRD-2968/2-29-84**
AUTHORITY	**1./S-602A**
TITLE	**Absence**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant and his wife were having marital problems. On the claimant's last day at work, he received a telephone call from his wife informing him that she was going to seek a divorce. After receiving the call, the claimant clocked out. When his supervisor asked him why he was leaving before the end of his shift, the claimant refused to discuss the reason because he wanted to go home to talk with his wife. The claimant was discharged the next day because he had left work without permission.

HELD: The claimant refused to tell his supervisor why he was leaving early, and he was discharged for failing to do so and not seeking permission to leave work. He was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**83-BRD-6713/5-31-83**
AUTHORITY	**2./S-602A**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**None**

The claimant was arrested on a charge of assault and battery, and he was incarcerated for nine months and ten days because he could not afford a bail bond. The claimant could not contact the employer by telephone because he was only allowed to make a "collect" phone call, and the employer would not accept such calls. Some time after the required period of notification, he wrote a letter to the employer explaining the circumstances of his continued absence from work, but he received no response. He had no family or friends in the area who could notify the employer.

The claimant was later acquitted of all charges. After his release, he contacted the employer who informed him that he had been replaced.

The employer stated that the claimant's separation from work was processed when he was absent from work without notification for five consecutive days.

HELD: The claimant used the only method available to him in an effort to notify the employer of the reason for his absence. His separation was, therefore, a discharge and not a voluntary leaving.

Compelling circumstances precluded both the claimant's attendance at work and a timely notification to the employer of the circumstances. He further had no opportunity to arrange a leave of absence. The claimant's actions do not exhibit a wilful disregard of duties owed the employer, and he was discharged for reasons other than misconduct. He is not disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **83-BRD-12598/11-8-83**
AUTHORITY **3./S-602A**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The claimant had been warned and disciplined regarding poor attendance. On Thursday, the claimant, with her supervisor's permission, left work early because she was experiencing dizziness. The claimant was ill and unable to report to work on Friday, and she telephoned the employer before the beginning of her shift and left a message for her supervisor informing him of her absence because of illness. The claimant's supervisor did not receive the message that the claimant had telephoned and, accordingly, believed that the claimant had failed to call in as required. The employer discharged the claimant because of her poor attendance record.

HELD: The claimant's last absence was due to illness, and, since she gave proper notification, she was discharged for reasons other than misconduct. She is not disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **83-BRD-14530/12-7-83**
AUTHORITY **4./S-602A**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The claimant was ill on Monday and asked a co-worker to report his absence to the employer. He was also absent the remainder of the week but did not report his absence to the employer. When the claimant reported to work on the following Monday, the employer discharged him for failing to report his absence daily in accordance with the company's rule. The employer had no knowledge of the nature or seriousness of the claimant's illness. The claimant testified that he knew he was to report his absence on daily basis.

HELD: The claimant failed to report his continuing absence daily to the employer in accordance with the company rule. The claimant was aware of the rule and had no explanation of his failure to give notification.

The claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **ABR-90-7216/10-17-90**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The claimant violated parole and was jailed. He made no personal effort to contact his employer and did not direct people who knew his whereabouts to contact his employer for him, because he was embarrassed about his predicament. The employer fired him after he was absent without notice for three days.

HELD: Absenteeism or a failure to notify the employer that is willful and deliberate constitutes misconduct.

Incarceration might constitute good cause for failing to report to work. It might also constitute good cause for failing to notify the employer about it. Here, however, the claimant could have notified his employer. His failure to do so was willful and deliberate and constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **84-BRD-285/1-10-84**
AUTHORITY **5./S-602A**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The claimant's doctor informed the employer's benefit department on December 7th that the claimant had undergone a gallbladder operation and that her date of return to work was unknown. The employer, by letter dated January 25th, asked the claimant to provide medical documentation for her continued absence by February 8th. It further asked for reasonable assurance as to when she would return to work. On January 28th, the employer's benefit department received a medical form from the claimant's doctor which still stated that her date of return was unknown. The employer discharged the claimant because the information was not supplied direct to the employer's medical or personnel departments and because it did not give some idea of her date of return.

HELD: The claimant complied with the employer's request, to the extent that it was possible, and in a reasonable manner. The claimant had been sending reports of her medical prognoses to the employer's benefit department, and it was reasonable to assume that such information would be available to any of the employer's other departments that might require such information. The indefiniteness of the claimant's expected date of return to work was beyond the claimant's control. The claimant was not disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE ***Wilson v. IDES*, 554 N.E. 2d 1006 (1990)**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The employer required its workers to notify the company of intended absences. Workers who did not comply with the policy for three consecutive days would be fired. During the past year, the claimant had been absent 48 times; about one-half of those absences were unexcused.

Then, on a Thursday, the claimant called in to request time off through that Friday. When he was absent on Monday, Tuesday, and Wednesday of the following week and did not call in, he was fired. The claimant testified that he was too sick to call in; but he also testified that he had been calling his doctor.

HELD: "Misconduct" means the willful violation of a reasonable policy. The failure, without good cause, to notify one's employer about an absence falls within that definition; i.e., it is willful. Here, the employer's policy and the claimant's testimony established that he should and could have called in. His failure to do so was willful and constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **84-BRD-213-FSC/3-2-84**
AUTHORITY **6./S-602A**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **None**

The claimant reported to work with an injury and was unable to perform his job. He was granted a medical leave of absence with the understanding that he contact the employer in two weeks about his condition and planned date of return. Three weeks later the claimant called the employer and stated that he could not return to work for two more weeks; he had forgotten to call the employer as directed. The claimant was discharged for his failure to call as scheduled.

HELD: The claimant's failure to notify the employer as scheduled was not due to circumstances beyond his control or for reasons which constitute good cause. Therefore, the claimant was discharged for misconduct connected with the work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **ABR-85-9417/5-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Permission**
CROSS-REFERENCE **None**

The claimant, a Library Assistant, asked for 3 weeks' leave, in order to spend time with her daughter, whom she had not seen since the daughter's abduction 14 years earlier. The claimant's supervisor told her that she could not be absent, in any event, for the first of those 3 weeks. The claimant complied with the supervisor's demand that she work the first week. Then, after notifying the supervisor, the claimant took the next 2 weeks off, applying accrued vacation time to the first 6 working days; the claimant took leave without pay for the final 4 days. The claimant was discharged for her final 4 days off, which the employer determined to be unauthorized.

At an appeal hearing, the claimant testified that it was the employer's policy that employees simply notify the employer of intended absences; express approval was not required; approval could be inferred from the absence of disapproval. The claimant testified that, although her supervisor had disapproved of her taking off the first week, she said nothing after being informed that the claimant would be absent the next 2 weeks. The employer did not appear at the appeal hearing.

HELD: Generally, a worker who is discharged for taking a leave simply pursuant to notice, without the employer's express approval, is discharged for misconduct. However, an exception to this general rule is where it is established that there has been an employer's practice to grant leave without express approval, so long as there has been no disapproval.

In the instant case, the claimant's unrebutted testimony was that it was the employer's practice to grant leave without express approval and in the absence of disapproval, and that, by her silence, the claimant's supervisor manifested her assent. The claimant's unrebutted testimony was not inherently improbable.

Because the evidence established that the claimant's absence was in accordance with her employer's practice, it could not be concluded that the claimant's absence was without permission, and that it constituted misconduct, within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 15.1**
DOCKET/DATE **ABR-85-2543/9-20-85**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Notice**
CROSS-REFERENCE **MC 485.1, Violation of Company Rule**

The claimant was employed as a Housekeeper, until August 21, 1984, when she became ill at work and was sent home. A doctor examined her that same day, and in the days following, and diagnosed her condition as ptomaine poisoning/bladder disease. The doctor recommended bed rest for 1-2 weeks.

The claimant spoke with her employer on August 22, 23, and 24, explaining that she was seeing her doctor for tests, but otherwise was confined to her bed, per the doctor's instructions. The claimant did not speak with her employer again, until August 31, when her supervisor telephoned. The supervisor informed her that she had been discharged because she had not continued to call in every day that she had been ill.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. At the same time, the circumstances which bring about a worker's absence from work may, of themselves, constitute notice to the employer. Thus, the nature of a worker's illness may put the employer on notice that she will be absent from work for some time. To require daily notice in such instances, before the individual knows precisely when she will be able to return to her job, would not be of any assistance to the employer and would serve no practical purpose.

In the instant case, despite the claimant's failure to call in every day, the employer had knowledge of the nature of the claimant's illness, and had no reasonable expectation that her return to work would be imminent. Because the employer had already been put on notice, the claimant's discharge could not have been for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**ABR-85-2000/6-13-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**MC 485.1, Violation of Company Rule**

The employer had a rule, which stated, in pertinent part:

> Absence for three consecutively scheduled work days without making proper notification to the employee's supervisor, in accordance with department call-in procedures ... can lead to ... immediate discharge.

The claimant acknowledged that she had been aware of the rule.

On Saturday, April 28, 1984, the building in which the claimant resided burned down. The claimant's apartment, including her belongings, was destroyed. An infant died in the claimant's arms. On Monday, April 30, the claimant's first scheduled work day after the fire, she telephoned her employer, stating that she would be unable to report to work as scheduled because of her need to obtain new housing for herself and her daughter. The claimant assumed that her employer understood that she would return to work as soon as she had obtained new housing. On Monday, May 7, having obtained new housing, the claimant reported to work. She was informed that she had been discharged, effective May 3, for not reporting her absence for three consecutive days.

The employer contended that the claimant's failure to abide by the employer's known rule concerning absenteeism and notice constituted misconduct:

> (T)he claimant proved her ability to contact the employer regarding her absence by her call on the first day. The claimant also testified that during the period in question, she was looking for new living quarters.
>
> The Referee in his decision (allowing benefits without a disqualification under Section 602A) seems to state that the trauma the claimant had suffered was the factor that prevented her from calling. However, it was not stated that the claimant was under a doctor's care, or that she was otherwise disabled. Indeed, her ability to engage in an active search for housing would seem to preclude a decision that the trauma suffered was disabling.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. Where, however, unusual facts exist, what constitutes prompt notification may be other than the employer's rules, insofar as unemployment insurance eligibility is concerned. While, generally, infractions of an employer's attendance rules are held to constitute misconduct, absences, generally, are not caused by a fire destroying a worker's home or resulting in a child dying in a worker's arms, as happened in the instant case. Where no reasonable person would have concluded that an employer would discharge a worker, it could not be held that the worker's actions constituted misconduct. Accordingly, this claimant was discharged not for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	***Thomas v. Ward*, 570 N.E. 2d 477 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**MC 190.15, Evidence; PR 380.25, Review, Scope**

The claimant had received numerous warnings for absenteeism. He was last absent because he was seeking admission to a hospital because of a reaction to heroin. The employer discharged him for being absent without notice.

The claimant testified that he tried to contact his employer by telephone. The employer testified that there was no message on its answering machine.

HELD: Failure, without good cause, to give notice of an absence constitutes misconduct.

Here, whether the claimant attempted to call was a factual question. The employer's testimony that there was no message on its answering machine was sufficient to resolve the factual question.

Benefits were denied.

ISSUE/DIGEST CODE	**Misconduct/MC 15.1**
DOCKET/DATE	**83-BRD-5577/5-16-83**
AUTHORITY	**1./S-602A**
TITLE	**Absence**
SUBTITLE	**Notice**
CROSS-REFERENCE	**None**

The claimant was bedridden due to a chronic back condition. His wife telephoned the employer on September 27, 1982 when she explained the circumstances to a coworker. The wife telephoned again on September 29th and spoke to her husband's supervisor. The supervisor told her that he had not received any word concerning the claimant's condition and that he had prepared discharge papers. He further told the claimant's wife that he would not process the papers and that he would contact the claimant at a later date. When the claimant did not hear from his supervisor, he attempted to telephone him but was unable to reach him. Subsequently, the claimant received a letter informing him that he had failed to report and that the employer had accepted his resignation.

The employer admitted that the claimant's wife contacted the supervisor on September 29, but that another employee had forgotten to convey her earlier message. The supervisor had expected the claimant to contact him. When the supervisor did not hear from the claimant, he attempted to telephone the claimant at a number which proved to be out of date. The claimant was then discharged.

The claimant had informed the employer when he changed telephone numbers and had, in fact, been reached at home on prior occasions by a different supervisor at the new number.

HELD: The claimant did not intend to quit work, and the issue, as a result, is a discharge and not a voluntary leaving.

The claimant and employer failed to communicate with each other for several days due to a series of misunderstandings. However, the employer was aware of the claimant's whereabouts and the reason for his absence, and the claimant attempted to comply with the employer's rules by providing proper notification. The claimant did not wilfully violate the employer's attendance rules and, therefore, was discharged for reasons other than misconduct connected with his work. He is not disqualified from receiving benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **ABR-85-467/7-8-85**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 85.05, Connection With Work**

The claimant, a Receptionist, was on a medical leave of absence. In a letter dated September 21, 1984, her physician informed the employer that the claimant would not be released to work for 3 or 4 weeks. (The physician later extended the recovery period until "about December 1, 1984"). In addition, the claimant had told her employer that her physician did not want her to return to work until she was fully recovered, because, due to the nature of her illness, she would become re-infected if she was out in public and exposed to "excessive germs."

In the meantime, the claimant, who was a volunteer in her community's program to counter drug abuse, accepted an invitation from a local high school to lecture to two health education classes, and, on October 1, 1984, the claimant spent 1-1/2 hours in contact with students at the high school.

The claimant was discharged from her Receptionist job after the employer learned that she had conducted those lectures in public.

HELD: An employee's obligations to her employer are not necessarily extinguished by the granting of a leave of absence or time off due to illness. An employee who is granted time off due to illness owes her employer a duty to convalesce under conditions which will not extend or unnecessarily prolong the period of recovery. An employee's actions which are inconsistent with that duty will constitute misconduct connected with the work.

In the instant case, both the claimant's and her physician's representations to the employer, that the claimant should not work, let alone venture into the public, made it clear that the claimant's duty to her employer was to remain at home until she was completely recovered from her illness. The claimant's subsequent actions, which included speaking to students in a high school, were certainly incompatible with the representations made to her employer, and were potentially damaging to the employer's interest that the claimant return to work as soon as possible. The claimant's actions constituted misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE ***Garner v. IDES*, 269 Ill App. 3d 370 (2nd Dist. 1995)**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 485.05, Harm/Warnings, Reasonableness of Rule; MC 485.1, Absence**

The claimant was employed as a custodian/janitor by the employer, a janitorial services provider. The claimant was paid twice a month and was told he would receive his checks on the 1st or 2nd and the 15th or 16th of the month. However, the claimant always received his checks after the 2nd and 16th of the month, and on several occasions took a day off from work to get a replacement check at the employer's headquarters. The claimant did not receive a check on August 1st or 2nd, 1991. Because he had not received his check, on August 5th he reported to work only after being telephoned by his supervisor after his shift had started, and on August 6th through the 9th he did not report to work at all. During this week his supervisor counseled him that he had been paid in the past and would be paid, and that his absenteeism would only hurt him and would be reflected on his employment record. The claimant received his check on August 9th after his shift ended. The claimant reported to work on August 12th and was terminated for violating the employer's rule that an employee's failure to appear for assigned duties on three consecutive working days constitutes employee resignation or termination by management.

The Board of Review found the claimant was ineligible for benefits under Section 602A of the Act because he had been discharged for misconduct. The Board determined that the claimant had wilfully disregarded the employer's interests and had caused the employer harm, and that he had been warned that his job could be jeopardized. The Circuit Court affirmed the decision of the Board.

HELD: The determination of the Board is against the manifest weight of the evidence. There is no evidence the employer had or would suffer an actual loss of property or other harm due to the claimant's absence from work. There is no evidence the claimant's absence resulted in uncompleted work, loss of productivity, complaints by the employer's client, loss of business for the employer, or even caused the claimant's supervisor to reschedule. In addition, the employer's rule as applied to the claimant is not reasonable because it is not reasonable to require an employee to call in and report his own absence when the absence relates to chronic non-payment of wages. Further, the warnings and instructions contemplated under Section 602A of the Act must be both explicit and specific to the conduct for which an employee is discharged. Here, there is only evidence that the complainant's supervisor "counseled" the claimant that his absence would only hurt him and would be reflected on his record. There is no evidence the claimant ever was explicitly warned his absences would not be tolerated. Similarly, there is no evidence the claimant was explicitly instructed to report to work. Therefore, the claimant did not commit misconduct as defined under Section 602A of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 15.15**
DOCKET/DATE	**83-BRD-15631/12-28-83**
AUTHORITY	**2./S-602A**
TITLE	**Absence**
SUBTITLE	**Permission**
CROSS-REFERENCE	**None**

The claimant requested a leave of absence in order to play with a band. His supervisor approved the leave and forwarded the paperwork to personnel. The claimant had only been employed three months, and he was unaware that the personnel department had to approve the leave. While the claimant was on leave, he spoke with both his supervisor and the head of his department who were aware of his taking leave. When the claimant returned to work, he was discharged because his leave of absence had not been approved by the personnel department.

HELD: The claimant was separated from his job as a result of lack of communication. His supervisor had approved a leave of absence, but, unknown to the claimant, the required approval of the personnel department had not been given. The claimant was discharged for reasons other than misconduct connected with the work and is not subject to a disqualification of benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 15.15**
DOCKET/DATE	**85-BRD-04514/6-18-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Permission**
CROSS-REFERENCE	**MC 485.05, Violation of Company Rule, Awareness of Rule**

The claimant was employed as a Night Auditor for three years. Prior to taking a previous vacation, the claimant had sought approval from the Office Manager. This time, the claimant approached the Assistant Office Manager, and stated that she intended to take a vacation which would commence in the following days. The Assistant Office Manager "never told me I could not go, so I assumed it was okay." The claimant then took her vacation, and was discharged, because it was determined that her vacation time had not been approved.

HELD: The approval of vacation leave requires an affirmative response to a worker's request, and approval cannot be reasonably construed merely from the absence of specific disapproval, unless there has been an employer's custom to that effect. In this case, the claimant's previous course of conduct indicated that the employer did not have a custom of allowing vacation leave without express approval. Therefore, the claimant took leave without permission, and her actions constituted misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **ABR-87-3581/8-14-87**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 270.05, Intoxicants; MC 385.05, Relation of Offense**

The claimant had been absent and tardy on a number of occasions, resulting in 2 suspensions and a final warning. In February, she acknowledged that her use of drugs might be the cause of her problems. Her employer referred her to a drug rehabilitation program; the employer, under its employees' health insurance package, was to pay for hospitalization. The claimant entered the rehabilitation program on February 6, and remained in the program until March 2, after which she continued to participate in support groups.

On February 26 - while the claimant was participating in the rehabilitation program - the employer discharged her for her prior absenteeism.

HELD: Absenteeism without justification constitutes misconduct. In this case, the claimant's previous absences were the result of drug usage; at the time and under the circumstances those absences occurred, they might have constituted misconduct. But, at the time of the work separation, the claimant, having sought medical attention to cure her condition, was participating in a drug rehabilitation program, to which she had been referred by the employer. The employer, having referred the claimant to its rehabilitation program - so that she might recuperate or make amends, in lieu of discharge - cannot 3 weeks later insist that the claimant's absences constituted misconduct for which she was discharged. The relation between the previous absences due to drug usage and the discharge was tenuous. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **83-BRD-8475/7-20-83**
AUTHORITY **1./S-602A**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **None**

The claimant had been warned about her absenteeism. She fell and injured herself on her way to work and sought medical attention immediately. She was under the care of a physician for the following three working days. Her physician verified in writing that he had attended to her injury, and the employer was in possession of the physician's statement. The claimant had properly notified the employer of her injury and had explained that the injury was the reason for her absence from work. However, she was discharged.

HELD: The claimant properly notified the employer that she would be absent because of her injury, and she provided the employer with her attending physician's statement. She was discharged for reasons other than misconduct connected with her work, and she is not disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **83-BRD-10846/9-23-83**
AUTHORITY **2./S-602A**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **None**

The claimant was last absent on October 29, 1982, because of a scheduled court appearance in connection with an automobile accident in which he was involved. He notified the employer of his intended absence. He had a considerable number of previous absences and had always provided the employer with proper notification. The claimant was discharged following his last absence.

HELD: The claimant was not discharged until after his final absence which was due to a compelling reason and after he gave his employer proper notice. The claimant's conduct does not exhibit a wilful disregard of duties owed the employer, and he was discharged for reasons other than misconduct. Thus he is not disqualified.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **83-BRD-13730/11-23-83**
AUTHORITY **4./S-602A**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **None**

The claimant worked for a hospital as a dietary worker for six years. The claimant had been warned about her absenteeism; and when she was absent again, she was discharged.

The claimant was absent because she had no one to care for her children, ages 8 months and 2 1/2 years old. On the date of discharge, the baby sitter was sick, and the claimant's husband was not at home to care for her children. The claimant reported the reason for her absence to the employer in a timely manner.

HELD: An absence from work for good cause and with proper notice to the employer does not constitute misconduct. The claimant notified the employer in a timely manner that she would be absent from work due to her domestic responsibilities. The claimant's absence from work was due to a compelling circumstances with proper notification and was, therefore, not a wilful violation of the employer's attendance rules. The claimant was discharged for reasons other than misconduct connected with her work, and she was not disqualified from receiving benefits.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **ABR-85-71-FSC/12-11-85**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 270.05, Intoxication and Use of Intoxicants**

The claimant reported for work early Saturday morning as scheduled, but, shortly after appearing, had to leave due to illness. He was sick because he had been drinking Tequila since 8 p.m. Friday. The claimant was told that his services were no longer needed.

HELD: An employer has a right to expect its workers to report to work in a condition to do the work assigned to them. At the same time, if a worker gives notice that he cannot work because he has suffered a disabling illness -- beyond his control, then a resultant discharge cannot be for misconduct.

In the instant case, the claimant may very well have been too ill to work. However, his illness, being the direct result of his deliberate and heavy consumption of alcohol during the hours shortly before he was scheduled to work, was avoidable. Therefore, the claimant's absence from work was due to intoxication, not illness, which showed a disregard of duties he owed his employer. He was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE **ABR-85-9770/7-25-86**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **None**

The claimant, an Order Filler, had received warnings concerning unexcused absenteeism. He was discharged after consecutive days' unexcused absences, which resulted from being

> ... exhausted because I had been conducting revival meeting during that week at my church. I am a minister with my own church. The revival would be over at 10 p.m. but I had to wake up at 2 a.m. in order to get to work ...

HELD: Implicit in every employment contract is the duty of the worker to report to work in accordance with the reasonable requirements of the employer. If an absence is without good cause, a discharge for absence is generally a discharge for misconduct.

Work, by its nature, tends to be tiring. Further, balancing work schedules and personal business can be difficult. Yet, there are substantial numbers of individuals who regularly report to work under such circumstances. And their circumstances are not dissimilar to what the claimant's were.

The instant case was not one of infringement upon religious practice; the issue was personal comfort and convenience. There was no conflict between the claimant's work schedule and his personal schedule for participation in church activities. Therefore, it was the claimant's obligation to take reasonable measures to obtain the necessary rest in light of his participation in both activities. He could have taken such measures and could have reported to work as scheduled. His absences, under those circumstances, were without good cause and his discharge was for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 15.2**
DOCKET/DATE	***Walter Bochenek v. IDES*, No. 87-0760 (1988)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Absence**
SUBTITLE	**Reasons**
CROSS-REFERENCE	**MC 435.05, Tardiness**

The employer was a small company that could not afford absenteeism and, therefore, warned the claimant repeatedly about his absenteeism and tardiness. Between January 14 and May 21 there were 88 work days out of which the claimant was absent 7 times and tardy 9 times. On May 21, when he reported to work 45 minutes late, he was fired.

At his appeal hearing, the claimant testified that he had psychological problems and was under psychiatric care. He presented a statement from his doctor stating that he suffered from schizo-affective psychosis and was on medication. The doctor added:

> I always wondered how he was able to keep his job for six years - due to his delusions of grandeur and persecution. I understand that he finally lost it. He should be occupied in a new appropriate position.

The claimant contended that his illness(es) excused the acts which resulted in his separation from work.

HELD: Misconduct which disqualifies an employee from unemployment benefits includes acts of wanton or willful disregard of the employer's interest, deliberate violations of the employer's reasonable rules, disregard for the standards of behavior which an employer has the right to expect of its employee, and carelessness or negligence of such degree or recurrence as to manifest equal culpability and wrongful intent.

In this case, the claimant had been warned repeatedly that his chronic absenteeism and tardiness adversely affected his employer. Despite the fact that the claimant had been under psychiatric care, his doctor's statement did not indicate that the claimant's condition affected his attendance - only that he should now seek other appropriate work. The claimant was aware of the need to improve his attendance. He failed to improve his attendance. By the time of the final incident, his absenteeism and tardiness had reached such a degree of recurrence as to be considered misconduct that would disqualify him from receiving unemployment compensation.

The claimant was disqualified for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 15.2**
DOCKET/DATE ***Candace Medvid v. IDES*, 542 N.E. 2d 852 (1989)**
AUTHORITY **Section 602A of the Act**
TITLE **Absence**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 140.05, Dishonesty**

The claimant worked at two jobs. On October 25, she did not report to work or call to notify her first employer of her absence. On October 26, she called 3 hours after her shift began, explaining that she had overslept and would not be at work. On October 27 and 28, she called in sick. The employer discovered that the claimant, during those same days and hours when she was scheduled to work, was working for her other employer. On October 29, the claimant was fired.

HELD: Failure to give proper notice of absences to an employer constitutes misconduct, if the failure to give proper notice is without good cause.

Proper notice means timely notice, and, if the worker provides reasons for absences, they must be legitimate.

Here, the claimant deliberately failed to give proper notice. Her failure to give proper notice constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 45.05**
DOCKET/DATE **ABR-85-9144/7-14-86**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Seeking Other Employment**
CROSS-REFERENCE **MC 135-2, Discharge or Leaving; VL 135.2**

The claimant, an Automobile Service Manager, did not receive the wage increase he had anticipated. Subsequently, during his lunch hour, he pored over job advertisements in a newspaper. He was observed doing this by a superior, who questioned the claimant's intentions. The claimant stated that, as a result of the lack of a wage increase, he felt compelled to seek other work. He informed his superior that, when he found other work, he would give the employer appropriate (2 or 3 week) notice. The claimant worked the rest of his shift that day, after which he was again questioned about his intentions. He repeated what he had said earlier, whereupon he was instructed to leave work immediately.

HELD: If misconduct is to be found, it must stem from a breach of some duty owed the employer. Pursuant to any contract of hire, a worker owes his employer a duty to do his job in a reasonably workmanlike manner and to refrain from willfully doing anything against the employer's interests.

But a worker's duty extends only so far. It is a worker's prerogative to explore other job possibilities. So long as the worker does so on his own time and in such a fashion as to not interfere with his employer's operations, a worker's desire to locate other employment does not constitute a breach of duty owed the employer.

In the instant case, there was no showing that the claimant was not doing his job in a workmanlike fashion. Meantime, it was the claimant's prerogative to seek other employment. Reading job advertisements during his lunch period (on his own time) did not interfere with the employer's operations. Therefore, it could not be concluded that the claimant's actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 45.1**
DOCKET/DATE **ABR-85-6431/2-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Agitation or Criticism**
CROSS-REFERENCE **MC 255.35, Insubordination, Ridicule of Authority**

The claimant, a Salesperson, had been criticized by her supervisor. The claimant felt that the criticism had been unwarranted, and that, in general, the supervisor was not supportive of her work. Later, in the employees' lunchroom, the claimant repeated a rumor to her co - workers: that the supervisor had been fired from previous jobs due to her inability to work with people. The claimant herself was discharged when management learned she had made this remark.

HELD: Making disparaging remarks about a superior may constitute misconduct. The determinative factor is whether the worker has merely shown a lack of good judgment or an intentional disregard of the employer's interests. An intentional disregard of the employer's interests will not have been shown unless the worker has failed to heed warnings concerning making such remarks, or, the remarks were made in a place or under circumstances that might tend to damage the employer's interests; damage in this context might include deterioration of employer control over employees, harmful effect on employee morale, or negative reaction of customers or the public. Nonetheless, realistically, in most normal working situations, a considerable amount of give and take is exchanged between co-workers, and, although some of it may be in poor taste, such exchanges confined to private conversations between workers would infrequently result in damage to the employer's interests.

In the instant case, the claimant's comment, made in an employees' lunchroom setting, was not dissimilar from the types of remarks employees often make privately among themselves. While the claimant might have exercised better judgment, her statement about her supervisor could not reasonably have been construed to have constituted an intentional disregard of her employer's interests amounting to misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 45.15**
DOCKET/DATE **83-BRD-11567/10-18-83**
AUTHORITY **l./S-602A**
TITLE **Attitude Toward Employer**
SUBTITLE **Competing With Employer**
CROSS-REFERENCE **None**

The claimant worked for the employer as a mechanic. The employer had sold pumps to a hospital, and the pumps were in need of repair. As the claimant had previously serviced the particular pumps, he arranged to repair the pumps on his own time, and he billed the hospital in the amount of $1,731 for labor and parts. Because the pumps were still under warranty, the hospital sought to be reimbursed by the employer. When the employer discovered the circumstances, it demanded his resignation.

HELD: A worker has an unquestioned obligation to conduct himself so that the employer's interests are well served. This obligation is broken when the worker engages in the same business independently of his employer and solicits his employer's customers. The claimant's operation of a clandestine business in competition with his employer was a wilful and wanton disregard of the employer's interests and constitutes misconduct in connection with his work. The claimant is disqualified for benefits.

(A constructive discharge occurs when the employer initiates the action to sever the working relationship, whereas a constructive voluntary leaving occurs when the worker initiates the action to sever the relationship. Although the claimant "resigned," it is apparent from the facts that it was the employer's intent to compel the claimant to leave work for reasons other than lack of work and that the claimant did not have the option of continuing to work.)

ISSUE/DIGEST CODE **Misconduct/MC 45.15**
DOCKET/DATE **ABR-89-5174/1-19-90**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Competing with Employer or Aiding Competitor**
CROSS-REFERENCE **None**

While working as a delivery driver for the employer, the claimant became involved in a business that competed with the employer for customers. The employer discovered this, and, even though the claimant had not taken away any of its current customers, fired him.

HELD: To constitute "misconduct," an act must harm the employer. A discharge for competing with the employer or aiding the employer's competitors harms the employer and constitutes misconduct. The harm does not necessarily result from luring the employer's existing customers to another place of business; harm also occurs when prospective customers do not patronize the employer because they are being lured elsewhere. Here, the claimant was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 45.2**
DOCKET/DATE **ABR-85-2758/2-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Complaint or Discontent**
CROSS-REFERENCE **MC 255.2, Insubordination, Negation of Authority**

The claimant alleged that she had been the "victim of sexual bondage and terrorization as a condition of her continued employment" - that she had been required to perform sexual acts with both the employer's president and vice-president, and that, ceasing such conduct, she suffered job consequences including demotion. In October, 1984, her attorney delivered to the employer's president and vice-president a letter, concluding with this language:

> We recognize that public disclosure of the facts concerning ... this conduct could be embarrassing to you, and therefore are taking this opportunity to advise that we have been instructed by (the claimant) to file suit ... if the matter has not been resolved to (the claimant's) satisfaction ... If you would like to discuss the matter, we would be pleased to hear from you or your attorneys ...

The employer responded by discharging the claimant, and, when the claimant filed her claim for unemployment benefits, the employer protested, contending that she had been discharged for misconduct connected with her work: The employer had considered the claimant's attorney's letter to have been equivalent to blackmail or extortion. The claimant's rebuttal was that since her problems at work concerned the employer's president and vice-president -- the highest levels of authority -- it would have served no purpose to have made her complaints through ordinary channels.

HELD: If a worker's discontent is unreasonable, and to the point where it adversely affects her work, or, the manner in which she tries to alleviate an unsatisfactory working condition is unreasonable, a resultant discharge may be for misconduct connected with her work.

In the instant case, the evidence did not show that the discontent underlying the claimant's complaint had been unreasonable. Nor, under the circumstances, was the method by which she chose to proceed unreasonable.

Duties owed the employer do not require that an individual forego a judicial avenue of redress or a disclosure of such intentions to the employer. The claimant, in her communications to her employer, did not initiate anything more than a disclosure to the employer of her intentions to utilize the judicial system afforded the general public for redressing a grievance. Putting the employer on notice was not patently extortionate. Neither the claimant's anticipated actions, nor the disclosure of her intentions to the employer, exhibited a willful disregard of duties owed the employer. The claimant was discharged for reasons other than misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 45.35**
DOCKET/DATE **ABR-85-2982/10-17-85**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Indifference**
CROSS-REFERENCE **MC 45.4, Injury to Employer, Relations with Patrons**

The claimant was Assistant Manager of a liquor store, which was the subject of a local referendum, which might result in the liquor store being closed down. The claimant was being interviewed at work by a representative of a local businessman's organization, and was asked his opinion on the referendum. The claimant responded:

> I don't care whether they close this store or not...If the Jews want to keep this store open, they can...

When the employer learned of this remark, the claimant was discharged. The employer stated that, inasmuch as local precincts could vote to close down the liquor stores, it was important to maintain a good relationship with people and groups within the community. The employer stated that the claimant's remark was offensive, and, therefore, detrimental to the employer's interests.

HELD: Indifference is generally a matter of attitude which of itself is meaningless, unless such attitude is displayed by acts which tend to damage the employer's interests. Whenever the indifference manifests itself in acts detrimental to the employer, the discharge is for misconduct connected with the work.

When a worker comes in contact with the employer's customers or prospective customers in the course of his work, he is under a duty to conduct himself in such a manner as not to injure his employer's interests. A violation of this duty is considered misconduct connected with the work.

In the instant case, the evidence established that the claimant knew that the interviewer was soliciting his opinion about a matter of serious, perhaps vital concern to the employer. The claimant, who worked in a position of some management responsibility, gratuitously offered a comment manifesting -- at best -- indifference to his employer's interests, and which, if repeated, would have caused offense to the employer's customers and the public generally. The claimant was either indifferent to his employer's interests, or intended them harm; in either case, his actions constituted misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 45.4**
DOCKET/DATE **ABR-85-6855/2-26-86**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Injury to Employer Through Relations with Patrons**
CROSS-REFERENCE **MC 190-15, Evidence, Weight and Sufficiency**

A woman came into the employer's furniture department, where the claimant worked as a Salesman, and asked for his assistance in connection with an insurance claim. The claimant, who was paid by commission, considered this a non-productive use of his time. Later, the woman overheard the claimant remark to a co-worker: "I've just spent one hour with this fucking bitch."

HELD: In all cases where a worker comes in contact with the employer's customers in the course of his work, he is under a duty to conduct himself in a manner so as not to injure the employer's interest. Being impudent or discourteous when serving the employer's patrons is a breach of duty and a resulting discharge will be for misconduct. The claimant was discharged for misconduct.

(See MC 190.15, Evidence, Weight and Sufficiency.)

ISSUE/DIGEST CODE **Misconduct/MC 45.35**
DOCKET/DATE **ABR-85-6121/1-22-86**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Indifference**
CROSS-REFERENCE **MC 255.05, Insubordination**

The claimant, a Secretary-Receptionist, had received warnings concerning tardiness. Subsequently, she was tardy 4 out of 5 days, causing the owner of the company to call her into his office. The claimant did not appreciate being summoned to the owner's office, so she delayed about 5 minutes before responding. When she got there, the owner informed her that, if her attitude did not change by the next pay period, she would be discharged. The claimant grimaced, rolled her eyes, and said, "Fine, are you done now? Can I go?" She was fired immediately.

HELD: Indifference is generally a matter of attitude which by itself is meaningless. Many people undoubtedly feel complete antipathy for their jobs and employers routinely take these workers as they come, accepting their temperaments as they exist. However, while remaining on an employer's payroll, it is unquestionably a worker's obligation to conduct herself so that the employer's interests are well served. Accordingly, when indifference manifests itself in acts detrimental to the employer, the discharge is for misconduct.

In the instant case, the claimant's indifference manifested itself in acts detrimental to the employer. Not only had she been tardy repeatedly, but, even when the employer was willing to give her another chance, her response demonstrated, at the least, that she would continue to require supervision, taking up the employer's time; that, by itself, constituted misconduct. Further, this was not a case of a worker, who, registering discontent for what she perceived to be a legitimate reason, made a spontaneous remark in the heat of the moment. When the claimant refused to report to the owner's office as directed and, next, when she grimaced, rolled her eyes, and made her remark, she was being rude deliberately; deliberate rudeness to an employer is inherently misconduct.

The claimant's discharge was for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 45.4**
DOCKET/DATE **ABR-85-2982/10-17-85**
AUTHORITY **Section 602A of the Act**
TITLE **Attitude Toward Employer**
SUBTITLE **Injury to Employer Through Relations with Patrons**
CROSS-REFERENCE **MC 45.35, Indifference**

The claimant was Assistant Manager of a liquor store, which was the subject of a local referendum, which might result in the liquor store being closed down. The claimant was being interviewed at work by a representative of a local businessman's organization, and was asked his opinion on the referendum. The claimant responded:

> I don't care whether they close this store or not...If the Jews want to keep this store open, they can...

When the employer learned of this remark, the claimant was discharged. The employer stated that, inasmuch as local precincts could vote to close down the liquor stores, it was important to maintain a good relationship with people and groups within the community. The employer stated that the claimant's remark was offensive, and, therefore, detrimental to the employer's interests.

HELD: Indifference is generally a matter of attitude which of itself is meaningless, unless such attitude is displayed by acts which tend to damage the employer's interests. Whenever the indifference manifests itself in acts detrimental to the employer, the discharge is for misconduct connected with the work.

When a worker comes in contact with the employer's customers or prospective customers in the course of his work, he is under a duty to conduct himself in such a manner as not to injure his employer's interests. A violation of this duty is considered misconduct connected with the work.

In the instant case, the evidence established that the claimant knew that the interviewer was soliciting his opinion about a matter of serious, perhaps vital concern to the employer. The claimant, who worked in a position of some management responsibility, gratuitously offered a comment manifesting - at best - indifference to his employer's interests, and which, if repeated, could have caused offense to the employer's customers and the public generally. The claimant was either indifferent to his employer's interests, or intended them harm; in either case, his actions constituted misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 45.4**
DOCKET/DATE	**83-BRD-15395/12-20-83**
AUTHORITY	**1./S-602A**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Injury to Employer Through Relations with Patrons**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a bank teller. He was discharged because of repeated rudeness to customers and his unauthorized leaving of the work station. The claimant had been counseled on several occasions regarding his relationship with customers.

After telling a customer who wanted to cash a check to show her identification to him, he added, "Tell your boss to pay you in cash." When the customer requested his name and told him that she would report him to his supervisor, he responded with profanity.

HELD: An employer has the right to promulgate reasonable rules of conduct for his workers and to expect his workers to abide by these rules and standards unless prevented by circumstances beyond their control. An employer has the right to expect his workers to service the employer's customers with courtesy. The claimant's failure to do so evidenced a wilful and wanton disregard of the standard of behavior the employer had a right to expect and of the duties and obligations he owed to his employer. The claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 45.4**
DOCKET/DATE	**ABR-87-7647/12-3-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Attitude Toward Employer**
SUBTITLE	**Injury to Employer Through Relations with Patrons**
CROSS-REFERENCE	**None**

The claimant, a member of a Buddhist organization, worked as an x-ray technician in a hospital. He was discharged after complaints by a patient that he was endorsing his religious faith during the performance of his x-ray duties; it was alleged, for example, that he had told a patient that he could make x-rays negative by chanting.

The claimant admitted that during the course of administering to hospital patients he would try to recruit them as new members into Buddhism. He would tell the patients a little history about Buddhism and chanting. He would dispense information such as the phone number and the address where his organization met.

HELD: When a worker comes in contact with his employer's patrons in the course of his work, he is under a duty to conduct himself in such a manner as to not injure his employer's interest. A violation of this duty is considered misconduct connected with the work.

In this case, the claimant was discharged not for his particular religious beliefs but because of conduct which interfered with the employer's business. The claimant's discharge was the result of his unsolicited attempts to distribute information about his religion. It was not within the claimant's responsibility as an x-ray technician to speak to patients on religious matters. It was the claimant's responsibility to provide service in his department. This was a discharge for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR99133/1-30-90**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Possession and Sale of Drugs Off the Job**
CROSS-REFERENCE **MC 270.05, Drugs; MC 490.05, Violation of Law**

The claimant worked for the Department of Corrections as a youth supervisor. He was arrested, then convicted, for possession of a controlled substance with intent to deliver. Neither the drug incident nor arrest took place during working hours or on the employer's premises. Still, after he was convicted, the employer fired him.

HELD: To constitute "misconduct," an act must violate a policy that governs the individual's performance of work. Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, a worker's obligations to his employer are broader in some occupations than in others, such as where the worker is a public servant and the public's trust and confidence are involved. Here, the claimant owed a duty to the public through his employer and he breached that duty. This was a discharge for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **85-BRD-04805/6-26-85**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Position of Trust**
CROSS-REFERENCE **None**

The claimant was employed as Senior Vice-President of Accounting for a financial institution, to which he applied, personally, for a mortgage loan. He knowingly failed to indicate on his loan application that a co-worker had lent him $35,000. The employer discharged him, contending that the claimant's falsification of his loan application reflected adversely upon his credibility as an officer of the institution.

HELD: Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, as an officer, the claimant owed to his employer, in addition to his other duties, a duty of trust. He breached that duty when he failed to disclose a substantial outstanding debt, without any compelling or justifiable reason for doing so. The claimant's breach of his duty of trust constituted misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-467/7-8-85**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Actions While on Medical Leave of Absence**
CROSS-REFERENCE **MC 15.2, Absence, Reasons**

The claimant, a Receptionist, was on a medical leave of absence. In a letter dated September 21, 1984, her physician informed the employer that the claimant would not be released to work for 3 or 4 weeks. (The physician later extended the recovery period until "about December 1, 1984"). In addition, the claimant had told her employer that her physician did not want her to return to work until she was fully recovered, because, due to the nature of her illness, she would become re-infected if she was out in public and exposed to "excessive germs."

In the meantime, the claimant, who was a volunteer in her community's program to counter drug abuse, accepted an invitation from a local high school to lecture to two health education classes, and, on October 1, 1984, the claimant spent 1-1/2 hours in contact with students at the high school.

The claimant was discharged from her Receptionist job after the employer learned that she had conducted those lectures in public.

HELD: An employee's obligations to her employer are not necessarily extinguished by the granting of a leave of absence or time off due to illness. An employee who is granted time off due to illness owes her employer a duty to convalesce under conditions which will not extend or unnecessarily prolong the period of recovery. An employee's actions which are inconsistent with that duty will constitute misconduct connected with the work.

In the instant case, both the claimant's and her physician's representations to the employer, that the claimant should not work, let alone venture into the public, made it clear that the claimant's duty to her employer was to remain at home until she was completely recovered from her illness. The claimant's subsequent actions, which included speaking to students in a high school, were certainly incompatible with the representations made to her employer, and were potentially damaging to the employer's interest that the claimant return to work as soon as possible. The claimant's actions constituted misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-85-1231/7-26-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Pre-Employment Activities**
CROSS-REFERENCE	**None**

The claimant became employed by the State of Illinois in 1981. During the course of her employment, the claimant became the subject of a United States mail fraud investigation, concerning a mail fraud which had been perpetrated in 1980. Subsequently, the claimant was indicted by a grand jury. After she was convicted of mail fraud and sentenced to probation in 1984, she was discharged by her employer, the State of Illinois, for "conduct unbecoming an employee." The claimant then filed a claim for unemployment benefits. The Claims Adjudicator concluded that a conviction for mail fraud was in fact "conduct unbecoming an employee of the State of Illinois" and issued a determination which disqualified the claimant for benefits for misconduct connected with her work.

HELD: A worker's actions prior to entering into employment generally are not connected with the work even though she may subsequently be discharged for such actions. In the instant case, the evidence established that the claimant was discharged after she was convicted of an offense against the United States.

However, the evidence also established that this offense was committed prior to her employment by the State of Illinois. There was no contention that the claimant falsified her application for work at the onset of employment, or that during the course of employment she violated any of the employer's rules. While the claimant's conviction may have rendered her a person who no longer met the employer's expectations, the claimant did not commit any act that could have been termed a violation of the working agreement. Under those circumstances, it could not be concluded that the claimant's "misconduct" was connected with her work. Therefore, the claimant was not subject to a disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-85-5353/1-16-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Public Trust/Condition of Employment**
CROSS-REFERENCE	**None**

The claimant was employed as a Police Officer, upon the condition that he would not violate the laws of any municipality or state. He was discharged following his conviction for theft. The theft occurred in a municipality other than the one in which he worked.

HELD: A worker's actions, even if they occur off duty or away from the usual place of business, may be connected with work if they adversely affect the public trust and confidence upon which the employer is dependent. Also, an employer may impose certain conditions upon a worker's off duty activities, where the nature of the work requires it.

In the instant case, the claimant, as a Police Officer, held a position of public trust. Also, it was a condition of his employment that he abide by the law at or away from his work place. That condition was reasonable in view of the nature of his work. His violation of a law, which, as a Police Officer, he was sworn to uphold, constituted misconduct, whether or not it occurred at or away from his work place.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-86-889/4-30-86**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Actions Subsequent to Work Separation**
CROSS-REFERENCE **None**

During her afternoon work shift, the claimant was informed that, due to economic considerations, she was being laid off. She was directed to leave the employer's premises.

The employer took offense at the claimant's subsequent actions and deemed them to constitute misconduct.

HELD: When an individual is no longer employed, her actions, regardless of what they are or where they occur, cannot, by definition, by themselves constitute misconduct connected with work. That is because a finding of misconduct is dependent upon a work separation resulting from, not occurring before, such acts.

In the instant case, the claimant's actions, subsequent to her lay off, could not by themselves constitute misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-5351/12-19-85**
AUTHORITY **Section 602B of the Act**
TITLE **Connected with Work**
SUBTITLE **Theft under Section 602B**
CROSS-REFERENCE **MC 602-05, Theft; MS 95.1, Construction of Statutes**

The claimant worked as Office Manager for a Dentist. In her statement to the Adjudicator, the claimant admitted that she had knowingly filed a false insurance claim - for dental services allegedly performed upon her by her employer. The claim for those non-existent services was filed against the claimant's husband's insurance policy. The claimant had used, without authorization, her employer's signature stamp, in order to ensure that the claim would be processed without question. The claimant stated that she had filed the false claim because she needed the money.

The claimant received payment from her husband's insurance company. When her employer learned what had transpired, he discharged the claimant for "insurance fraud."

The issue presented was whether the claimant had committed a theft within the meaning of Section 602B, since, technically, she had committed a theft against the insurance company and not her employer.

HELD: The disqualifying provisions of Section 602B of the Act do not require that the theft for which the claimant is discharged be committed against the employer, but only that the theft be connected with her work.

In the instant case, the claimant's unauthorized use of the employer's signature stamp implicated the employer in the fraud, even if only to the extent that it required the employer to take time away from his work to deal with the matter by accounting for his services. There was also the potential for damage to the employer's reputation and business.

The claimant's actions were sufficiently material to the employer's interests as to be connected with her work. The claimant was properly subject to the disqualifying provisions of Section 602B.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-4079/10-9-85**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Off-Duty Illegal Act/Public Trust**
CROSS-REFERENCE **None**

The claimant, a Nursing Assistant employed by a hospital, was arrested near her home and charged with selling cocaine. An account of her arrest appeared in a local newspaper. It was not alleged that the claimant had obtained the cocaine from the hospital, or that she had sold it on the hospital premises. In fact, the evidence disclosed that the claimant did not handle drugs while on duty. Following her conviction for selling cocaine, the claimant was fired.

HELD: A worker's off-duty legal or illegal actions may be connected with the work if the worker's actions adversely affect the public trust and confidence on which the employer's business is dependent. A hospital, which is entrusted with the treatment and care of patients, including the legitimate prescription of drugs, is dependent upon the public's trust and confidence, and may expect a certain standard of conduct from its employees, at work and in the community. In the instant case, the claimant's conduct was unbecoming a health care worker and could only have tarnished the employer's reputation in the community. Her actions constituted misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-85-7438/3-13-86**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Social Relationships**
CROSS-REFERENCE **MC 485.05, Violation of Company Rule**

The claimant, a 30 year old High School Teacher, was physically attracted to one of his 17 year old students, and asked her for a date. The student did not make a date with the claimant. The claimant persisted in trying to talk with her, including going to the student's home. Following his visit to her home, the student's mother complained to the high school principal, who issued a warning to the claimant: He was to have no more personal contact with the student.

Although the claimant did not subsequently meet or talk directly with the student, he did, upon occasion, go out of his way to drive past her home. Then, at the onset of summer vacation, he went to the student's work place, where he discussed with the student's work supervisor his (the claimant's) prospects of dating the claimant during the summer. Following this incident, the student's mother again complained to the claimant's principal, that her daughter was being harassed, whereupon the claimant was discharged.

HELD: Discharges because of social relationships outside of working hours and away from the employer's premises are not generally considered to be connected with the work, even though there may be a rule or order prohibiting such relationships. However, discharges arising out of a worker's private activities may be connected with the work if the acts in question are sufficiently identified with the work or tend to injure the employer's interests.

In the instant case, the claimant was a teacher. Both he and his employer, a school, were responsible to the community, in that they had been entrusted to look after the well-being of students - many of them minors. The claimant's conduct toward one of his students - a minor - was violative of the public's trust, and therefore tended to injure his employer's interests. The claimant's actions were inherently misconduct connected with his work, regardless of the fact that many of the claimant's acts took place outside of working hours and away from the employer's premises.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	***Winklmeier v. Board of Review*, 450 N.E. 2d 353 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**General**
CROSS-REFERENCE	**MC 5.05, Def. of Misconduct; MS 95.4, Constr. of Statutes**

Over a two-year period, the claimant submitted 13 medical insurance claims to his employer. Each claim was for medical treatment for his wife. On each claim he knowingly and falsely stated that his wife was unemployed and had no insurance of her own. His practice of filing false claims could result in higher insurance costs to his employer.

HELD: Section 602A provides that misconduct must be connected with work. However, misconduct need not have a direct connection with work. Instead, the connection with work is determined in light of the specific facts of each case.

Here, the claimant's behavior arose out of duties and obligations owed his employer, was directed at his employer's insurer, and could have resulted in a substantial financial loss to his employer.

This was misconduct connected with work.

ISSUE/DIGEST CODE	**Misconduct/MC 85.05**
DOCKET/DATE	**ABR-89-2827/9-12-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Connected with Work**
SUBTITLE	**Alcohol Rehabilitation**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

In 1986, the claimant was hospitalized for alcoholism. As a condition of her continued employment, she was required to obtain follow-up treatment, and she agreed that, for a period of 1 year, she would attend alcoholism counselling sessions.

For 1 year, the claimant attended the counselling sessions. She continued to attend counselling sessions well into a second year. She herself paid for these sessions. Toward the end of the second year, she began missing meetings with her counselor. This was partly because of her schedule: counseling plus work, including overtime, ran from 1 p.m. until 2 a.m. Also, she did not have sufficient funds to continue to pay for the sessions.

From the time the claimant began her counselling sessions, she committed no work infractions - except that the employer desired that she continue participating in the rehabilitation program. In January, 1989, because she failed to keep up her attendance in the program; she was discharged.

HELD: Section 602A of the Act requires that misconduct be connected with work.

Generally, if a worker has a substance abuse problem, causing difficulties on the job or absences from work, a requirement that she enroll in a rehabilitation program (in lieu of being discharged outright) is connected with the work and is reasonable. Generally, the worker's failure to enroll in or continue to attend such a program will constitute misconduct.

However, in the instant case, the relationship between continuing rehabilitation and work was tenuous. The original incident occurred in 1986. The claimant fulfilled her obligation to attend counselling for 1 year. For that year, and until her discharge in 1989, she committed no infractions that caused difficulties on the job or absences from work.

The counselling sessions that continued after 1 year, being off-duty, personally financed, and not warranted by behavior at work, were not connected with work; therefore, missing them could not constitute misconduct.

The claimant was allowed benefits without disqualification under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE ***Robinson v. IDES* (1994)**
AUTHORITY **Section 602A of the Act**
TITLE **Connection with Work**
SUBTITLE **Off-Duty Drug Use**
CROSS-REFERENCE **MC 270.05, Use of Intoxicants; MC 485.45, Company Rule**

The employer had a drug-free workplace policy, which included drug tests for work-related injuries, and, if drugs were found, subsequent unannounced tests, then, if drugs were found, a discharge.

The claimant's job was spray painting cabinets and computers. He was an excellent worker. After he sustained a scratch on the job, he was required to take a drug test. He tested positive for morphine and marijuana. A year later, over a weekend, off the job, he attended a wedding reception, where he had a few lines of cocaine and smoked marijuana. The next day, when he reported to work, he was required to take an unannounced drug test. The test revealed traces of the drugs in his system and he was discharged. He was then denied unemployment benefits.

The claimant contended that the rule that resulted in his discharge was unreasonable because it had nothing to do with his work performance, which was excellent, but, rather, with his off-duty conduct.

HELD: Section 602A provides, in pertinent part, that "misconduct" means a violation of a "reasonable rule ... governing the individual's behavior in performance of his work."

The goal of a drug-free workplace and substance abuse policy is to create and maintain a work environment free from the adverse effects of using drugs. The fact that an individual is a good worker whose job performance is not yet affected by drugs does not render a drug-free workplace policy and disciplinary rules unreasonable.

Here, the employer's rule was reasonable. The claimant deliberately and willfully violated the rule. The claimant had been warned (and, therefore, harm was irrelevant). All the conditions for a discharge for misconduct under Section 602A were met.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-94-7167/9-21-94**
AUTHORITY **Section 602A of the Act**
TITLE **Connection With Work**
SUBTITLE **Off-Duty Behavior**
CROSS-REFERENCE **MC 485.05, Violation of Company Rule**

The employer, a school district, had a rule (in Illinois' statutes) prohibiting it from retaining any worker convicted of public indecency. The claimant was a utility worker, whose work placed him in the presence of students ranging from kindergarten through 12th grade. He was discharged after being convicted of public indecency, for acts he committed while he was off-duty and off school premises.

HELD: "Misconduct" requires that an employer's rule or policy govern an individual's behavior in performance of his work. The term is not limited to actions that occur while a worker is on-duty or on the employer's premises. Off-duty actions that materially jeopardize the public's perception of the employer's services or a claimant's ability to properly and fully carry out his duties involve the performance of work. Here, the employer's rule governed the claimant's behavior in performance of his work. He was discharged for misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 85.05**
DOCKET/DATE **ABR-97-6027 / 7-30-97**
AUTHORITY **Section 602A of the Act**
TITLE **Connected with Work**
SUBTITLE **Use of Intoxicants Off the Job**
CROSS REFERENCE **MC 270.05, Intoxicants; MC 485.45, Viol. Of Company Rule**

The claimant worked as a craps dealer on a riverboat casino. Pursuant to company policy (and in accordance with federal regulations), he was administered a random drug test, which he failed, due to his use of drugs while off duty.

HELD: ABR-85-3809, previously contained in this Digest, holding that, in a particular fact situation, off the job use of drugs did not constitute misconduct, is hereby ***overruled***. The Board of Review now holds that, under certain circumstances, even if drug use occurs off the job, it constitutes misconduct. This is certainly true where the employer is governed by federal regulations which require the removal of an individual who tests positive for drugs.

ISSUE/DIGEST CODE **Misconduct/MC 135.05**
DOCKET/DATE **83-BRD-10627/9-16-83**
AUTHORITY **1./S-601A and S-602A**
TITLE **Discharge Or Leaving**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant had been granted a leave of absence of more than seven consecutive days. No work was available for him when his leave expired.

HELD: If an individual is on an approved leave of absence, the employment relationship is not severed. Where, as in this case, work is not available for the claimant when he returns at the expiration of the leave, a layoff occurs at that time. On the facts, neither a discharge nor a voluntary leaving took place, and there can be no disqualification. Therefore, the claimant is entitled to benefits.

ISSUE/DIGEST CODE **Misconduct/MC 135.05**
DOCKET/DATE **ABR-85-2581/12-24-85**
AUTHORITY **Sect. 601A and Sect. 602A of the Act**
TITLE **Discharge Or Leaving**
SUBTITLE **Option to Remain Employed**
CROSS-REFERENCE **VL 50.05, Attributability; VL 135.05; VL 155.1**

The claimant was employed by a hospital as a Respiratory Therapy Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled - as were other Therapists - to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: An individual is discharged when the employer takes the action which results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action which results in his unemployment and he has a choice of remaining at work at the time that he ceases working.

In the instant case, the claimant could have remained employed, but he refused to comply with a condition of work made at the time of hire. In effect, the claimant quit rather than agree to this condition. This then was a case of a voluntary leaving, and not a discharge.

(See also, VL 155.1, Domestic Circumstances, Children, Care of.)

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	**ABR-92-416/8-21-89**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge Or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**VL 135.05, Discharge or Leaving**

The claimant, a maintenance worker, was taking typing classes. Her employer was aware that, when she completed the classes, she would seek secretarial work. On October 24, the employer asked when the claimant's last class was and when she would begin looking for other work. The claimant responded that her last class was December 9, after which she would seek other work, and that she would give the employer appropriate notice. On December 7, the employer asked her when she was leaving. The claimant responded that she did not intend to leave until she obtained other work. On December 10, the employer hired a replacement for the claimant.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when she takes the action that results in her unemployment and she has a choice of remaining at work at the time that she ceases working.

In this case, at no time did the claimant disclose a definite or ascertainable date upon which she intended to leave work or that she was unwilling to continue working for the employer during any interim. All she did was assure the employer - in response to its questions - that she would provide notice at the appropriate time (when she obtained a job). The employer initiated the claimant's separation from work by replacing her, at which time she no longer had the choice of remaining in employment. Therefore, this was a discharge, not a leaving.

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	***Randell D. Ivy v. Board of Review*, 88 L 50532**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**VL 135.05, Discharge or Leaving**

The claimant found a new job. He gave his employer 2 weeks' notice that he was leaving. The employer told him to leave immediately. The claimant filed a claim for benefits for the 2 weeks until his new job began.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action that results in his unemployment and he has a choice of remaining at work at the time that he ceases working.

In this case, the claimant did not intend to leave on the date he gave notice, but was willing to work until the effective date of his resignation. He did not have the choice of remaining at work at the time that he ceased working.

This was a discharge.

ISSUE/DIGEST CODE **Misconduct/MC 135.05**
DOCKET/DATE ***Jones v. IDES*/11-15-95**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Approved Leave of Absence**
CROSS-REFERENCE **VL 135.05, Discharge or Leaving**

The claimant was granted a five-months leave of absence. She was not told that, by taking a leave, she was in any way jeopardizing her position or that her return was conditional upon the employer finding a permanent replacement. Nonetheless, when her leave ended, she was told that the employer had restructured itself, and, further, that it had decided to keep the temporary replacement who had been sitting in for her, because that person was working for less money. The claimant then filed a claim for benefits.

HELD: The leaving was involuntary because the employer, not the claimant, severed the relationship. Had the leave of absence been in any way disapproved or made conditional, there would have been a voluntary leaving, but this was not the case. Therefore, the disqualifying provisions of Section 601A do not apply.

ISSUE/DIGEST CODE **Misconduct/MC 135.05**
DOCKET/DATE **ABR-97-12111 / 5-18-97**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Option to Remain Employed**
CROSS REFERENCE **VL 135.05, Discharge or Leaving**

On July 23, the claimant tendered his resignation, to become effective July 28. The employer told him to leave immediately.

HELD: Generally, if a claimant gives at least two weeks' notice, and is told to separate from work before the expiration of the notice period, without wages for what would have been the remaining weeks of his employment, the separation is a discharge.

However, where the claimant has given less than two weeks' notice, we are reluctant to hold that the claimant was discharged. In those instances, the claimant's voluntary leaving is merely accelerated.

This was a voluntary leaving.

ISSUE/DIGEST CODE **Misconduct/MC135.05**
DOCKET/DATE ***Arroyo v. IDES*, 695 N.E. 2d 1350 (1998)**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Option to Remain Employed**
CROSS REFERENCE **VL 135.05, Discharge or Leaving; PR 195.05, Notice**

On June 14, approximately eight months into her pregnancy, the claimant experienced complications and was admitted to the hospital, where she gave birth to a still-born child. The claimant was released from the hospital on June 18, with orders to refrain from work for six weeks. The employer learned of her circumstances, but, on July 23, when the claimant advised her employer she could resume work, the employer would not take her back, contending she had "terminated voluntarily" because she hadn't shown up for work for more than a month. The Board of Review considered this a Voluntary Leaving.

HELD: Whether an employee voluntarily discontinues her employment is a question of intent and is to be determined from the totality of the evidence presented. Here, there is no evidence to prove the claimant intended to leave her job. The employer discharged her.

ISSUE/DIGEST CODE	**Misconduct/MC 135.05**
DOCKET/DATE	**ABR-97-1665 / 4-14-97**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS REFERENCE	**VL 135.05, Discharge or Leaving**

The claimant was absent for several days due to a physical condition and her employer called her at home, requesting that, if she intended to return to work, she should bring in a doctor's statement, showing she had been released to work. Instead, the claimant said she was quitting, adding: "I will give you my two weeks notice." The employer told her not to return to work at all.

HELD: Generally, if a claimant gives two weeks' notice, and is told to separate from work before the expiration of the notice period, the separation is a discharge. However, there are exceptions to that general rule, including where it appears the notice period is merely a formality and there is no real intent to continue working. Here, the claimant's conduct (her abrupt resignation and intent not to obtain a doctor's release which would have allowed her to work the next two weeks anyway) indicated the notice period was simply a formality. This was a voluntary leaving.

ISSUE/DIGEST CODE	**Misconduct/MC 135.1**
DOCKET/DATE	**ABR-91-921/9-20-89**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge Or Leaving**
SUBTITLE	**Constructive Discharge**
CROSS-REFERENCE	**VL 135.4, Discharge or Leaving Resignation Intended**

The claimant, an administrative assistant, worked from 9 to 5, then requested a change to part-time hours, noon to 5, because she wanted to work mornings as a trader at the Board of Trade. Her supervisor agreed to a 30-day trial period. After 30 days, on February 9, the supervisor told her that he really needed a full-time administrative assistant.

At that February 9 meeting, both the claimant and her supervisor became upset. The supervisor told her that she had until February 11 to make up her mind. After the claimant left for the day, the supervisor removed the claimant's work from her desk and cleaned off the desk-top, including removing her computer. On February 10, the claimant called in sick. When the claimant reported to work on February 11, she saw that her desk had been cleaned out. A secretary told her she was fired.

HELD: An individual is discharged when the employer takes the action that results in her unemployment and she does not have a choice of remaining employed. An individual leaves work when she has a choice of remaining at work, but takes the action that results in unemployment.

Here, the claimant's desire to try part-time hours was not the cause of her unemployment. The employer took the action that resulted in her unemployment. When the supervisor cleaned out the claimant's desk, the claimant no longer had any choice. This occurred on February 9, pre-dating the claimant calling in sick on February 10, as well as the February 11 ultimatum date, so whatever the claimant might have intended on those subsequent days was irrelevant.

This was a discharge, not an intended resignation.

ISSUE/DIGEST CODE **Misconduct/MC 135.1**
DOCKET/DATE **85-BRD-62-FE/6-25-85**
AUTHORITY **Section 601A & 602A of Act**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Discharge**
CROSS-REFERENCE **VL 495.05, Voluntary**

The claimant was employed by the United States government, as a Clerk-Typist, in West Germany. She was a "dependent spouse," working during her husband's tour of military duty in that country. When her husband's tour of duty ended, and he was transferred back to the United States, the claimant left her Clerk-Typist position, submitting a letter of resignation. Later, she testified that her resignation had been a formality only: Army personnel rules directed that a dependent spouse was not permitted to remain in a foreign country upon her husband's transfer.

HELD: The claimant had no option to remain at work, due to the rules promulgated by her employer. She did not leave work voluntarily. This was a constructive discharge.

ISSUE/DIGEST CODE **Misconduct/MC 135.1**
DOCKET/DATE **ABR-85-3491/9-30-85**
AUTHORITY **Section 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Discharge**
CROSS-REFERENCE **VL 235.4, Health or Physical Condition, Pregnancy**

The claimant was 6 months pregnant, when, according to her employer's standard policy, she was given a choice: She could be placed on "Maternity Leave Status," which meant she could no longer work, but would be eligible to be re-hired, if there was an opening, after her baby was born; or, she could continue working by signing a "Release of Liability" form, which stated that she would release all rights to recovery for injury to herself or the unborn child, regardless of the cause of such injury. The claimant refused to sign a "Release of Liability," was placed on "Maternity Leave Status," and was told she could re-apply for work after her baby was born.

HELD: If a company rule requires separation at a certain stage of pregnancy, the separation, if it occurs at that stage, is a discharge, not a voluntary leaving. Even though the worker may take some action which results in the separation, a separation which arises out of the employer's rule will constitute a constructive discharge. In the instant case, the claimant's refusal to sign a "release" constituted a constructive discharge cognizable under Section 602A of the Act. Because compelling circumstances caused the claimant to refuse to sign the form, her actions in refusing to sign did not exhibit a willful disregard of duties owed to the employer. The claimant was discharged for reasons other than misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 135.2**
DOCKET/DATE **ABR-84-12229/10-4-85**
AUTHORITY **Section 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Interpretation of Remark or Action**
CROSS-REFERENCE **VL 135.2, Discharge or Leaving, VL 160.05**

The claimant worked as a Jewelry Salesman, and enjoyed a familiar relationship with the store's owner, for whom he had worked for 25 years. From May, 1983, through September 2, 1983, the claimant had been absent from work due to illness. On September 3, he returned to work, unannounced, and was preparing to open the store, when the owner told him that he had hired a new employee. Upon hearing this, the claimant handed the owner his keys and left.

At a hearing, the employer testified that the new employee had not been hired as a replacement for the claimant. The claimant testified that he had assumed that he had been replaced by the new employee.

HELD: There are some situations in which it is difficult to determine whether a separation is a discharge or a voluntary leaving, as both the employer and worker have made some remark or have taken some action which has contributed to the initiation of a separation. Generally, if an employer makes a remark or takes some action which initiates the separation, then a discharge has occurred. However, if the employee is given a choice of remaining at work, it is a voluntary leaving. In either case, the reasonableness of the parties' actions must be considered.

Even though an employer's remark might generally give rise to a discharge, in the instant case, the claimant's belief that he had been discharged was not reasonable. Considering his many years of employment, and his familiar relationship with the owner, the claimant should have taken steps to ascertain his status. His failure to do so by departing abruptly constituted a voluntary leaving without good cause attributable to his employer.

ISSUE/DIGEST CODE	**Misconduct/MC 135.2**
DOCKET/DATE	**ABR-85-9144/7-14-86**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation of Remarks or Actions**
CROSS-REFERENCE	**MC 45.05, Attitude Toward Employer; VL 135.2**

The claimant, an Automobile Service Manager, did not receive the wage increase he had anticipated. Subsequently, during his lunch hour, he pored over job advertisements in a newspaper. He was observed doing this by a superior, who questioned the claimant's intentions. The claimant stated that, as a result of the lack of a wage increase, he felt compelled to seek other work. He informed his superior that, when he found other work, he would give the employer appropriate (2 or 3 week) notice. The claimant worked the rest of his shift that day, after which he was again questioned about his intentions. He repeated what he had said earlier, whereupon he was instructed to leave work immediately.

HELD: At some point in time, either the employer no longer has the option of continuing the worker in employment or the worker no longer has the option of remaining at work. The separation occurs at such point in time. If the employer has made a remark or committed an action which prevents the worker from remaining in employment, the separation is a discharge; if the worker has made a remark or committed an action which prevents the employer from retaining him in employment, the separation is a voluntary leaving.

In the instant case, the claimant's statements did not indicate that he would be leaving his job at any ascertainable time, nor did his actions indicate that he had ceased, or would imminently cease, performing his duties under the terms of hire. The employer had the option of continuing the claimant in employment, but chose not to do so. This, then, was a discharge, not a voluntary leaving.

(This was a discharge not for misconduct -- See MC 45.2 & .3.)

ISSUE/DIGEST CODE	**Misconduct/MC 135.25**
DOCKET/DATE	**84-BRD-4168/3-28-84**
AUTHORITY	**1./S-601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Discharge Before Effective Date Of Resignation**
CROSS-REFERENCE	**None**

The claimant became dissatisfied with his job because of a reduction in wages and because he was required to perform lesser skilled work. He made an agreement with his employer that he would seek other employment, that the employer would look for a replacement, and that either would give the other one week's notice before the employment ended. The employer notified the claimant when he found a replacement and told the claimant not to return to work.

HELD: The event which would constitute a voluntary leaving by the claimant, the location of other employment, had not occurred. The employer's hiring of a replacement did occur and resulted in the separation of the claimant from the employment. He was, therefore, discharged but not for misconduct connected with the work. The claimant is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**ABR12059/3-14-91**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation (Deemed Voluntary Leaving)**
CROSS-REFERENCE	**MC 165.05, Employer Requirements; VL 135.15, Leaving**

The claimant was a bus driver. He was required to have a valid driver's license. His driver's license was revoked due to an off-duty accident. The employer could no longer retain his services.

HELD: When an occupational license, a tool of an individual's trade, is within his control to obtain and maintain, a work separation that occurs as a result of not obtaining or maintaining that license is a voluntary leaving (constructive quit), not a discharge.

Here, the claimant constructively quit his job when he lost his license.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**ABR-86-2404/8-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation**
CROSS-REFERENCE	**MC 139.05, Discrimination; MC 390.25, Fellow Employees**

In September, 1985, the claimant became ill with tuberculosis and was placed on indefinite leave. Thirteen months later, he was released to return to work, without restrictions. (Copies of medical reports were submitted to the employer and, later, in evidence at the appeal hearing). However, co-workers were still afraid of contagion and refused to work with the claimant. This view was also held by persons in management, who were afraid that their own jobs might be on the line if the claimant was permitted to return to work. Although there were no legal, medical, or established business requirements dictating that the claimant undergo further medical tests, the employer required that he undergo such testing. The employer would not permit him to return to work until he did. The claimant refused to undergo what he considered unnecessary testing and was discharged.

HELD: A worker who brings about his unemployment, either because he no longer wishes to remain on his job or because he does not wish to comply with the conditions under which his employer is willing' to retain him, leaves work voluntarily, since it is his action or inaction which brings about his unemployment. On the other hand, a worker who is separated from his job because the employer does not want to retain him is said to have been laid off or discharged. There are also instances in which an employer cannot retain a worker in its employ because the worker fails to meet a legal requirement or because of other circumstances beyond the employer's control - although the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge.

In this matter, the claimant did not terminate his employment. The termination was brought about as a consequence of the employer's failure to place him in employment when he reported to work with an unrestricted release by his doctor. The employer imposed an unreasonable and unnecessary condition upon the claimant's return to work. In effect, the employer told the claimant that it did not wish to retain his services. This was a discharge for no cause, and, therefore, a discharge for reasons other than misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**54-BRD-2983/12-12-54**
AUTHORITY	**1./S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation**
CROSS-REFERENCE	**None**

After the claimant was hired as a candy wrapper and assigned to her work station, she underwent a physical examination required by all new employees. During this examination, it was determined that the claimant was unable to meet the health standards required by the state statute, and she was discharged by the employer. The claimant had been treated for a similar condition 10 years previously and had been released as cured by her physician. When she accepted employment, she was unaware of the recurrence of her infectious blood condition.

HELD: Although it was the responsibility of the employer to discharge the claimant in view of her physical condition, there is no evidence to indicate that the claimant intended to conceal her condition from her employer. Under these circumstances, her separation from work was involuntary and not for misconduct connected with work. She is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 135.3**
DOCKET/DATE	**ABR-85-756/6-25-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Involuntary Separation**
CROSS-REFERENCE	**MC 165.05, Employer Requirements; VL 160.05**

In October, 1979, the claimant was hired as a Nurse's Assistant. Pursuant to a statute passed in 1980, Nurse's Assistants were required to be licensed by the State. The claimant's certificate that had been issued in 1968 was not recognized by the 1980 statute, and, moreover, the claimant had not had sufficient work experience prior to the passage of the statute to take advantage of that portion of the statute which allowed licensing based upon work experience. Subsequent to the passage of the 1980 statute, the claimant was notified that her employer could not continue to employ her because of her lack of the requisite license.

HELD: There are instances in which an employer cannot retain a worker in its employ because the worker has failed to meet a legal requirement for continued employment. Even though the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge as opposed to a voluntary leaving, unless it is established that it was contemplated in the working agreement and was within the control of the affected worker to satisfy the legal condition for continued employment. In the instant case, the requirement for State certification was mandated at some time after the claimant's hire and there was no assurance that the claimant had within her control the ability to obtain the requisite certification. Therefore, the claimant's work separation was a discharge (not for misconduct) and not a voluntary leaving.

(The Board of Review compared the instant case to its previous decision, ABR-84-237, dated October 17, 1984: In that case, the claimant was hired with the understanding that, within a relatively brief time after hire, she would be required to attend a training course in order to become certified. The claimant chose not to attend the training course, and, thereby, precluded any opportunity to maintain the certification required to keep her job. The distinguishing feature of that case, as opposed to the instant case, was that the claimant was aware of, and accepted the responsibility for, obtaining the proper State certification, which was within her control to obtain.)

ISSUE/DIGEST CODE **Misconduct/MC 135.3**
DOCKET/DATE ***Hawkins v. IDES*/12-21-94**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Involuntary Separation (Constructive Quit)**
CROSS-REFERENCE **MC 165.05; VL 50.05; VL 135.15**

The claimant was a bus driver. In March, 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him.

HELD: When an occupational license is within an individual's control to obtain, a work separation that occurs as a result of not obtaining that license is a voluntary leaving (constructive quit), not a discharge. Here, it was within the claimant's control to obtain his license. The claimant constructively quit by not making a reasonable effort to take the test in time to meet the licensing requirement. He left work without good cause attributable to his employer and benefits were denied.

ISSUE/DIGEST CODE **Misconduct/MC 135.35**
DOCKET/DATE **ABR-85-7421/4-7-86**
AUTHORITY **Sections 601A and 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Leaving in Anticipation of Discharge**
CROSS-REFERENCE **VL 135.35, Discharge or Leaving; VL 138.05**

The claimant was employed by the Department of Transportation, which had undertaken an investigation to see whether the claimant had misused vehicles assigned to him and/or whether he had kept improper time records. The claimant volunteered to resign if the employer would not pursue its investigation, the outcome of which was as yet unknown (to the employer); no formal charges had been filed against the claimant. The employer did not object to the claimant's suggestion. The claimant resigned.

HELD: A worker who leaves work in anticipation of a discharge for misconduct cannot evade the attendant disqualification by leaving. In cases where a discharge is imminent, the separation is considered a discharge and the claim is adjudicated accordingly. In cases where the claimant suspects that he will be discharged, but is under no threat of imminent discharge, the separation is considered a voluntary leaving and the claim is adjudicated accordingly.

In the instant case, the claimant left work voluntarily. He did not show that the work had become unsuitable, so as to affect his well being, only that the employer was exercising its prerogative to conduct, in a reasonable fashion, an investigation into its business affairs. The claimant left work without good cause attributable to his employer and was subject to the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE **Misconduct/MC 135.35**
DOCKET/DATE **ABR-93-10137 / 4-20-94**
AUTHORITY **Section 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Leaving in Anticipation of Discharge**
CROSS-REFERENCE **VL 135.35, Discharge or Leaving**

The claimant's employer was served with a court order to withhold payments to the claimant, for child support. The employer wanted "nothing to do with it" and told the claimant to "take a walk" unless he intended to catch up with a lump sum payment to his wife by the end of the week. There was nothing the claimant could do, because he had no money and needed the job in order to continue to pay child support, so he left.

HELD: A discharge occurs when an employer gives an individual no genuine option to remain employed. Leaving work to avoid a definite and imminent discharge does not change a discharge to a voluntary leaving. In the instant case, the claimant did not have any option to continue working, inasmuch as he would be unable to comply with the employer's directive within the time provided. This was a discharge.

ISSUES DIGEST CODE **Misconduct/MC 139.05**
DOCKET/DATE **ABR-86-2404/8-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Discrimination**
SUBTITLE **Illness, Fear of Contagion**
CROSS-REFERENCE **MC 135.3 Discharge or Leaving; MC 390.25, Employees**

In September, 1985, the claimant became ill with tuberculosis and was placed on indefinite leave. Thirteen months later, he was released to return to work, without restrictions. (Copies of medical reports were submitted to the employer and, later, in evidence at the appeal hearing). However, co-workers were still afraid of contagion and refused to work with the claimant. This view was also held by persons in management, who were afraid that their own jobs might be on the line if the claimant was permitted to return to work. The employer would not permit the claimant to return to work.

HELD: An employee has the obligation to so conduct himself as not to interfere with the proper operation of the employer's business. But when a discharge results because an individual's co-workers object to working with him because of their dislike for his race, religious beliefs, political beliefs, or other personal reasons - where no interference with the work has been demonstrated - such a discharge cannot be for misconduct. In this case, the discharge was not for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 140.05**
DOCKET/DATE **83-BRD-5374/5-10-83**
AUTHORITY **1./S-602A**
TITLE **Dishonesty**
SUBTITLE **General**
CROSS-REFERENCE **None**

The employer, a hospital, testified that the claimant was discharged for misappropriating property while at work. The hospital recently experienced numerous thefts, and it had marked currency placed in the pocket of a lab coat. The hospital's witness observed the coat hanging on the hook immediately before the room was unlocked so that the claimant could clean the area. When the claimant finished her activities, the employer's security officer checked the coat and found the currency missing. The claimant was searched, and the marked currency was found in her coin purse.

The claimant testified that, upon entering the room, she found the coat and the currency on the floor. She stated that she hung the coat back up on the hook and placed the currency in her pocket. She further indicated she intended to take the money to the security department but that she was confronted and accused of appropriating the funds before doing so.

HELD: The claimant was discharged for taking possession of the employer's marked currency in her work area and during the course of her employment. The claimant's explanation of the incident lacked credibility in light of her contention that she picked up the coat but put the money in her coin purse, even though the employer observed the coat hanging on a hook just prior to the claimant's entry. It is concluded that all necessary elements have been proved, and the claimant was discharged for misconduct connected with her work. She is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.05**
DOCKET/DATE **83-BRD-14228/11-30-83**
AUTHORITY **2./S-602A**
TITLE **Dishonesty**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked as a school bus driver. She had been suspended on four occasions for absences from work without notification to the employer. On the last occasion leading to her discharge, the claimant was late in picking up children on her bus route, and she attributed her tardiness to her college courses. The employer contacted the claimant's school to verify the claimant's reason and found that the claimant was not registered at the school. On March 28, 1983, the claimant was discharged.

The claimant admitted that at one time she had attended college classes but later discontinued such classes. She further stated that her tardiness was because she had been stopped by police for a traffic law violation.

HELD: The claimant was discharged for falsely stating that her attendance at college classes caused her tardiness in picking up children on her school bus route. The claimant's actions exhibited a wilful disregard of duties owed the employer, and she could reasonably have foreseen that her conduct would seriously jeopardize her job. Accordingly, the claimant was discharged for misconduct connected with her work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 140.05**
DOCKET/DATE	***Candace Medvid v. IDES*, 542 N.E. 2d 852 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Falsifying the Reason for an Absence**
CROSS-REFERENCE	**MC 15.2, Absence, Reasons**

The claimant worked at two jobs. On October 25, she did not report to work or call to notify her first employer of her absence. On October 26, she called 3 hours after her shift began, explaining that she had overslept and would not be at work. On October 27 and 28, she called in sick. The employer discovered that the claimant, during those same days and hours when she was scheduled to work, was working for her other employer. On October 29, the claimant was fired.

HELD: Misconduct includes a deliberate disregard of a standard of behavior that an employer has a right to expect of its employee.

Deliberate falsification of a reason for an absence is a violation of a standard of behavior that an employer has a right to expect from an employee.

The claimant's dishonesty constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 140.05**
DOCKET/DATE	**83-BRD-11823/10-24-83**
AUTHORITY	**3./S-602A**
TITLE	**Dishonesty**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant backed the employer's van into the employer's dock causing damage. He did not report the accident to the employer but instead made his morning deliveries. When he returned, the employer noticed the damage to the van and questioned the claimant. The claimant denied knowledge of how or when the van was damaged.

The employer inspected the delivery dock and found paint chips which matched the paint of the damaged van. Upon further questioning, the claimant admitted to the employer that he had damaged the van earlier in the day when he backed into the delivery dock. The claimant was discharged for failing to report the damage to the van and for denying that he had knowledge of how the damage occurred.

HELD: The claimant's conduct was wilful and deliberate and constituted misconduct within the meaning of the Act. He is ineligible to receive benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.1**
DOCKET/DATE **ABR-85-5456/11-27-85**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Aiding and Abetting**
CROSS-REFERENCE **None**

The claimant and 2 co-workers worked on the employer's client's premises, where they shared a locker which had a broken lock and was therefore accessible to others. When the claimant and his co-workers opened the locker and determined that its contents - a sweatshirt and pair of shoes - did not belong to any of them, 1 co-worker took the sweatshirt and the other co-worker took the shoes and they left the premises.

Later, the claimant was discharged, because, although he had not taken any items, he had failed to report the matter to the employer or the client.

HELD: A worker has a duty to report acts of dishonesty which might tend to injure the employer. A worker's willful failure to report such acts of dishonesty is a breach of duty constituting misconduct. In the instant case, the claimant was an eye-witness to a theft, had control over whether he reported the theft, and willfully failed to report it. He breached his duty toward his employer and his discharge was for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **84-BRD-4301/3-29-84**
AUTHORITY **1./S-602A**
TITLE **Dishonesty**
SUBTITLE **Falsification of Records**
CROSS-REFERENCE **None**

The claimant was employed as an outside salesman. Weekly activity reports were used by the employer to measure the performance and production of its outside salesmen, and the claimant listed more contacts on a report than he had actually made. He was discharged for the falsification of his report.

HELD: In this case, the claimant was discharged as a result of knowingly submitting a false report of his performance and production to his employer. Such falsification was a substantial breach of duty owed the employer. Therefore, the claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **83-BRD-8940/7-28-83**
AUTHORITY **2./S-602A**
TITLE **Dishonesty**
SUBTITLE **Falsification Of Records**
CROSS-REFERENCE **None**

The claimant worked as a home health nurse's aide. In an interview with the Adjudicator she stated: "I was discharged June 14, 1982. The reason given was falsifying time records. I reported working some hours that I didn't actually work. Sometimes the patients would say that I could leave early, but I would report that I worked the full shift. The employer wanted me to sign out the time that I actually stopped working. I falsely reported working 252 hours over several months when, in fact, I only worked 136 hours. I therefore owe the employer 117 hours at $3.35 per hour for a total of $391.95."

At the hearing before the Referee, the employer testified that the claimant reported hours for which she was reimbursed but that she did not actually work, a violation of a known company policy. The claimant had received a written warning for falsifying hours on December 24, 1981. The claimant was aware of the published company rule which provided: "Falsifying time card (sheets) or work records will result in immediate dismissal."

HELD: Any worker who knowingly submits a false report of time at work has directly injured the employer's interest. The claimant's falsification of her work, whereby she was reimbursed for work she did not perform, is clearly against the employer's interest. Therefore, she was discharged for misconduct connected with the work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	**84-BRD-67-FSC/1-17-84**
AUTHORITY	**3./S-602A**
TITLE	**Dishonesty**
SUBTITLE	**Falsification Of Records**
CROSS-REFERENCE	**None**

The claimant was responsible for contacting persons listed in a city directory to verify listing information. As a method of confirming the fact that all such people were contacted personally, the company placed false names on each worker's lists. The claimant submitted verifications for three false names, and she was discharged. She claimed that she obtained the information through a trailer park manager, but the employer pointed out that the claimant was instructed to make the verification personally with each listed individual.

HELD: The accuracy of the information was vital to the employer's business, and it is concluded that the claimant knowingly inserted false information in the employer's records. She was discharged for misconduct connected with the work and is disqualified from benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	**84-BRD-2955/2-29-84**
AUTHORITY	**4./S-602A**
TITLE	**Dishonesty**
SUBTITLE	**Falsification Of Records**
CROSS-REFERENCE	**None**

In his application for employment as a truck driver, the claimant admitted to two convictions for moving violations in a three year period. After he was hired, a report from the Secretary of State showed that he had three. The employer's rule would not allow anyone to be hired with three violations in this period of time, and he was discharged.

HELD: The employer's question in the application was reasonable, and it was a material factor in the selection of the claimant as an employee. The claimant supplied false information which tended to injure the interests of the employer in terms of insurance costs or the claimant's loss of his driver's license at some early date.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	**84-BRD-4270/3-29-84**
AUTHORITY	**5./S-602A**
TITLE	**Dishonesty**
SUBTITLE	**Falsification Of Records**
CROSS-REFERENCE	**None**

The claimant, a termite inspector, was required to inspect homes for termite damage and submit a report of his investigation to his employer. The claimant was discharged when it was discovered that he had submitted inspection reports on homes that were not actually available for inspection because the occupants were not home. The claimant admitted that he had forged the occupants' signatures on the reports.

HELD: The claimant knowingly submitted false reports to his employer that purported to show inspections that were never made by the claimant. The claimant's actions were not mere inefficiency or good faith errors in judgment but were acts of intentional misrepresentation that related directly to the business of the employer. The claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 140.25**
DOCKET/DATE	**ABR-85-4754/11-26-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Falsification of Record (Application for Employment)**
CROSS-REFERENCE	**None**

In early March, 1985, the claimant applied for work as a Beef Processor. One of the questions on the employment application asked whether he had suffered any back injury in the last 5 years. Later, the claimant explained to the Adjudicator:

> Since I hadn't had an injury in five years, I said no. I had an injury six or seven years ago...I just pulled a muscle. I was told to do light duty for a couple weeks.

At any appeal hearing, the claimant testified that, upon reconsideration after his job interview, he made it a point to telephone the employer that same day to clarify what he had written. He told his employer that, while working for a previous employer, he had been to a doctor for his back, but that he did not consider it serious enough to constitute an "injury." He also re-affirmed his belief that the pulled muscle had occurred six or seven years earlier.

The record indicated that on March 9, 1980 (within the 5 year period), the claimant had sustained a sprained muscle in his back. It had required minimal medical treatment and had no residual effects.

The employer testified:

> Well, the purpose of the question on our medical history questionnaire is to identify people who have problems like that so that we can place them appropriately, hence if we have someone who had back trouble, we have places where we can assign those people where they won't be in danger of injuring themselves further.

The claimant had been employed for 3 weeks, when, on March 21, 1985, the employer, determining that there was a discrepancy between what the claimant had written and what the record indicated, discharged him for allegedly falsifying his application for employment.

HELD: In order for an alleged false statement or omission in a work application to constitute misconduct connected with work, it is necessary that:

> (1) The employer's requirements as to what information the prospective worker must reveal must be reasonable; and
>
> (2) The employer's accurate knowledge of the requested information is material in the selection of the worker for the job; and
>
> (3) The false statement or omission must be willfully made by the worker; and
>
> (4) The falsification of the work application must tend to injure the interests of the employer.

In the instant case, when the claimant applied for work, he was asked a question which would aid in determining whether he had a physical defect which would prevent him from executing the duties for which he was being considered. The question was reasonable, the requested information was material, and a falsified answer would have tended to injure the interests of the employer. However, the evidence failed to establish that the claimant willfully falsified his application for employment. He furnished the employer with information which he reasonably believed to be correct. Therefore, the claimant was not subject to a disqualification under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **ABR-85-5489/12-19-85**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Falsification of Record (Misrepresenting Qualifications)**
CROSS-REFERENCE **None**

For several years the claimant worked as Office Manager for an employer in the bronze business, and, through that job, came in contact with another employer in the metal coatings business. The claimant interviewed for a job with that employer, citing her experience with her current employer. The new employer offered her a job as a Customer Service Agent and the claimant accepted. After she had worked at her new job for 2 weeks, the employer discharged her.

The employer stated that the claimant had been hired on the basis of her representations as to her experience in the field. However, she was so inept at her work as to indicate to the employer that she had misrepresented her qualifications.

HELD: A discharge for dishonesty requires, at the minimum, that there be an act or omission indicating a lack of truthfulness on the part of the worker. It must be established that what is alleged to be dishonest is not merely a misunderstanding or an expectation.

In the instant case, the employer failed to establish that the claimant had committed a dishonest act. The only evidence offered by the employer on point was that the claimant represented that she had worked for several years in a similar business - which was true.

The fact that the claimant was not as proficient as the employer thought she should have been, based upon her experience, did not render her representations dishonest or constitute misconduct based upon dishonesty.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE **ABR-86-878/4-18-86**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Falsification of Application**
CROSS-REFERENCE **MC 385.05, Relation of Offense to Discharge**

The claimant worked for 10 years as a Respiratory Therapist, until her employer discovered that she had lied, on her application for employment, about her formal qualifications: The claimant had completed only 16 of the 42 college credit hours required for her certification as a Respiratory Therapist.

When the employer learned of the claimant's falsified credentials, she was discharged, even though her work for the past 10 years had been satisfactory.

HELD: There are 4 major principles which determine whether falsification of an application for work constitutes misconduct. One of these is whether the employer's accurate knowledge of the requested information is material in the selection of the worker for the job. Another is whether the falsification of the work application will tend to injure the interest of the employer.

In many occupations, a falsehood in an application for employment would be remote after 10 years, and inconsequential in view of satisfactory performance in the interim. However, there are many professions to which remoteness cannot apply, either because continuing honesty is of paramount importance, or because the credentials set forth in the application are a continuing requirement for licensing or continue to be essential to the nature of the work performed.

In the instant case, the claimant was employed in a profession where the possession of certain medical knowledge and life saving skills was essential. A genuine certificate of formal training would have shown whether the claimant brought to her job such knowledge and skills, and was material to her selection for the job. In the absence of that formal training, it could not be shown that the claimant, even by working 10 years, had maintained certain skills (which she might never have possessed). The claimant, by falsifying her credentials, may have exposed patients to risk and subjected her employer to liability. Her discharge was for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 140.25**
DOCKET/DATE ***DeBois v. IDES*, 274 Ill. App. 3d 660 (1st. Dist. 1995)**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Falsification of Records**
CROSS-REFERENCE **MC 485.05, Awareness of Rule, Harm; MC 485.1, Absence; MC 485.3, Dishonesty**

The claimant was employed as a computer attendant and was assigned to the employer's computer room. There was no on-site supervisor present at the computer room, but various on-site employees, including the claimant, were appointed as the "lead person," a position like a temporary supervisor. On several occasions the claimant was observed leaving the computer room more than an hour before the end of her shift without the approval of her supervisor. Sometimes she closed and locked the computer room when she left early. The claimant was responsible for completing and signing her own time sheets. On the days the claimant left early her time sheets indicated she had worked until the end of her shift. The claimant was suspended and then dismissed because she had falsified her time sheets, thereby violating the employer's code of conduct. However, the employer had a progressive discipline policy. It failed to follow the policy when it suspended and dismissed the claimant.

The Board of Review determined that the claimant was ineligible for benefits under Section 602A of the Act because she had wilfully violated the employer's work rules and code of conduct and had harmed the employer by closing the computer room early and by causing the employer to pay her and her co-workers for time they were not actually on duty. The Circuit Court reversed, reasoning that progressive discipline policies play an important role in the modern work place and therefore the employer's failure to follow its progressive discipline policy prevented it from opposing the claimant's claim for benefits.

HELD: The decision of the Circuit Court is reversed because it is contrary to the law. The statutory definition of misconduct provided in Section 602A of the Act does not excuse the misconduct of an employee when an employer violates a policy of progressive discipline. The legislature cannot have intended the result reached by the Circuit Court.

The decision of the Board of Review is affirmed because it is not against the manifest weight of the evidence. The record shows that it was proper for the Board to conclude the employer had a reasonable rule directing its employees to not falsify company time sheets. Further, it was proper for the Board to conclude the claimant had wilfully violated the rule because the record supports a finding the claimant was aware of the rule. Willful behavior is found when an employee is aware of a company rule but disregards it. Finally, it was proper for the Board to conclude the claimant's disregard of the rule caused the employer harm because by falsifying her time sheets she claimed more money than she was actually owed.

ISSUE/DIGEST CODE **Misconduct/MC 140.3**
DOCKET/DATE **ABR-85-7264/4-23-86**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Property of Employer, Conversion of**
CROSS-REFERENCE **MC 190.1/.15, Evidence**

The claimant, a Warehouse Worker for a department store, was discharged after the employer determined that he had taken possession of the employer's property (a pair of blue jeans) for his personal use.

At an appeal hearing, the employer established the facts that: Security officers had found an open carton of blue jeans, with 1 pair missing, on the floor of a trailer where the claimant had been working. The claimant was then escorted to the security office, where he was asked to remove his coveralls so that a security officer could inspect the jeans he was wearing. The claimant refused. He insisted that the union steward be present. The claimant, accompanied by a security officer, went into the warehouse to find the steward. Before returning, the claimant requested to go to the rest room. There, inside a stall, he was heard to be ripping material. Upon his return to the security office, he removed his coveralls and displayed his jeans: identical in size, brand, pattern, and every respect - except for knife or razor-torn cuffs - to the jeans missing from the open carton. The employer further testified that the claimant carried a knife while at work, as a necessary tool.

The claimant testified that the jeans he was wearing had been purchased by his wife several days earlier, at another of the employer's stores. He offered into evidence a cash register receipt, claiming it represented the purchase of the jeans he was wearing. The date of the purchase and the number of the register upon which it had been rung up had been obliterated.

The Referee concluded that, because the employer did not offer testimony from a witness who had personally observed the claimant taking the jeans from the carton, it had not proven its case.

HELD: Evidence upon which a decision will be based must be competent, credible, and of such a nature that reasonable people would rely upon it. In the instant case, the employer offered competent and credible evidence as to every fact but one; the employer did not produce an eye-witness to the taking. Still, from the evidence, the fact that the claimant took the jeans could reasonably have been deduced. On that basis, the employer made its case.

In response, the claimant offered into evidence a sales receipt which established nothing. The claimant's contention that his wife had purchased the jeans was not supported by the evidence.

The employer met its burden of proof by presenting competent, credible evidence upon which reasonable people could rely. The employer's evidence was entitled to greater weight than the claimant's. The evidence established that the claimant had converted the employer's property for his personal use. Any worker who is discharged for wrongfully converting property of his employer is discharged for misconduct connected with the work. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 140.30**
DOCKET/DATE	***Hoffmann v. Lyon Metal Products*, 217 Ill. App. 3d 490 (2nd Dist. 1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Dishonesty**
SUBTITLE	**Conversion of Property of Employer**
CROSS-REFERENCE	**MC 485.05, Deliberate and Willful Violation, Harm; MC 485.75, Removal of Property**

The claimant was employed as a material handler for 22 years with the employer. When the claimant left work on a Saturday he put one of the employer's extension cords in a paper sack to borrow it over the weekend. The claimant was stopped as he left and was asked what was in the sack. The claimant took the extension cord out of the sack, and was told to put it back where it came from since the claimant did not have a written package pass for it. The claimant put the extension cord back as instructed, and left the plant. When he returned to work on Monday, the claimant was told his intent was to steal the extension cord, and was discharged. The hearings referee determined the claimant had not been discharged for misconduct under Section 602A of the Act because there was no showing of a deliberate and willful violation in spite of a warning or explicit instruction of the employer's rule that no package other than an employee's lunch box or work clothes may be carried out of the employer's plant without a properly signed package pass, and because the evidence showed the rule was not unambiguous and was ignored in practice. The Board reversed, noting that the claimant had concealed the extension cord in a bag, that he had left through a door where no guard was stationed although he normally left through a door that had a guard, that his wife was waiting for him in the parking lot with their car motor running, and that earlier in the day he had requested a package pass for a co-worker but not for himself. The Board reasoned the claimant had been intentionally injurious to the employer's interests because the employer had an interest in knowing where its property is. The circuit court reversed the Board, finding the claimant eligible for unemployment benefits.

HELD: The circuit court is affirmed. The evidence does not show a deliberate and willful violation of the employer's package pass policy, or that the employer was harmed by the claimant's violation of the policy. The claimant consistently stated he was unaware a package pass was needed for borrowed items, and in the past had used a package pass for items he was keeping but not for items he was borrowing. These statements are consistent with the testimony of other witnesses. There was no evidence the claimant had been otherwise informed. One of the employer's supervisors testified the package pass the claimant requested for a co-worker was for an item the co-worker intended to keep. The claimant stated that a lot of people borrowed an awful lot at the plant, and the employer's vice-president acknowledged there had been a lot of circumventing of the rules regarding package passes and the employer was trying to stop it. The claimant testified he had taken borrowed items past the guard at the exit he normally used on prior occasions without being stopped. He had a reasonable explanation for his use of the alternative exit on the day of the incident, and since the incident occurred in February the fact the claimant's wife had kept the car motor running does not have great significance. In addition, the evidence does not show the employer was harmed by the claimant's violation of the package pass rule, since the claimant returned the extension cord. While other courts have held that the threat of future financial loss can cause harm to an employer, there is no evidence the employer had suffered or would suffer any loss of property or other harm due to the claimant's violation of the package pass rule. The employer's evidence as to the purpose of the policy and the need to know where its equipment is at all times is sufficient to establish that the policy is reasonable, but is not sufficient to establish that the employer was harmed by the claimant's violation of the policy.

ISSUE/DIGEST CODE **Misconduct /MC 140.30**
DOCKET/DATE ***Ray v. Board of Review*, 244 Ill. App. 3d 233 (1st Dist. 1993)**
AUTHORITY **Section 602A of the Act**
TITLE **Dishonesty**
SUBTITLE **Conversion of Property of Employer**
CROSS-REFERENCE **MC 485.05, Implicit Rule, Harm; MC 485.75, Removal of Property**

The claimant was employed in the maintenance department of the employer, and was discharged after an undercover investigator observed him stealing the employer's property on eight different occasions. The claimant testified he had never stolen anything, and was unaware of any theft problems at work or of any memorandum or bulletin from the employer regarding theft. He also testified he had borrowed a car battery after his supervisor told him to take it and keep it until he bought a new battery, and had taken a gallon of floor cleaner after a supervisor told him he could. The hearings referee found that the claimant was ineligible for unemployment benefits under Section 602A of the Act because he had been discharged for committing eight separate acts of theft of the employer's property in violation of a reasonable rule or policy of the employer. The Board affirmed, but the circuit court reversed, finding that the employer failed to demonstrate it had a policy against lending, and that the evidence did not establish the employer had been harmed by the claimant's acts.

HELD: The circuit court is reversed. There is no mandate in Section 602A that misconduct be in violation of a written rule. While there was no direct evidence the employer had an express policy prohibiting employees from taking company property for permanent personal use without permission, any employer would have such a policy unless a contrary policy is clearly presented. Implicit in the employment relationship is the understanding that employees do not steal from employers. In addition, the claimant's conduct showed his taking of the employer's property was deliberate and that he knew of a policy against taking company property for personal use. Also, the claimant's actions harmed the employer because they clearly affected the employer's inventory and costs.

ISSUE/DIGEST CODE **Misconduct/MC 140.35**
DOCKET/DATE **83-BRD-10499/9-13-83**
AUTHORITY **1./S-602A**
TITLE **Dishonesty**
SUBTITLE **Conversion Of Property Of Other Than The Employer**
CROSS-REFERENCE **MC 190.05, General under Evidence**

The claimant, a freight elevator operator, was accused by security personnel of wrongfully removing a water cooler owned by a tenant in the employer's building. He informed the guard that the tenant had given him the cooler and later provided written authorization, a copy of which was submitted in evidence. The employer did not inquire of the tenant whether permission had been given to the claimant for removal of the cooler and offered the claimant the option of submitting his resignation or being discharged. The claimant refused to resign.

HELD: The employer's evidence was based upon suspicion of dishonesty, while the preponderance of the evidence substantiated the claimant's allegation of ownership. In the absence of any evidence of misappropriation, it must be held that the claimant was discharged for reasons other than misconduct connected with the work and is not subject to any disqualification.

ISSUE/DIGEST CODE **Misconduct/MC 165.05**
DOCKET/DATE **ABR12059/3-14-91**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Employer Requirements**
SUBTITLE **Driver's License**
CROSS-REFERENCE **MC 135.3, Discharge; VL 135.15, Voluntary Leaving**

The claimant was a bus driver. He was required to have a valid driver's license. His driver's license was revoked due to an off-duty accident. His employer could no longer retain his services.

HELD: When an occupational license, a tool of an individual's trade, is within his control to obtain and maintain, a work separation that occurs as a result of not obtaining or maintaining that license is a voluntary leaving (constructive quit), not a discharge.

Here, the claimant constructively quit his job when he lost his license.

ISSUE/DIGEST CODE	**Misconduct/MC 165.05**
DOCKET/DATE	**ABR-85-756/6-25-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Obtaining a License**
CROSS-REFERENCE	**MC 135.3, Discharge or Leaving VL 160.05**

In October, 1979, the claimant was hired as a Nurse's Assistant. Pursuant to a statute passed in 1980, Nurse's Assistants were required to be licensed by the State. The claimant's certificate that had been issued in 1968 was not recognized by the 1980 statute, and, moreover, the claimant had not had sufficient work experience prior to the passage of the statute to take advantage of that portion of the statute which allowed licensing based upon work experience. Subsequent to the passage of the 1980 statute, the claimant was notified that her employer could not continue to employ her because of her lack of the requisite license.

HELD: There are instances in which an employer cannot retain a worker in its employ because the worker has failed to meet a legal requirement for continued employment. Even though the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge as opposed to a voluntary leaving, unless it is established that it was contemplated in the working agreement and was within the control of the affected worker to satisfy the legal condition for continued employment. In the instant case, the requirement for State certification was mandated at some time after the claimant's hire and there was no assurance that the claimant had within her control the ability to obtain the requisite certification. Therefore, the claimant's work separation was a discharge (not for misconduct) and not a voluntary leaving.

(The Board of Review compared the instant case to its previous decision, ABR-84-237, dated October 17, 1984: In that case, the claimant was hired with the understanding that, within a relatively brief time after hire, she would be required to attend a training course in order to become certified. The claimant chose not to attend the training course, and, thereby, precluded any opportunity to maintain the certification required to keep her job. The distinguishing feature of that case, as opposed to the instant case, was that the claimant was aware of, and accepted the responsibility for, obtaining the proper State certification, which was within her control to obtain.)

ISSUE/DIGEST CODE	**Misconduct/MC 165.05**
DOCKET/DATE	***Hawkins v. IDES*/12-21-94**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Driver's License**
CROSS-REFERENCE	**MC 135.3; VL 50.05; VL 135.15**

The claimant was a bus driver. In March, 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him.

HELD: When an occupational license is within an individual's control to obtain, a work separation that occurs as a result of not obtaining that license is a voluntary leaving (constructive quit), not a discharge. Here, it was within the claimant's control to obtain his license. The claimant constructively quit by not making a reasonable effort to take the test in time to meet the licensing requirement. He left work without good cause attributable to his employer and benefits were denied.

ISSUE/DIGEST CODE	**Misconduct/MC 190.05**
DOCKET/DATE	**84-BRD-590/1-17-84**
AUTHORITY	**2./S-602A**
TITLE	**Discharge Or Leaving**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The employer's witness alleged that the claimant had a poor attitude towards his work, that he was frequently away from his work station visiting with other employees, that his production was low, and that, overall, he demonstrated a wilful or deliberate failure to produce the required quantity of work. The witness further stated that the claimant had received warnings on three or four occasions.

The claimant rebutted the employer's witness by noting that he had been working at a new facility for three months and the witness had not observed his work at this location. He testified that his most recent supervisor had expressed satisfaction with his work and that, when he was separated from employment, he was told that he was being laid off because of lack of work.

HELD: The burden of proving that the separation is a discharge is upon the individual making the allegation. The employer's witness could offer no competent testimony concerning the claimant's work performance for the last three months. In view of the claimant's denial of the allegation, it must be concluded that the employer did not prove misconduct by a fair preponderance of the evidence. The claimant is not disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 190.1**
DOCKET/DATE	**85-BRD-126-FSC/7-10-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumptions**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a Sales Clerk until her discharge as a result of a violation of the employer's rules, which the employer deemed willful. Pursuant to statements made by the claimant to the Claims Adjudicator, the Claims Adjudicator determined that the claimant was discharged for an unintentional error which did not constitute misconduct connected with her work.

The employer appealed, and on October 10, 1984, its witness appeared and testified at a hearing which the claimant did not attend. The employer's witness did not possess personal, first-hand knowledge concerning the circumstances surrounding the claimant's separation from work and relied entirely upon information found in documents prepared and furnished by persons who did not appear at the hearing. (No foundation was laid for the submission of the documents as business records.)

HELD: Although the Board of Review is not bound by the technical statutory rules of evidence, consideration must be given to the inherent weakness of unsupported testimony and documents as evidence. Even if deemed competent, the employer's evidence constituted hearsay. It was the employer's burden to demonstrate by a preponderance of the evidence that the Claims Adjudicator's determination was incorrect. Given its due weight, the employer's unsupported allegations were insufficient to overcome the Claims Adjudicator's determination that the claimant's discharge resulted because of unintentional error. Accordingly, it could not be concluded that the claimant had been discharged for misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 190.1**
DOCKET/DATE **ABR-87-2086/6-30-87**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Burden of Proof and Presumptions**
CROSS-REFERENCE **MC 485.3, Violation of Company Rule, Dishonesty**

At the time of hire, the claimant signed a document, which read, in pertinent part:

> ...The undersigned hereby agrees and consents to submit to a lie detector test at any time...she might be requested to do so at the request of the employer.

The claimant worked in a store, in a department which had been experiencing theft problems. The claimant was transferred to a new department, and, shortly thereafter, the new department experienced missing funds. The claimant, together with other employees, was directed to take a lie detector test. The claimant refused to take the test. She was discharged.

At an appeal hearing, the claimant testified that she was not scheduled to work, nor did she work, on the day funds were discovered missing from her department. She denied misappropriating any funds.

The employer offered no evidence concerning any theft. But, the employer contended that, even if the claimant was not the person responsible for the missing funds, her refusal to submit to a lie detector test - in violation of the agreement at the time of hire - constituted misconduct.

HELD: A worker who is discharged because she has violated a known and reasonable rule is discharged for misconduct.

The fact that a worker knows of an employer's rule, or has consented at the time of hire to abide by an employer's rule, does not undo any fundamental unreasonableness of that rule.

Polygraph tests shift the burden from the employer (to establish guilt) to the worker (to establish innocence). Polygraph results have not been shown to be reliable. Polygraph results are inadmissible in a court of law. Therefore, it cannot be concluded that a requirement to submit to a polygraph test is a reasonable one; and, accordingly, a worker who is discharged solely on the basis of refusing to take a polygraph test is discharged for reasons other than misconduct.

In this case, the employer did not possess any tangible, competent evidence bearing on the claimant's alleged involvement in any misappropriation of funds. She was discharged solely upon the basis of her refusal to submit to polygraph testing, which alone did not prove dishonesty or constitute misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 190.1**
DOCKET/DATE ***Meeks v. IDES*, 567 N.E. 2d 481 (1990)**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Burden of Proof and Presumptions**
CROSS-REFERENCE **MC 390.2, Fellow Employees; MC 485.15, Company Rule**

The claimant, who worked in an office setting, was discharged after a fight with a fellow employee. At an appeal hearing, the employer did not produce any written rule or offer any testimony that fighting on the job was impermissible. The claimant contended that the employer did not satisfy all the required elements for misconduct under Section 602A because it did not prove ***by direct evidence*** that it had a "reasonable rule or policy."

HELD: Section 602A provides, in pertinent part, that misconduct arises from a violation of a "reasonable rule or policy." Whether a rule or policy exists need not be proven by direct evidence but may be determined by "common sense business practices." With the exception of some business ventures engaged in professional sports, any employer would obviously have a policy against physical violence. Here, there was an implicit rule against fighting. The "reasonable rule or policy" requirement of Section 602A was met.

ISSUE/DIGEST CODE **Misconduct 190.15**
DOCKET/DATE ***James L. Hafele & Associates v. IDES*, 308 Ill. App. 3d 983 (3d Dist. 1999)**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS-REFERENCE **None**

The claimant was employed as a secretary with the employer, a law firm, and was discharged. A hearings referee found that the claimant was eligible for benefits. This finding was affirmed by the Board of Review and the Circuit Court. On appeal the employer argued that the employee was ineligible for benefits because she was discharged for cumulative acts of misconduct connected to her work, and that the employer should have been granted a continuance to present the testimony of a witness who was undergoing surgery at the time of the hearing.

HELD: The Board's findings are not against the manifest weight of the evidence and will not be overturned if there is any evidence in the record that supports the Board's decision. In this case, there is evidence in the record to support the Board's findings that the employee was not discharged for cumulative acts of misconduct but rather for a single act when she allegedly feigned illness so she could miss work, and that her illness was not feigned.

There is no absolute right to a continuance, and an administrative agency has broad discretion in determining whether to grant a continuance. There is no abuse of discretion if there is no showing that had the continuance been granted additional evidence would have been discovered which could have affected the outcome of the hearing. In this case, there was no abuse of discretion since the witness' testimony would only have been cumulative of other witnesses' testimony.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE ***Thomas v. Ward*, 570 N.E. 2d 477 (1990)**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS-REFERENCE **MC 15.1, Absence; PR 380.25, Review, Scope**

The claimant had received numerous warnings for unexcused absenteeism. He was last absent because he was seeking admission to a hospital because of a reaction to heroin. The employer discharged him for being absent without notice.

The claimant testified that he tried to contact his employer by telephone. The employer testified that there was no message on its answering machine.

HELD: Questions of fact may be resolved by assessing the parties' credibility.

Here, the question of fact was whether the claimant called in. All the employer had to offer as evidence was a statement that something did not exist. Still, based upon the parties' credibility, this was sufficient to deny benefits.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-86-9483/9-29-87**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS-REFERENCE **MC 270.05, Intoxication and Use of Intoxicants**

The claimant was employed as a truck driver, until, during a routine physical check-up, a test of a urine specimen reportedly revealed the presence of marijuana in the claimant's system.

At an appeal hearing, the employer testified that both the company and the claimant's union had approved a rule that a test result of over 30 nanograms of marijuana would subject a driver to discharge. The employer submitted into evidence a laboratory test result, indicating that the claimant had 50 nanograms of marijuana in his system. There was no testimony offered concerning who administered the test or how the test was administered.

The claimant denied using marijuana.

HELD: Hearsay is an out-of-court statement (including a document) which is offered to prove the truth of the matter asserted. Hearsay evidence, while admissible, is not competent evidence upon which a decision may be based. The reason for this is that such evidence cannot be cross-examined, and thus, cannot be scrutinized to establish reliability.

At the same time, the defects in hearsay evidence can be overcome, by laying a proper foundation, through testimony. But in this case, there was no chain of evidence which established, in the first place, that it was the claimant's specimen which was analyzed, and not someone else's. Further, because there was no testimony by or concerning the person(s) who administered the test or how it was administered, there was no basis for determining the reliability of the test results. Therefore, the hearsay defects (no cross-examination, unreliability) were not overcome.

The claimant's denial that he used marijuana being the only competent evidence presented, it could not be concluded that he was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC-190.15**
DOCKET/DATE	**ABR-09-15206**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**MC 485.65, Violation of Company Rule -Motor Vehicle**

The claimant was discharged on July 15, 2009 for speeding while transporting a patient. The employer's dispatch supervisor testified that the employer's Global Positioning System (GPS) tracked the claimants' vehicle, but he was not aware of the date the vehicle was tracked. The GPS system purportedly showed that the claimant had driven at speeds of 82 and 83 mph on July 14, 2009. The employer's human resources person testified that she was not aware of how the GPS system was calibrated and whether it is accurate from day to day. The claimant denied that she had driven over the speed limit.

HELD: The Board of Review found that the claimant's testimony denying that she had exceeded the speed limit was more credible than that of the employer's witnesses where (1) none of whom had first hand knowledge of the claimant's alleged speeding, (2) the employer's dispatch supervisor was unaware of the exact date that the employer's GPS system had tracked the claimant, and (3) the human resources person was unaware of how the employer's GPS system was calibrated and whether it was accurate from day to day. Evidence upon which a decision is based must be competent, credible, and of such a nature that reasonable people would rely upon it. Here, the evidence submitted by the employer was not insufficient to prove that the claimant was discharged for misconduct connected with the work.

ISSUE/DIGEST CODE	**Misconduct/MC 190.05**
DOCKET/DATE	**83-BRD-10499/9-13-83**
AUTHORITY	**1./S-602A**
TITLE	**Evidence**
SUBTITLE	**General**
CROSS-REFERENCE	**MC 140.35, Conversion Of Property Of Other Than Employer under Dishonesty**

The claimant, a freight elevator operator, was accused by security personnel of wrongfully removing a water cooler owned by a tenant in the employer building. He informed the guard that the tenant had given him the cooler and later provided written authorization, a copy of which was submitted in evidence. The employer did not inquire of the tenant whether permission had been given to the claimant for removal of the cooler and offered the claimant the option of submitting his resignation or being discharged. The claimant refused to resign.

HELD: The employer's evidence was based upon suspicion of dishonesty, while the preponderance of the evidence substantiated the claimant's allegation of ownership. In the absence of any evidence of misappropriation, it must be held that the claimant was discharged for reasons other than misconduct connected with the work and is not subject to any disqualification.

ISSUE/DIGEST CODE **Misconduct/MC 190.1**
DOCKET/DATE **85-BRD-04670/6-25-85**
AUTHORITY **56 Ill Adm Code 2720.315b2**
TITLE **Evidence**
SUBTITLE **Burden of Proof and Presumptions**
CROSS-REFERENCE **MC 190.15, Evidence, Weight and Sufficiency; PR 190.05, Evidence**

At an appeal hearing before a Referee, on August 23, 1984, the claimant and witnesses for the employer appeared and testified to consider the issue of whether the claimant had been discharged for misconduct connected with her work. Based upon his findings, the Referee issued a decision which allowed benefits to the claimant. The employer appealed to the Board of Review, and in connection with that appeal, the employer submitted an affidavit, by the claimant's supervisor, which purported to refute the testimony furnished by the claimant at the August 23 hearing - which the supervisor had not attended. The affidavit was not accompanied by any statement providing a reason for the supervisor's failure to attend the August 23 hearing. The record did not show that the employer had requested a continuance of the hearing in order to present the supervisor's testimony.

HELD: Agency Rule 2720.315(b)(2) reads, in pertinent part:

> If the party who filed a request to submit additional evidence, or his witness, failed to appear at a scheduled hearing, the party must show either that he did not receive timely notice of the hearing, that his failure to appear at the hearing was due to circumstances beyond his control or that he requested a continuance before the conclusion of the hearing, which was denied.

In the instant case, because no reason was provided for the supervisor's failure to appear at the original hearing, and because no continuance had been requested, the Board of Review refused to consider the substance of the supervisor's affidavit. The claimant's testimony, in person, under oath and subject to cross-examination, was entitled to the greater weight. Accordingly, it could not be concluded that the claimant had been discharged for misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 190.1**
DOCKET/DATE **ABR-85-7938/4-18-86**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Burden of Proof (Refusal to Take Blood Alcohol Test)**
CROSS-REFERENCE **MC 270.05, Intoxication**

On his last day of work, the claimant, a Truck Driver, was involved in 2 accidents. When he reported in at the end of his shift, he was confronted by the Transportation Supervisor, who testified that, because he smelled alcohol on the claimant's breath, he directed the claimant to take a blood test for alcohol.

The claimant refused to take the blood test. He contended, among other reasons, that the contract between his union and the employer did not require that he take the blood alcohol test. Also, he was fearful that any alcohol which he had consumed up to 18 hours earlier, off the job, might result in the test being "positive."

Upon his refusal to submit to testing, he was discharged.

HELD: The refusal to take a blood alcohol test does not constitute misconduct per se. However, reporting to work in an intoxicated condition may constitute misconduct.

In the instant case, the employer presented evidence to show that the claimant had been under the influence of alcohol while at work: he was observed to have alcohol on his breath and he had had accidents with the company vehicle.

The fact that the claimant did not take a blood alcohol test, for whatever reason(s), did not alter the facts as presented by the employer. The claimant did nothing to rebut those facts.

The employer established by a preponderance of the evidence that the claimant had reported to work in an intoxicated condition. The claimant's actions, irrespective of his refusal to submit to a blood alcohol test, constituted misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 190.1/.15**
DOCKET/DATE **ABR-85-7264/4-23-86**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Circumstantial Evidence**
CROSS-REFERENCE **MC 140.3, Dishonesty, Conversion of Property**

The claimant, a Warehouse Worker for a department store, was discharged after the employer determined that he had taken possession of the employer's property (a pair of blue jeans) for his personal use.

At an appeal hearing, the employer established the facts that: Security officers had found an open carton of blue jeans, with 1 pair missing, on the floor of a trailer where the claimant had been working. The claimant was then escorted to the security office, where he was asked to remove his coveralls so that a security officer could inspect the jeans he was wearing. The claimant refused. He insisted that the union steward be present. The claimant, accompanied by a security officer, went into the warehouse to find the steward. Before returning, the claimant requested to go to the rest room. There, inside a stall, he was heard to be ripping material. Upon his return to the security office, he removed his coveralls and displayed his jeans: identical in size, brand, pattern, and every respect -- except for knife or razor-torn cuffs -- to the jeans missing from the open carton. The employer further testified that the claimant carried a knife while at work, as a necessary tool.

The claimant testified that the jeans he was wearing had been purchased by his wife several days earlier, at another of the employer's stores. He offered into evidence a cash register receipt, claiming it represented the purchase of the jeans he was wearing. The date of the purchase and the number of the register upon which it had been rung up had been obliterated.

The Referee concluded that, because the employer did not offer testimony from a witness who had personally observed the claimant taking the jeans from the carton, it had not proven its case.

HELD: Evidence upon which a decision will be based must be competent, credible, and of such a nature that reasonable people would rely upon it. In the instant case, the employer offered competent and credible evidence as to every fact but one; the employer did not produce an eye-witness to the taking. Still, from the evidence, the fact that the claimant took the jeans could reasonably have been deduced. On that basis, the employer made its case.

In response, the claimant offered into evidence a sales receipt which established nothing. The claimant's contention that his wife had purchased the jeans was not supported by the evidence.

The employer met its burden of proof by presenting competent, credible evidence upon which reasonable people could rely. The employer's evidence was entitled to greater weight than the claimant's. The evidence established that the claimant had converted the employer's property for his personal use. Any worker who is discharged for wrongfully converting property of his employer is discharged for misconduct connected with the work. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-88-071/2-23-89**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS-REFERENCE **MC 270.05, Intoxication and Use of Intoxicants**

The claimant's supervisor testified that he saw two workers with an open container of alcohol. They went to a car, took out a package, and brought it to the claimant. The claimant went into the locker room and locked the door. The supervisor knocked on the door, but the claimant did not respond for ten minutes. When the claimant finally came out, his eyes were bloodshot and he had difficulty speaking and maintaining his balance.

The employer directed the claimant to undergo blood and urinalysis tests. The employer submitted into evidence a copy of a report from a laboratory showing that there was cocaine in the claimant's system. There was no foundation laid for the findings of that report.

The claimant denied using alcohol or drugs.

HELD: A worker who is discharged for being in an impaired condition at work due to the use of controlled substances is discharged for misconduct.

Proof that the worker's condition is due to the use of drugs does not necessarily depend upon a laboratory report, nor need a witness actually observe the worker at the precise moment he uses the drug. Circumstantial evidence may provide the necessary proof.

Here, the claimant's supervisor's testimony as to what he observed - before, during, and after the claimant was locked in the locker room - was competent evidence that the claimant was in an impaired condition due to the use of drugs, and was all that was necessary to deny benefits. (The blood and urinalysis report, being hearsay, could not itself provide the basis for denying benefits, but it supported the supervisor's conclusions.)

The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**83-BRD-10110/8-31-83**
AUTHORITY	**1./S-602A**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**None**

The claimant worked as a licensed practical nurse, at a wage of $9.98 per hour, and he was discharged for making sexual advances and indecent exposure towards a female patient. Submitted into evidence was a menu on the back of which the claimant had written his name and telephone number. The employer testified that the claimant went to the patient's room at least twice, but he testified that he went there once "and sat down and I asked her how she was doing." A security guard, who was stationed as a surveillant after the patient had complained of the claimant's unwelcome advances, testified that he saw the claimant in the patient's room where he remained for about 10 minutes and that the claimant offered the patient money. The director of nurses testified that, when she questioned the claimant, he denied that he had ever gone to the complaining patient's room.

HELD: The employer, a health service organization, is required to insure the welfare of the patients entrusted to its care. It has a duty to exercise necessary vigilance lest its employees fail to maintain a high degree of efficiency and decorum.

The claimant failed to present convincing evidence to rebut the employer's testimony that he was guilty of misbehavior which was wilful and wanton and, clearly, against the employer's interests. Therefore, the evidence supports a finding that he was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-04327/6-11-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**None**

The claimant, a Truck Driver for a Food Service, was discharged after it was reported that he had deviated from his truck route and had gone home during working hours. It was also reported that the claimant had taken certain food items from the employer for his personal use, and that these were discovered in a garage under the claimant's control.

The employer's investigation had been prompted by an anonymous telephone call. The testimony of the employer's witness was based upon information furnished by the employer's investigators, who did not testify. At the appeal hearing, the claimant denied each of the employer's allegations.

HELD: Although the Board of Review is not bound by the technical statutory rules of evidence, consideration must be given to the inherent weakness of unsupported allegations as evidence. Even if deemed competent, the employer's evidence constituted hearsay. The individuals alleging the basis for the claimant's discharge did not appear to testify with respect to their allegations and could not be confronted by the claimant and cross-examined by him. On the other hand, the claimant appeared personally, testified under oath, and denied the allegations.

The claimant's testimony was entitled to greater weight. Accordingly, it could not be concluded that the claimant was discharged for misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-04670/6-25-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**PR 190.05, Evidence; MC 190.1, Burden of Proof and Presumptions**

At an appeal hearing before a Referee, on August 23, 1984, the claimant and witnesses for the employer appeared and testified to consider the issue of whether the claimant had been discharged for misconduct connected with her work. Based upon his findings, the Referee issued a decision which allowed benefits to the claimant. The employer appealed to the Board of Review, and in connection with that appeal, the employer submitted an affidavit, by the claimant's supervisor, which purported to refute the testimony furnished by the claimant at the August 23 hearing - which the supervisor had not attended. The affidavit was not accompanied by any statement providing a reason for the supervisor's failure to attend the August 23 hearing. The record did not show that the employer had requested a continuance of the hearing in order to present the supervisor's testimony.

HELD: Although the Board of Review is not bound by the technical statutory rules of evidence, consideration must be given to the inherent weakness of an affidavit furnished after the fact. Even if deemed competent, the employer's affidavit constituted hearsay. The individual who would purport to refute the claimant's direct testimony had not appeared to testify and could not have been confronted by the claimant or cross-examined by her. No compelling reason was cited for that individual's failure to attend the hearing. In light of those considerations, the claimant's testimony, in person, under oath and subject to cross-examination, was entitled to the greater weight. Accordingly, it could not be concluded that the claimant was discharged for misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-06072/8-22-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Referee's Findings as to Credibility)**
CROSS-REFERENCE	**PR 380.15, Rehearing or Review, Credibility of Witness**

The claimant was employed as a Housekeeper in a hospital, until his discharge for reportedly stealing food.

At the appeal hearing, the employer's first witness, a security officer, testified that in the course of her investigation of the causes of missing food, she hid in a Day Surgery dressing room, directly across from a nurses' station where the food in question was kept. She observed the claimant enter the nurses' station, stoop and crawl toward a refrigerator, and remove two cartons of juice. The security officer exclaimed, "I got you!" Whereupon the claimant replaced the cartons of juice and proceeded to walk away, ignoring a command that he stop. At that point, one of the claimant's co-workers approached the area, as did the claimant's supervisor.

The employer's second witness testified that the claimant did have the right to be in the Day Surgery section of the hospital. However, that witness testified that the claimant's co-worker had no business being there.

The claimant's supervisor filed a report concerning the incident. It reflected what the security officer had reported to the supervisor, and did not mention the claimant's co-worker.

The claimant testified that he never took anything from the refrigerator. Both the claimant and his witness, the co-worker, testified that they had a right to be in the Day Surgery section, since they were on a break and were not preoccupied by other duties. They testified that they had entered the Day Surgery section together.

The Referee issued a decision in which it was concluded that the claimant had not attempted to steal food items.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee - being in the best position to observe the demeanor of the witnesses and to assess their credibility - shall determine which testimony is more credible and what weight to accord it. In the instant case, neither the claimant's nor his co-worker's statements were any less consistent or on their face entitled to any less credence than the statements of the employer's witnesses. Therefore, it could not be concluded that the Referee's decision was contrary to the manifest weight of the evidence.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-05454/7-19-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Referee's Findings as to Credibility)**
CROSS-REFERENCE	**PR 380.15, Rehearing or Review, Credibility of Witness**

The claimant was employed as a Nurse's Aide, until her discharge for reportedly remarking to a patient: "Shut up, you old crab."

At the appeal hearing, the claimant, under oath, denied making any such remark to a patient. An eyewitness of the employer, also under oath, testified to having heard the claimant make the remark to a patient.

The Referee concluded that the claimant had made the remark to a patient and as a result the claimant was disqualified under Section 602A.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee -- who has had an opportunity to observe the demeanor and mien of the witnesses -- shall determine which testimony is more credible and what weight to accord it. In the instant case, the Board of Review determined that the record was adequate and that the Referee had made appropriate findings as to credibility. Therefore, the Referee's decision was properly based upon the preponderance of credible evidence.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-05305/7-15-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Admissions, Effect upon Hearsay)**
CROSS-REFERENCE	**None**

On January 2, 1985, the claimant appeared and testified at a hearing, which the employer did not attend, to consider the issue of whether the claimant had been discharged for misconduct connected with her work. During the course of that hearing, the Referee read into the record statements made previously by the employer in the course of an interview with the Claims Adjudicator. Those statements indicated that the claimant had falsified her production reports before submitting them to the employer. Apart from reading those statements into the record, the Referee also heard the claimant's direct testimony. In a decision dated January 11, 1985, the Referee made the following finding of fact: "The claimant admitted she sometimes adjusted or estimated her daily duty charts." The Referee concluded that the claimant's actions constituted misconduct connected with her work.

In her memorandum in support of her appeal to the Board of Review, the claimant contented that "inadmissible hearsay evidence" formed the basis for the Referee's decision.

HELD: Agency Rule 2720.250 reads, in pertinent part:

> Technical rules of evidence do not apply to hearings before Referees. However, the decision of the Referee will be based on the preponderance of the credible, legally competent evidence in the record.

Therefore, even though an employer's statements to a Claims Adjudicator might constitute hearsay, they are admissible as evidence, so long as the Referee recognizes the inherent weakness of such evidence and accords its due weight in his decision.

In the instant case, although the Referee read into the record the employer's hearsay statements, nothing in the Referee's findings or conclusion supported the claimant's contention that the employer's hearsay statements formed the basis for the Referee's decision. Rather, it was the claimant's admission which corroborated the employer's statements and resulted in her disqualification for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-05276/7-12-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Credibility)**
CROSS-REFERENCE	**None**

The claimant, a 35 year old working mother, was employed as an Ambulance Dispatcher on the third shift until her discharge, which, according to the employer's witness, resulted from the claimant sleeping on the job. The claimant explained to the Referee that she had not been sleeping, but instead had been lying on a couch because she had been ill with mononucleosis.

Prior to the appeal hearing, nowhere in the course of an interview with the Claims Adjudicator had the claimant denied sleeping on the job. Nor had she made mention of an illness. Instead, she had attributed her lack of sleep to having "to deal with the kids during the day." Neither prior to, during, nor after the incident in question had the claimant complained to her employer of any illness.

HELD: Inconsistent statements, especially material omissions, may impeach an individual's testimony. Because the claimant had made no mention of any illness to either her employer or the Claims Adjudicator, her credibility was questionable. Therefore, based upon credibility it was established that the claimant was sleeping on the job, not due to illness. Sleeping during working hours indicated a wanton disregard of the employer's interests, because it interfered with the normal operation of the employer's business, dispatching ambulances. The claimant's actions constituted misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**85-BRD-04800/6-26-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency/Polygraph, Admissions Incident Thereto**
CROSS-REFERENCE	**MC 380.05, Relation of Offense to Discharge**

The claimant was employed by a bank, as Assistant to the Chief Cashier. The claimant was asked by her employer, and consented, to take a polygraph test, in connection with a loss of $4,000. The claimant was absolved of any wrongdoing in connection with that loss. However, apart from the polygraph results themselves, the claimant admitted to her employer, and later to the Referee, that earlier in her course of employment she had misappropriated funds: She had kept for herself overpayments made by bank customers. Upon hearing this, the employer discharged the claimant for her earlier, dishonest acts.

HELD: Although the results of the polygraph test would not, of themselves, have been reliable enough to have been admissible against the claimant, no such bar would have applied to the claimant's unequivocal admission to her employer, absent coercion or duress. On the basis of competent evidence of acts of dishonesty inherently violative of the employment relationship, the claimant was discharged for misconduct within the meaning of section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **85-BRD-06425/9-6-85**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency (Employer's Interview with Claims Adjudicator)**
CROSS-REFERENCE **None**

In a telephone interview with the Claims Adjudicator, a witness for the employer alleged that the claimant was discharged for being absent from scheduled work without prior notification to the employer, on three occasions in Winter, 1984-85.

The employer did not appear at the appeal hearing. The claimant appeared and testified that his absences resulted because of mechanical difficulties with his automobile. The claimant testified that on each of these occasions he contacted his employer at least one hour prior to the start of his shift to report his anticipated absence. The claimant testified that he attempted unsuccessfully to arrange travel by public transportation from his Chicago residence to the employer's premises in an outlying community.

HELD: Although the Board of Review is not bound by the technical statutory rules of evidence, consideration must be given to the inherent weakness of unsupported allegations as evidence. Even if deemed competent as an Agency record, the employer's statement to the Adjudicator constituted hearsay. The individual alleging the basis for the claimant's discharge did not appear at the hearing to testify with respect to his allegation and could not be confronted by the claimant and cross-examined by him. On the other hand, the claimant appeared personally, testified under oath, and denied the allegation. The claimant's testimony was entitled to greater weight. Accordingly, it could not be concluded that the claimant was discharged for misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **85-BRD-126-FSC/7-10-85**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS-REFERENCE **MC 190.1, Burden of Proof and Presumptions**

The claimant was employed as a Sales Clerk until her discharge as a result of a violation of the employer's rules, which the employer deemed willful. Pursuant to statements made by the claimant to the Claims Adjudicator, the Claims Adjudicator determined that the claimant was discharged for an unintentional error which did not constitute misconduct connected with her work.

The employer appealed, and on October 10, 1984, its witness appeared and testified at a hearing which the claimant did not attend. The employer's witness did not possess personal, first-hand knowledge concerning the circumstances surrounding the claimant's separation from work and relied entirely upon information found in documents prepared and furnished by persons who did not appear at the hearing. (No foundation was laid for the submission of the documents as business records.)

HELD: Although the Board of Review is not bound by the technical statutory rules of evidence, consideration must be given to the inherent weakness of unsupported testimony and documents as evidence. Even if deemed competent, the employer's evidence constituted hearsay. It was the employer's burden to demonstrate by a preponderance of the evidence that the Claims Adjudicator's determination was incorrect. Given its due weight, the employer's unsupported allegations were insufficient to overcome the Claims Adjudicator's determination that the claimant's discharge resulted because of unintentional error. Accordingly, it could not be concluded that the claimant had been discharged for misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-85-3858/9-30-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Credibility)**
CROSS-REFERENCE	**MC 270.05, Intoxication; PR 380.15, Review**

The claimant, a Driver, left his employer's garage at 4 p.m. on Christmas Eve, to pick up and deliver mail, and was expected to return no later than 6 p.m. Instead, at 8:15 p.m., the employer located the claimant in the vestibule of a closed post office along his route. The employer testified that although he found no "booze" on the claimant's person or in his truck, the claimant was in an obviously drunken condition.

The claimant testified that his truck had twice stalled, leaving him stranded at a post office until his employer could arrive with a tow truck. He denied that he had consumed any intoxicants. He stated that he believed the employer discharged him in retaliation for the claimant's having exposed certain violations of law by the employer: The claimant said that he had been instrumental in forcing the employer to pay unemployment insurance contributions, and to buy state licenses for trucks which the employer had been operating with dealers' stickers.

The Referee asked the employer no questions concerning the alleged violations and alleged retaliation. Subsequently, the Referee issued a decision which disqualified the claimant for benefits. The Referee's conclusions rested solely upon the employer's testimony, which the Referee had found to be more credible than that of the claimant.

In its review of the record, the Board of Review noted that the claimant made reference to the fact that, for 49 years, his speech had been impaired and he walked with a limp. Those points were not developed in the record.

HELD: Where the record is adequate, and a Referee's findings as to credibility are supported by that record, the Referee's findings as to credibility will not be disturbed, since the Referee would have been in the best position to evaluate the demeanor and mien of the witnesses. However, from an inadequate record, a Referee's findings as to credibility, being unsupported, must be questioned.

In the instant case, the Referee's failure to ask relevant questions rendered the record, and therefore the Referee's resolution of the question of credibility, inadequate. The case was remanded, with instructions to pose the following relevant questions:

(1) Was the employer in violation of tax and licensing laws; and

(2) Did the claimant expose such violations to the authorities; and

(3) Was the claimant's act of exposing such violations a consideration in the employer's decision to discharge him; and

(4) Does the claimant suffer from physical disabilities which could cause him to speak and walk as if he were intoxicated?

The Referee was instructed to elicit testimony with respect to those questions, and, from that testimony and the evidence previously submitted, make findings and issue a decision based upon the more complete record.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-85-6855/2-26-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Hearsay vs. Admission)**
CROSS-REFERENCE	**MC 45.4, Attitude Toward Employer**

A woman came into the employer's furniture department, where the claimant worked as a Salesman, and asked for his assistance in connection with an insurance claim. The claimant was paid by commission and considered this to be a non-productive use of his time. Later, it was reported, by both the woman and a co-worker, that the claimant had remarked: "I've just spent one hour with this fucking bitch."

When confronted with this accusation in the employer's personnel office, the claimant told the personnel manager: "I do not recall saying that at all." Subsequently, the claimant told the Adjudicator: "I have no recollection of swearing at all."

At an appeal hearing, neither the woman nor the co-worker appeared. Claimant's counsel objected to all testimony concerning their statements as hearsay.

HELD: A Referee must base his decision upon competent evidence in the record. Because hearsay is not competent evidence, it cannot form the basis for a decision to disqualify. However, admissions do not constitute hearsay, and thus can be the basis for a decision to disqualify. Admissions need not be explicit, but may arise from an individual's silence or equivocal responses.

In the instant case, irrespective of the non-appearing witnesses' statements, the claimant had 2 opportunities to deny categorically that he had remarked, "I've just spent an hour with this fucking bitch." Yet, he made no such denial. Had the claimant not made such a remark he would have recalled that he had not. To believe otherwise would be contrary to reason. By his equivocal responses, the claimant admitted to having made a remark which was impudent and discourteous. He breached his duty to his employer to behave properly toward the employer's patrons. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-85-4804/2-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**None**

In connection with the disappearance of merchandise from his employer's premises, the claimant, and several other employees, were directed to take a polygraph test. On principle, the claimant refused to take the test. The employer discharged him, although there was no evidence, independent of the polygraph refusal, to indicate that the claimant had stolen anything.

HELD: A rule requiring that a worker submit to a lie detector test is unreasonable since it places the initial burden of proof upon the worker to establish his innocence. Accordingly, a worker's refusal to submit to this unreasonable test does not constitute misconduct. The refusal to take a polygraph test, alone, unsupported by competent evidence, does not constitute misconduct connected with work.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE ***Northern Service v. Bd of Review*, No. 3-87-0450 (1988)**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency (Hearsay)**
CROSS-REFERENCE **None**

The claimant worked in a service station which sold lottery tickets. For security reasons, the claimant was enclosed in a small glass-enclosed kiosk and tickets and money were passed between the claimant and a customer through a slot 2 inches high and 4 inches long.

The claimant's discharge was based upon the employer's belief that she had been rude to 5 customers. None of those customers testified at the appeal hearing. The only evidence of the claimant's behavior toward those customers was the testimony of an employer's witness relating their complaints.

The employer's testimony was that one of the complaints was made on the phone and came from a black woman who complained that she had been called a nigger son-of-a-bitch when she was purchasing lottery tickets. The caller further stated that the claimant had thrown lottery tickets and money at her through the slot of the cubicle where the claimant was stationed. Another incident testified to was of the same nature by a gentleman who claimed that a mistake had been made in his lottery tickets and when the error was called to the claimant's attention she refused to remedy the mistake and threw the tickets at him. The other 3 complaints also concerned rudeness and throwing tickets.

The claimant, through counsel, objected to this testimony as hearsay.

The employer did not quarrel as to whether or not such testimony was hearsay but argued that hearsay evidence was admissible in unemployment insurance hearings and had in the past been relied upon in the decision rendering process.

HELD: When hearsay evidence is admitted without an objection it is to be considered and given its natural probative effect.

In this case, the claimant, through counsel, made objections as to the hearsay testimony. Therefore, the hearsay evidence could not be considered in the decision rendering process.

But even if the claimant had not objected, hearsay, generally, has little probative value and is, generally, unreliable. In this case, the unreliability of the testimony was illustrated by the statements that on numerous occasions the claimant threw money and lottery tickets at customers. Because the claimant worked in a small glass-enclosed kiosk type structure where tickets and money were passed through a slot 2-by-4-inches, it was impossible for the claimant to throw or hurl any objects at anyone.

There was no evidence of misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-98-99 / 5-6-98**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **MC 385.05, Relation of Offense to Discharge**

On October 2, the claimant was fired immediately after he was found at work in possession of a plastic bag, the contents of which were unknown at the time; however, the employer suspected the bag contained an illegal substance. The results of a laboratory test became available a week after the claimant’s discharge: the bag contained heroin. The employer attached a copy of the test results to its protest, dated October 30. After an appeal hearing, a Referee concluded the claimant was discharged on mere suspicion (and not for misconduct) because the contents of the bag were not known at the time the employer discharged the claimant.

HELD: The relevant inquiries are to determine the stated reason for the discharge, and, whether the individual’s actions occurred prior to or after the discharge. Here, the employer stated it fired the claimant for being in possession of an illegal substance while at work, and, the claimant was in possession of an illegal substance while at work. The fact that evidence validating the employer’s suspicions became available after the discharge is of no concern. Benefits were denied.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-98-3684 / 6-15-98**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **None**

The claimant tested positive for cocaine. He was in the process of being discharged when he participated in an exit interview with the employer's industrial nurse. During that interview he neither denied using illegal substances nor objected to his discharge on that basis. At an appeal hearing, at which the nurse testified, a copy of the laboratory report was presented. No foundation was laid for the report and it constituted hearsay. The issue was whether that deficiency in the employer's evidence meant there was no competent evidence of drug use.

HELD: Despite the deficiency of the laboratory report, the nurse could provide direct evidence of the claimant's reaction -- or lack of reaction – during the exit interview, which was tantamount to the claimant's admission of drug use. Benefits were denied based upon the claimant's admission.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-94-1878 / 7/1/98**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **None**

In a case where a urine specimen tested positive for drugs, the claimant's attorney objected that a "chain of custody log" should not be considered as evidence because it was hearsay; no one whose name was entered in the log testified at the hearing. The log contained the signatures of everyone who came into contact with the specimen, the reason each person came into contact with the specimen, and further indicated the specimen had been properly sealed and marked. The entries were made as the events occurred. The log was submitted at the hearing by the director of the laboratory that did the testing.

HELD: There is an exception to the hearsay rule for business records. The record in question must have been made in the regular course of business (as it was here, the laboratory being in the business of performing tests) and it must have been the regular course of business to make the record at the time of the act, transaction, occurrence, or event, or within a reasonable time thereafter (and, here, the log entries were made as they occurred). The chain of custody log was a business record and could be considered as evidence. Benefits were denied.

ISSUE/DIGEST CODE **Misconduct/MC 190.15**
DOCKET/DATE **ABR-97-6477 / 9-5-97**
AUTHORITY **Section 602A of the Act**
TITLE **Evidence**
SUBTITLE **Weight and Sufficiency**
CROSS REFERENCE **None**

The employer's drug-testing procedures provided for a "split sample," which was segregated and retained for testing, if desired. After initially testing positive for marijuana, the claimant chose not to exercise his option to have his split sample tested. At an appeal hearing, the employer presented a copy of the laboratory report indicating the presence of marijuana, but laid no foundation for the report. The issue was whether the deficiency in the employer's evidence (the laboratory report was hearsay) meant there was no evidence of drug use.

HELD: Despite the deficiency in the employer's evidence, the claimant's failure to exercise his option to have the split sample tested was tantamount to an admission against interest (an admission he smoked marijuana). Benefits were denied based upon the claimant's admission.

ISSUE/DIGEST CODE	**Misconduct/MC 190.15**
DOCKET/DATE	**ABR-98-5200 / 7-31-98**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS REFERENCE	**None**

The claimant was fired after testing positive for marijuana. She admitted having smoked marijuana, but not recently. She suggested that, because she was frequently in the company of marijuana users, the positive test result must have been from ingesting their second-hand smoke.

HELD: Once it was shown the claimant tested positive for marijuana, the burden was on the claimant to show either that the test was not reliable (which she did not contend) or provide an explanation that would make it more likely she had not smoked marijuana. The claimant's second-hand smoke theory was medically improbable, as she presented no medical evidence that second-hand marijuana smoke could result in her positive test result. Further, her past use of marijuana and her continued frequent association with marijuana users made it more likely than not she was smoking with them. It was shown by a preponderance of the evidence the claimant smoked marijuana. Benefits were denied.

ISSUE/DIGEST CODE	**MC 190.15 Evidence, Weight & Sufficiency**
DOCKET/DATE	***Village Discount Outlet v. Department of Employment Security*, 384 Ill.App.3d 522, 323 Ill.Dec. 469, 893 N.E.2d 943 (1st Dist., 2008)**
AUTHORITY	**56 Ill. Adm. Code 2720.250 and 2720.270**
TITLE	**Evidence**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 190.15 Evidence, General; PR 195.05, Fair Hearing & Due Process**

The employer operated drop-off facilities and thrift stores for various charities. It discharged the claimant for allegedly setting aside donations intended for the employer and taking them for himself or his relatives. At the hearing before the Referee, the employer's Regional Manager testified that he had seen a videotape showing the claimant setting aside a television and directing attendants to load it into a relative's car. The claimant denied taking any items. On appeal by the claimant, the Board of Review reversed the Referee's finding of misconduct on the basis that the Regional Manager's testimony was hearsay and there was not sufficient firsthand evidence to show that the claimant had actually committed the actions that had caused his discharge.

HELD: The appellate court held that the Regional Manager's testimony about his observations of the videotape was not hearsay. The court found, however, that the Board of Review was correct in not ruling that the alleged hearsay was inadmissible and properly gave such evidence its natural probative effect, which was minimal due to fact that the evidence was rife with evidentiary flaws, such as the employer's failure to lay a proper foundation for the videotape. Also affecting the weight of the evidence was that the videotape itself was never introduced into evidence and, thus, the witness's description of what he saw on the tape ran afoul of the "best evidence rule", which expresses a preference for the original of documentary evidence when the contents of the documentary evidence are sought to be proved.

The court also held that the employer's due process right to a fair hearing was not violated. The court noted that the Referee took an active role in developing the evidence and fleshing out the positions of the parties. Due process does not require the Referee to take such an active role at a hearing that all evidentiary deficiencies are remedied, even where a party is not represented by legal counsel. The employer was given prior notice of the requirements for admitting the videotape into evidence and elected, instead, to present only the testimony of a supervisor who had been shown the tape. According to the court, the employer "must now live with the consequences of that decision." Since the employer received a fair hearing, there was no necessity to remand the matter to allow the employer another opportunity to correct any evidentiary deficiencies in its case.

ISSUE/DIGEST CODE **Misconduct/MC 255.05**
DOCKET/DATE **85-BRD-04690/6-25-85**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Refusal to Sign Reprimand**
CROSS-REFERENCE **None**

The claimant, an Inspector, was asked to sign a counseling notice concerning her alleged mislabeling of boxes. The claimant asked what the consequences would be if she signed. She was told that her signature would constitute an admission of wrongdoing. The claimant refused to sign the counseling notice because she disagreed with it. As a result of her refusal to sign, she was discharged.

HELD: The claimant reasonably understood that by signing the warning notice she would be admitting to wrongdoing of which she did not feel culpable. Under those circumstances, her refusal to sign the statement was not an act of insubordination, but a refusal to incriminate herself, which by itself should not constitute misconduct. This case would be distinguished from one where a claimant's signature would serve merely to acknowledge earlier receipt of a warning, unaccompanied by an admission.

(Compare 85-BRD-04661/6-20-85, where the claimant, a Sales Representative, was asked to sign an official written notice, for the purpose of acknowledging previous verbal reprimands. The claimant refused to sign, or even read the document, instead remarking: "This is a bunch of crap." **HELD:** In this second case, the claimant did not have a compelling reason for refusing to sign. The claimant could have kept his job by merely acknowledging receipt of a document prepared solely for the purpose of the employer maintaining accurate records. The claimant's refusal to sign, or even read the document, manifested an indifference to whether he remained employed, and was, in effect, a challenge to the employer to discharge him).

ISSUE/DIGEST CODE **Misconduct/MC 255.05**
DOCKET/DATE **ABR-85-6121/1-22-86**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Indifference**
CROSS-REFERENCE **MC 45.35, Attitude Toward Employer**

The claimant, a Secretary-Receptionist, had received warnings concerning tardiness. Subsequently, she was tardy 4 out of 5 days, causing the owner of the company to call her into his office. The claimant did not appreciate being summoned to the owner's office, so she delayed about 5 minutes before responding. When she got there, the owner informed her that, if her attitude did not change by the next pay period, she would be discharged. The claimant grimaced, rolled her eyes, and said, "Fine, are you done now? Can I go?" She was fired immediately.

HELD: Indifference is generally a matter of attitude which by itself is meaningless. Many people undoubtedly feel complete antipathy for their jobs and employers routinely take these workers as they come, accepting their temperaments as they exist. However, while remaining on an employer's payroll, it is unquestionably a worker's obligation to conduct herself so that the employer's interests are well served. Accordingly, when indifference manifests itself in acts detrimental to the employer, the discharge is for misconduct.

In the instant case, the claimant's indifference manifested itself in acts detrimental to the employer. Not only had she been tardy repeatedly, but, even when the employer was willing to give her another chance, her response demonstrated, at the least, that she would continue to require supervision, taking up the employer's time; that, by itself, constituted misconduct. Further, this was not a case of a worker, who, registering discontent for what she perceived to be a legitimate reason, made a spontaneous remark in the heat of the moment. When the claimant refused to report to the owner's office as directed and, next, when she grimaced, rolled her eyes, and made her remark, she was being rude deliberately; deliberate rudeness to an employer is inherently misconduct.

The claimant's discharge was for misconduct within the meaning of section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 255.05**
DOCKET/DATE ***Stovall v. IDES*, 262 Ill. App. 3d 1098 (1st Dist. 1994)**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Disobedience**
CROSS-REFERENCE **MC 255.35, Ridicule of Authority; MC 390.05, Disruptive Behavior**

The claimant was employed as a medical secretary with the employer. Three months into her employment the claimant began to exhibit a pattern of disruptive and argumentative behavior. A disciplinary meeting was held, which the claimant left crying and angry. Her supervisor asked the claimant to return to the meeting. Upon returning to the meeting, the claimant called her supervisor a liar and said she did not have to follow the supervisor's orders. Since the claimant's behavior at the meeting was argumentative, disrespectful and insubordinate, the claimant was terminated. The Board found that the claimant's actions were clearly insubordinate and constituted insubordination under the Act. The circuit court reversed.

HELD: The Appellate Court reversed the circuit court. The claimant's behavior at the meeting was clearly sufficient reason to discharge her, and the Board's conclusion that the claimant' behavior rose to the level of willful misconduct under the Act was not manifestly erroneous.

ISSUE/DIGEST CODE **Misconduct/MC 255.1**
DOCKET/DATE **83-BRD-11470/10-11-83**
AUTHORITY **2./S-602A**
TITLE **Insubordination**
SUBTITLE **Disobedience**
CROSS-REFERENCE **None**

The claimant's supervisor instructed the claimant to photocopy a list of employees who were authorized to work on weekends so that it could be sent to the security department. The claimant refused to perform this task and was discharged. The claimant had been warned earlier that week for refusing to perform other photocopying.

The claimant did not believe that her job duties included photocopying, and she did not wish to take time away from her regular work because she had fallen behind.

The employer presented a "position description" which stated that the "Nature and Scope" of the claimant's duties included, "making photo copies and other general clerical duties."

HELD: The claimant refused to comply with the reasonable instructions of her supervisor. She had been warned once concerning a similar incident, and the work asked of her was within the scope of the duties of her position, as indicated by her job description. Her refusal to comply with her supervisor's instructions was insubordination, and her discharge was for misconduct connected with her work, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 255.1**
DOCKET/DATE **84-BRD-823/1-20-84**
AUTHORITY **1./S-602A**
TITLE **Insubordination**
SUBTITLE **Disobedience**
CROSS-REFERENCE **None**

The claimant, age 37, worked as a teller for three years until she was discharged for violating her supervisor's written instructions regarding notification of lunch breaks. She had been counseled in a corrective interview three weeks before her discharge about her refusal to cooperate and accept supervision.

The claimant gave a signed statement to the claims adjudicator which read, in pertinent part, as follows.

"I received a memo on May 23, 1982, from the supervisor listing six things. I complied with all except letting her know when I was going on my break."

The employer reported to the claims adjudicator that the claimant was discharged because of her "very bad attitude" towards her supervisor.

HELD: Insubordination is defined as a refusal to submit to reasonable authority. Every worker is subject to some degree of authority exercised by the employer through supervisory personnel. The authority normally covers such things as time of reporting for work, assignment of duty, manner of performing work, conduct on the job, and the like. The wilful refusal of the employee to submit to the reasonable instructions of the employer in the conduct of its business is in violation of the worker's duties which are implied in the agreement of hire.

In this instance, the claimant wilfully and wantonly refused to accept supervision, which constituted a breach of her duties and obligations to her employer. She was discharged for misconduct connected with her work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	**84-BRD-1608/2-2-84**
AUTHORITY	**3./S-602A**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**None**

The claimant was suspended from her night shift job for poor work performance. She was suspended for three days or until further notice; and, since it was her third suspension, it could have led to her discharge. She was told to leave the plant, but she stayed in the work area and talked to other employees. She testified that she was trying to raise cab fare because she did not wish to drive home at 5:00 a.m. The employer testified that she was offered cab fare, according to company policy, but that she made no response and then had to be removed from the premises by a security guard when she refused to leave.

HELD: The claimant was suspended pending investigation of her work which could have subsequently led to her discharge. She was discharged, after the suspension, however, for refusing to leave the plant on instructions from her foreman. She could reasonably have anticipated that her conduct would lead to a discharge. The claimant was discharged for misconduct connected with her work, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	**84-BRD-2731/2-28-84**
AUTHORITY	**4./S-602A**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**None**

In a performance appraisal interview, the claimant was told that she was not producing her best effort and that greater cooperation was expected on her part. The claimant then became argumentative and began yelling. When she was asked to sign the interview form, she refused to do so and said that she did not intend to improve her performance. She was discharged.

HELD: The claimant's refusal both to cooperate with the employer during her performance interview and to improve her performance amounted to a refusal to perform her work as directed. The claimant then became unemployed because of her violation of a reasonable rule of conduct, which the employer had a right to control, and this amounted to misconduct connected with her work. She is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 255.1**
DOCKET/DATE	***Raymond A. Walthall v. IDOL*, 497 N.E. 2d 782 (1986)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Disobedience**
CROSS-REFERENCE	**MC 485.05 Violation of Company Rule, Awareness of Rule**

The employer, a department store, had a rule that workers were to eat only in designated areas, such as the cafeteria or lounge, and away from work areas where eating would be both counterproductive and a health hazard. The claimant, a warehouseman, had never been warned about violating this rule.

He was on his 15-minute morning break. He moved away from his immediate work area and into a corner, where he peeled some hard-boiled eggs and began to eat them. His supervisor saw him doing this, informed him that he was violating the employer's rule, and directed him to eat in one of the designated areas. The claimant, however, continued to eat, quickly consuming the rest of his eggs.

HELD: A deliberate violation of an employer's known and reasonable rule constitutes misconduct.

In this case, initially, the claimant might not have been aware of the employer's rule. Therefore, at the time he began eating, there was no demonstration that his violation of the rule was willful.

However, after he received a warning from his supervisor, he was certainly aware of the rule and knew that his supervisor expected his immediate compliance. At this point, he chose to disobey the supervisor's order. This disobedience was a deliberate violation of the employer's known, and reasonable rule and constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 255.15**
DOCKET/DATE	***Sheff v. Board of Review*, 470 N.E. 2d 1044 (1984)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Dispute with Superior**
CROSS-REFERENCE	**None**

The claimant, who had worked at a variety of jobs for a grocery, last worked as a Carry-out Boy, 32 hours per week, reduced from 40. In addition to the reduction in hours, the claimant was displeased with the duties his work entailed. He requested a conference with the Store Manager. At that conference, the Store Manager stated that the claimant's unhappiness was nothing new, that the claimant had been displeased with his different jobs in the past as well. The Store Manager suggested that the claimant had demonstrated an unwillingness to accept responsibility on those jobs. The claimant then became upset and angry. Although he did not use profanity or call the Store Manager any names, he raised his voice to twice his normal speaking voice. The Store Manager felt that he was not getting the proper respect, and discharged the claimant.

HELD: In order to constitute misconduct, an act must exhibit a wanton or willful disregard of the employer's rules, a disregard of standards of behavior which the employer has the right to expect of its employee, or an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer. Being merely argumentative is not sufficient for misconduct.

In the instant case, it was in the privacy of the Manager's office that the claimant raised his voice. There was no abusive language or vilification of the Manager. There were no verbal or physical threats. The claimant was being merely argumentative, and, as such, his acts did not rise to the level of justification for a discharge due to misconduct so as to deprive him of his statutory right to unemployment compensation.

ISSUE/DIGEST CODE	**Misconduct/MC 255.15**
DOCKET/DATE	**ABR-85-5978/1-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Dispute with Superior**
CROSS-REFERENCE	**None**

The claimant, who was a Union Steward, was given permission by his foreman to leave his work station a few minutes early, extending his break so that he might discuss a union grievance with the employer's Vice President and Director of Human Resources in the Vice President's office. The Vice President did discuss the grievance with the claimant, until a bell rang to indicate the end of the break, at which time the Vice President suggested that he and the claimant continue to discuss the grievance later. He instructed the claimant to return to his work, which involved an urgent job.

However, the claimant did not respond to that directive, but continued talking about the grievance; the Vice President again ordered him to return immediately to his work. The claimant still did not comply, but continued talking. The Vice President then told the claimant he would have just 30 seconds to leave the office and return to his work. The claimant persisted in talking, until, upon the passing of 30 seconds, the Vice President told the claimant he was discharged.

HELD: In order to constitute misconduct, an act (of alleged insubordination) must exhibit a wanton or willful disregard of the employer's rules or orders, a disregard of standards of behavior which the employer has the right to expect of its employee, or an intentional and substantial disregard of the employer's interest or of the employee's duties and obligations to the employer.

In *Sheff v. Board of Review*, 470 N.E. 2d 1044 (1984), it was held that a claimant who had merely raised his voice in the privacy of a superior's office, and did not use abusive or threatening language, was merely being argumentative, and, as such, his acts did not rise to the level of justification for a discharge due to misconduct.

In the instant case, however, there was an additional element. The claimant had been directed to return to his work. He had been given an ample opportunity to return to his work, without forfeiting his right as a Union Steward to discuss the grievance at another, more opportune time. The claimant's intentional failure to respond with reasonable promptness to the Vice President's repeated order to return to his work was an insubordinate defiance of the employer's authority, and constituted misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 255.15**
DOCKET/DATE	***Carroll v. Board of Review*, 477 N.E. 2d 800 (1985)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Dispute with Superior**
CROSS-REFERENCE	**MC 255.4, Insubordination, Vulgar or Profane Language**

The claimant was assistant manager of a music store. Upon arriving at work one morning, the new store manager found LPs on the floor because the claimant had not finished stocking them the previous day. The manager considered the store to be a mess and began to criticize the claimant's job performance.

The claimant responded, "I don't need to hear this bullshit." Then he added, "If you're going to fire me, fire me," suggesting that the new manager could not make a discharge stick without the approval of the district manager. The manager fired him.

HELD: A worker has a duty to discuss with his supervisor complaints regarding his job performance. If a worker insubordinately refuses to discuss job performance and challenges authority to fire him, his discharge will be for misconduct.

The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 255.15**
DOCKET/DATE	***Oleszczuk v. Dept. Of Employment Security*, 782 N.E.2d 808, 336 Ill. App. 3d 46 (1st Dist. (2002)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Dispute with Superior**
CROSS-REFERENCE	**None**

The claimant was employed as a customer service representative. The employer sent her to a two day training session in California. When she returned, her supervisor questioned her about what she had learned and, in particular, whether she could teach her how to do “shipping”. The supervisor testified that the claimant responded that the computers were down in California and that she was unable to teach her anything. The supervisor then called the trainer in California who verified that the claimant had been taught “shipping”. At this point, the claimant became upset and yelled at the supervisor that she had notes from the training. The claimant admitted that she became upset but denied that she yelled at her supervisor. The claimant was discharged for claiming that she hadn’t been taught “shipping” and for yelling at her supervisor.

The Board of Review adopted the findings of the referee that (1) the employer testified the claimant denied learning specific tasks and yelled at her supervisor, (2) the claimant did not provide testimony and evidence warranting reversal of the local office determination that the claimant was disqualified for benefits under Section 602A of the Act, and (3) the claimant therefore deliberately and willfully disregarded the interests of the employer and was properly discharged for misconduct under Section 602A of the Act.

HELD: The Appellate Court held that disqualification for benefits under Section 602A of the Act is proper if: (1) the employer has a reasonable work rule; (2) which the employee deliberately and willfully violates; and (3) the violation either harmed the employer or other employees, or was repeated by the employee despite a warning or instruction to cease the conduct. The court found the referee had made no findings (1) that the claimant had lied to the supervisor, (2) as to what reasonable rule of the employer was violated when the claimant yelled at her supervisor, or (3) how the employer was harmed by that conduct or whether it was repeated conduct after a warning. The referee also made no findings as to the language used by the claimant during the yelling incident. The court concluded the claimant should not have been disqualified for benefits under Section 602A of the Act.

In the absence of evidence of a reasonable work rule, or an explanation of what rule might be inferred from the evidence, there can be no finding that a reasonable work rule has been deliberately and willfully violated. A single flurry of temper between a worker and a supervisor may be enough to warrant discharge in an at-will relationship, but it is not enough to deny unemployment benefits. Arguing with a supervisor without using abusive language or threats is not sufficient to establish discharge for misconduct under the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 255.2**
DOCKET/DATE	**ABR-85-2758/2-28-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Insubordination**
SUBTITLE	**Negation of Authority**
CROSS-REFERENCE	**MC 45.2, Attitude Toward Employer**

The claimant alleged that she had been the "victim of sexual bondage and terrorization as a condition of her continued employment" - that she had been required to perform sexual acts with both the employer's president and vice-president, and that, ceasing such conduct, she suffered job consequences including demotion. In October, 1984, her attorney delivered to the employer's president and vice-president a letter, concluding with this language:

> We recognize that public disclosure of the facts concerning...this conduct could be embarrassing to you, and therefore are taking this opportunity to advise that we have been instructed by (the claimant) to file suit...if the matter has not been resolved to (the claimant's) satisfaction... If you would like to discuss the matter, we would be pleased to hear from you or your attorneys...

The employer responded by discharging the claimant, and, when the claimant filed her claim for unemployment benefits, the employer protested, contending that she had been discharged for misconduct connected with her work: The employer had considered the claimant's attorney's letter to have been equivalent to blackmail or extortion. The claimant's rebuttal was that since her problems at work concerned the employer's president and vice-president - the highest levels of authority - it would have served no purpose to have made her complaints through ordinary channels.

HELD: If a worker's discontent is unreasonable, and to the point where it adversely affects her work, or, the manner in which she tries to alleviate an unsatisfactory working condition is unreasonable, a resultant discharge may be for misconduct connected with her work.

In the instant case, the evidence did not show that the discontent underlying the claimant's complaint had been unreasonable. Nor, under the circumstances, was the method by which she chose to proceed unreasonable.

Duties owed the employer do not require that an individual forego a judicial avenue of redress or a disclosure of such intentions to the employer. The claimant, in her communications to her employer, did not initiate anything more than a disclosure to the employer of her intentions to utilize the judicial system afforded the general public for redressing a grievance. Putting the employer on notice was not patently extortionate. Neither the claimant's anticipated actions, nor the disclosure of her intentions to the employer, exhibited a willful disregard of duties owed the employer. The claimant was discharged for reasons other than misconduct connected with her work.

ISSUE/DIGEST CODE	**Misconduct/MC 255.303**
DOCKET/DATE	***Hobbie v. Unemp. Appeals Comm'n*, 107 S.Ct. 1046 (1987)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Misconduct**
SUBTITLE	**Insubordination, Refusal to Work**
CROSS-REFERENCE	**MC 5.05, Misconduct, Conscientious Objection**

The claimant was employed as Assistant Manager of a retail jewelry store. In April, 1984, she informed her immediate supervisor that she was to be baptized into the Seventh-Day Adventist Church and that, for religious reasons, she would no longer be able to work on her Sabbath, from sundown on Friday to sundown on Saturday. Her supervisor agreed to substitute for her whenever she was scheduled to work on a Friday evening or Saturday; in return, the claimant agreed to work other evenings and Sundays.

In June, 1984, the general manager of the jewelry store learned of this arrangement and advised the claimant that she could either work her scheduled shifts or resign. When the claimant refused to do either, she was discharged. When she filed for unemployment benefits, she was disqualified on the basis that she had been discharged for misconduct connected with her work. This denial of benefits was affirmed by the Florida Unemployment Appeals Commission and the Florida Fifth District Court of Appeal. The United States Supreme Court agreed to hear the case directly from the Court of Appeal.

HELD: The Supreme Court ruled that the denial of benefits to the claimant violated the Free Exercise Clause of the First Amendment, as applied to Florida through the Fourteenth Amendment. The Court quoted the following passage:

> Where the state conditions receipt of an important benefit upon conduct proscribed by a religious faith, *or where it denies such a benefit because of conduct mandated by religious belief, thereby putting substantial pressure on an adherent to modify his behavior and to violate his beliefs*, a burden upon religion exists. While the compulsion may be indirect, the infringement upon free exercise is nonetheless substantial.

Thomas v. Review Board of Indiana Employment Security Div., 450 U.S. 707 (1981). (Emphasis in original).

The Florida Appeals Commission had argued that the claimant caused the conflict between work and religious belief, by being the "agent of change," and, as a result, neither the employer nor the state imposed a burden upon free exercise:

> [I]t is ... unfair for an employee to adopt religious beliefs that conflict with existing employment and expect to continue the employment without compromising those beliefs.

The Court rejected that argument, declining to single out the religious convert for different, less favorable treatment than that given an individual whose adherence to his or her faith preceded employment. The Court concluded that the timing of the claimant's conversion was immaterial to a determination that her free exercise of her rights had been burdened: the salient inquiry under the Free Exercise Clause was the burden involved, period. The claimant was forced to choose between fidelity to religious belief and continued employment; the forfeiture of unemployment benefits for choosing the former over the latter brought unlawful coercion to bear on the claimant's choice.

Insubordination is defined, generally, as a worker's refusal to comply with an employer's reasonable directive. Because, in this case, the employer's directive was unreasonable, in light of the First Amendment, the claimant's refusal to work under the conditions set forth by the employer did not constitute misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 255.304**
DOCKET/DATE **85-BRD-05029/7-8-85**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Refusal to Work Overtime**
CROSS-REFERENCE **None**

The claimant was employed as a Security Technician. One week prior to her discharge, the claimant was advised by her supervisor to anticipate an overtime work schedule. On the date of her discharge, the claimant refused her supervisor's request that she work overtime, because she wanted to return a video-tape she had rented. She would have had to return it by that night's deadline, or pay a $10 fine.

HELD: An employer reserves the right to determine its employees' schedules, including overtime work, so long as such scheduling is contemplated in the working agreement. The reasonableness of the employer's request, including notice, must be balanced against any compelling reasons an employee might have for refusing to work overtime. In the instant case, the evidence did not show that the claimant's attendance for reasonably requested overtime work had been precluded by compelling circumstances. The claimant was discharged for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 255.304**
DOCKET/DATE ***Crowley v. IDES*, No. 2-88-1168 (1989)**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Refusal to Work Overtime**
CROSS-REFERENCE **MC 485.05. Violation of Company Rule**

The claimant was a bus driver for a mass transit company. The employer received passengers' complaints about him.

The employer's policy was to discuss such complaints as soon as drivers got off work, so that the discussions would not interfere with bus driving schedules. The drivers' union did not object to this policy. Also, the discussions generally lasted no more than 2 to 3 minutes.

One day, when the claimant got off work, a supervisor asked him to discuss the passengers' complaints about him. The claimant refused to discuss the complaints, unless he was paid for his time. He was suspended for 5 days for refusing to discuss the complaints. In ensuing weeks, he continued to refuse to discuss the complaints, despite the employer's and union's urging. He told a supervisor: "If you wish to discuss complaints with me, either I want to be paid or I'll see you when I am on the clock." Finally, the employer fired him for refusing to discuss the complaints the employer's way.

The claimant argued to the court that, under the Fair Labor Standards Act, applicable to mass transit companies, he was entitled to be paid for any time demanded of him by his employer, when that time was outside normal working hours and attendance was involuntary.

HELD: A worker's refusal to comply with an employer's request to work overtime does not constitute misconduct if the overtime work would be illegal.

Here, the requirement that the claimant work overtime was illegal.

The claimant's refusal to work overtime did not constitute misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 255.35**
DOCKET/DATE **ABR-85-6431/2-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Ridicule of Authority**
CROSS-REFERENCE **MC 45.1, Attitude Toward Employer**

The claimant, a Salesperson, had been criticized by her supervisor. The claimant felt that the criticism had been unwarranted, and that, in general, the supervisor was not supportive of her work. Later, in the employees' lunchroom, the claimant repeated a rumor to her co-workers: that the supervisor had been fired from previous jobs due to her inability to work with people. The claimant herself was discharged when management learned she had made this remark.

HELD: Making disparaging remarks about a superior may constitute misconduct. The determinative factor is whether the worker has merely shown a lack of good judgment or an intentional disregard of the employer's interests. An intentional disregard of the employer's interests will not have been shown unless the worker has failed to heed warnings concerning making such remarks, or, the remarks were made in a place or under circumstances that might tend to damage the employer's interests; damage in this context might include deterioration of employer control over employees harmful effect on employee morale. or negative reaction of customers or the public. Nonetheless, realistically, in most normal working situations, a considerable amount of give and take is exchanged between co-workers, and, although some of it may be in poor taste, such exchanges confined to private conversations between workers would infrequently result in damage to the employer's interests.

In the instant case, the claimant's comment, made in an employees' lunchroom setting, was not dissimilar from the types of remarks employees often make privately among themselves. While the claimant might have exercised better judgment, her statement about her supervisor could not reasonably have been construed to have constituted an intentional disregard of her employer's interests amounting to misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 255.4**
DOCKET/DATE ***Carroll v. Board of Review*, 477 N.E. 2d 800 (1985)**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Vulgar or Profane Language**
CROSS-REFERENCE **MC 255.15, Insubordination, Dispute with Superior**

The claimant was assistant manager of a music store. Upon arriving at work one morning, the new store manager found LPs on the floor because the claimant had not finished stocking them the previous day. The manager considered the store to be a mess and began to criticize the claimant's job performance.

The claimant responded, "I don't need to hear this bullshit." Then he added, "If you're going to fire me, fire me," suggesting that the new manager could not make a discharge stick without the approval of the district manager. The manager fired him.

HELD: Abusive language is a form of insubordination which alone may be found to be disqualifying. Even if language is found not to be abusive, it is still a factor to be considered in determining whether a worker's insubordination constitutes misconduct.

In this case, the claimant's language might not alone have constituted misconduct. However, it did reflect an insubordinate attitude. Coupled with his refusal to discuss work performance and his challenge to authority to fire him, it constituted misconduct.

The claimant was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 255.4**
DOCKET/DATE ***Greenlaw v. Dept. Of Employment Security,* 701 N.E. 2d 175, 233 Ill. App. 3d 446 (1st Dist. 1998)**
AUTHORITY **Section 602A of the Act**
TITLE **Insubordination**
SUBTITLE **Vulgar or Profane Language**
CROSS-REFERENCE **MC 255.1, Insubordination, Disobedience; MC 485.05, Violation of Company Rule, Potential Harm**

The claimant was employed as a homemaker by a homecare provider. After suffering an injury, the claimant was placed on light duty and given reduced hours. The claimant met with her supervisor (Clark) and another supervisor (Mueller) in the supervisors' shared office to discuss her reduction in hours. At the meeting, the claimant spoke to Mueller but not to Clark. When the claimant turned to leave, she told Clark "you can kiss my grits." Clark asked the claimant to sign an exit report, but instead she left the office. Mueller followed the claimant into the parking lot and asked her to return to the office, but she refused.

The Board of Review held that the claimant was properly discharged for misconduct under Section 602A of the Act, and therefore was disqualified for benefits. The circuit court of Cook County reversed the Board of Review.

HELD: The Appellate Court reversed the circuit court, holding that a person is disqualified for benefits under Section 602A of the Act if he or she is discharged for misconduct, and that abusive language may be a basis of misconduct since it is a form of insubordination. Further, when determining the issue of harm to the employer, a claimant's conduct should not be narrowly viewed in the context of actual harm, but should be evaluated in terms of potential harm.

While the words "kiss my grits" were not profane, they were insubordinate because they were abusive and violated the standard of behavior an employer has the right to expect from an employee. That insubordinate conduct was compounded when claimant refused Clark's request to sign an exit order and Mueller's request to return to the office. The claimant's conduct constituted a deliberate disregard for the employer and was potentially harmful to its interests.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR99133/1-30-90**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Possession and Sale of Drugs Off the Job**
CROSS-REFERENCE **MC 85.05, Connect w/Work; MC 490.05, Violation of Law**

The claimant worked for the Department of Corrections as a youth supervisor. He was arrested, then convicted, for possession of a controlled substance with intent to deliver. Neither the drug incident nor arrest took place during working hours or on the employer's premises. Still, after he was convicted, the employer fired him.

HELD: To constitute "misconduct," an act must violate a policy that governs the individual's performance of work. Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, a worker's obligations to his employer are broader in some occupations than in others, such as where the worker is a public servant and the public's trust and confidence are involved. Here, the claimant owed a duty to the public through his employer and he breached that duty. This was a discharge for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR88071/2-23-89**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **First-hand Observations and Drug Test Results**
CROSS-REFERENCE **MC 190.15, Evidence, weight and Sufficiency**

The claimant's supervisor testified that he saw two workers with an open container of alcohol. They went to a car, took out a package, and brought it to the claimant. The claimant went into the locker room and locked the door. The supervisor knocked on the door, but the claimant did not respond for ten minutes. When the claimant finally came out, his eyes were bloodshot and he had difficulty speaking and maintaining his balance.

The employer directed the claimant to undergo blood and urinalysis tests. The employer submitted into evidence a copy of a report from a laboratory showing that there was cocaine in the claimant's system. There was no foundation laid for the findings of that report.

The claimant denied using alcohol or drugs.

HELD: A worker who is discharged for being in an impaired condition at work due to the use of controlled substances is discharged for misconduct.

Proof that the worker's condition is due to the use of drugs does not necessarily depend upon a laboratory report, nor need a witness actually observe the worker at the precise moment he uses the drug. Circumstantial evidence may provide the necessary proof.

Here, the claimant's supervisor's testimony as to what he observed - before, during, and after the claimant was locked in the locker room - was competent evidence that the claimant was in an impaired condition due to the use of drugs, and was all that was necessary to deny benefits. (The blood and urinalysis report, being hearsay, could not itself provide the basis for denying benefits, but it supported the supervisor's conclusions.)

The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Employment Division v. Smith*, 110 S. Ct. 1595 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Religious Practice that Violates Criminal Law**
CROSS-REFERENCE	**MC 5.05, Misconduct; MC 490.05, Violation of Law**

The claimants were discharged from their jobs at a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug. Generally, the use of peyote violated Oregon's controlled substance law. However, the claimants ingested the drug for sacramental purposes in connection with their Native American Church.

The question presented to the United States Supreme Court was whether the claimants could be disqualified for unemployment benefits for misconduct, or whether such a disqualification would violate the First Amendment's Free Exercise Clause.

HELD: Unemployment insurance benefits cannot be denied when the denial is specifically directed at religious beliefs (see, e.g., MC 5.05, Hobbie; RW 90.05, Frazee). However, benefits can be denied when there is a neutral, across-the-board, criminal prohibition on a particular form of conduct. Here, based upon Oregon's drug law, unemployment benefits could be denied.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Overstreet v. IDES*, No. 86-2642 (1987)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Prior to Reporting for Work**
CROSS-REFERENCE	**MC 485.45. Violation of Company Rule**

The claimant was a Bus Driver. She took sick leave from January 30, 1985 to March 15, 1985. Because she had been on sick leave for more than 7 days, she was required by her employer's policy to submit to a medical examination upon returning to work. The examination included blood and urine tests which, when analyzed, indicated the presence of cocaine. Upon receipt of this information, the employer removed the claimant from service and required her to undergo a second test, the result of which also indicated the presence of cocaine. On March 20, the claimant was discharged from her job and referred to a rehabilitation program. The program was to run for a minimum of 30 days. The claimant, during the course of the program, filed for unemployment insurance benefits.

The claimant admitted that the test results were accurate. But she argued that she had not used the narcotics at work. Upon review, she added that, since the time of the occurrence, she had successfully completed the program and had refrained from the use of narcotics.

HELD: Misconduct has been defined as conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to her employer.

Reporting to work under the influence of narcotics, where it is shown that being under the influence might impact upon the ability to perform one's work, constitutes misconduct, irrespective of whether the actual use of the narcotic is at or prior to reporting to work. In this case, the claimant repeatedly used narcotics, and it was reasonable to conclude that she was under the influence of such narcotics after she had reported back to work. The claimant was a bus driver, and her use of cocaine prior to reporting for work as a bus driver constituted a deliberate violation of her employer's policy and indicated a disregard of the standards of behavior which the employer had the right to expect. What she did subsequent to the work separation (successfully completing a rehabilitation program) was irrelevant. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-87-3581/8-14-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Rehabilitation Program**
CROSS-REFERENCE	**MC 15.2, Absence; MC 385.05, Relation of Offense**

The claimant had been absent and tardy on a number of occasions, resulting in 2 suspensions and a final warning. In February, she acknowledged that her use of drugs might be the cause of her problems. Her employer referred her to a drug rehabilitation program; the employer, under its employees' health insurance package, was to pay for hospitalization. The claimant entered the rehabilitation program on February 6, and remained in the program until March 2, after which she continued to participate in support groups.

On February 26 - while the claimant was participating in the rehabilitation program - the employer discharged her for her prior absenteeism.

HELD: Absenteeism without justification constitutes misconduct. In this case, the claimant's previous absences were the result of drug usage; at the time and under the circumstances those absences occurred, they might have constituted misconduct. But, at the time of the work separation, the claimant, having sought medical attention to cure her condition, was participating in a drug rehabilitation program, to which she had been referred by the employer. The employer, having referred the claimant to its rehabilitation program - so that she might recuperate or make amends, in lieu of discharge - cannot 3 weeks later insist that the claimant's absences constituted misconduct for which she was discharged. The relation between the previous absences due to drug usage and the discharge was tenuous. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-86-9483/9-29-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Test Results, Alone, as Evidence**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a truck driver, until, during a routine physical check-up, a test of a urine specimen reportedly revealed the presence of marijuana in the claimant's system.

At an appeal hearing, the employer testified that both the company and the claimant's union had approved a rule that a test result of over 30 nanograms of marijuana would subject a driver to discharge. The employer submitted into evidence a laboratory test result, indicating that the claimant had 50 nanograms of marijuana in his system. There was no testimony offered concerning who administered the test or how the test was administered.

The claimant denied using marijuana.

HELD: Hearsay is an out-of-court statement (including a document) which is offered to prove the truth of the matter asserted. Hearsay evidence, while admissible, is not competent evidence upon which a decision may be based. The reason for this is that such evidence cannot be cross-examined, and thus, cannot be scrutinized to establish reliability.

At the same time, the defects in hearsay evidence can be overcome, by laying a proper foundation, through testimony. But in this case, there was no chain of evidence which established, in the first place, that it was the claimant's specimen which was analyzed, and not someone else's. Further, because there was no testimony by or concerning the person(s) who administered the test or how it was administered, there was no basis for determining the reliability of the test results. Therefore, the hearsay defects (no cross-examination, unreliability) were not overcome.

The claimant's denial that he used marijuana being the only competent evidence presented, it could not be concluded that he was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	***Profice v. Board of Review*, 481 N.E. 2d 1229 (1985)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Use of Marijuana During Working Hours**
CROSS-REFERENCE	**MC 485.45, Violation of company Rule, Intoxicants**

The claimant worked for the CTA as a Bus Servicer. Although she was not a bus driver, her duties included the driving of buses from location to location in the employer's yard, and fueling those buses.

Her foreman was looking for another worker, and was walking towards the women's locker-room, when he observed the claimant exiting the door to that room. Still looking for the other worker, he knocked on the door. When the worker opened the door, he smelled the aroma of marijuana smoke. He reported this to a supervisor.

At an appeal hearing, the supervisor testified that he, too, smelled the odor of marijuana smoke in the women's locker-room. On the locker-room bench, he found half a marijuana cigarette and drug paraphernalia. The claimant and her co-worker were called into the supervisor's office. Marijuana was found in the co-worker's purse. The supervisor testified that both had "glassy eyes." Subsequently, the claimant tested positive for THC, the primary chemical element of marijuana.

Although the claimant admitted that she had smoked marijuana, she stated that she did so off-duty and denied doing it on the job. She also contended that, because she was a Bus Servicer, not a driver, she could not have harmed her employer or anyone else, even if she had been under the influence of marijuana while at work.

HELD: A discharge for using intoxicating narcotics on the job, or for reporting to work in an impaired condition due to the use of narcotics, is a discharge for misconduct.

In this case, the evidence established that the claimant was in a room with a worker who kept marijuana in her purse, the strong odor of marijuana was present in the room, a marijuana cigarette and related paraphernalia were found in the room, the claimant manifested signs of having smoked marijuana recently, and she tested positive for THC. Despite the claimant's denial, the Board of Review's decision that the claimant used marijuana (and was under its influence) during working hours was supported by the manifest weight of the evidence. Further, the claimant did drive buses and did use flammable liquids while under the influence of marijuana. This did pose a danger to the CTA, co-workers, and others. This was a discharge for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**83-BRD-8871/7-27-83**
AUTHORITY	**1./S-602A**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

While on the employer's premises, the claimant purchased an illegal drug from a co-worker and was discharged for doing so.

HELD: Possession of an illegal drug while at work is misconduct connected with the work. He is ineligible to receive benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **83-BRD-15401/12-20-83**
AUTHORITY **2./S-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

There had been four documented incidents of the claimant reporting to work under the influence of alcohol. The claimant had been warned each time about reporting to work in an inebriated condition.

The claimant again reported to work under the influence of alcohol and was discharged the next morning. Witnesses observed that the claimant's speech was slurred, his footing unsure, and that he was in no condition to perform the work.

The claimant admitted to having had a few beers at lunch, but he said he did not think that he was under the influence of alcohol. The claimant had no recollection of whether his speech or footing was uncertain.

HELD: The claimant's conduct evidenced a wilful and wanton disregard of the duties and obligations the claimant owed his employer and of a standard of behavior which the employer had a right to expect of the claimant. Since the claimant failed to meet this reasonable standard, he was discharged for misconduct connected with his work and is ineligible for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **83-BRD-15637/12-28-83**
AUTHORITY **3./S-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant and two other employees were discharged after they were found in a washroom with a half-empty bottle of alcohol and two cups which contained alcohol. The employer said that he did not smell alcohol on the claimant's breath, nor did he see the claimant in possession of any alcohol. The employer also said that one of the other employees had a cup in his hand and the third employee was near a cup that had been crushed. The bottle of alcohol was found in an empty locker with an unused empty cup. The claimant denied that he had been drinking alcohol, or that he had supplied the bottle, and requested either a breath analysis or lie detector test.

HELD: The claimant was found in a common area and had no control over the actions of other employees. He denied taking any part in the offense and offered to prove his innocence by submitting to a test. Under these circumstances, the claimant was discharged for reasons other than misconduct connected with his work and is eligible to receive benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **84-BRD-4256/3-29-84**
AUTHORITY **4./S-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was employed as a stockman with a steel supply company. After knocking over a pile of steel beams while in the process of stacking them, the claimant admitted to his supervisor that he had a few drinks before reporting to work. He had received prior warnings and a suspension for similar behavior.

HELD: Reporting to work under the influence of alcohol adversely affected the employer's interests. The claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **84-BRD-4286/3-29-84**
AUTHORITY **5./S-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

When the claimant reported to work, his supervisor thought he detected the odor of alcohol on his breath. The claimant agreed to take a blood test, and the results showed extreme intoxication bordering on a comatose level. He was discharged.

HELD: Reporting to work intoxicated constitutes a wilful disregard of the employer's best interests. The claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **84-BRD-4288/3-29-84**
AUTHORITY **6./S-602A**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant's superior observed the claimant and a co-worker passing and smoking a cigarette in the company break room. The superior noted the greenish color of the cigarette filter and the odor and concluded that the men were smoking marijuana. Both men had been warned that the possession or use of illegal drugs on company premises would be grounds for immediate discharge under company rules. The co-worker admitted he was smoking marijuana. Both workers were discharged.

HELD: The claimant wilfully violated a known company rule forbidding the use of a controlled substance on the employer's premises. He was discharged for misconduct connected with his work and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR-85-131-FE/10-2-85**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Failure to Undergo Alcoholism Rehabilitation**
CROSS-REFERENCE: **None**

The claimant was employed as a Mail Carrier for 14 years, until her discharge for curtailing (failing to deliver) mail in March, 1984. The claimant had recently returned from a vacation, was confronted by what she determined to be a heavy workload, and fell behind in her deliveries. Instead of reporting the problem to her employer, the claimant stashed mail in a relay box, where it remained, undelivered, until another carrier reported it to the employer.

At an appeal hearing, the claimant admitted her actions. However, she also argued that, at the time she did not deliver the mail, she was affected by alcoholism, a disease which prevented her from realizing her obligations as an employee; had she not been suffering from alcoholism, the incident of not delivering the mail would not have occurred.

Additional testimony indicated that, years before, at the employer's urging, the claimant was to have participated in an alcohol rehabilitation program. The claimant began attending meetings in January, 1983, but, shortly thereafter, by her own choice, dropped out of the program.

HELD: Generally, when competent medical evidence establishes that an individual suffers from a disease, an individual's discharge, as a result of the effects of that disease, will not constitute a discharge for misconduct. The Unemployment Insurance Act does recognize alcoholism to be a disease.

At the same time, it is expected that an individual who suffers from a disease will seek treatment. There can be no basis for relieving an individual of responsibility for the consequences of an untreated condition.

In the instant case, the claimant may have been suffering from alcoholism. But, she chose to drop out of an alcohol rehabilitation program. She was not participating in any treatment program at the time of the incident in question. Therefore, there was no basis for relieving her of responsibility for her actions, despite the effects of alcoholism. The claimant's actions constituted misconduct within the meaning of Section 602A of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-85-3858/9-30-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Physical Disabilities Manifesting Appearance of**
CROSS-REFERENCE	**MC 190.15, Evidence; PR 380.15, Review**

The claimant, a Driver, left his employer's garage at 4 p.m. on Christmas Eve, to pick up and deliver mail, and was expected to return no later than 6 p.m. Instead, at 8:15 p.m., the employer located the claimant in the vestibule of a closed post office along his route. The employer testified that although he found no "booze" on the claimant's person or in his truck, the claimant was in an obviously drunken condition.

The claimant testified that his truck had twice stalled, leaving him stranded at a post office until his employer could arrive with a tow truck. He denied that he had consumed any intoxicants. He stated that he believed the employer discharged him in retaliation for the claimant's having exposed certain violations of law by the employer: The claimant said that he had been instrumental in forcing the employer to pay unemployment insurance contributions, and to buy state licenses for trucks which the employer had been operating with dealers' stickers.

The Referee asked the employer no questions concerning the alleged violations and alleged retaliation. Subsequently, the Referee issued a decision which disqualified the claimant for benefits. The Referee's conclusions rested solely upon the employer's testimony, which the Referee had found to be more credible than that of the claimant.

In its review of the record, the Board of Review noted that the claimant made reference to the fact that, for 49 years, his speech had been impaired and he walked with a limp. Those points were not developed in the record.

HELD: Where the record is adequate, and a Referee's findings as to credibility are supported by that record, the Referee's findings as to credibility will not be disturbed, since the Referee would have been in the best position to evaluate the demeanor and mien of the witnesses. However, from an inadequate record, a Referee's findings as to credibility, being unsupported, must be questioned.

In the instant case, the Referee's failure to ask relevant questions rendered the record, and therefore the Referee's resolution of the question of credibility, inadequate. The case was remanded, with instructions to pose the following relevant questions:

(1) Was the employer in violation of tax and licensing laws; and

(2) Did the claimant expose such violations to the authorities; and

(3) Was the claimant's act of exposing such violations a consideration in the employer's decision to discharge him; and

(4) Does the claimant suffer from physical disabilities which could cause him to speak and walk as if he were intoxicated?

The Referee was instructed to elicit testimony with respect to those questions, and, from that testimony and the evidence previously submitted, make findings and issue a decision based upon the more complete record.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR-85-7938/4-18-86**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Burden of Proof (Refusal to Take Blood Alcohol Test)**
CROSS-REFERENCE **MC 190.1, Burden of Proof**

On his last day of work, the claimant, a Truck Driver, was involved in 2 accidents. When he reported in at the end of his shift, he was confronted by the Transportation Supervisor, who testified that, because he smelled alcohol on the claimant's breath, he directed the claimant to take a blood test for alcohol.

The claimant refused to take the blood test. He contended, among other reasons, that the contract between his union and the employer did not require that he take the blood alcohol test. Also, he was fearful that any alcohol which he had consumed up to 18 hours earlier, off the job, might result in the test being "positive."

Upon his refusal to submit to testing, he was discharged.

HELD: The refusal to take a blood alcohol test does not constitute misconduct per se. However, reporting to work in an intoxicated condition may constitute misconduct.

In the instant case, the employer presented evidence to show that the claimant had been under the influence of alcohol while at work: he was observed to have alcohol on his breath and he had had 2 accidents with the company vehicle.

The fact that the claimant did not take a blood alcohol test, for whatever reason(s), did not alter the facts as presented by the employer. The claimant did nothing to rebut those facts.

The employer established by a preponderance of the evidence that the claimant had reported to work in an intoxicated condition. The claimant's actions, irrespective of his refusal to submit to a blood alcohol test, constituted misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR-85-71-FSC/12-11-85**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Illness Resulting From**
CROSS-REFERENCE **MC 15.2, Absence, Reasons**

The claimant reported for work early Saturday morning as scheduled, but, shortly after appearing, had to leave due to illness. He was sick because he had been drinking Tequila since 8 p.m. Friday. The claimant was told that his services were no longer needed.

HELD: An employer has a right to expect its workers to report to work in a condition to do the work assigned to them. At the same time, if a worker gives notice that he cannot work because he has suffered a disabling illness - beyond his control, then a resultant discharge cannot be for misconduct.

In the instant case, the claimant may very well have been too ill to work. However, his illness, being the direct result of his deliberate and heavy consumption of alcohol during the hours shortly before he was scheduled to work, was avoidable. Therefore, the claimant's absence from work was due to intoxication, not illness, which showed a disregard of duties he owed his employer. He was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR-85-9186/5-12-86**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Alcoholism as a Mitigating Factor, Limits**
CROSS-REFERENCE **MC 485.45, Violation of Company Rule**

The claimant had received warnings concerning bringing alcoholic beverages into the employer's plant, being under the influence of intoxicants at work, and the consumption of alcohol in general, resulting in his participation in employer programs for alcoholism.

On his final day of work, he was attempting to enter the employer's plant with an open soft drink can. Pursuant to the employer's rule, which required employees to submit to an examination of articles they were attempting to bring into the plant, the security guard at the gate asked the claimant to permit her to examine the contents of the can. Instead of turning over the can, the claimant threw it into a parking lot. The can was later retrieved and examined by the employer's personnel and the claimant was discharged.

The claimant contended that he suffered from the disease of alcoholism, and, because his discharge resulted from the effects of the disease, it could not have been a discharge for misconduct.

HELD: Generally, an individual who is discharged for violating a known and reasonable company rule is discharged for misconduct. In such cases, the individual is discharged because he has violated a standard of conduct which an employer has the right to expect from its workers, and not because of the lack of suitable work.

In the instant case, the employer had promulgated a reasonable rule requiring employees to submit to an examination of articles they were attempting to bring into the plant. The claimant was aware of the rule. The claimant was discharged because he refused to permit the security guard to examine the contents of the article he was attempting to bring into the plant. Whether or not the can the claimant attempted to bring into the plant contained alcohol, the claimant violated the employer's rule.

Whether or not the claimant was an alcoholic, there was no showing that his alcoholism compelled him to refuse to permit the security guard to examine the soft drink can. There was no showing that his alcoholism compelled him to toss the soft drink can into a parking lot. There being no compelling reason for the claimant to violate the employer's rule, his violation of the rule constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 270.05**
DOCKET/DATE **ABR-89-2827/9-12-89**
AUTHORITY **Section 602A of the Act**
TITLE **Intoxication and Use of Intoxicants**
SUBTITLE **Alcohol Rehabilitation**
CROSS-REFERENCE **MC 85.05, Connection with Work**

In 1986, the claimant was hospitalized for alcoholism. As a condition of her continued employment, she was required to obtain follow-up treatment, and she agreed that, for a period of 1 year, she would attend alcoholism counselling sessions.

For 1 year, the claimant attended the counselling sessions. She continued to attend counselling sessions well into a second year. She herself paid for these sessions. Toward the end of the second year, she began missing meetings with her counselor. This was partly because of her schedule: counseling plus work, including overtime, ran from 1 p.m. until 2 a.m. Also, she did not have sufficient funds to continue to pay for the sessions.

From the time the claimant began her counselling sessions, she committed no work infractions - except that the employer desired that she continue participating in the rehabilitation program. In January, 1989, because she failed to keep up her attendance in the program; she was discharged.

HELD: Section 602A of the Act requires that misconduct be connected with work.

Generally, if a worker has a substance abuse problem, causing difficulties on the job or absences from work, a requirement that she enroll in a rehabilitation program (in lieu of being discharged outright) is connected with the work and is reasonable. Generally, the worker's failure to enroll in or continue to attend such a program will constitute misconduct.

However, in the instant case, the relationship between continuing rehabilitation and work was tenuous. The original incident occurred in 1986. The claimant fulfilled her obligation to attend counselling for 1 year. For that year, and until her discharge in 1989, she committed no infractions that caused difficulties on the job or absences from work.

The counselling sessions that continued after 1 year, being off-duty, personally financed, and not warranted by behavior at work, were not connected with work; therefore, missing them could not constitute misconduct.

The claimant was allowed benefits without disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-89-6042/8-28-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Unannounced Drug Test (after prior violation)**
CROSS-REFERENCE	**MC 485.45, Violation of Company Rule**

The claimant was absent from work for 21 days; he had been hospitalized as part of an employer-sponsored drug and alcohol rehabilitation program. Following his return to work, he agreed that, as a condition of his continued employment, he would abstain from drug and alcohol use; to verify this, he was to submit to unannounced drug screens, for a period of 1 year.

One week after his return to work, the claimant tested negative for drugs.

Two weeks after his return to work, he tested positive for marijuana and cocaine; as a result, he was fired.

The question presented was whether the employer's drug policy - including unannounced drug testing - was reasonable.

HELD: Section 602A defines "misconduct," in pertinent part, as a violation of a "reasonable rule or policy."

When a worker's use of drugs or alcohol impairs his work or causes him to be absent from work, it is reasonable for an employer to require, as a condition of continued employment (in lieu of outright discharge), that the worker submit to drug rehabilitation - including unannounced drug tests.

In this case, the scope of the employer's measures was reasonable and not unduly intrusive.

The claimant was discharged for misconduct and was ineligible for benefits under Section 602A.

ISSUE/DIGEST CODE	**Misconduct / MC 270.05**
DOCKET/DATE	***Robinson v. IDES* (1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Connection with Work**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 485.45, Company Rule**

The employer had a drug-free workplace policy, which included drug tests for work-related injuries, and, if drugs were found, subsequent unannounced tests, then, if drugs were found, a discharge.

The claimant's job was spray painting cabinets and computers. He was an excellent worker. After he sustained a scratch on the job, he was required to take a drug test. He tested positive for morphine and marijuana. A year later, over a weekend, off the job, he attended a wedding reception, where he had a few lines of cocaine and smoked marijuana. The next day, when he reported to work, he was required to take an unannounced drug test. The test revealed traces of the drugs in his system and he was discharged. He was then denied unemployment benefits.

The claimant contended that the rule that resulted in his discharge was unreasonable because it had nothing to do with his work performance, which was excellent, but, rather, with his off-duty conduct.

HELD: Section 602A provides, in pertinent part, that "misconduct" means a violation of a "reasonable rule ... governing the individual's behavior in performance of his work." The goal of a drug-free workplace and substance abuse policy is to create and maintain a work environment free from the adverse effects of using drugs. The fact that an individual is a good worker whose job performance is not yet affected by drugs does not render a drug-free workplace policy and disciplinary rules unreasonable.

Here, the employer's rule was reasonable. The claimant deliberately and willfully violated the rule. The claimant had been warned (and, therefore, harm was irrelevant). All the conditions for a discharge for misconduct under Section 602A were met.

ISSUE/DIGEST CODE	**Misconduct / MC 270.05**
DOCKET/DATE	***McAlister v. IDES* (1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Harm**
CROSS-REFERENCE	**None**

Illinois law required that the Chicago Transit Authority (CTA) establish and enforce a drug testing program consistent with Federal statutes and regulations. In addition, the CTA had to maintain a drug-free workplace policy to be eligible for a grant or contract from a Federal agency. The CTA's rule was that "an employee may not have a controlled substance ... in his system from the time [he] reports for work until the conclusion of [his] work day." The collective bargaining agreement between the CTA and the union representing bus operators gave the CTA the right to test bus operators for drugs. The claimant, a CTA bus driver, tested positive for cocaine and the CTA discharged him.

The claimant contended that he could not be denied unemployment benefits because Section 602A requires that harm be established. The claimant had tested positive for residual traces of cocaine, which he said he had consumed six days earlier, while off the job. According to the claimant, this did not impair his job performance and, therefore, did not harm the CTA.

HELD: In pertinent part, 56 Ill. Adm. Code 2840.25 defines "harm" to include "damage or injury that could be reasonably foreseen to occur but for the individual being prevented from ... continuing to work." The rule also provides an example:

> Federal law provides that a commercial carrier may not permit its vehicle to be operated by an individual if there is, within the individual's system, the presence of unlawful, controlled substances ... The presence of such a substance during working hours within the system of a commercial driver ... constitutes harm to the carrier. To continue to employ the individual as a driver would result in the carrier's violating federal law.

The example extends to an individual such as the claimant. The United States Supreme Court has stated that drug testing of persons in safety-sensitive positions is justified. The CTA was subject to Illinois and Federal laws regarding a drug-free workplace, requiring that the bus operator not be permitted to drive. Further, denying unemployment benefits is particularly appropriate where, as in the instant case, passing a drug test was an agreed condition of employment.

Here, the employer did not have to show impairment or strange conduct or await injury on the job to establish harm.

ISSUE/DIGEST CODE	**Misconduct/MC 270.05**
DOCKET/DATE	**ABR-97-6027 / 7-30-97**
AUTHORITY	**Section 602A of the Act**
TITLE	**Intoxication and Use of Intoxicants**
SUBTITLE	**Use of Intoxicants Off the Job**
CROSS REFERENCE	**MC 85.05, Connection with Work; MC 485.45, Viol. Rule**

The claimant worked as a craps dealer on a riverboat casino. Pursuant to company policy (and in accordance with federal regulations), he was administered a random drug test, which he failed, due to his use of drugs while off duty.

HELD: ABR-85-3809, previously contained in this Digest, holding that, in a particular fact situation, off the job use of drugs did not constitute misconduct, is hereby ***overruled***. The Board of Review now holds that, under certain circumstances, even if drug use occurs off the job, it constitutes misconduct. This is certainly true where the employer is governed by federal regulations which require the removal of an individual who tests positive for drugs.

ISSUE/DIGEST CODE **Misconduct/MC 300.3**
DOCKET/DATE **84-BRD-42873-29-84**
AUTHORITY **1./S-602A**
TITLE **Manner Of Work Performing Work**
SUBTITLE **Quantity of Work**
CROSS-REFERENCE **None**

The claimant objected to the employer's wage scale. He was discharged after eight months when he continued to limit his production to a level he considered commensurate with the wages he was being paid.

HELD: The failure to produce the required quantity of work was due solely to the claimant's dissatisfaction with the wage scale, and it was not due either to his physical or mental inability to do the work, or because the employer failed to give him sufficient time to meet the standards. Accordingly, the claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 300.05**
DOCKET/DATE **84-BRD-4096/3-28-84**
AUTHORITY **2./S-602A**
TITLE **Manner Of Work Performing Work**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was a biomedical support technician for a period of three years. On the date of his discharge, he was responsible for bacteria level tests for persons given kidney dialysis, and he failed to run the tests on two successive days. He admitted that the tests were one of his primary responsibilities, but he forgot the tests the first day because of other duties, and he transferred the job to a co-worker the second day and neglected to determine if the work was done. The claimant had infrequently performed the tests before.

HELD: The claimant knew or should have known that if the tests were not completed the health and safety of the employer's dialysis patients could be placed in danger, thus requiring a high degree of care on his part. The claimant's negligence recurred on successive days and led to his discharge for misconduct connected with his work. He is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 300.05**
DOCKET/DATE **83-BRD-10893/9-26-83**
AUTHORITY **1./S-602A**
TITLE **Manner Of Work Performing Work**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant, a nurse's aide, restrained an uncontrollable and abusive patient by putting her in a utility room near a nurse's station. She used minimal force and did not injure the patient in doing so. Contrary to the employer's rules, the claimant did not call for assistance. However, at the time of the occurrence, no assistance was available.

HELD: Although the claimant was in technical violation of the employer's rules, she reacted to an emergency situation and to the best of her ability. It is concluded that the employer was not injured by the claimant's conduct and that she was discharged for reasons other than misconduct connected with her work and is not subject to any disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 300.1**
DOCKET/DATE	**83-BRD-5456/5-11-83**
AUTHORITY	**2./S-602A**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**Accident**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a school bus driver. While driving her school bus, the claimant switched on a blower fan which did not work. She then looked down to see if the switch was turned on and struck a telephone pole and damaged the vehicle. Three days prior to this accident, the claimant had been verbally warned for careless and inattentive driving. The claimant was immediately suspended following her last accident and subsequently discharged.
The claimant admitted fault in looking away at the bus panel board while driving, but she correctly testified that this was her first accident.

HELD: In view of recent warnings from the employer concerning the claimant's inattentive driving habits, her conduct in diverting her attention to a panel in her vehicle while driving constituted negligence to such a degree as to exhibit a wilful disregard of duties owed the employer. The claimant was discharged for misconduct connected with work and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 300.1**
DOCKET/DATE	***Barry Pesce v. Board of Review*, No. 86-2049 (1987)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**Accident**
CROSS-REFERENCE	**MC 5.05, Misconduct, Definition**

The claimant was employed as a driver in a medicar used to transport patients to and from hospitals and nursing homes. During the 3-1/2 months he was employed he was involved in 4 accidents with the employer's vehicle. Each of these accidents occurred while the claimant was backing up and resulted in the claimant's vehicle striking a stationary object. There were no patients in the medicar at the time of these accidents and none of the accidents caused severe damage.

The employer had a rule that 2 accidents with the employer's vehicle would result in discharge; but, because the employer did not know how many of the accidents might have been the claimant's fault, the employer did not discharge him until after his 4th accident.

The Board of Review stated that the claimant was discharged due to his inability to back up the employer's vehicle. The Board then went on to equate the claimant's inability to back up the vehicle with gross indifference to the interests of the employer, because, if the claimant had continued on that course, there was the potential of the claimant injuring or aggravating an existing injury of one of the patients who relied on him for transportation. The Board concluded that this was misconduct.

The claimant contended that, even if he may have been properly and justifiably discharged, his actions did not constitute misconduct.

HELD: Every justifiable discharge does not disqualify the discharged employee from receiving unemployment benefits. An employee's conduct may be such that the employer may properly discharge him. Such conduct might not, however, constitute "misconduct connected with the work."

Misconduct is defined as conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of its employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability.

In this case, the record showed that the claimant had 4 accidents with stationary objects while backing up in the employer's vehicle. But, there was no evidence of deliberate conduct or a willful or wanton disregard of the employer's interests. Similarly, there was no evidence, other than the fact that the accidents occurred, to indicate that the claimant's conduct could be characterized as carelessness or negligence of such a degree or recurrence as to manifest equal culpability. In short, there was no showing of an unreasonable and improper course of conduct from which could be imputed a lack of proper regard for the employer's interests.

The claimant was allowed benefits without disqualification under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 300.15**
DOCKET/DATE **83-BRD-8937/7-28-83**
AUTHORITY **1./S-602A**
TITLE **Manner Of Work Performing Work**
SUBTITLE **Damage To Equipment Or Materials**
CROSS-REFERENCE **None**

The claimant was employed as a truck driver. He was discharged after the truck he was driving hit the underside of a bridge, which caused damage to the trailer. The claimant knew that the city had removed 2 inches of asphalt from the street under the bridge to allow trucks to use the route in servicing this section of the city. He knew the height of the bridge and had driven other trailers under the bridge without difficulties.

HELD: No misconduct can be found if the damage to the equipment or materials is caused by ordinary negligence in isolated cases by good faith errors in judgment.

The claimant did not act wilfully or wantonly in disregard of the employer's interest. He was discharged for reasons other than misconduct connected with his work and is not disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 300.2**
DOCKET/DATE **83-BRD-5703/5-20-83**
AUTHORITY **1./S-602A**
TITLE **Manner Of Work Performing Work**
SUBTITLE **Judgment**
CROSS-REFERENCE **None**

The claimant worked in maintenance for nine months and was discharged for removing two broken locks from doors to common hallways in an apartment building.

The claimant had been told by his supervisor that, when any locks to common hallways were broken, he should remove the lock, take it to the main office, and bring it to a local lock company for repair or replacement.

Approximately one week before he was discharged, the claimant was informed that two locks on doors in building number seven were inoperable. One of the locks had a key jammed in it, and the other was broken and could not be opened, thereby denying tenants access to their apartments. The claimant's supervisor was on vacation, and the man taking his place was unavailable. The claimant removed the two locks and brought them to the main office. The resident manager became angry at the claimant because she wanted to know which tenant had broken off his key in one of the locks. When the claimant's supervisor returned from his vacation, the claimant was discharged upon the recommendation of the resident manager.

HELD: The claimant performed his duties in accordance with what he believed to be standard operating procedure. He did not act with any intentional disregard for the interests of the employer, and he could not reasonably be expected to know that his conduct would jeopardize his employment. The claimant was discharged for reasons other than misconduct connected with his work and is not subject to any disqualifications.

ISSUE/DIGEST CODE **Misconduct/MC 300.25**
DOCKET/DATE **84-BRD-1589/1-31-84**
AUTHORITY **3./S-602A**
TITLE **Manner Of Work Performing Work**
SUBTITLE **Quality Of work**
CROSS-REFERENCE **None**

The claimant was an operator-cashier who had received oral and written warnings and a suspension because her cash drawer did not balance. When she had another shortage, she was discharged. The claimant followed established procedures and was performing the job to the best of her ability. The employer contended that the shortage occurred because of the claimant's carelessness.

HELD: Where a worker has been discharged for the poor quality of her work performance, the primary concern is whether she was capable of doing better. Care must be exercised to distinguish between those cases where she knowingly failed to perform to the best of her ability, and those cases where the work assignments were beyond her capability.

In this case, the claimant did not meet the employer's expectations and this was due to incompetency, which is not misconduct under the Act. The claimant was not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 300.25**
DOCKET/DATE	**83-BRD-12490/11-4-83**
AUTHORITY	**2./S-602A**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**Quality of Work**
CROSS-REFERENCE	**None**

The claimant was last employed as a salesman and men's clothing department manager.

The claimant's duties consisted of keeping a daily record of department inventory; supervising full and part time employees; taking an accurate count of the suits, coats, and slacks; transfers in and out of the department; and recording the mark-ups and mark-downs of department merchandise. When the semi-annual inventory was taken, the employer found that the counting of suits, sport coats and slacks had been incorrectly recorded, and, as a consequence, the claimant was relieved of the responsibility of the daily count.

Subsequently, the men's clothing buyer informed the store manager that the claimant had failed to record numerous pairs of slacks in the correct department number, and on, the following day, the claimant made the same mistake. He was then discharged.

The claimant had received proper training in his work, and he was advised of his responsibilities.

HELD: The claimant was discharged for his failure to perform his work to the employer's satisfaction. Although the employer may well have been justified in discharging the claimant, the claimant's errors were not the result of his wilful refusal to follow instructions. Therefore, the claimant was discharged for reasons other than misconduct connected with his work and was not subject to any disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 300.25**
DOCKET/DATE	**83-BRD-11801/10-24-83**
AUTHORITY	**1./S-602A**
TITLE	**Manner Of Work Performing Work**
SUBTITLE	**Quality of Work**
CROSS-REFERENCE	**None**

The claimant worked part-time as a pharmacy technician for almost a year, and he was discharged because he mislabeled medical bottles, which could have been potentially hazardous to the patients of the hospital. He was responsible for reading the medication profiles, as clarified by the pharmacist, and filling the containers with proper medication for each patient. He had received a technician training manual and had participated in a work enhancement program. Before his discharge, the claimant had received two prior warnings for mislabeling.

HELD: The claimant was trained to perform a certain job which required diligence and accuracy at the risk of dispensing potentially hazardous drugs to patients. Nevertheless, the claimant repeatedly mislabeled medical bottles which could have resulted in serious problems for the patients and the employer. The claimant had been warned previously regarding the need to be more careful and to perform properly.

This is not a case of inefficiency or the failure to perform to the employer's expectation as the result of inability or incapacity, inadvertencies, or ordinary negligence. The claimant's conduct was evidence of carelessness and negligence to a gross degree and in disregard of the duties and obligations the claimant owed to the employer. The claimant was discharged for misconduct connected with the work, and he is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 300.25**
DOCKET/DATE	***Messer & Stilp, Ltd. v. Department of Employment Security*, 392 Ill.App.3d 849, 331 Ill.Dec. 467, 910 N.E.2d 1223 (1st Dist., 2009); Petition for Leave to Appeal Denied at 233 Ill.2d 562, 335 Ill.Dec. 635, 919 N.E.2d 354 (Table) (9/30/09)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Manner of Performing Work**
SUBTITLE	**Quality of Work**
CROSS-REFERENCE	**None**

The claimant, a lawyer, was discharged by the employer for allegedly failing to follow the firm's rules concerning the handling of cases and for repeated problems in conducting lease negotiations. The claimant testified that she worked to the best of her ability. On appeal, the Board of Review reversed the Referee and awarded benefits, concluding that the claimant's failure was not deliberate and willful and did not constitute misconduct as defined by Section 602(A) of the Act. The circuit court affirmed.

HELD: On appeal to the appellate court, the employer asserted that the claimant should be held to a higher standard in determining whether her behavior constituted misconduct because, as an attorney, she was bound by numerous rules and ethical requirements that do not govern the employment practices of nonprofessional workers and, thus, her behavior should be deemed misconduct if it resulted from carelessness and negligence rather than deliberation and willfulness. The court rejected the employer's argument on the basis that there was nothing in the plain language of Section 602(A) to indicate that the legislature intended to differentiate between different professions or occupations in applying the definition of misconduct contained in that provision. The statute unequivocally applies equally to all workers without regard to the nature or type of employment or the designation or position of the individual. The court concluded that the evidence did not establish that the claimant deliberately and willfully failed to meet the employer's requirements and, therefore, her behavior did not constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 310.1**
DOCKET/DATE	***Loveland Management Corp v. IDES*, No. 2-87-0687 (1988)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Neglect of Duty**
SUBTITLE	**Duties Not Discharged**
CROSS-REFERENCE	**None**

The claimant was hired to be the maintenance man for a complex of 91 apartments and 30 townhouses. The employer's witness, the president of the complex's management corporation, testified that the claimant's neglect of duties led her to discharge him.

The employer's witness testified that she instructed the claimant to have a sewer main rodded out. This was not done, and 3 apartments were flooded by sewage. Further, 3 days after the flooding, the claimant had still not cleaned out the flooded apartments.

The employer's witness also testified that the village fire inspector had listed 17 safety violations at the complex, including: lint collecting behind clothes dryers, garbage near a furnace, and an inoperative fire alarm system.

Finally, on the claimant's last day of work, the witness observed that garbage had piled up in the chutes, the lobby of the building was dirty, and the lawn had not been cut. When the claimant, wearing only shorts and sandals, met her at the management office, she immediately discharged him.

The claimant testified that he had had little experience as a maintenance man and that the employer knew this when he was hired. He stated that, in addition to his regular maintenance duties, he was required to paint townhouses. With respect to the garbage situation, he stated that the residents were in the habit of throwing their garbage on the floor of the garbage room, but that he always cleared it up at the end of the day. As to the lawn, he agreed that it might have been high in some places, but that was due to the fact that the complex was large and that it would have been nearly impossible to cut all the grass at one time even if he did not have the number of duties he had. Also, the claimant pointed out that at one point he had been prepared to quit but the employer persuaded him to continue. Finally, after he was discharged, the employer hired 2 people to perform the duties he had been assigned.

HELD: The intended meaning of the term "misconduct" is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of its employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer.

In short, an employer may be justified in discharging an individual due to that individual's inability to perform his work; but, a misconduct disqualification requires a showing of willfulness or gross negligence, something more than inability to perform the work.

In this case, the claimant was the sole maintenance man for a complex of 91 apartments and 30 townhouses. While his weak job performance may have justified his discharge, he was discharged due to his inability to perform his work to the employer's satisfaction and not because of willfulness or gross negligence.

Benefits were allowed without disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 310.1**
DOCKET/DATE	**83-BRD-l1414/10-7-83**
AUTHORITY	**1./S-602A**
TITLE	**Neglect Of Duty**
SUBTITLE	**Duties Not Discharged**
CROSS-REFERENCE	**None**

The claimant was a licensed practical nurse. The employer cited three separate instances in which the claimant had dispensed improper care to the patients. The last infraction, which led to her discharge, was her failure to record the medication and the diet that she had given a particular patient. The claimant stated that she did not record the information because she was called away when a doctor came to her floor. The claimant admitted to these infractions. She had received prior warnings.

HELD: Despite prior warnings, the claimant did not increase her attention to her work and was, therefore, derelict in her duty. The claimant was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 310. 1**
DOCKET/DATE	**83-BRD-14886/12-13-83**
AUTHORITY	**2./S-602A**
TITLE	**Neglect Of Duty**
SUBTITLE	**Duties Not Discharged**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a security guard. While he was on duty, he received a telephone call from the security guard who was to relieve him saying that he would be five minutes late. When the relief guard did not report, the claimant left his assigned post without authorization and without explaining the situation to the employer. He was discharged.

HELD: Leaving a security guard post without authorization or reporting the fact that the relief had not appeared is misconduct connected with work. Therefore, the claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 310. 15**
DOCKET/DATE	**83-BRD-5908/5-26-83**
AUTHORITY	**1./S-602A**
TITLE	**Neglect Of Duty**
SUBTITLE	**Personal Comfort And Convenience**
CROSS-REFERENCE	**None**

The claimant worked as a process control technician on the night shift. A security guard testified that he discovered the claimant asleep on a mail table at 4:45 a.m. and that the claimant did not respond when spoken to. The guard reported the incident.

The claimant's supervisor testified that the claimant was scheduled for a lunch break from 5:00 to 5:40 a.m. and, when confronted, the claimant had told him that he could not remember when he had taken lunch but that he had used that time to sleep. The claimant had not signed out for lunch as required, and his contention that he was sleeping on his own time could not be verified. The claimant subsequently told the supervisor that he had switched lunch periods with a co-worker who took lunch at 4:00 a.m., but, when the supervisor telephoned the co-worker for verification, she told him that she could not recall making such an arrangement.

The claimant testified that he had not signed out because he and his co-workers kept records in a haphazard manner, filling them out when they remembered.

HELD: The claimant knew or should have known that sleeping on the job during working hours might lead to his dismissal. He was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 310.15**
DOCKET/DATE	**ABR-83-14494/11-21-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Neglect Of Duty**
SUBTITLE	**Making Sexual Advances During Working Hours**
CROSS-REFERENCE	**MC 390.25. Fellow Employees; MC 485.05, Company Rule**

After the claimant, a meat cutter, made a statement of a sexual nature to a female co-worker, he was warned by his employer that any repetition of the event would lead to his discharge. Subsequently, the employer made an arrangement through which it employed high school girls in a learning program. When it became known to the employer that from time to time the claimant made statements of a sexual nature to some of these employees, he was discharged.

Some of the female workers believed that the claimant's discharge was too harsh a penalty.

HELD: The work place is a place where work is performed. It is not a place where one makes sexual arrangements. A worker who does so does so at his peril. Whatever interferes with the normal operation of the employer's business damages the best interest of the employer.

Even if the conduct is not patently offensive, amounting only to excessive conversation, if it is established that the worker persisted in such conduct despite warnings or reprimands, his discharge will be for misconduct.

In the instant case, it was immaterial that some of the female workers considered the claimant's discharge too harsh a penalty. The claimant had been warned. His persistence in making comments of a sexual nature that had nothing to do with his work constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 310.15**
DOCKET/DATE	***Washington v. Board of Review*, 570 N.E. 2d 566 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Manner of Performing Work**
SUBTITLE	**Personal Comfort and Convenience (Sleeping)**
CROSS-REFERENCE	**MC 495.7, Violation of Company Rule**

The claimant, a secretary, was assigned to take minutes of a committee meeting. At the start of the meeting, she took an aspirin because she was suffering from a headache. During the meeting, she rested an elbow on the table and leaned her head against her hand. She dozed off and awoke 30 minutes later. She was discharged for sleeping on the job.

HELD: Misconduct requires "willful" behavior. Falling asleep on the job is willful only if an individual purposely takes a nap, or, knowing that she might fall asleep, fails to follow the employer's procedures (fails to inform the employer).

Here, nothing in the facts indicated that the claimant purposely took a nap or expected to fall asleep. She accidentally fell asleep. Accidents are not willful. There was no misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 310.15**
DOCKET/DATE **ABR-85-7221/3-13-86**
AUTHORITY **Section 602A of the Act**
TITLE **Neglect Of Duty**
SUBTITLE **Personal Convenience (Taking Personal Telephone Calls)**
CROSS-REFERENCE **MC 485.7, Violation of Company Rule**

The employer's rules provided that workers should make and/or accept personal telephone calls only during breaks or lunch hour, or in the case of emergencies. The claimant, an Apprentice Photo Re-toucher, had been warned to discontinue his practice of accepting personal telephone calls at his work station during business hours. Nonetheless, the claimant continued to receive personal telephone calls, until, finally, the employer discharged him for that reason. The claimant contended that the only reason he continued to accept personal phone calls was that the switchboard operator had put the calls through to him, and, therefore, he could not be held responsible for accepting the calls.

HELD: Excessive, non-work related (telephone) conversations which waste the employer's time and interfere with the normal operation of the employer's business may constitute misconduct. If the worker knows, or should know, that he should desist, then his actions will constitute misconduct. In the instant case, the claimant had been put on notice, both by the employer's stated rule and by specific warnings. The claimant's contention that he did not have the ability to desist was without merit: He could have told his family, relatives, friends and acquaintances to call him at designated times, other than working hours. His actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 310.15**
DOCKET/DATE ***Odie v. Department of Employment Security*, 377 Ill.App.3d 710, 317 Ill.Dec. 190, 881 N.E.2d 358 (1st Dist., 2007)**
AUTHORITY **Section 602(A) of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Personal Comfort and Convenience**
CROSS-REFERENCE **MC 485.7 Violation of Company Rule**

The claimant, a certified nurse's assistance, was assigned to monitor approximately 25 residents in the employer's dayroom and to provide assistance as necessary, which required her to be awake and alert. Without informing anyone, the claimant, suffering from a toothache, took extra-strength Tylenol, which she believed to cause drowsiness, and fell asleep for 10 to 20 minutes. When awakened by a visitor and informed that a resident was shouting for help, the claimant told the visitor that the resident does that all the time and went back to sleep. The claimant knew that her job was in jeopardy due to previous infractions of the employer's policies, although she had never received a warning for sleeping on the job. The claimant knew that sleeping on the job was a cause for termination.

HELD: The court found that the claimant's violation of the employer's reasonable policy was deliberate and willful. The claimant was aware that her job was in jeopardy due to prior infractions of the employer's rules. Nevertheless, without informing anyone, she took a drug which she knew caused drowsiness and subsequently fell asleep. When awakened by a visitor who told her that a resident was shouting for help, her response was one of indifference rather than alarm and embarrassment, even though it was her responsibility to ensure the well-being of the nursing home's residents. Such circumstances demonstrate that the claimant's acts cannot be excused as being unintentional, thereby distinguishing the instant case from the court's prior rulings in *Washington v. Board of Review*, 570 N.E.2d 556 (1st Dist., 1991) and *Wrobel v. IDES*, 801 N.E.2d 29 (1st Dist., 2003).

ISSUE/DIGEST CODE **Misconduct/MC 310.2**
DOCKET/DATE" **84-BRD-2843/2-29-84**
AUTHORITY **1./S-602A**
TITLE **Neglect Of Duty**
SUBTITLE **Temporary Cessation Of Work**
CROSS-REFERENCE **None**

The claimant was discharged for leaving his work location. The claimant had been warned on at least three previous occasions not to leave his work station to visit another department. The claimant said that there were parts that he needed from that department in order to perform his job, but he never gave this information to his supervisor, and the employer denied it. On his last day at work, he was discharged when he committed the same act.

HELD: The claimant had been repeatedly warned not to leave his work station to visit another department, and there was no compelling reason for the cessation of work or for failing to obtain prior authorization. When he persisted in deliberately disregarding the warnings, his resulting discharge was for misconduct connected with the work, and the claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 310.2**
DOCKET/DATE	**ABR-85-5412/12-27-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Neglect Of Duty**
SUBTITLE	**Temporary Cessation of Work**
CROSS-REFERENCE	**None**

The claimant had been scheduled to work the 11 p.m. to 7 a.m. shift. She was discharged after she left work, without permission, at 3:30 a.m.

The claimant's foreman had come to work drunk and was mistreating the claimant by bumping against her and hitting her on the "rear end." Also, because the claimant's last name rhymed with "salami," the foreman kept referring to his "Polish sausage." The claimant sought assistance from other foremen on the premises. The other foremen refused to try to do anything about her foreman's conduct, refused to report the matter to superiors, and refused to provide the claimant with those superiors' telephone numbers. On account of her foreman's continuing conduct, the claimant left work. Her attempts to discuss the matter with the employer later that day were rebuffed; she had already been discharged for leaving work early.

HELD: When a worker has been discharged for ceasing work without authorization, or for leaving work early without authorization, the following factors should be considered:

1 - The worker's reason(s) for ceasing to work;

2 - The worker's reason(s) for failing to obtain authorization;

3 - The length of time the worker failed to work;

4 - The seriousness of the work cessation in terms of damage to the employer's interests.

Generally, if the worker's reason for ceasing work and her reason for failing to obtain prior authorization are both so compelling as to constitute good cause, her actions will not constitute misconduct, unless she has unnecessarily prolonged the work cessation, resulting in damaging consequences for the employer.

In the instant case, the claimant left early because she was being mistreated by a drunken foreman; this constituted good cause. Her reasonable attempts to remedy the situation were unsuccessful; she had no alternative but to leave without authorization. The evidence established that the claimant did not unnecessarily prolong the cessation of work. The evidence did not indicate that the employer suffered any harm.

The claimant was not subject to a disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 310.2**
DOCKET/DATE	**ABR-85-6603/1-29-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Neglect Of Duty**
SUBTITLE	**Temporary Cessation of Work**
CROSS-REFERENCE	**MC 485.1, Violation of Company Rule**

The claimant, a Parking Enforcement Officer, had received warnings and a suspension for neglect of duty. On the morning of her discharge, she was warned about "going out of service" (shutting off radio contact) without giving headquarters her location and a reason. One hour after returning from lunch, and 10 minutes before a scheduled break, the claimant shut off radio contact with headquarters, without giving her location or a reason. She was discharged.

The claimant stated that an "emergency" had prevented her from complying with the employer's directive. The emergency was that she wished to go to the bathroom.

HELD: When a worker has been discharged because she ceased work without authorization, or because she left work early without authorization, the following factors should be considered:

1 - The worker's reason(s) for ceasing to work;

2 - The worker's reason(s) for failing to obtain authorization;

3 - The length of time the worker failed to work;

4 - The seriousness of the work cessation in terms of damage to the employer's interest.

In the instant case, the claimant did not have good cause for failing to notify the employer before "going out of service." Her preferred justification was contrary to the weight of human experience: Except for illness or physical dysfunction, neither of which the claimant cited to have existed, the need to go to the toilet does not come without warning. Such warning would have been sufficient for the claimant to have notified headquarters.

If a worker does not have good cause, either for ceasing work or failing to obtain authorization, then a determination of misconduct depends upon how substantially the worker has violated the standard of behavior expected of her. Generally, brief cessations of work do not constitute misconduct. However, if a worker has been warned about such behavior, or is aware that the cessation of work may be detrimental to the employer's interests, then the worker's actions will constitute misconduct.

In light of the warnings the claimant had received, her failure to keep her employer informed, even for a short period of time, constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 363.05**
DOCKET/DATE	**ABR-86772/6-1-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Personal Appearance**
SUBTITLE	**Rule about Long Hair**
CROSS-REFERENCE	**None**

Although the employer did not set any objective standard by which to measure hair length, it did have a rule that employees should be "neat." The claimant testified that from time to time he would get his hair cut. He thought that his hair was the "proper" length. The employer discharged the claimant, feeling that his hair was still longer than it should have been.

HELD: Employers have the right to prescribe certain standards for their employees. Such standards may be prescribed because the employer wishes to maintain an appearance of neatness or cleanliness.

But misconduct means the violation of a known and reasonable rule. Here, the employer's rule did not prescribe any measurable standard. Consequently, it could not be concluded that the claimant was aware of it or that it was reasonable. Benefits were allowed.

ISSUE/DIGEST CODE	**Misconduct/MC 363.05**
DOCKET/DATE	**ABR-85-3359/10-2-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Personal Appearance**
SUBTITLE	**Impact on Safety**
CROSS-REFERENCE	**MC 485.2, Violation of Company Rule; MC 485.8**

The claimant was employed as a Carpenter in a nuclear power plant. His job would require him to work in potentially radioactive areas, where the wearing of a securely fitted mask, to protect against contamination, was mandatory. So that the claimant's mask would fit properly, he was requested to cut off his beard. When the claimant refused to cut off his beard, he was discharged.

HELD: Employers have the right to prescribe certain standards of dress for their employees. Such standards may be prescribed because the employer wishes to maintain a certain "atmosphere," or appearance of neatness or cleanliness, or to protect employees' safety. A rule requiring the wearing of certain items deemed necessary for safety is generally reasonable, unless outweighed by special considerations, and a worker who is discharged for a willful violation of such a rule is generally discharged for misconduct connected with his work. In the instant case, the employer's need for safety measures outweighed the claimant's interest in maintaining his beard. The claimant's refusal to comply with his employer's reasonable safety regulation constituted misconduct connected with his work within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 363.05**
DOCKET/DATE	**ABR-85-4088/10-3-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Personal Appearance**
SUBTITLE	**Hygiene**
CROSS-REFERENCE	**None**

The claimant worked for an insurance company. The evidence established that, after co-workers had complained about her body odor, the claimant was counseled by the employer about personal hygiene methods. Thereafter, although the claimant decided not to use feminine hygiene products recommended by the company nurse, she did bathe daily and use deodorant. The claimant's hygiene methods were not effective in eliminating the odor, which was the reason for her discharge.

HELD: Although it is the employer's right to set standards for its employees' neatness and cleanliness, unless the employer can establish that an employee has willfully failed to comply with those standards and such non-compliance may be detrimental to others' health, safety, or morals, or to the employer's business, a resulting discharge will not be for misconduct. In the instant case, those elements were not established. The claimant made a reasonable effort to control the problem of disturbing her coworkers with her body odor. She did not willfully disregard the employer's interests and her discharge was not for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 363.05**
DOCKET/DATE	**ABR-86-259/4-8-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Personal Appearance**
SUBTITLE	**Uniform**
CROSS-REFERENCE	**MC 485.2, Violation of Company Rule**

The claimant worked as a Porter in a bowling alley. While working on the day shift, he wore, per requirements, a red casual shirt. Before he began working on the night shift, he was informed that he would be required to wear a white shirt, red vest, and black bow tie. One night, the claimant reported to work not wearing the required attire. Although directed to do so by his manager, the claimant replied that he did not wish to "look like a clown." The claimant was fired.

HELD: Employers reserve the right to prescribe certain standards of dress and appearance for their employees. Such rules may be for the purpose of establishing a certain "atmosphere" in the establishment or for making employees easily identifiable and accessible, and are generally reasonable. A willful violation of such a reasonable rule may tend to injure the employer's interests, and therefore constitutes misconduct.

In the instant case, the claimant willfully violated his employer's reasonable rule. His actions constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/385.05**
DOCKET/DATE	**85-BRD-04800/6-26-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**Condonation/Employer's Awareness of Act**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed by a bank, as Assistant to the Chief Cashier. The employer was concerned about a recent loss of $4,000, and interrogated the claimant, as well as others, about that specific loss. During the course of her interrogation, the claimant admitted not to an act involving that $4,000, but to an earlier, distinct misappropriation of funds: Some time earlier, the claimant had kept for herself overpayments made by bank customers. The employer had had no knowledge of the claimant's earlier actions, until she herself had disclosed them during the course of the interrogation. The employer then discharged the claimant for her earlier, dishonest acts.

HELD: Inasmuch as the employer was not aware of the claimant's acts of dishonesty until the claimant admitted them, it cannot be said that the employer had condoned them. Notwithstanding the claimant's subsequent record, her admitted acts of dishonesty were inherently violative of the employment relationship and constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/385.05**
DOCKET/DATE	**ABR-86-878/4-18-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**Falsification of Application**
CROSS-REFERENCE	**MC 140.25, Dishonesty, Falsification of Application**

The claimant worked for 10 years as a Respiratory Therapist, until her employer discovered that she had lied, on her application for employment, about her formal qualifications: The claimant had completed only 16 of the 42 college credit hours required for her certification as a Respiratory Therapist.

When the employer learned of the claimant's falsified credentials, she was discharged, even though her work for the past 10 years had been satisfactory.

HELD: There are 4 major principles which determine whether falsification of an application for work constitutes misconduct. One of these is whether the employer's accurate knowledge of the requested information is material in the selection of the worker for the job. Another is whether the falsification of the work application will tend to injure the interest of the employer.

In many occupations, a falsehood in an application for employment would be remote after 10 years, and inconsequential in view of satisfactory performance in the interim. However, there are many professions to which remoteness cannot apply, either because continuing honesty is of paramount importance, or because the credentials set forth in the application are a continuing requirement for licensing or continue to be essential to the nature of the work performed.

In the instant case, the claimant was employed in a profession where the possession of certain medical knowledge and life saving skills was essential. A genuine certificate of formal training would have shown whether the claimant brought to her job such knowledge and skills, and was material to her selection for the job. In the absence of that formal training, it could not be shown that the claimant, even by working 10 years, had maintained certain skills (which she might never have possessed). The claimant, by falsifying her credentials, may have exposed patients to risk and subjected her employer to liability. Her discharge was for misconduct.

ISSUE/DIGEST CODE **Misconduct/385.05**
DOCKET/DATE **ABR-87-3581/8-14-87**
AUTHORITY **Section 602A of the Act**
TITLE **Relation of Offense to Discharge**
SUBTITLE **General**
CROSS-REFERENCE **MC 15.2, Absence; MC 270.05, Use of Intoxicants**

The claimant had been absent and tardy on a number of occasions, resulting in 2 suspensions and a final warning. In February, she acknowledged that her use of drugs might be the cause of her problems. Her employer referred her to a drug rehabilitation program; the employer, under its employees' health insurance package, was to pay for hospitalization. The claimant entered the rehabilitation program on February 6, and remained in the program until March 2, after which she continued to participate in support groups.

On February 26 - while the claimant was participating in the rehabilitation program - the employer discharged her for her prior absenteeism.

HELD: Absenteeism without justification constitutes misconduct. In this case, the claimant's previous absences were the result of drug usage; at the time and under the circumstances those absences occurred, they might have constituted misconduct. But, at the time of the work separation, the claimant, having sought medical attention to cure her condition, was participating in a drug rehabilitation program, to which she had been referred by the employer. The employer, having referred the claimant to its rehabilitation program - so that she might recuperate or make amends, in lieu of discharge - cannot 3 weeks later insist that the claimant's absences constituted misconduct for which she was discharged. The relation between the previous absences due to drug usage and the discharge was tenuous. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE **Misconduct/385.05**
DOCKET/DATE **83-BRD-13682/11-22-83**
AUTHORITY **1./S-602A**
TITLE **Relation of Offense to Discharge**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant had been warned about her tardiness to work. On March 10, 1983, she was again late, and the claimant was discharged for that tardiness on April 12, 1983. The employer was unable to explain the reason it took so long to discharge the claimant after her last tardiness on March 10, 1983.

HELD: The claimant continued to work for the employer at least four weeks after her last tardiness. There is no evidence that the delay in discharging the claimant was due to the employer's need to conduct an investigation or for any other compelling business reason. Therefore, the employer condoned claimant's last tardiness, and her discharge was for reasons other than misconduct connected with her work, and she is not subject to any disqualification.

ISSUE/DIGEST CODE **Misconduct/385.05**
DOCKET/DATE **85-BRD-05894/8-14-85**
AUTHORITY **Section 602A of the Act**
TITLE **Relation of Offense to Discharge**
SUBTITLE **General**
CROSS-REFERENCE **PR 195.05, Fair Hearing and Due Process**

The claimant worked in Sales for 2 1/2 years. On November 29, 1984, immediately after being questioned about "register shortages," the claimant was discharged. He was told that he being was discharged due to having falsified his application for employment.

At the appeal hearing, the claimant admitted that 2 1/2 years prior to his discharge he had omitted to mention on his application the name of a previous employer. Although the employer was represented at the hearing, the employer's witness offered no direct testimony concerning the reason for the claimant's discharge, nor did the Referee ask the employer's witness to testify as to the reason for the claimant's discharge.

The Referee issued a decision which disqualified the claimant for misconduct, on the basis of the claimant having falsified his employment application.

HELD: It is axiomatic that for an act to constitute misconduct connected with work within the meaning of the statute the claimant must have been discharged for that act.

In the instant case, based upon the evidence of record, it was unclear whether the employer had discharged the claimant immediately upon discovering that he had falsified his employment application, or had discharged the claimant after a substantial passage of time, thereby condoning such falsification and discharging the claimant for other reasons. Because the Referee did not attempt to elicit from the employer's witness information sufficient for the Board of Review to decide for what act or acts the claimant was discharged, the Board of Review was compelled to remand the case with instructions to the Referee: to elicit unequivocal testimony from the employer's witness as to the reason for the claimant's discharge; to elicit from the employer's witness testimony sufficient to establish the date upon which the employer discovered that the claimant had falsified his application for work, accompanied by an explanation from the employer's witness as to the reason for a delay, if any, between the employer's discovery of the claimant's alleged offense and his discharge for that offense; and, at the conclusion of the new hearing, to issue a new decision based upon all of the evidence.

ISSUE/DIGEST CODE	**Misconduct/385.05**
DOCKET/DATE	***Neville v. Board of Review*, 494 N.E. 2d 512 (1986)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant reported to work with bloodshot eyes and alcohol on his breath. The next day, he received one week's notice that he would be discharged for recurring drinking that affected his work.

The claimant contended that, because he was permitted to work another week, his discharge could not have been for misconduct.

HELD: An undue delay between alleged misconduct and discharge raises a presumption that the discharge is due to a cause other than the alleged act. Notice of discharge, as opposed to immediate discharge, does not, by itself, raise the presumption.

In this case, neither the timing of the notice (1 day after the act) nor the timing of the actual work separation (1 week after) constituted an undue delay. Therefore, the fact that the claimant was not dismissed immediately did not change the reason for discharge. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/385.05**
DOCKET/DATE	**ABR-85-4867/10-31-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**"Last Straw" Doctrine**
CROSS-REFERENCE	**MC 390.1, Relations with Fellow Employees**

During the last 2 years of employment, the claimant, an Assembler, had received oral and written warnings and suspensions for a variety of offenses, including tardiness, use of profanity, insubordination, and poor work performance. A witness for the employer testified that the claimant's record was "probably the worst record that an employee has established with us."

The claimant's discharge finally came about as a result of the following incident: He and a co-worker were working together on an assembly line machine. The machine jammed and cartons began falling to the floor. The claimant shut off the machine in order to clear the jam. Then the co-worker restarted the machine. The claimant told him, "Hey, man, cut the damn machine off, you know." The co-worker then reported to his superiors that he could not work with the claimant anymore. The employer decided that this incident was "kind of a last straw."

HELD: In order to establish misconduct, it is not always necessary to show that the claimant's last act was a serious breach of duties owed the employer. If the act was but the last in a series of actions which, viewed in their entirety, demonstrated a willful and wanton disregard of the worker's obligations, it would establish misconduct. At the same time, the last act must, even if only in some trivial fashion, amount to a willful disregard of the employer's interests.

Within this context, abusive or profane language used in talking to fellow employees must be viewed in light of the total environment. There is a certain amount of "give and take" between employees, and language which does not go beyond that customarily used in the establishment could not serve as a basis for a finding of misconduct, unless the worker has been warned or reprimanded for use of such language; but, even then, it must be shown that the claimant chose to ignore the warning.

In the instant case, the final incident for which the claimant was discharged was in the nature of a spontaneous expression of exasperation, not uncommon in the work place. Standing alone, it certainly did not rise (or sink) to a level of misconduct. Nor, even in light of a previous warning, did it amount to a willful disregard of the employer's interests. Therefore, even though the employer may well have had good reason to dispense with the claimant's services on the basis of his overall record, the "last straw" was insufficient to constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 385.05**
DOCKET/DATE	**ABR-98-99 / 5-6-98**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**General**
CROSS REFERENCE	**MC190.15, Evidence, Weight and Sufficiency**

On October 2, the claimant was fired immediately after he was found at work in possession of a plastic bag, the contents of which were unknown at the time; however, the employer suspected the bag contained an illegal substance. The results of a laboratory test became available a week after the claimant's discharge: the bag contained heroin. The employer attached a copy of the test results to its protest, dated October 30. After an appeal hearing, a Referee concluded the claimant was discharged on mere suspicion (and not for misconduct) because the contents of the bag were not known at the time the employer discharged the claimant.

HELD: The relevant inquiries are to determine the stated reason for the discharge, and, whether the individual's actions occurred prior to or after the discharge. Here, the employer stated it fired the claimant for being in possession of an illegal substance while at work, and, the claimant was in possession of an illegal substance while at work. The fact that evidence validating the employer's suspicions became available after the discharge is of no concern. Benefits were denied.

ISSUE/DIGEST CODE	**Misconduct/MC 385.05**
DOCKET/DATE	***Czajka v. The Department of Employment Security,* 387 Ill. App.3d 168, 327 Ill. Dec. 108, 901 N.E.2d 436 (1st Dist., 2008)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relation of Offense to Discharge**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The employer was a church parish. The claimant was a sacristan of the church who was discharged by the parish for voicing objections to the parish's program instructing students concerning its policies concerning inappropriate physical contact. She filed a claim at the local office which granted benefits. The claimant expressed her opinions against the program before meeting with the pastor. When she met with the pastor, she reiterated her opposition which was shared by other parents but did not picket or otherwise orchestrate any campaign against the pastor after her meeting with him. The Referee reversed the local office adjudication, holding that the claimant had been insubordinate in voicing her opposition and thus was disqualified from receiving benefits on grounds of misconduct. On appeal by the claimant, the Board of Review affirmed the Referee's finding of misconduct on grounds of insubordination.

HELD: The court held that the claimant did not deliberately and willfully violate the parish's policies when she expressed her opposition to them. Although the parish's rule or policy requiring employees to act in accordance with the policies of the parish was reasonable, the actions of the claimant in expressing her disapproval largely occurred before she met with the pastor. The claimant's opposition to the program did not escalate after meeting with the pastor. The court held that this sequence of events indicated that the claimant's opposition to the program was not a deliberate or willful violation of the parish's policies. Additionally, although the parish's rules on adherence to parish policy were reasonable, it was not shown that the claimant's opposition to this particular program in any way hindered the performance of her functions as a sacristan of the parish. Even if the claimant's opposition to the program had violated the parish's rule to some extent, it was not shown that the parish suffered any harm from it. Because the court did not find the claimant guilty of misconduct, it declined to address the claimant's additional objection that her discharge violated her First Amendment's right of free speech.

ISSUE/DIGEST CODE **Misconduct/MC 390.05**
DOCKET/DATE **83-BRD-14568/12-7-83**
AUTHORITY **1./S-602A**
TITLE **Relations With Fellow Employees**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was employed as a waitress. She testified that she had a difference of opinion with the employer's controller while at work. Because she became angry, she loudly called the controller a "dummy" and an "idiot" in front of patrons. She was discharged the following day.

HELD: The claimant was discharged for arguing with another employee at work in the presence of the employer's patrons. Such behavior violated a reasonable mode of conduct which the employer had a right to control. The claimant knew, or reasonably could have known, that such behavior would result in her discharge, which was for misconduct connected with her work. She is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 390.05**
DOCKET/DATE ***Lachenmyer v. Didrickson* (1994)**
AUTHORITY **Section 602A of the Act**
TITLE **Relations with Fellow Employees**
SUBTITLE **Implicit Rules, Deliberate Behavior, Harm**
CROSS-REFERENCE **None**

During a three-month period, the claimant alienated five different co-workers with his behavior, which included swearing and throwing objects. He was fired after he threw a file on a desk in the direction of a co-worker. The claimant contended there could be no finding of misconduct because (1) there was no rule or policy regarding throwing a file; (2) the evidence showed only personality conflicts and not deliberate and willful behavior; (3) his actions caused no harm.

HELD: Common sense ***implies*** the existence of a rule against disrupting the workplace. Deliberate and willful behavior stems from awareness of a rule that is disregarded. Harm occurs when co-workers cannot perform their duties because they cannot work with an individual. Here, when the claimant threw a file, he did so deliberately, in violation of an implicit rule not to disrupt the workplace, and he harmed his co-workers by preventing them from doing their work. All the elements of misconduct were met. The claimant's actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 390.1**
DOCKET/DATE **ABR-85-4867/10-31-85**
AUTHORITY **Section 602A of the Act**
TITLE **Relations With Fellow Employees**
SUBTITLE **Abusive or Profane Language**
CROSS-REFERENCE **MC 385.05, Relation of Offense to Discharge**

During the last 2 years of employment, the claimant, an Assembler, had received oral and written warnings and suspensions for a variety of offenses, including tardiness, use of profanity, insubordination, and poor work performance. A witness for the employer testified that the claimant's record was "probably the worst record that an employee has established with us."

The claimant's discharge finally came about as a result of the following incident: He and a co-worker were working together on an assembly line machine. The machine jammed and cartons began falling to the floor. The claimant shut off the machine in order to clear the jam. Then the co-worker restarted the machine. The claimant told him, "Hey, man, cut the damn machine off, you know." The co-worker then reported to his superiors that he could not work with the claimant anymore. The employer decided that this incident was "kind of a last straw."

HELD: In order to establish misconduct, it is not always necessary to show that the claimant's last act was a serious breach of duties owed the employer. If the act was but the last in a series of actions which, viewed in their entirety, demonstrated a willful and wanton disregard of the worker's obligations, it would establish misconduct. At the same time, the last act must, even if only in some trivial fashion, amount to a willful disregard of the employer's interests.

Within this context, abusive or profane language used in talking to fellow employees must be viewed in light of the total environment. There is a certain amount of "give and take" between employees, and language which does not go beyond that customarily used in the establishment could not serve as a basis for a finding of misconduct, unless the worker has been warned or reprimanded for use of such language; but, even then, it must be shown that the claimant chose to ignore the warning.

In the instant case, the final incident for which the claimant was discharged was in the nature of a spontaneous expression of exasperation, not uncommon in the work place. Standing alone, it certainly did not rise (or sink) to a level of misconduct. Nor, even in light of a previous warning, did it amount to a willful disregard of the employer's interests. Therefore, even though the employer may well have had good reason to dispense with the claimant's services basis of his overall record, the "last straw" was insufficient to constitute misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC-390.1**
DOCKET/DATE	***Manning v. Department of Employment Security,* 365 Ill.App.3d 553, 302 Ill.Dec. 807, 850 N.E.2d 244 (1st Dist., 2006)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Relations with Fellow Employee**
SUBTITLE	**Abusive or Profane Language**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a medical assistant. She relied on a co-worker to drive her to and from work. One day, the co-worker left work early without the claimant in order to pick up her child. The claimant became angry and began slamming exam room doors and swearing under her breath and was asked to refrain from this conduct. Later that evening, the co-worker called the claimant=s home several times and left insulting messages. In response, the claimant called the co-worker and left a message. An excerpt from the message was played at the hearing and in it the claimant repeatedly used the Af-word@ and profanities in reference to the co-worker and other co-workers. The claimant was discharged for leaving a hostile, intimidating and vulgar message on a co-worker=s home voice-mail. The claims adjudicator found that the claimant was discharged for misconduct connected with the job and was disqualified from receiving benefits. The Referee, the Board of Review, and the circuit court all upheld the claims adjudicator=s decision.

HELD: The appellate court affirmed the trial court=s conclusion that the claimant=s behavior constituted misconduct. Although the voice-mail message to the co-worker may not have caused actual harm to the employer, it was potentially harmful to its interests because the use of hostile and intimidating language to a co-worker could adversely affect the work environment. Moreover, though the vulgar message was left after work hours, the incident from which it arose occurred at work and included the claimant=s disruptive conduct at work of slamming doors and swearing. The profane comments in the message also were related to other co-workers and the work environment. Furthermore, even though the employer had no written policy concerning the use of abusive language towards co-workers, the court concluded that common sense implies that the use of hostile, intimidating and vulgar language disregards the employer=s interests.

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	**ABR-85-8835/5-12-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations With Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**MC 485.15, Violation of Company Rule**

The claimant was employed as a Sorter until his discharge for assaulting a co-worker.

The employer submitted in evidence a copy of its "Rules of Conduct," which provided:

> It is a violation of Group I rules to provoke or participate in fights involving physical contact; or assaulting any person or provoking or inviting another person to assault anyone, the violation of which is subject to discharge for first offense.

The claimant contended that his discharge could not have constituted misconduct, because he had been unaware of the employer's rule.

HELD: Generally, a worker's discharge as a result of his violation of a known and reasonable company rule will constitute misconduct.

An employee's obligation not to engage in fights upon company time or property is inherent in all employment relationships; accordingly, it is not even necessary that there be a specific company rule against fighting. A worker is presumed to have knowledge that fighting violates a reasonable standard of conduct which the employer has a right to expect from its workers.

In the instant case, because the claimant should have known that fighting would result in his discharge, he was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	**83-BRD-12516/11-7-83**
AUTHORITY	**1./S-602A**
TITLE	**Relations With Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**None**

The claimant was discharged for fighting on company premises. At the time of his discharge, the claimant was a maintenance foreman. The claimant called another maintenance foreman at five minutes before the end of the claimant's shift, as was the usual practice, to inform him of work left over from the claimant's shift. This work would have to be completed on the next shift, which was under the authority of the other foreman. He testified that the other foreman became upset and began cursing and calling him names. The claimant said that he responded with profanities.

The claimant then continued to finish the work that he was doing without giving the argument much thought since bad language and frequent arguments were commonplace. Approximately two minutes later, the other foreman, who substantially outweighed the claimant, burst into the claimant's work area, shouting obscenities, and seized the claimant. The claimant pushed the other man and attempted to break the grip, while the other foreman swung at the claimant and missed. The claimant then struck the foreman. The office was very small and full of furniture, and the other foreman blocked the only doorway.

The employer did not contradict the claimant.

HELD: The claimant reacted in self-defense and was unable to leave the office or to avoid the confrontation. The claimant did not start the fight and attempted to withdraw until the other foreman physically grabbed the claimant and attempted to strike him. The claimant's testimony was unrebutted and is credible. Accordingly, the claimant was discharged for reasons other than misconduct connected with his work and is not subject to any disqualification.

ISSUE/DIGEST CODE	**Misconduct/MC 390.2**
DOCKET/DATE	**ABR-85-8837/4-4-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Relations With Fellow Employees**
SUBTITLE	**Altercation or Assault**
CROSS-REFERENCE	**None**

Following a verbal disagreement with a co-worker, the claimant was required to discuss the matter with an Employee Relations Specialist. The Specialist asked the claimant to describe how she had felt toward the co-worker during their argument. The claimant replied: "I felt like slapping her in the face." The Specialist reported this remark to management. Management considered the remark to have been a threat of physical harm to the co-worker, and discharged the claimant.

HELD: It is a worker's obligation to conduct herself so that she can work with fellow employees. Since most people do not maintain continuous perfect relations with others, occasional isolated instances of verbal disagreements do occur, and, generally do not constitute misconduct. However, if quarrels continue after warnings or reprimands, a resultant discharge would be for misconduct, since the continued outbreaks could easily lead to physical violence which would not be in the best interest of the employer.

In the instant case, the claimant engaged in one, isolated argument. Her after-the-fact remark was not made in disregard of a warning or reprimand, but was made upon request. No threat was communicated to an intended victim. No threat could have been inferred from the claimant's statement regarding a past incident. Because there was no showing that the claimant had disregarded warnings or that she intended to repeat her actions, it could not be concluded that her remark constituted misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 390.2**
DOCKET/DATE **83-BRD-12589/11-8-83**
AUTHORITY **2./S-602A**
TITLE **Relations With Fellow Employees**
SUBTITLE **Altercation or Assault**
CROSS-REFERENCE **None**

The claimant went to his supervisor to complain about his receipt of defective boxes of merchandise from a co-worker. The claimant was dissatisfied with the supervisor's response so he went to the manager's office to further complain about the matter. His supervisor then proceeded directly in front of him and bounced his chest into the claimant. The claimant was angered by this and retaliated by punching the supervisor in the face. The claimant was discharged for his conduct during the incident.

HELD: The claimant was discharged for physically striking his supervisor in the face during the course of an altercation. The evidence does not show that the supervisor's contact with the claimant placed the claimant in such imminent fear for his safety as to reasonably warrant the claimant's use of physical force. The claimant's physical response to actions initiated by his supervisor was unreasonably excessive and exhibited a wilful disregard of duties owed the employer. The claimant was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 390.2**
DOCKET/DATE ***Meeks v. IDES*, 567 N.E. 2d 481 (1990)**
AUTHORITY **Section 602A of the Act**
TITLE **Relations with Fellow Employees**
SUBTITLE **Altercation or Assault**
CROSS-REFERENCE **MC 190.1, Evidence; MC 485.15, Company Rule**

The claimant, who worked in an office setting, was discharged after a fight with a fellow employee. At an appeal hearing, the employer did not produce any written rule or offer any testimony that fighting on the job was impermissible. The claimant contended that the employer did not satisfy all the required elements for misconduct under Section 602A because it did not prove by direct evidence that it had a "reasonable rule or policy."

HELD: Section 602A provides, in pertinent part, that misconduct arises from a violation of a "reasonable rule or policy." Whether a rule or policy exists need not be proven by direct evidence but may be determined by "common sense business practices." With the exception of some business ventures engaged in professional sports, any employer would obviously have a policy against physical violence. Here, there was an implicit rule against fighting. The "reasonable rule or policy" requirement of Section 602A was met.

ISSUE/DIGEST CODE **Misconduct/MC 390.25**
DOCKET/DATE **ABR-86-2404/8-28-86**
AUTHORITY **Section 602A of the Act**
TITLE **Relations With Fellow Employees**
SUBTITLE **Annoyance of Fellow employees**
CROSS-REFERENCE **MC 135/3. Discharge or Leaving; MC 139.05, Discrimination**

In September, 1985, the claimant became ill with tuberculosis and was placed on indefinite leave. Thirteen months later, he was released to return to work, without restrictions. (Copies of medical reports were submitted to the employer and, later, in evidence at the appeal hearing). However, co-workers were still afraid of contagion and refused to work with the claimant. This view was also held by persons in management, who were afraid that their own jobs might be to return to work. The employer would not permit the claimant to return to work.

HELD: An employee has the obligation to so conduct himself as not to interfere with the proper operation on the employer's business. But when a discharge results because an individual's co-workers object to working with him because of their dislike for his race, religious beliefs, political beliefs, or other personal reasons - where no interference with the work has been demonstrated - such a discharge cannot be for misconduct. In this case, the discharge was not for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 390.25**
DOCKET/DATE **ABR-83-14494/11-21-85**
AUTHORITY **Section 602A of the Act**
TITLE **Relations With Fellow Employees**
SUBTITLE **Annoyance of Fellow Employees (Sexual Advances)**
CROSS-REFERENCE **MC 310.15, Neglect of Duty; MC 485.05, Company Rule**

After the claimant, a meat cutter, made a statement of a sexual nature to a female co-worker, he was warned by his employer that any repetition of the event would lead to his discharge. Subsequently, the employer made an arrangement through which it employed high school girls in a learning program. When it became known to the employer that from time to time the claimant made statements of a sexual nature to some of these employees, he was discharged.

Some of the female workers believed that the claimant's discharge was too harsh a penalty.

HELD: The work place is a place where work is performed. It is not a place where one makes sexual arrangements. A worker who does so does so at his peril. Whatever interferes with the normal operation of the employer's business damages the best interest of the employer.

Even if the conduct is not patently offensive, amounting only to excessive conversation, if it is established that the worker persisted in such conduct despite warnings or reprimands, his discharge will be for misconduct.

In the instant case, it was immaterial that some of the female workers considered the claimant's discharge too harsh a penalty. The claimant had been warned. His persistence in making comments of a sexual nature that had nothing to do with his work constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 390.25**
DOCKET/DATE **ABR-85-5071/11-12-85**
AUTHORITY **Section 602A of the Act**
TITLE **Relations With Fellow Employees**
SUBTITLE **Annoyance of Fellow Employees (Sexual Advances)**
CROSS-REFERENCE **None**

The claimant, a Supervisor at a large plant, was asked by a female worker for transportation to her car, which was parked a good distance away at one of the employer's entrance gates. The claimant was discharged because, after he drove the worker to the wrong gate, he stopped the car; he kissed the worker; then he unzipped his pants. He later characterized his actions as "inadvertent" and apologized.

HELD: A worker should know that, in connection with work, sexual advances do not constitute proper conduct. Sexual advances which are offensive or repetitive and consequently unwelcome will constitute misconduct. In the instant case, the claimant knew or should have known that his actions were offensive and not in compliance with the standard of behavior an employer would expect from its worker. The claimant's assertion that his actions were "inadvertent" was contrary to the weight of human experience and inherently incredible. His apology, being after the fact, was irrelevant. The claimant's actions constituted misconduct connected with his work.

ISSUE/DIGEST CODE **Misconduct/MC 435.05**
DOCKET/DATE **83-BRD-6630/5-31-83**
AUTHORITY **1./S-602A**
TITLE **Tardiness**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked for a hospital as a dietary aide for three years. She had received warnings and a suspension for absenteeism, tardiness and for failing to notify her employer on such occasions. On her last day she was late to work because she was waiting for her twelve-year old son to come home to care for her daughter, who has asthma. She was thirteen minutes late for work. She did not telephone the employer to report that she would be late, and as a result, she was discharged.

HELD: Although she had a compelling reason to be late, the claimant was discharged for failing to report her delayed arrival to the employer in a timely fashion. Therefore, she was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-897-EB/10-7-83**
AUTHORITY	**2./S-602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was discharged when he was 9 minutes late in returning from his break. He had been repeatedly warned about exceeding his authorized break time. The claimant acknowledged that he had violated this particular rule but gave no reason for doing so other than stating his belief that this was something that should not result in discharge.

HELD: The claimant was discharged for deliberately violating a known company rule after having several warnings for similar infractions. His discharge was for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-11449/10-7-83**
AUTHORITY	**3./S-602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was tardy on her first day back from a vacation leave. She returned from an out-of-town trip the same day and did not allow sufficient travel time. She had received three warnings for tardiness, and she was discharged as a result of this last incident. She did not show that her tardiness was unavoidable.

HELD: The claimant had an obligation to her employer to arrange her travel schedule so as to avoid her late arrival. Her failure to do so was a disregard of her employer's interests in view of her prior warnings for the same offense. She was discharged for misconduct connected with her work and is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 435.05**
DOCKET/DATE	**83-BRD-14714/12-9-83**
AUTHORITY	**4./S-602A**
TITLE	**Tardiness**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was warned about his tardiness on April 14, 1982 and June 15, 1982. On March 28, 1983, he was put on probation with a final admonition that, if he was tardy again, he would be discharged. On the following day, the claimant was again late because his bus was delayed due to bad weather. He was discharged.

HELD: The claimant did not take extra precautions to avoid being tardy, which, in light of the fact that his job was in jeopardy, was a reasonable expectation. The claimant should have known that a further instance of tardiness would result in his discharge. He was discharged for misconduct connected with his work and is ineligible for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 435.05**
DOCKET/DATE **83-BRD-14718/12-9-83**
AUTHORITY **5./S-602A**
TITLE **Tardiness**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked for the employer part-time. He was discharged for tardiness and after written prior warnings. The claimant admitted that he came in late and stated that he either had to rely on a ride with other people or had to walk. On the day of his discharge, he arrived late at work because he had to walk.

HELD: The claimant was warned regarding his pattern of tardiness and, because of his lack of transportation, should have known that he had to take extra precautions to arrive at work on time. When the claimant arrived late on his last day, after receiving warnings regarding previous lateness, this constituted misconduct connected with the work, and he is ineligible for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 435.05**
DOCKET/DATE **84-BRD-339/1-11-84**
AUTHORITY **6./S-602A**
TITLE **Tardiness**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant had been warned about excessive tardiness on two occasions. She stated that her tardiness was caused by a faulty alarm clock. On the date of her discharge, she was two hours late for work. She again stated that her clock failed to awaken her.

HELD: The claimant was repeatedly tardy because she overslept when her alarm clock did not awaken her. Her failure to rectify the problem when it was within her control to do so amounted to an intentional breach of her obligation to her employer. (Compare *Wrobel v. Dept. of Employment Security*, 801 N.E. 2d 29, 344 Ill. App. 3d 533 (1st Dist. 2003), where misconduct was not found when the claimant was merely negligent or careless regarding backing up an alarm clock which failed to go off due to a power failure.) She was discharged for misconduct connected with the work, and she is disqualified from receiving benefits.

ISSUE/DIGEST CODE **Misconduct/MC 435.05**
DOCKET/DATE ***Walter Bochenek v. IDES*, No. 87-0760 (1988)**
AUTHORITY **Section 602A of the Act**
TITLE **Tardiness**
SUBTITLE **Reasons**
CROSS-REFERENCE **MC 152, Absence, Reasons**

The employer was a small company that could not afford absenteeism and, therefore, warned the claimant repeatedly about his absenteeism and tardiness. Between January 14 and May 21 there were 88 work days out of which the claimant was absent 7 times and tardy 9 times. On May 21, when he reported to work 45 minutes late, he was fired.

At his appeal hearing, the claimant testified that he had psychological problems and was under psychiatric care. He presented a statement from his doctor stating that he suffered from schizo-affective psychosis and was on medication. The doctor added:

> I always wondered how he was able to keep his job for six years - due to his delusions of grandeur and persecution. I understand that he finally lost it. He should be occupied in a new appropriate position.

The claimant contended that his illness(es) excused the acts which resulted in his separation from work.

HELD: Misconduct which disqualifies an employee from unemployment benefits includes acts of wanton or willful disregard of the employer's interest, deliberate violations of the employer's reasonable rules, disregard for the standards of behavior which an employer has the right to expect of its employee, and carelessness or negligence of such degree or recurrence as to manifest equal culpability and wrongful intent.

In this case, the claimant had been warned repeatedly that his chronic absenteeism and tardiness adversely affected his employer. Despite the fact that the claimant had been under psychiatric care, his doctor's statement did not indicate that the claimant's condition affected his attendance - only that he should now seek other appropriate work. The claimant was aware of the need to improve his attendance. He failed to improve his attendance. By the time of the final incident, his absenteeism and tardiness had reached such a degree of recurrence as to be considered misconduct that would disqualify him from receiving unemployment compensation.

The claimant was disqualified for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 440.05**
DOCKET/DATE	**ABR-86-1890/7-24-87**
AUTHORITY	**Section 602A of the Act**
TITLE	**Termination of Employment**
SUBTITLE	**Discharge Distinguished from Lay-off**
CROSS-REFERENCE	**MC 5.05, Misconduct, Distinguishing the Issue**

On October 25, the claimant, a truck driver, was involved in an accident with the employer's truck, for which he was ticketed.

On October 26, for economic reasons, the employer reduced its work force; the claimant was one of the workers laid-off. The employer's terminal manager later testified that, since the day after the claimant's accident, there was no work available to assign to the claimant.

On October 29, the employer sent to the claimant a notice of suspension, pending investigation of the October 25 accident. The employer's policy provided for a such a suspension whenever a driver was involved in an accident for which he was ticketed.

On November 13, the claimant received a notice of discharge.

HELD: There cannot be a discharge from non-existing work. As soon as there is a work separation due to a lay-off, any subsequent action by the employer during the course of that lay-off is irrelevant.

In this case, the claimant was separated from work due to a lack of work resulting in an indefinite lay-off. By reason of that lay-off, the employer's subsequent review of the claimant's accident and the suspension and discharge were irrelevant.

The claimant was not subject to disqualification under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 440.05**
DOCKET/DATE	**84-BRD-3789/3-22-84**
AUTHORITY	**1./S-602A**
TITLE	**Termination of Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a security guard and was originally given the uniform of another guard. Subsequently, he received his own uniform, but he never returned the other uniform. The claimant was placed on an indefinite layoff due to lack of work. Seventeen days later, the employer's representative went to the claimant's home to pick up the two uniforms and found that the claimant was in possession of a third uniform which he was not authorized to remove from the employer's premises. He was then notified that he was discharged for possession of the third uniform.

HELD: The claimant's employment had already been discontinued for non-disqualifying reasons when he was placed on an indefinite layoff. He could not subsequently be "discharged" for misconduct for events which occurred prior to the layoff. The claimant is not disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 440.05**
DOCKET/DATE	**ABR-80-10604/10-18-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Termination of Employment**
SUBTITLE	**Expiration of Contract**
CROSS-REFERENCE	**MC 5.05, Distinguishing the Issue**

The claimant, a Roman Catholic, worked for a Roman Catholic school, as a Teacher. In November, 1979, she married a divorced man of the Methodist faith. The marriage ceremony was not performed in the Roman Catholic Church and was not recognized as valid by that Church. One week later, the employer became aware of the claimant's marriage, and concluded that, by entering into the marriage, the claimant had breached her employment contract, which provided, in pertinent part:

> "(T)he teacher agrees to...act in accordance with the doctrine and precepts of the Catholic Church." However, rather than discharge the claimant immediately, the employer decided to permit her to continue teaching until June, 1980, the end of the academic year, at which time also the claimant's employment contract would expire. The employer decided not to renew the claimant's contract.

HELD: A work separation which is based upon the expiration of a contract does not fall within the purview of Section 602A of the Act. In the instant case, the claimant became an unemployed individual by operation of law, because her contract had expired, and for no other reason. This rendered any consideration of the misconduct issue moot; and, similarly, any reason the employer might have had for deciding not to renew the claimant's contract was irrelevant.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Ross v. IDES*, 201 Ill.App.3d 474, 147 Ill.Dec. 100, 559 N.E.2d 100 (1st Dist., 7/6/90)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

The collective bargaining agreement (CBA) between the union and the employer was due to expire on August 1, 1986. Each party notified the other in May, 1986 of its intent to terminate the CBA, in accordance with a provision in the CBA requiring such notice within 60 days of the CBA's expiration. Negotiations for the new contract began on June 12, 1986 and ended in a stalemate on July 31, 1986, after each side traded several proposals and counter-proposals regarding wages and other working conditions. The shutdown of the plant took place in several stages but was complete by July 31, 1986.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court found that a labor dispute began at the plant on June 12, 1986, the day the negotiations commenced regarding a new CBA, that the stoppage of work occurred on July 31, 1986 when the negotiations ended in a stalemate and the plant shutdown, and that the claimants' unemployment was caused by the work stoppage and the labor dispute. Consequently, the court held that the claimants were ineligible for benefits pursuant to Section 604.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Golab v. IDES*, 281 Ill.App.3d 108, 216 Ill.Dec. 897, 666 N.E.2d 347 (4th Dist., 5/29/96)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

On April 30, 1993, the union's collective bargaining agreement (CBA) with the employer expired. The union members rejected the employer's contract offer and voted to continue working under the old contract while negotiations continued regarding a new contract. The employer informed the members that they could not work without a contract. When the members arrived at work on May 3, 1993, he told them to "pack up their tools" and leave. Negotiations for a new contract continued until a new contract was agreed upon on June 19, 1993. During the period negotiations were held, the company did not hire replacement workers to fill the members' positions and most of the work they would have completed was not done. Picketers also were stationed outside the company's premises during this period.

HELD: Under Section 604, ineligibility for benefits is based on three factors: (1) the existence of a labor dispute at the employer's premises; (2) the existence of a work stoppage; and (3) proximate causation between the labor dispute and the work stoppage. In the instant case, the court found that there was a labor dispute because the terms and conditions of labor remained unresolved at the time the previous contract expired, rejecting the union's contention that there was no labor dispute because its members were willing to continue working under the old contract while negotiations continued. The court also found that there was a stoppage of work due to the labor dispute based on evidence showing that the union members did not work at all while negotiations took place, the employer did not hire replacement workers, and much of the work the members usually completed was not done during the course of the dispute. The union argued, lastly, that the labor dispute and the work stoppage were not causally related because the company caused the work stoppage by its refusal to let the union members work. The court rejected this argument, stating that a "labor dispute" includes a "lock out", such as occurred in the instant case, adding that "neither the unreasonableness of the demands nor the merits of the dispute are material to a determination of whether a labor dispute actually exists." Since the evidence showed that the union members were unemployed because of a work stoppage caused by a labor dispute, they were ineligible for benefits pursuant to Section 604.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Bridgestone/Firestone, Inc. v. Aldridge et al.*, 179 Ill.2d 141, 227 Ill.Dec. 753, 688 N.E.2d 90 (1997)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

On July 12, 1994, the claimants went on strike. The claimants conceded that they were not eligible for benefits pursuant to Section 604 of the Act which provides that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." However, each of the 243 claimants in the instant case obtained interim employment with other employers during the course of the strike and each was subsequently fired or laid off from that job, which may have lasted from a few days to a few months. After being separated from the interim job, the claimants filed for, and were granted, unemployment benefits by the Department of Employment Security (IDES). The circuit court set aside IDES's decision and remanded the case back to IDES so that the latter could determine if the claimants had performed the interim employment "in good faith" and not merely to remove the disqualification for benefits imposed upon them by Section 604. The appellate court in *Bridgestone/Firestone, Inc. v. Doherty*, 284 Ill.App.3d 360, 219 Ill.Dec. 871, 672 N.E.2d 379 (4th Dist., 1996) affirmed the circuit court and remanded the cases back to IDES, not so that the Department could determine if the claimants had taken the jobs "in good faith", as directed by the circuit court, but in order to determine if any of the claimants had worked for an interim employer who could be determined to be the "last employer" as that term is defined in Section 1502.1 of the Act. In most instances, according to that section, the "last employer" is the last employer for which an individual had worked for at least 30 days.

HELD: The Illinois Supreme Court reversed the appellate court and concluded that the claimants did not have to show that they worked for an employer that could be classified as a "last employer" as defined by Section 1502.1, (*i.e.*, claimants did not have to show that they had worked for the interim employer for at least 30 days). However, the Supreme Court held that the claimants must demonstrate that they took the interim jobs "in good faith" and not merely to remove the disqualification imposed by Section 604. In providing guidance as to what constitutes "good faith", the Supreme Court cited the language used by the circuit court which had written that, "[O]bviously good faith is absent if a claimant is primarily motivated by a desire to remove the labor dispute disqualification and he or she does not undertake work expected to provide a significant support. Good faith is present if there is a genuine effort to remain in the active workforce and be regularly employed. Good faith does not necessarily require a belief that the interim employment will be permanent."

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Caterpillar, Inc. v. Doherty,* 299 Ill.App.3d 338, 233 Ill.Dec. 889, 701 N.E.2d 1163 (2nd Dist., 1998)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**None**

While on strike, the claimant was discharged for allegedly violating the employer's rules of conduct for striking employees by threatening a nonstriking worker. At the hearing, the nonstriking co-worker testified that the claimant followed him in his truck when they left work. While both were waiting at a red light, the claimant allegedly called him a "scab", cursed at him, made threats, and later tried to run him off of the road. The claimant testified that the co-worker initiated a verbal exchange while their vehicles were stopped at the red light by inviting the claimant to call him a "scab". The claimant obliged by calling the co-worker a "fCing scab". The claimant denied threatening the co-worker or any of his passengers and denied trying to run him off of the road. The employer argued that the claimant was unemployed due to the on-going strike at the plant and should be disqualified from receiving benefits pursuant to Section 604 of the Act.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court held that the claimant's separation from work was not due to the work stoppage caused by the strike but to the employer's decision to discharge the claimant for violating its work rules. Consequently, Section 604 was not applicable to determining the claimant's eligibility for benefits, even though the strike and work stoppage continued after the claimant's discharge. Since the claimant was discharged for a work rule violation, Section 602 was the section of the Act relevant to determining the claimant's eligibility. Relying on that Section, the court found that the evidence supported a conclusion that the claimant's behavior did not constitute "misconduct" as defined in Section 602 and, thus, the claimant was not disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Caterpillar, Inc. v. Department of Employment Security,* 304 Ill.App.3d 492, 238 Ill.Dec. 93, 710 N.E.2d 890 (3rd Dist., 1999)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**None**

During the course of a strike, the six claimants involved in the case were discharged for alleged conduct on the picket line contrary to the employer's "Rules of Conduct for Striking Employees". The employer's witness testified at the hearing before the Referee that he saw one of the claimants walking in front of vehicles and shaking his fist, but he did not recall whether the employer received any complaints about the claimant's conduct or whether any vehicles were actually prevented from entering the plant. The claimant testified that he was on the picket line but did not strike any vehicle. Another witness corroborated the claimant's testimony. The employer argued that the claimants were unemployed due to the on-going strike at the plant and should be disqualified from receiving benefits pursuant to Section 604 of the Act.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court relied on *Caterpillar, Inc. v. Doherty*, 299 Ill.App.3d 338, 233 Ill.Dec. 889, 701 N.E.2d 1163 (2nd Dist., 1998) and held that the claimants' separation from work was not due to the work stoppage caused by the strike but to the employer's decision to discharge them for violating its work rules regarding conduct on the picket line. Upon discharge, the claimants were no longer unemployed due to a labor dispute. Consequently, Section 604 was not applicable to determining the claimant's eligibility for benefits, even though the strike and work stoppage continued after the claimant's discharge. Since the claimants were discharged for a work rule violation, Section 602 was the section of the Act relevant to determining the claimants' eligibility. Relying on that Section, the court found that the evidence supported a conclusion that the claimants' behavior did not constitute "misconduct" as defined in Section 602 and, thus, the claimants were not disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Misconduct/MC-475.35**
DOCKET/DATE	***Bridgestone/Firestone, Inc. v. Doherty,* 305 Ill.App.3d 141, 238 Ill.Dec. 412, 711 N.E.2d 799 (4th Dist., 1999)**
AUTHORITY	**Section 604**
TITLE	**Union Relations**
SUBTITLE	**Labor Dispute, Participation in**
CROSS-REFERENCE	**Voluntary Leaving/VL-475.35; Labor Dispute, Participation in**

The claimants went on strike on July 12, 1994 and the strike ended on May 8, 1995. On September 6, 1994, the Department of Employment Security (IDES) issued a labor dispute determination that held that the strikers were ineligible to receive unemployment benefits pursuant to Section 604 of the Act. Subsequently, IDES received information indicating that the employer's plant had returned to normal production and that many of the striking workers had been permanently replaced. During the period between January 4 through January 17, 1995, the employer had sent letters to approximately 943 striking employees informing them they had been permanently replaced. As of January 17, 1995, the plant had about 950 employees as opposed to 1,209 before the strike. The plant began a continuous production schedule of 24 hours a day, seven days a week on January 15,1995. Statements by the employer's management officials in media outlets indicated that the plant had returned "to full production" although not to "full capacity" at that time. On February 23, 1995, IDES issued a supplemental labor dispute determination in which it concluded that the work stoppage caused by the labor dispute at the plant ceased during the week ending January 14, 1995 so that the claimants were not ineligible for benefits after that date pursuant to Section 604.

HELD: Section 604 of the Act provides, in part, that "an individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed." In the instant case, the court found that the evidence supported a finding that the work stoppage ended when the plant returned to full production. A work stoppage ends, according to the court, when the employer regains production to a point where business operations are "substantially normal". The court noted, however, that production levels do not have to return exactly to prestrike levels before "substantially normal business operations" are reached. The court also held that the disqualification imposed by Section 604 ended when the workers were permanently replaced. The court reasoned that, since the employment relationship between the striking worker and the employer was ended when he/she was permanently replaced, it could no longer be maintained that the worker was unemployed due to a work stoppage caused by a labor dispute at the plant.

ISSUE/DIGEST CODE **Misconduct/MC-475.35**
DOCKET/DATE **International Union of Operating Engineers, Local 148, AFL-CIO v. Department of Employment Security, 215 Ill.2d 37, 293 Ill.Dec. 606, 828 N.E.2d 1104 (2005)**
AUTHORITY **Section 604**
TITLE **Union Relations**
SUBTITLE **Labor Dispute, Interest in**
CROSS-REFERENCE **Voluntary Leaving/VL-475.35; Labor Dispute, Interest in**

The employer=s collective bargaining agreements (CBA) with the two unions at its plant, Local 702 of the Electrical Workers and Local 148 of the Operating Engineers, expired on June 30, 1992. On May 20, 1993, the employer locked out both unions. In accordance with Section 604 of the Act, the Department of Employment Security (IDES) determined on June 11, 1993 that the members were not eligible for unemployment benefits because their unemployment was due to a work stoppage that resulted from a labor dispute at their plant. On June 14, 1993, Local 148 reached an agreement with the employer and the lockout ended with respect to its members on June 22, 1993. However, its members did not return to work the following day but voted to honor the picket line established by Local 702. Local 148 members did not partake in any of Local 702's picketing activities. On August 25, 1993, the employer ended its lockout of Local 702 and the members of both unions returned to work on August 28, 1993. Local 702 and the employer reached an agreement on a new CBA in January, 1994. The Director of IDES issued a decision on February 16, 1995 in which she found that the members of Local 148 had a direct interest in the continuing dispute between the employer and Local 702 even after Local 148 had concluded its own agreement with the employer and ruled that Local 148 members were not eligible for unemployment benefits for the entire period from May 20 to August 28, 1993. Local 148 filed a complaint in the circuit court to review the Director=s decision, contending that its members were eligible for benefits after the employer had ended the lockout of its members on June 22, 1993 until they returned to work on August 28, 1993. The circuit court agreed with the plaintiff and reversed the Director=s decision, finding that Local 148 members were eligible for benefits during this period. The Director and the employer appealed. The appellate court affirmed the circuit court in *International Union of Operating Engineers, Local 148, AFL-CIO v. Department of Employment Security,* 345 Ill.App.3d 382, 280 Ill.Dec. 364, 802 N.E.2d 289 (5th Dist., 2005) and the employer appealed.

HELD: Section 604 of the Act provides, in part, that Aan individual shall be ineligible for benefits for any week with respect to which it is found that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed.@ However, Section 604 also provides that this disqualification will not apply if the individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work and is not in the same grade or class as those individuals participating, financing or directly interested in such dispute. Section 604 provides, further, that an individual=s failure to cross a picket line is not, by itself, considered to be participation in a labor dispute. In the instant case, the court found that Local 148 of the Operating Engineers had a direct interest in the dispute between the Electrical Workers= Union and the employer, where the record showed that the Operating Engineers= contract with the employer provided them with a legally enforceable right, and not just a Amere expectancy@, with regard to improved health care benefits which the Electrical Workers might achieve in their contract with the employer. Consequently, the Illinois Supreme Court reversed the appellate court and held that the members of Local 148 of the Operating Engineers were not eligible for benefits when they stayed off the job from June 23, 1993 to August 28, 1993 while the dispute between the Electrical Workers and the employer continued.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **ABR-83-14494/11-21-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Social Relationships**
CROSS-REFERENCE **MC 310.15, Neglect of Duty; MC 390.25, Fellow Employees**

After the claimant, a meat cutter, made a statement of a sexual nature to a female co-worker, he was warned by his employer that any repetition of the event would lead to his discharge. Subsequently, the employer made an arrangement through which it employed high school girls in a learning program. When it became known to the employer that from time to time the claimant made statements of a sexual nature to some of these employees, he was discharged.

Some of the female workers believed that the claimant's discharge was too harsh a penalty.

HELD: The work place is a place where work is performed. It is not a place where one makes sexual arrangements. A worker who does so does so at his peril. Whatever interferes with the normal operation of the employer's business damages the best interest of the employer.

Even if the conduct is not patently offensive, amounting only to excessive conversation, if it is established that the worker persisted in such conduct despite warnings or reprimands, his discharge will be for misconduct.

In the instant case, it was immaterial that some of the female workers considered the claimant's discharge too harsh a penalty. The claimant had been warned. His persistence in making comments of a sexual nature that had nothing to do with his work constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR19872/6-7-91**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Harm**
CROSS-REFERENCE	**None**

The claimant was a cashier working in a convenience store that sold sandwiches, pop, cookies, etc. The store had a rule that unsalable foods were to be either thrown away or purchased. The claimant had never been warned for violating this rule.

A customer ordered three cookies, at a cost of 35 cents each. A fourth cookie stuck to the three cookies, so that half of that fourth cookie went to the customer. After the customer left, the claimant picked up the remaining, unsalable half cookie and ate it. She was fired because she did not pay for it.

HELD: Misconduct requires that, in the absence of a warning or explicit instruction, an individual's conduct result in harm. Here, the cookie was ruined, unsalable, and had no value. There was no harm.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Adams v. Ward*, 565 N.E. 2nd 53 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Awareness of Rule**
CROSS-REFERENCE	**None**

The claimant was a janitor whose duties included cleaning locker rooms where employees changed out of dirty uniforms after working with printers ink. Those employees were to place their dirty uniforms in a laundry bin. There was also a trash bin. One day, the claimant found two very dirty, ink-stained uniforms in a pile of trash and threw them into the trash bin. The next day, he was fired.

The employer contended that because there was a laundry bin it was implicit that all uniforms be placed in that bin to be washed and reused.

The claimant stated that, although he was aware that there was a company policy of keeping a separate bin for ink-covered uniforms to be laundered, he believed that the two very dirty uniforms were in the trash pile because they were supposed to be discarded.

HELD: Misconduct requires that there be a violation of a reasonable rule or policy. A rule or policy need not be expressly set forth; it may be implicit. Still, it is not reasonable unless a worker knows, or should know, of its existence.

Here, there was no rule or policy clearly articulated that all soiled uniforms were to be placed into the laundry bin. Nor was it implicit, just because there was a laundry bin, that all soiled uniforms were to placed into that bin, as opposed to the trash bin. It would be just as reasonable to expect that, at some point in time, a uniform would have no further value to the employer, at which point it would be discarded or destroyed.

There was no misconduct because the employer failed to establish that it had a rule or policy of which the claimant should have been aware.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Caterpillar v. IDES*, 780 N.E. 2d 497, 313 Ill. App. 3d 645 (2nd Dist. 2000)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Willful Violation/Reasonableness of Rule/Unwritten Rule/Harm**
CROSS-REFERENCE	**MC 255.1, Insubordination, Disobedience; MC 390.25, Relations with Fellow Employees, Annoyance of Fellow Employees (Sexual Advances)**

The claimant was employed as a manager with the employer, and participated on the employer's diversity council. The diversity council met to discuss, among other things, gender issues in the workplace including sexual harassment and the employer's sexual harassment policy. The employer charged the claimant with engaging in unwelcome sexual advances and other harassing behavior toward a co-employee and with harassing the co-employee's boyfriend, who was also an employee of the employer. The claimant was discharged for disobeying an order because he continued to engaged in the harassing behavior after being told to stop, for harassing the co-worker and her boyfriend, and for misuse of company resources because he sent personal e-mails to the co-employee.

A Hearings Referee found the claimant to be ineligible for benefits under Section 602A of the Act because he was discharged for violating the employer-s sexual harassment policy and for misconduct connected to his work. The Board of Review reversed. The Board found (1) the employer told the claimant to stop seeing the co-employee, (2) the claimant was terminated because he would not stop seeing the co-employee, and (3) most of the claimant's conduct with the co-employee took place outside of work, and concluded (1) the contention that the claimant was discharged for misuse of company resources was without merit, (2) there was insufficient evidence to show the claimant harassed the co-employee's boyfriend, and (3) the claimant's disregard of the order to stop seeing the co-employee was not willful.

HELD: The Appellate Court reversed the Board and found the claimant ineligible for benefits under Section 602A. The Court observed that an employee's act of misconduct is willful if he is aware of a company rule and then disregards that rule. The Court, noting there was no evidence the claimant was insane or acted involuntarily when he disobeyed the direct order to stay away from the co-worker, concluded the claimant's disregard of the order was willful. The Court also concluded the order was reasonable since standards of behavior an employer has a right to expect constitute reasonable rules and policies. The Court noted it made no difference whether a rule or policy is written or otherwise formalized since the existence of a reasonable rule or policy need not be proved by direct evidence, but may be determined by a commonsense realization that certain conduct intentionally and substantially disregards an employer's interests, and concluded an employer has a right to expect an employee to comply when he is expressly ordered to stop making unwanted contact with a co-worker. Finally, the Court reasoned the element of harm was satisfied because the claimant disobeyed a direct order to stay away from the co-worker, and alternatively because actual harm was caused by the claimant's conduct as it hindered the co-employee's ability to perform her job. It is well established that depriving an employer of an employee's services causes harm to the employer within the meaning of Section 602A of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Caterpillar v. Fehrenbacher*, 286 Ill. App. 3d 614 (2nd Dist. 1997)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Reasonableness of Rule; Governing Behavior in Performance of Work**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 475.05, Union Relations**

The claimant was employed as a lathe operator with the employer. The claimant placed a sign in the window of his truck which said "Support S-55 Stop Scabs From Taking Union Jobs." When the claimant parked his truck in the employer's parking lot he was asked twice to remove the sign because if violated the employer's rule prohibiting the display of the word "scab" anywhere on the employer's property. The claimant refused to remove the sign and was discharged. The Board of Review ruled that displaying the sign with the word "scab" was not misconduct under Section 602A because the employer's rule was not reasonable. The Circuit Court reversed the Board because of a federal appellate court decision which upheld the authority of an employer to ban the display of the word "scab" in the workplace.

HELD: The claimant's peaceful display of the sign with the word "scab" outside the workplace was not misconduct under Section 602A because the employer's rule prohibiting the display of the word "scab" anywhere on the employer's property was not reasonable. The federal appellate court decision relied on by the Circuit Court involved a restriction only on displays in the workplace during working hours, and was premised on the theory that the display of the word "scab" in the employer's plant would disrupt production. The relationship between displays and disruptions in production is greatest when the displays occur at the same time and place as the production. Court decisions subsequent to the federal appellate court decision have struck down employer rules banning the display of inflammatory words and union insignia anywhere on an employer's property. In addition, other court decisions have recognized that strong words such as "scab" are commonplace in labor disputes and may be protected pro-union speech. Restrictions on such protected speech require "special circumstances," and there is no evidence of any "special circumstances" in the record.

The claimant's alleged misconduct was not connected to his work because the placement of the sign in the window of his truck occurred outside the claimant's actual place of work and did not relate to the performance of his job. In addition, the employer's rule did not govern the claimant in the performance of his work because the rule as applied to the claimant only governed his use of the employer's parking lot, which under the facts in this case was only an adjunct to the performance of his work.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Farmers State Bank v. IDES*, 576 N.E. 2d 532 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Awareness of Rule**
CROSS-REFERENCE	**MC 490.05, Violation of Law**

Farmers Bank kept a special drawer, designated "drawer five," as an accommodation to customers. Customers could write checks that would ordinarily result in overdrafts, except, checks put in drawer five would not immediately be debited to the customer's checking account. They would be kept in drawer five until the customer deposited the necessary amount, usually within a matter of a few days. Aside from customers, there were employees, officers, and directors of the bank who used drawer five to prevent overdrafts in their personal checking accounts.

The claimant was an assistant cashier with no supervisory responsibilities. She discovered that a fellow employee put three personal checks, totaling $12,000, into drawer five, and that the checks had been there for at least two weeks. Another six days went by before the claimant reported this to management.

Farmers Bank fired the claimant for delaying in reporting the misapplication of funds. The bank cited an Illinois statute requiring the bank to report any misapplication of funds within 48 hours of discovery.

HELD: There is no misconduct unless an individual violates a reasonable rule. A rule is not reasonable unless it provides guidelines that are, or should be, known by the worker.

Here, the bank had no formalized rules concerning the duration of time a check could be held in drawer five; it was just customary that checks would be covered within a few days. Further the statute cited applied to management's reporting requirements, not the claimant's. Therefore, there was no basis for concluding that the claimant should have been aware of rule or law regarding a time in which to report the misapplication of funds.

In this case, the claimant's delay in bringing the matter to management's attention may have amounted to poor judgment, it did not violate a reasonable rule, as misconduct under Section 602A requires.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE ***Katten Muchin and Zavis v. IDES*, 279 Ill. App.794 (1st Dist. 1996)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Cumulative Rule Violations**
CROSS-REFERENCE **None**

The claimant was employed as a paralegal in the employer law firm's docket department. The claimant's personnel file contained four memoranda from his supervisor dated between May 21, 1991, and September 23, 1991, addressing various employer rule infractions, including failure to comply with docket procedures, rudeness to other staff, tardiness (for which the claimant was placed on 30-days' probation), poor work attitude and product, and unwillingness to cooperate with the employer's policies and procedures. The claimant was discharged on September 25, 1991.

The Board determined that misconduct as defined under Section 602A requires a *final* willful or deliberate act. The Board found the evidence failed to establish a proximate cause or occurrence that resulted in the claimant's discharge, and concluded the claimant was discharged for reasons other than misconduct connected to his work. The Circuit Court remanded, listing five questions for the Board to address in a supplemental decision. In the supplemental decision the Board answered the five questions, finding: (1) the claimant's tardiness, failure to follow office procedure, and attitude toward others were not willful or deliberate; (2) the facts alleged by the employer were not established by witnesses with personal knowledge; (3) the claimant did not violate any procedures after receiving a warning on May 21, 1991; (4) the claimant's tardiness did not continue after being warned on July 15, 1991; and (5) the claimant had been placed on 30-day's probation for excessive tardiness on July 15, 1991, and had not been placed on probation at any other time for any other infractions. The Board held that, because Section 602A requires a discharge *for* misconduct, the Board must look to the last act precipitating a discharge to determine the cause of the discharge, and again concluded the claimant was qualified for benefits because he was not discharged for misconduct connected with his work. The Circuit Court affirmed, finding section 602A requires a triggering event or proximate cause, and noting the Board found claimant's testimony credible and the employer's evidence insufficient to contradict the Board's conclusion.

HELD: Section 602A misconduct does not require a showing of a particular incident of a rules violation that triggers an employee's discharge. Since the Section 602A definition of misconduct includes *repeated* rules violations following a warning, Section 602A misconduct may result from cumulative rules violations taken as a whole. Therefore, Section 602A misconduct can be premised on either a particular incident of a rules violation that triggers an employee's discharge, or the employee's cumulative rules violations taken as a whole. Reversed and remanded to the Board for a determination whether the claimant's cumulative rules violations constituted misconduct under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE ***Kiefer v. IDES*, 266 Ill. App. 3d 1057 (1st Dist. 1994)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Harm**
CROSS-REFERENCE **MC 485.25, Other Work**

The claimant was employed as a marketing associate and assistant to the president of the employer, a PPO which offered discounts to persons who purchased health insurance from Association Life Insurance Company ("ALIC") and who obtained healthcare from members of the employer PPO. The employer was not itself an insurance company. The claimant was also licensed to sell health insurance in Illinois, and sold health insurance for ALIC. In connection with her sales of health insurance, the claimant created a form called a Request For Quote. The heading on the form included the names of both the employer and ALIC. The claimant sent the form to a group of dentists who were members of the employer PPO in order to gather information for providing them a health insurance quote from ALIC. The employer's president discharged the claimant upon learning she had included the name of the employer in the heading on the form.

The Board held the claimant had been discharged for misconduct under Section 602A of the Act because she had wilfully and deliberately distributed misleading information about her employer, its services and products, to third parties to the employer's detriment. The Circuit Court affirmed the Board, and the claimant appealed.

On appeal, the employer argued the claimant's conduct potentially obligated it to pay insurance claims submitted by the dentists' employees, and this threat of future financial loss caused it harm. The employer also argued the claimant's use of the employer's name on the form potentially subjected it to monetary sanctions for violating state insurance laws, and potentially damaged its reputation after customers who were mislead by the form learned the employer was not an insurance provider.

HELD: The claimant did not engage in misconduct as defined under Section 602A of the Act because the claimant's conduct did not potentially harm the employer. The employer conceded it suffered no actual harm, and it's claimed risk of future harm is nothing more than a remote possibility. The claimant sold no insurance policies using the form, so the employer had no risk of future contractual liability caused by the claimant. Further, no evidence shows that claimant's one-time use of the employer's name on the form caused threats of monetary sanctions or loss of goodwill that were ever likely to evolve into actual threats. Courts that have held a threat of potential harm to constitute "harm" under the Act considered threats that were real and impending, not threats that were remote and speculative possibilities such as those in this case.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Nichols v. IDES*, 578 N.E. 2d 1121 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Reasonableness of Rule**
CROSS-REFERENCE	**None**

The claimant was a maintenance worker who in past seasons, in addition to other duties, cut grass. This season, other maintenance workers were assigned that task until, one day, the claimant was asked to cut the grass. He refused and was fired.

The claimant argued that the employer's directive was outside the scope of his job duties and unreasonable as a matter of law; therefore, his refusal could not constitute misconduct.

HELD: Section 602A defines misconduct in pertinent part as a violation of a reasonable rule governing the performance of work. If an individual is directed to perform work outside his job duties, that directive might be unreasonable. However, the fact that an individual is not personally assigned a task for some time does not mean that it is not within the scope of his job duties. Here, the task was within the scope of his job duties as a maintenance worker. His refusal to do his work constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Glasper v. Board of Review*, 578 N.E. 2d 254 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Reasonableness of Rule**
CROSS-REFERENCE	**None**

The employer's rule provided that:

> Any employee exhibiting behavior which leads management to suspect that he/she is under the influence of a mind altering substance will be sent immediately to the clinic for a drug/alcohol screening test. Positive results or refusal to take such test will result in immediate dismissal.

The claimant was seen coming out of a liquor store during lunch break. When he returned to the office his eyes were glassy and his speech was slurred. His supervisor asked him to submit to a drug test. The claimant refused and was fired.

On appeal, the claimant's only argument was that he was not intoxicated, that his eyes were glassy because of dust and that his speech was slurred because of a speech impairment.

HELD: Section 602A defines misconduct in pertinent part as a violation of a reasonable rule. Here, nothing in the record, including the claimant's explanations, detracted from the reasonableness of the employer's rule: it was related to the business, it was known to the claimant, and it was applied fairly (the claimant's condition would allow the employer to suspect that the claimant had been drinking).

The claimant willfully violated a reasonable rule. He was discharged for misconduct and benefits were denied.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE ***Raymond A. Walthall v. IDOL*, 497 N.E. 2d 782 (1986)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Awareness of Rule**
CROSS-REFERENCE **MC 255.1, Insubordination, Disobedience**

The employer, a department store, had a rule that workers were to eat only in designated areas, such as the cafeteria or lounge, and away from work areas where eating would be both counterproductive and a health hazard. The claimant, a warehouseman, had never been warned about violating this rule.

He was on his 15-minute morning break. He moved away from his immediate work area and into a corner, where he peeled some hard-boiled eggs and began to eat them. His supervisor saw him doing this, informed him that he was violating the employer's rule, and directed him to eat in one of the designated areas. The claimant, however, continued to eat, quickly consuming the rest of his eggs.

HELD: A deliberate violation of an employer's known and reasonable rule constitutes misconduct.

In this case, initially, the claimant might not have been aware of the employer's rule. Therefore, at the time he began eating, there was no demonstration that his violation willful.

However, after he received a warning from his supervisor, he was certainly aware of the rule and knew that his supervisor expected his immediate compliance. At this point, he chose to disobey the supervisor's order. This disobedience was a deliberate violation of the employer's known and reasonable rule and constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **85-BRD-04821/6-27-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Awareness of Rule**
CROSS-REFERENCE **None**

The claimant had been employed as an Engraver for thirty-three years. Toward the end of a December vacation, he sprained his knee in an accident at home. He was unable to report to work when his vacation ended. Despite the fact that the claimant continued to be incapacitated throughout the month of January, he did not seek medical attention. He did, however, provide his employer with regular updates concerning his physical condition, insofar as it prevented him from working. The employer appeared to be understanding, and even suggested that the claimant take additional vacation time, to which he was entitled, and not return to work until mid-February. Upon the claimant's return to work in mid-February, he was informed that he would be required to furnish a medical statement, verifying the treatment he had received from a doctor. The claimant had never made any representations to his employer that he had seen a doctor. He explained that because he had not been treated by a doctor, he would be unable to furnish the required medical statement. Subsequently, the claimant was discharged, in accordance with a new rule, adopted by the employer the previous year, which required a doctor's statement whenever an employee was absent due to illness or injury.

The claimant testified that no one had been made aware of this new rule and even supervisory personnel had admitted that the new rule had not been brought to anyone's attention. The rule had not been posted on the employee bulletin board, where workers might have been put on notice as to the correct procedures.

HELD: In order for a disqualification to be imposed, it would have to be established that the claimant violated a known company rule. Knowledge can be actual or implied.

In the instant case, the evidence established that the claimant did not have actual knowledge of the rule. He did not know that the employer would require a medical verification of his injury. Nor was it established that the claimant should have known of the rule. The claimant complied with what he perceived, based upon his years of service, to be the employer's ongoing policy.

In the absence of knowledge by the claimant, his actions, or omissions, in failing to seek medical treatment or obtain medical verification, did not constitute misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **85-BRD-04514/6-18-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Awareness of Rule**
CROSS-REFERENCE **MC 15.15, Absence, Permission**

The claimant was employed as a Night Auditor for three years. Prior to taking a previous vacation, the claimant had sought approval from the Office Manager. This time, the claimant approached the Assistant Office Manager, and stated that she intended to take a vacation which would commence in the following days. The Assistant Office Manager requested that the claimant write down the dates that she wished to be off from work, then "never told me I could not go, so I assumed it was okay." The claimant then took her vacation, and was discharged, because it was determined that her vacation time had not been approved, in accordance with the employer's rule that approval come from the Office Manager after a review of a written request. The claimant testified that she was unaware of this formal procedure.

HELD: In order for a disqualification to be to be imposed, it would have to be established that the claimant violated a known company rule. Knowledge can be actual or implied. In this case, given the claimant's previous course of conduct, the Assistant Office Manager's equivocal response, and the short notice period between the request and desired vacation dates, the claimant knew or should have known that her job tenure was in jeopardy if she did not receive express approval. Therefore, she violated a known company rule.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **83-BRD-3233/3-29-83**
AUTHORITY **1./S-602A**
TITLE **Violation of Company Rule**
SUBTITLE **General**
CROSS-REFERENCE **None**

The hospital rule prohibited employees from smoking except at lunch time or on breaks in assigned areas. The claimant had been warned about smoking while performing his work and while not in the assigned area. On the date of his discharge, he was again discovered smoking in an unassigned area while performing his work.

HELD: It is the employer's right to establish reasonable rules for the conduct of its business. A hospital, in particular, has a substantial interest in protecting the health of its patients, and the restricted smoking rule was for this purpose. Therefore, the rule was reasonable. Having been warned previously, the claimant wilfully and deliberately violated a reasonable rule and was discharged for misconduct connected with his work. He is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **83-BRD-11433/10-7-83**
AUTHORITY **2./S-602A**
TITLE **Violation of Company Rule**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked a second shift as a nursing assistant and had to wait an hour for her "ride" before she could go home. Alleging that she worked on things that were available, she began putting in overtime for herself and was paid for this time for two pay periods until a time sheet audit uncovered an additional claim for a third successive pay period. She had not been given permission to work overtime.

The employer's handbook specifically stated that no employee was to work overtime without permission and that falsification of the work time sheet was grounds for dismissal. The claimant signed a receipt for the employer indicating she "had read and understood" the rules, and she admitted that her supervisor and other employees had told her that claiming unauthorized overtime was improper. The employer stated that, as a general rule, it does not give people permission to work overtime because it increases its operating costs. The claimant was discharged when her third pay period claim for overtime was discovered.

HELD: The claimant's violation of the employer's reasonable rule against the unauthorized accrual of overtime is misconduct connected with the work, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **83-BRD-11549/10-17-83**
AUTHORITY **3./S-602A**
TITLE **Violation of Company Rule**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was discharged for making personal telephone calls on the company phone in violation of a published company rule. She had been warned for a similar infraction a month earlier and was told that a repetition of the offense would result in her discharge.

HELD: The wilful refusal of an employee to comply with reasonable rules promulgated by the employer in the conduct of its business is a violation of the authority implicit in the agreement of hire. Moreover, where there has been a prior warning for the same offense with a threat of discharge, there is wilful disregard of the employer's interest which establishes misconduct connected with the work. She is ineligible for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **ABR-85-2212/8-21-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Significance and Substantial Harm**
CROSS-REFERENCE **None**

The claimant was employed as a department store Cashier for 5 years until her discharge in December, 1984, for violating her employer's rule, which was:

> Friends and relatives when shopping should make purchases from someone other than yourself to eliminate misunderstanding.

On December 8, 1984, the claimant was on her lunch break when her daughter entered the employer's store. Her daughter selected items to purchase, then stood in line, making her way toward the register. The register was being serviced by a Relief Cashier at the time. Then the claimant returned from her lunch break, and took over for the Relief Cashier. The claimant was unaware that her daughter had been standing in line until her daughter reached the register with her purchases. The claimant saw that all the other register lines were backed up, so she did not send her daughter to another cashier. The claimant attempted to contact her supervisor, who was unavailable. So, the claimant told her Relief Cashier to stand by and witness the transaction as the claimant rang up her own daughter's purchases. The purchases were rung up correctly.

The issue presented was whether the claimant's technical violation of her employer's rule constituted misconduct connected with her work within the meaning of Section 602A.

HELD: A discharge resulting from a violation of an employer's rule is not, per se, for misconduct connected with the work. Before a discharge for a violation of an employer's rule can be construed as misconduct, a minimum set of conditions must be satisfied; among them: the violation must be significant and the violation must tend to substantially harm the employer's interests. A violation is not significant unless it interferes with the employer's operations, or, if it is minor or trivial, is but the last in a series of actions, which, when viewed in their entirety, evidence a willful or wanton disregard of the worker's obligations to her employer.

In the instant case, there was no interference with the employer's operations. Nor had the claimant been willfully or wantonly disregardful of her employer's interests; there was no evidence that the claimant had previously failed to observe the rules or policies of the employer. Also, there was little or no possibility of substantial harm to the employer, since the claimant had taken steps to ensure that she would ring up the prices correctly, and did, in fact, ring up the prices correctly. Accordingly, the claimant's discharge as a result of violating her employer's rule was not for misconduct connected with her work.

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE **ABR-85-7438/3-13-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Social Relationships**
CROSS-REFERENCE **MC 85.05, Connection With Work**

The claimant, a 30 year old High School Teacher, was physically attracted to one of his 17 year old students, and asked her for a date. The student did not make a date with the claimant. The claimant persisted in trying to talk with her, including going to the student's home. Following his visit to her home, the student's mother complained to the high school principal, who issued a warning to the claimant: He was to have no more personal contact with the student.

Although the claimant did not subsequently meet or talk directly with the student, he did, upon occasion, go out of his way to drive past her home. Then, at the onset of summer vacation, he went to the student's work place, where he discussed with the student's work supervisor his (the claimant's) prospects of dating the claimant during the summer. Following this incident, the student's mother again complained to the claimant's principal, that her daughter was being harassed, whereupon the claimant was discharged.

HELD: Discharges because of social relationships outside of working hours and away from the employer's premises are not generally considered to be connected with the work, even though there may be a rule or order prohibiting such relationships. However, discharges arising out of a worker's private activities may be connected with the work if the acts in question are sufficiently identified with the work or tend to injure the employer's interests.

In the instant case, the claimant was a teacher. Both he and his employer, a school, were responsible to the community, in that they had been entrusted to look after the well-being of students - many of them minors. The claimant's conduct toward one of his students - a minor - was violative of the public's trust, and therefore tended to injure his employer's interests. The claimant's actions were inherently misconduct connected with his work, regardless of the fact that many of the claimant's acts took place outside of working hours and away from the employer's premises .

ISSUE/DIGEST CODE **Misconduct/MC 485.05**
DOCKET/DATE ***Crowley v. IDES*, No. 2-88-1168 (1989)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Reasonableness of Rule**
CROSS-REFERENCE **MC 255.304, Insubordination, Refusal to Work Overtime**

The claimant was a bus driver for a mass transit company. The employer received passengers' complaints about him.

The employer's policy was to discuss such complaints as soon as drivers got off work, so that the discussions would not interfere with bus driving schedules. The drivers' union did not object to this policy. Also, the discussions generally lasted no more than 2 to 3 minutes.

One day, when the claimant got off work, a supervisor asked him to discuss the passengers' complaints about him. The claimant refused to discuss the complaints, unless he was paid for his time. He was suspended for 5 days for refusing to discuss the complaints. In ensuing weeks, he continued to refuse to discuss the complaints, despite the employer's and union's urging. He told a supervisor: "If you wish to discuss complaints with me, either I want to be paid, or I'll see you when I am on the clock." Finally, the employer fired him for refusing to discuss the complaints the employer's way.

The claimant argued to the court that, under the Fair Labor Standards Act, applicable to mass transit companies, he was entitled to be paid for any time demanded of him by his employer, when that time was outside normal working hours and attendance was involuntary.

HELD: Misconduct is a disregard of a standard of behavior an employer has a right to expect from a worker. But a demand that an employee work in violation of a statute would be insistence on behavior the employer has no right to expect.

Misconduct is a disregard of a reasonable policy. A policy that requires a worker to violate a statute is unreasonable.

Here, the employer demanded that the claimant work in violation of federal statute. This was insistence on behavior the employer had no right to expect. It was an unreasonable policy. The claimant's disregard for that policy did not constitute misconduct.

(The court also reiterated that misconduct requires a willful or wanton disregard of the employer's interests. The court noted that, even if the claimant had been incorrect in believing that his employer had been violating a statute, if his belief was in "good faith," his actions would not constitute misconduct.)

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR-94-7167/9-21-94**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**"Governing Behavior ... In Performance of Work"**
CROSS-REFERENCE	**MC 85.05, Connection with Work**

The employer, a school district, had a rule (in Illinois' statutes) prohibiting it from retaining any worker convicted of public indecency. The claimant was a utility worker, whose work placed him in the presence of students ranging from kindergarten through 12th grade. He was discharged after being convicted of public indecency, for acts he committed while he was off-duty and off school premises.

HELD: "Misconduct" requires that an employer's rule or policy govern an individual's behavior in performance of his work. The term is not limited to actions that occur while a worker is on-duty or on the employer's premises. Off-duty actions that materially jeopardize the public's perception of the employer's services or a claimant's ability to properly and fully carry out his duties involve the performance of work. Here, the employer's rule governed the claimant's behavior in performance of his work. He was discharged for misconduct connected with his work.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	**ABR-95-6405/8-2-95**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Reasonableness of Rule**
CROSS-REFERENCE	**None**

The claimant became ill in the middle of her shift. She sought permission to leave work early, and permission was granted, conditionally: the claimant was instructed to stop by a co-worker's house and get the co-worker to work the remainder of her shift. The claimant was unable to get the co-worker to replace her. When the claimant failed to return to work that day, she was fired.

HELD: Section 602A defines misconduct in pertinent part as a violation of a reasonable rule or policy. Whatever the reasonableness or unreasonableness of the requirement that the claimant obtain a replacement, a rule or policy that requires an individual to report to work when she is ill is, itself, unreasonable. Here, the claimant was absent because she was ill, which is not misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.05**
DOCKET/DATE	***Wrobel v. Dept. of Employment Security*, 801 N.E. 2d 29, 344 Ill. App. 3d 533 (1st Dist. 2003)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Deliberate and Wilful Violation**
CROSS-REFERENCE	**MC 435.05, Tardiness, Reasons; MC 485.1,Violation of Company Rule, Tardiness**

The claimant was employed as a pressman with a large metropolitan newspaper. His shift started at 6:00 a.m. If he was going to be absent or late, he was required to call a supervisor by 5:00 a.m. The employer had a progressive discipline policy which called for discharge of an employee who accumulated six attendance infractions in a twelve month period. Failing to call in an absence or late arrival, or calling in late, counted as two infractions. The claimant had frequent absence and tardiness problems, including failure to make timely calls to a supervisor. After being told another attendance infraction could result in discharge, the claimant called in at 5:50 a.m. to tell his supervisor he would be late to work. The claimant was subsequently discharged.

The Board of Review adopted the referee's decision *in toto*, finding the final attendance infraction occurred because the claimant overslept when his electric clock-radio failed to go off due to an overnight power outage and his back up wind-up alarm clock failed to go off because he forgot to set it. The claimant also admitted the electric clock-radio's power could have been backed up with batteries but he never put any in. The Board concluded the circumstances causing the claimant's final attendance violation were within the claimant's ability to control or avoid, and held the claimant was properly discharged for misconduct under Section 602A of the Act because he did not take steps to ensure his alarm clocks would go off, even in the event of a power failure. The Circuit Court affirmed the Board's decision.

HELD: The Appellate Court reversed the Board, finding the claimant did not deliberately and willfully violate the employer's attendance rule when he committed the final attendance infraction. The Court reasoned the limitation of the definition of misconduct under Section 602A to deliberate and willful violations of an employer's work rule means that Section 602A misconduct is limited to acts by an employee that are intentional. The Court observed that misconduct under Section 602A requires a conscious act of an employee. The Court found that the claimant had only committed the unconscious act of oversleeping (when his alarm clock failed to go off due to the power outage). There was nothing in the record to suggest the claimant had chosen to oversleep, and the other actions of the claimant established by the record, such as his forgetting to set his back up alarm clock, only showed the claimant had been negligent or careless rather than acting intentionally (compare with 84-BRD-339/1-11-84, where misconduct was found when the claimant knew her alarm clock did not work properly but did nothing to rectify the problem).

The Court rejected the Board's argument that deliberate and willful conduct on the part of the claimant should be inferred because the claimant was not fired on the basis of the last infraction alone, but on the basis of his history of attendance infractions which had occurred with sufficient frequency to demonstrate willful violation of the employer's attendance rule. The Court found (1) the Board's argument was inconsistent with the factual findings and legal reasoning of the referee, which the Board had adopted *in toto*, since the referee had focused exclusively on the claimant's final attendance infraction, and (2) the record indicated the reasons for only one other attendance infraction, which had occurred when the claimant's electric clock radio failed to go off for unknown reasons, and therefore any or all of the other attendance infractions could have been the result of the claimant's negligence. The Court refused to infer a deliberate and willful violation of an employer's attendance rule based on the number of infractions alone.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	**ABR-85-2000/6-13-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Absence -- Notice**
CROSS-REFERENCE	**MC 15.1, Absence, Notice**

The employer had a rule, which stated, in pertinent part:

> Absence for three consecutively scheduled work days without making proper notification to the employee's supervisor, in accordance with department call-in procedures...can lead to...immediate discharge.

The claimant acknowledged that she had been aware of the rule.

On Saturday, April 28, 1984, the building in which the claimant resided burned down. The claimant's apartment, including her belongings, was destroyed. An infant died in the claimant's arms. On Monday, April 30, the claimant's first scheduled work day after the fire, she telephoned her employer, stating that she would be unable to report to work as scheduled because of her need to obtain new housing for herself and her daughter. The claimant assumed that her employer understood that she would return to work as soon as she had obtained new housing. On Monday, May 7, having obtained new housing, the claimant reported to work. She was informed that she had been discharged, effective May 3, for not reporting her absence for three consecutive days.

The employer contended that the claimant's failure to abide by the employer's known rule concerning absenteeism and notice constituted misconduct:

> [T]he claimant proved her ability to contact the employer regarding her absence by her call on the first day. The claimant also testifiedthat during the period in question, she was looking for new living quarters.

The Referee in his decision (allowing benefits without a disqualification under Section 602A) seems to state that the trauma the claimant had suffered was the factor that prevented her from calling. However, it was not stated that the claimant was under a doctor's care, or that she was otherwise disabled. Indeed, her ability to engage in an active search for housing would seem to preclude a decision that the trauma suffered was disabling.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. Where, however, unusual facts exist, what constitutes prompt notification may be other than the employer's rules, insofar as unemployment insurance eligibility is concerned. While, generally, infractions of an employer's attendance rules are held to constitute misconduct, absences, generally, are not caused by a fire destroying a worker's home or resulting in a child dying in a worker's arms, as happened in the instant case. Where no reasonable person would have concluded that an employer would discharge a worker, it could not be held that the worker's actions constituted misconduct. Accordingly, this claimant was discharged not for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.1**
DOCKET/DATE	**ABR-85-6603/1-29-86**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Temporary Cessation of Work**
CROSS-REFERENCE	**MC 310.2, Neglect of Duty**

The claimant, a Parking Enforcement Officer, had received warnings and a suspension for neglect of duty. On the morning of her discharge, she was warned about "going out of service" (shutting off radio contact) without giving headquarters her location and a reason. One hour after returning from lunch, and 10 minutes before a scheduled break, the claimant shut off radio contact with headquarters, without giving her location or a reason. She was discharged.

The claimant stated that an "emergency" had prevented her from complying with the employer's directive. The emergency was that she wished to go to the bathroom.

HELD: When a worker has been discharged because she ceased work without authorization, or because she left work early without authorization, the following factors should he considered:

1 - The worker's reason(s) for ceasing to work;

2 - The worker's reason(s) for failing to obtain authorization;

3 - The length of time the worker failed to work;

4 - The seriousness of the work cessation in terms of damage to the employer's interest.

In the instant case, the claimant did not have good cause for failing to notify the employer before "going out of service." Her proffered justification was contrary to the weight of human experience: Except for illness or physical dysfunction, neither of which the claimant cited to have existed, the need to go to the toilet does not come without warning. Such warning would have been sufficient for the claimant to have notified headquarters.

If a worker does not have good cause, either for ceasing work or failing to obtain authorization, then a determination of misconduct depends upon how substantially the worker has violated the standard of behavior expected of her. Generally, brief cessations of work do not constitute misconduct. However, if a worker has been warned about such behavior, or is aware that the cessation of work may be detrimental to the employer's interests, then the worker's actions will constitute misconduct.

In light of the warnings the claimant had to keep her employer informed, even for a short period of time, constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.1**
DOCKET/DATE ***Shirley London v. IDES*, No. 87-2098 (1988)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Tardiness**
CROSS-REFERENCE **None**

Most of the claimant's co-workers reported to work at or before 8 a.m. The claimant, who worked for the employer for 7 years, had permission to report later. Her family had only 1 car and she used it to transport her husband to work in Indiana and her daughter to school before driving herself to work.

After a succession of comptrollers complained that the claimant's schedule was "screwing up the operations," the employer circulated a memorandum stating that employees were required to report to work at 8 a.m. The claimant, although warned about tardiness, was never told, specifically, that her accommodation was rescinded. Months later, she was told to take 30 days to try to make necessary travel arrangements to insure her arrival by 8 a.m. She began to arrive at work between 8:20 and 8:30 and the employer acknowledged that there was continual improvement.

The 30 days passed and, one morning, the claimant notified the employer that she would be absent so she could attend to an unexpected personal matter. The employer suspended her for being absent, during a busy period, without giving notice prior to the day of absence.

The employer also decided that, if the claimant arrived later than 8 a.m. on the day she was to return from her suspension, she would be discharged. On the day of her return, the claimant reported to work at 8:06, due to road construction delays, and she was fired.

HELD: Tardiness constitutes misconduct only if it displays a worker's willful or wanton disregard for her duties or her employer's interests. Prior transgressions might demonstrate such a willful or wanton disregard. But, where prior transgressions themselves are not willful or wanton, it is similar to there being no record of prior transgressions.

In this case, the final incident appeared to be unavoidable. And an examination of prior incidents did not indicate willful or wanton behavior. The claimant's tardiness that preceded warnings was with good cause as part of an accommodation. During the lag period when the accommodation was being rescinded, her punctuality improved. There being no evidence of willful or wanton behavior, there was no misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.1**
DOCKET/DATE ***Loretta L. Wright v. IDES*, No. 86 L 50107 (1988)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Tardiness**
CROSS-REFERENCE **None**

The claimant was late to work 5 times between August, 1984 and February, 1985. (There was no evidence presented as to how late she was or why she was late.) Upon each occasion she received an oral reprimand, except that, in the last instance, she also received a written warning explaining that she would be terminated for her next offense.

On March 28, 1985, the claimant was scheduled to report to work at 7 a.m. Her car would not start, so she had to take a bus. The bus was delayed. The claimant arrived at work at 7:05 a.m. This resulted in her discharge.

HELD: Misconduct is conduct evincing such willful or wanton disregard of the employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of its employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability.

Tardiness without good cause, which is excessive in degree or frequency, constitutes misconduct.

In this case, the claimant's final incident of tardiness was unavoidable and for good cause. (Nor, for that matter, was there evidence that any of the previous incidents had been deliberate or excessive to any degree.) Therefore, the claimant's tardiness could not be construed as misconduct. The claimant was allowed benefits without disqualification under Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 485.1**
DOCKET/DATE **ABR-85-2543/9-20-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Absence -- Notice**
CROSS-REFERENCE **MC 15.1, Absence, Notice**

The claimant was employed as a Housekeeper, until August 21, 1984, when she became ill at work and was sent home. A doctor examined her that same day, and in the days following, and diagnosed her condition as ptomaine poisoning / bladder disease. The doctor recommended bed rest for 1-2 weeks.

The claimant spoke with her employer on August 22, 23, and 24, explaining that she was seeing her doctor for tests, but otherwise was confined to her bed, per the doctor's instructions. The claimant did not speak with her employer again, until August 31, when her supervisor telephoned. The supervisor informed her that she had been discharged because she had not continued to call in every day that she had been ill.

HELD: An employer has the right to expect its workers to come to work promptly as scheduled unless prevented from doing so by compelling circumstances. An employer has the right to expect prompt notification from the worker when the worker is prevented from reporting to work. Prompt notification often means notification as required by the employer under rules it has specifically promulgated. At the same time, the circumstances which bring about a worker's absence from work may, of themselves, constitute notice to the employer. Thus, the nature of a worker's illness may put the employer on notice that she will be absent from work for some time. To require daily notice in such instances, before the individual knows precisely when she will be able to return to her job, would not be of any assistance to the employer and would serve no practical purpose.

In the instant case, despite the claimant's failure to call in every day, the employer had knowledge of the nature of the claimant's illness, and had no reasonable expectation that her return to work would be imminent. Because the employer had already been put on notice, the claimant's discharge could not have been for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 485.1**
DOCKET/DATE **ABR-09-7323**
AUTHORITY **Section 602(A) of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Absence, Tardiness or Temporary Cessation of Work**
CROSS-REFERENCE

During the last year of her employment, the claimant’s attendance was spotty due to personal illnesses and the illness of her mother. The employer was aware that the claimant’s mother was ill and in need of the claimant’s care. The claimant began calling off of work on January 9, 2009 because her mother was ill and needed her care. The claimant called off of work everyday and spoke either to her supervisor or to the receptionist. On January 30, 2009, the employer sent the claimant a letter notifying her that she was being discharged for missing work for three weeks without calling in. The employer’s witness testified that the employer had contacted someone at the claimant’s home who told them that the claimant was caring for her mother.

HELD: The Board of Review found that the claimant was absent from work due to compelling family circumstances, *e.g.*, the need to care for her sick mother, and that she properly reported her absences to the employer. Under such circumstances, the Board could not say that the claimant’s absences from work were willful and deliberate as those terms are used in Section 602(A) of the Act. Consequently, the Board concluded that the claimant was discharged from work for reasons other than misconduct and was not disqualified from receiving benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.1**
DOCKET/DATE **ABR-08-8408**
AUTHORITY **Section 602(A) of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Absence, Tardiness or Temporary Cessation of Work**
CROSS-REFERENCE **None**

The claimant worked for the employer for about one year during which time he had received verbal warnings regarding his attendance. The claimant was discharged after being tardy for two consecutive days due to marital problems, of which the employer was aware. He notified the employer of his impending tardiness in a timely fashion in compliance with the employer's policy.

HELD: The Board of Review affirmed the Referee's decision that the claimant's tardiness under these circumstances was not a deliberate and willful violation of the employer's attendance policy and, thus, the claimant's behavior did not constitute misconduct as that term is defined in Section 602(A) of the Act.

ISSUE/DIGEST CODE **Misconduct/MC 485.15**
DOCKET/DATE **ABR-85-8835/5-12-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Assaulting Fellow Employee**
CROSS-REFERENCE **MC 390.2, Relations with Fellow Employees**

The claimant was employed as a Sorter until his discharge for assaulting a co-worker.

The employer submitted in evidence a copy of its "Rules of Conduct," which provided:

> It is a violation of Group I rules to provoke or participate in fights involving physical contact; or assaulting any person or provoking or inviting another person to assault anyone, the violation of which is subject to discharge for first offense.

The claimant contended that his discharge could not have constituted misconduct, because he had been unaware of the employer's rule.

HELD: Generally, a worker's discharge as a result of his violation of a known and reasonable company rule will constitute misconduct.

An employee's obligation not to engage in fights upon company time or property is inherent in all employment relationships; accordingly, it is not even necessary that there be a specific company rule against fighting. A worker is presumed to have knowledge that fighting violates a reasonable standard of conduct which the employer has a right to expect from its workers.

In the instant case, because the claimant should have known that fighting would result in his discharge, he was discharged for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.15**
DOCKET/DATE ***Meeks v. IDES*, 567 N.E. 2d 481 (1990)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Assaulting Fellow Employee**
CROSS-REFERENCE **MC 190.1, Evidence; MC 390.2, Fellow Employees**

The claimant, who worked in an office setting, was discharged after a fight with a fellow employee. At an appeal hearing, the employer did not produce any written rule or offer any testimony that fighting on the job was impermissible. The claimant contended that the employer did not satisfy all the required elements for misconduct under Section 602A because it did not prove ***by direct evidence*** that it had a "reasonable rule or policy."

HELD: Section 602A provides, in pertinent part, that misconduct arises from a violation of a "reasonable rule or policy." Whether a rule or policy exists need not be proven by direct evidence but may be determined by "common sense business practices." With the exception of some business ventures engaged in professional sports, any employer would obviously have a policy against physical violence. Here, there was an implicit rule against fighting. The "reasonable rule or policy" requirement of Section 602A was met.

ISSUE/DIGEST CODE **Misconduct/MC 485.2**
DOCKET/DATE **ABR-85-3359/10-2-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Clothing and Appearance**
CROSS-REFERENCE **MC 363.05, Personal Appearance; MC 485.8, Safety**

The claimant was employed as a Carpenter in a nuclear power plant. His job would require him to work in potentially radioactive areas, where the wearing of a securely fitted mask, to protect against contamination, was mandatory. So that the claimant's mask would fit properly, he was requested to cut off his beard. When the claimant refused to cut off his beard, he was discharged.

HELD: Employers have the right to prescribe certain standards of dress for their employees. Such standards may be prescribed because the employer wishes to maintain a certain "atmosphere," or appearance of neatness or cleanliness, or to protect employees' safety. A rule requiring the wearing of certain items deemed necessary for safety is generally reasonable, unless outweighed by special considerations, and a worker who is discharged for a willful violation of such a rule is generally discharged for misconduct connected with his work. In the instant case, the employer's need for safety measures outweighed the claimant's interest in maintaining his beard. The claimant's refusal to comply with his employer's reasonable safety regulation constituted misconduct connected with his work within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 485.2**
DOCKET/DATE **ABR-86-259/4-8-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Clothing and Appearance**
CROSS-REFERENCE **MC 363.05, Personal Appearance**

The claimant worked as a Porter in a bowling alley. While working on the day shift, he wore, per requirements, a red casual shirt. Before he began working on the night shift, he was informed that he would be required to wear a white shirt, red vest, and black bow tie. One night, the claimant reported to work not wearing the required attire. Although directed to do so by his manager, the claimant replied that he did not wish to "look like a clown." The claimant was fired.

HELD: Employers reserve the right to prescribe certain standards of dress and appearance for their employees. Such rules may be for the purpose of establishing a certain "atmosphere" in the establishment or for making employees easily identifiable and accessible, and are generally reasonable. A willful violation of such a reasonable rule may tend to injure the employer's interests, and therefore constitutes misconduct.

In the instant case, the claimant willfully violated his employer's reasonable rule. His actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.3**
DOCKET/DATE **ABR-87-2086/6-30-87**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Dishonesty**
CROSS-REFERENCE **MC 190.1, Evidence, Burden of Proof and Presumptions**

At the time of hire, the claimant signed a document, which read, in pertinent part:

> ...The undersigned hereby agrees and consents to submit to a lie detector test at any time...she might be requested to do so at the request of the employer.

The claimant worked in a store, in a department which had been experiencing theft problems. The claimant was transferred to a new department, and, shortly thereafter, the new department experienced missing funds. The claimant, together with other employees, was directed to take a lie detector test. The claimant refused to take the test. She was discharged.
At an appeal hearing, the claimant testified that she was not scheduled to work nor did she work on the day funds were discovered missing from her department. She denied misappropriating any funds.

The employer offered no evidence concerning any theft. But, the employer contended that, even if the claimant was not the person responsible for the missing funds, her refusal to submit to a lie detector test - in violation of the agreement at the time of hire - constituted misconduct.

HELD: A worker who is discharged because she has violated a known and reasonable rule is discharged for misconduct.

The fact that a worker knows of an employer's rule, or has consented at the time of hire to abide by an employer's rule, does not undo any fundamental unreasonableness of that rule.

Polygraph tests shift the burden from the employer (to establish guilt) to the worker (to establish innocence). Polygraph results have not been shown to be reliable. Polygraph results are inadmissible in a court of law. Therefore, it cannot be concluded that a requirement to submit to a polygraph test is a reasonable one; and, accordingly, a worker who is discharged solely on the basis of refusing to take a polygraph test is discharged for reasons other than misconduct.

In this case, the employer did not possess any tangible, competent evidence bearing on the claimant's alleged involvement in any misappropriation of funds. She was discharged solely upon the basis of her refusal to submit to polygraph testing, which alone did not prove dishonesty or constitute misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.45**
DOCKET/DATE ***Overstreet v. IDES*, No. 86-2642 (1987)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Intoxication and Use of Intoxicants**
CROSS-REFERENCE **MC 270.05, Intoxication and Use of Intoxicants**

The claimant was a Bus Driver. She took sick leave from January 30, 1985 to March 15, 1985. Because she had been on sick leave for more than 7 days, she was required by her employer's policy to submit to a medical examination upon returning to work. The examination included blood and urine tests which, when analyzed, indicated the presence of cocaine. Upon receipt of this information, the employer removed the claimant from service and required her to undergo a second test, the result of which also indicated the presence of cocaine. On March 20, the Claimant was discharged from her job and referred to a rehabilitation program. The program was to run for a minimum of 30 days. The claimant, during the course of the program, filed for unemployment insurance benefits.

The claimant admitted that the test results were accurate. But she argued that she had not used the narcotics at work. Upon review, she added that, since the time of the occurrence, she had successfully completed the program and had refrained from the use of narcotics.

HELD: Misconduct has been defined as conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to her employer.

Reporting to work under the influence of narcotics, where it shown that being under the influence might impact upon the ability to perform one's work, constitutes misconduct, irrespective of whether the actual use of the narcotic is at or prior to reporting to work. In this case, the claimant repeatedly used narcotics, and it was reasonable to conclude that she was under the influence of such narcotics after she had reported back to work. The claimant was a bus driver, and her use of cocaine prior to reporting for work as a bus driver constituted a deliberate violation of her employer's policy and indicated a disregard of the standards of behavior which the employer had the right to expect. What she did subsequent to the work separation (successfully completing a rehabilitation program) was irrelevant. The claimant was discharged for misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	***Profice v. Board of Review*, 481 N.E. 2d 1229 (1985)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Use of Intoxicants**
CROSS-REFERENCE	**MC 270.05,Intoxication and Use of Intoxicants**

The claimant worked for the CTA as a Bus Servicer. Although she was not a bus driver, her duties included the driving of buses from location to location in the employer's yard, and fueling those buses.

Her foreman was looking for another worker, and was walking toward the women's locker-room, when he observed the claimant exiting the door to that room. Still looking for the other worker, he knocked on the door. When the worker opened the door, he smelled the aroma of marijuana smoke. He reported this to a supervisor.

At an appeal hearing, the supervisor testified that he, too, smelled the odor of marijuana smoke in the women's locker-room. On the locker-room bench, he found half a marijuana cigarette and drug paraphernalia. The claimant and her co-worker were called into the supervisor's office. Marijuana was found in the worker's purse. The supervisor testified that both had "glassy eyes." Subsequently, the claimant tested positive for THC, the primary chemical element of marijuana.

Although the claimant admitted that she had smoked marijuana, she stated that she did so off-duty and denied doing it on the job. She also contended that, because she was a Bus Servicer, not a driver, she could not have harmed her employer or anyone else, even if she had been under the influence of marijuana while at work.

HELD: A discharge for using intoxicating narcotics on the job, or for reporting to work in an impaired condition due to the use of narcotics, is a discharge for misconduct.

In this case, the evidence established that the claimant was in a room with a worker who kept marijuana in her purse, the strong odor of marijuana was present in the room, marijuana cigarette and related paraphernalia were found in the room, the claimant manifested signs of having smoked marijuana recently, and she tested positive for THC. Despite the claimant's denial, the Board of Review's decision that the claimant used marijuana (and was under its influence) during working hours was supported by the manifest weight of the evidence. Further, the claimant did drive buses and did use flammable liquids while under the influence of marijuana. This did pose a danger to the CTA, co-workers, and others. This was a discharge for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.45**
DOCKET/DATE **ABR-85-4255/8-28-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Intoxicants, Use of**
CROSS-REFERENCE **None**

On Christmas Eve, 1984, the claimant, an Assistant Butcher, was discharged for being under the influence of alcohol during working hours. He had previously received warnings for being intoxicated at work, including on the previous Thanksgiving and Christmas Eve.

HELD: A worker who is discharged for violation of an employer's rule or order regarding the use of intoxicants on the employer's premises and on company time is generally discharged for misconduct connected with his work.

In the instant case, the evidence established that, notwithstanding the fact that it was Christmas Eve, the claimant knew or should have known that being under the influence of alcohol during working hours was a prohibited act. The claimant's actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.45**
DOCKET/DATE **ABR-86-1900/7-23-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Possession of Controlled Substance**
CROSS-REFERENCE **None**

The claimant was arrested in the employer's parking lot, where he was found to be knowingly in possession of marijuana. He was discharged for violating the employer's rule prohibiting the possession of illicit drugs on the employer's premises.

HELD: A rule concerning the possession of illicit drugs on the employer's premises is generally reasonable, and, accordingly, a worker who is discharged for the violation of such a rule is discharged for misconduct. In the instant case, because the evidence showed that the claimant was knowingly in possession of an illicit drug on the employer's premises, his discharge was for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.45**
DOCKET/DATE **ABR-85-9186/5-12-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Intoxicants, Use of**
CROSS-REFERENCE **MC 270.05, Intoxication and Use of Intoxicants**

The claimant had received warnings concerning bringing alcoholic beverages into the employer's plant, being under the influence of intoxicants at work, and the consumption of alcohol in general, resulting in his participation in employer programs for alcoholism.

On his final day of work, he was attempting to enter the employer's plant with an open soft drink can. Pursuant to the employer's rule, which required employees to submit to an examination of articles they were attempting to bring into the plant, the security guard at the gate asked the claimant to permit her to examine the contents of the can. Instead of turning over the can, the claimant threw it into a parking lot. The can was later retrieved and examined by the employer's personnel and the claimant was discharged.

The claimant contended that he suffered from the disease of alcoholism, and, because his discharge resulted from the effects of the disease, it could not have been a discharge for misconduct.

HELD: Generally, an individual who is discharged for violating a known and reasonable company rule is discharged for misconduct. In such cases, the individual is discharged because he has violated a standard of conduct which an employer has the right to expect from its workers, and not because of the lack of suitable work.

In the instant case, the employer had promulgated a reasonable rule requiring employees to submit to an examination of articles they were attempting to bring into the plant. The claimant was aware of the rule. The claimant was discharged because he refused to permit the security guard to examine the contents of the article he was attempting to bring into the plant. Whether or not the can the claimant attempted to bring into the plant contained alcohol, the claimant violated the employer's rule.

Whether or not the claimant was an alcoholic, there was no showing that his alcoholism compelled him to refuse to permit the security guard to examine the soft drink can. There was no showing that his alcoholism compelled him to toss the soft drink can into a parking lot. There being no compelling reason for the claimant to violate the employer's rule, his violation of the rule constituted misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	**ABR-89-6042/8-28-89**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Use of Intoxicants (after prior violation)**
CROSS-REFERENCE	**MC 270.05, Intoxication and Use of Intoxicants**

The claimant was absent from work for 21 days; he had been hospitalized as part of an employer-sponsored drug and alcohol rehabilitation program. Following his return to work, he agreed that, as a condition of his continued employment, he would abstain from drug and alcohol use; to verify this, he was to submit to unannounced drug screens, for a period of 1 year.

One week after his return to work, the claimant tested negative for drugs.

Two weeks after his return to work, he tested positive for marijuana and cocaine; as a result, he was fired.

The question presented was whether the employer's drug policy including unannounced drug testing - was reasonable.

HELD: Section 602A defines "misconduct," in pertinent part, as a violation of a "reasonable rule or policy."

When a worker's use of drugs or alcohol impairs his work or causes him to be absent from work, it is reasonable for an employer to require, as a condition of continued employment (in lieu of outright discharge), that the worker submit to drug rehabilitation - including unannounced drug tests.

In this case, the scope of the employer's measures was reasonable and not unduly intrusive.

The claimant was discharged for misconduct and was ineligible for benefits under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	***Robinson v. IDES* (1994)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Intoxication and Use of Intoxicants**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 270.05, Intoxicants**

The employer had a drug-free workplace policy, which included drug tests for work-related injuries, and, if drugs were found, subsequent unannounced tests, then, if drugs were found, a discharge.

The claimant's job was spray painting cabinets and computers. He was an excellent worker. After he sustained a scratch on the job, he was required to take a drug test. He tested positive for morphine and marijuana. A year later, over a weekend, off the job, he attended a wedding reception, where he had a few lines of cocaine and smoked marijuana. The next day, when he reported to work, he was required to take an unannounced drug test. The test revealed traces of the drugs in his system and he was discharged. He was then denied unemployment benefits.

The claimant contended that the rule that resulted in his discharge was unreasonable because it had nothing to do with his work performance, which was excellent, but, rather, with his off-duty conduct.

HELD: Section 602A provides, in pertinent part, that "misconduct" means a violation of a "reasonable rule ... governing the individual's behavior in performance of his work."

The goal of a drug-free workplace and substance abuse policy is to create and maintain a work environment free from the adverse effects of using drugs. The fact that an individual is a good worker whose job performance is not yet affected by drugs does not render a drug-free workplace policy and disciplinary rules unreasonable.

Here, the employer's rule was reasonable. The claimant deliberately and willfully violated the rule. The claimant had been warned (and, therefore, harm was irrelevant). All the conditions for a discharge for misconduct under Section 602A were met.

ISSUE/DIGEST CODE	**Misconduct/MC 485.45**
DOCKET/DATE	**ABR-97-6027 / 7-30-97**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Use of Intoxicants Off the Job**
CROSS REFERENCE	**MC 85.05, Connection with Work; MC 270.05, Intoxicants**

The claimant worked as a craps dealer on a riverboat casino. Pursuant to company policy (and in accordance with federal regulations), he was administered a random drug test, which he failed, due to his use of drugs while off duty.

HELD: ABR-85-3809, previously contained in this Digest, holding that, in a particular fact situation, off the job use of drugs did not constitute misconduct, is hereby ***overruled***. The Board of Review now holds that, under certain circumstances, even if drug use occurs off the job, it constitutes misconduct. This is certainly true where the employer is governed by federal regulations which require the removal of an individual who tests positive for drugs.

ISSUE/DIGEST CODE	**Misconduct/MC 485.55**
DOCKET/DATE	**83-BRD-11551/10-17-83**
AUTHORITY	**2./S-602A**
TITLE	**Violation of Company Rule**
SUBTITLE	**Manner Of Performing Work**
CROSS-REFERENCE	**None**

The claimant was discharged for not following proper procedures in counting her cash receipts. The claimant has been warned for failing to follow the employer's written rule that cash drawers were to be counted by both the outgoing and the incoming managers at the change of a shift. The claimant was discharged after she again counted her receipts alone before the end of her shift and had no reasonable explanation for doing so.

HELD: The claimant was discharged for failing to follow the employer's reasonable instructions, behavior which could have resulted in substantial loss to her employer. Since she had been warned about the same offense and was aware of the importance of the procedure in maintaining control of cash receipts, she intentionally and deliberately failed to perform the work properly. She was discharged for misconduct connected with her work and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.55**
DOCKET/DATE	**83-BRD-12457/11-3-83**
AUTHORITY	**3./S-602A**
TITLE	**Violation of Company Rule**
SUBTITLE	**Manner Of Performing Work**
CROSS-REFERENCE	**None**

The claimant was discharged after he used vulgar and profane language while speaking to customers on the employer's premises. He was previously warned for being rude to customers.

HELD: The evidence established that the claimant carelessly and negligently repeated the use of vulgar or profane language while dealing with customers and in violation of a reasonable rule of conduct which the employer had a right to control. The discharge was for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.55**
DOCKET/DATE	**Livingston v. Department of Employment Security, 375 Ill.App. 3d 710, 313 Ill.Dec. 820, 873 N.E.2d 444 (1st Dist., 2007)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Manner of Performing Work**
CROSS-REFERENCE	**None**

The claimant worked as a Certified Nursing Assistant (CNA) in the employer=s nursing home. She was discharged for slapping an elderly resident in the face. The claimant denied slapping the resident. She testified that the resident was angry because she did not want to get up for breakfast. The claimant stated that she was afraid that the resident was going to hit her so she put her hand on the resident=s face. She admitted that it was not necessary to touch the resident=s face to calm her down, nor was it appropriate. A fellow CNA testified that when she walked by the resident=s room, she heard the resident yelling loudly, AStop it, stop doing that@. The co-worker did not hear the claimant say anything in response but observed the claimant strike the resident with the back of her hand. She also heard the slap. The co-worker reported the incident to the charge nurse. The claimant was denied unemployment benefits on the basis that her behavior constituted misconduct.

HELD: The appellate court found that the claimant acted wilfully and deliberately since, although she knew of the employer=s policy against slapping and/or inappropriately touching a resident, she went ahead and slapped an elderly resident in the face. The employer=s policy prohibiting such physical abuse of a resident was obviously reasonable. The court found, too, that the claimant caused actual harm to the employer's interest because the co-worker was taken away from her normal duties by reporting the incident to the charge nurse. The claimant's behavior also caused potential harm to the employer by placing the employer in jeopardy of violating state regulations prohibiting abusive treatment of nursing home residents, exposing the employer to tort litigation, and possibly damaging its business reputation.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	**83-BRD-6617/5-31-83**
AUTHORITY	**1./S-602A**
TITLE	**Violation of Company Rule**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**MC 490.2, Motor Vehicle Law under Violation Of Law**

The claimant worked for the employer as a school bus driver until she was discharged. The school district had specific rules and regulations pertaining to the operation of buses, and the drivers were to observe the rules of the road of the State of Illinois. The claimant admitted driving a bus containing student passengers through a railroad crossing when the warning gates were down and the warning lights were flashing.

HELD: The violation of State and school district driving rules evidenced intentional and wilful disregard of the employer's interests. Therefore, the claimant was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	***Zuaznabar v. IDES*, 257 Ill. App. 3d 354 (1st Dist. 1993)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rules**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**MC 485.05, Deliberate and Willful Violation, Harm/Warning**

The claimant was employed as a bus driver with the employer bus company. Two managers covertly followed the claimant while he drove his route, and testified that the claimant made two unauthorized stops, failed to report the unauthorized stops to the employer's central office, and allowed a passenger to cash a check during one of the unauthorized stops. They also testified that, although they did not "clock" him, the claimant drove too fast for conditions, and followed other vehicles too closely. All of these actions violated the employer's rules, and the claimant was discharged. At hearing the employer testified that during the claimant's eleven months with the employer the claimant had engaged in other incidents of unsafe driving and had received approximately five warnings alleging 14 infractions of the employer's rules. However, the employer offered no documents or other evidence to support its claims of prior misconduct by the claimant. The hearings referee held that the claimant deliberately and willfully violated the known and reasonable of rules of the employer despite repeated warnings, and found him ineligible for benefits under Section 602A of the Act. The Board affirmed the hearings referee, and the circuit court affirmed the Board.

HELD: The circuit court is reversed because the employer failed to prove that the claimant's alleged unsafe driving or unauthorized stops were deliberate or willful conduct, and that it suffered actual harm or gave the claimant explicit warnings about the conduct for which he was discharged. The employer did not produce any objective evidence that the claimant drove unsafely by exceeding the speed limit under the relevant conditions, or that the claimant acted more than negligently by stopping without authorization due to his physical necessity. In drafting Section 602A of the Act, the legislature intended that persons discharged for incapacity, inadvertence, negligence or inability to perform assigned tasks should receive unemployment benefits. In addition, the employer failed to prove it suffered actual harm from the plaintiff's conduct. A mere potential for injury is not enough to establish harm for purposes of Section 602A (compare to *Greenlaw v. IDES*, 233 Ill. App. 3d 446 (1st Dist. 1998)). The record also shows that the claimant did not receive prior warnings specific to the conduct for which he was discharged. Although the record supports the discharge of the claimant for numerous incidents of improper conduct, his discharge does not disqualify him from receiving unemployment benefits under Section 602A of the Act.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	**ABR-09-15206**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**MC-190.15: Evidence-Weight and Sufficiency**

The claimant was discharged on July 15, 2009 for speeding while transporting a patient. The employer's dispatch supervisor testified that the employer's Global Positioning System (GPS) tracked the claimants' vehicle, but he was not aware of the date the vehicle was tracked. The GPS system purportedly showed that the claimant had driven at speeds of 82 and 83 mph on July 14, 2009. The employer's human resources person testified that she was not aware of how the GPS system was calibrated and whether it is accurate from day to day. The claimant denied that she had driven over the speed limit.

HELD: The Board of Review found that the claimant's testimony denying that she had exceeded the speed limit was more credible than that of the employer's witnesses where (1) none of whom had first hand knowledge of the claimant's alleged speeding, (2) the employer's dispatch supervisor was unaware of the exact date that the employer's GPS system had tracked the claimant, and (3) the human resources person was unaware of how the employer's GPS system was calibrated and whether it was accurate from day to day. Evidence upon which a decision is based must be competent, credible, and of such a nature that reasonable people would rely upon it. Here, the evidence submitted by the employer was not insufficient to prove that the claimant was discharged for misconduct connected with the work.

ISSUE/DIGEST CODE	**Misconduct/MC 485.65**
DOCKET/DATE	***Hurst v. Department of Employment Security*, 393 Ill.App.3d 323, 332 Ill.Dec. 777, 913 N.E.2d 1067 (1st Dist., 2009)**
AUTHORITY	**Section 602(A) of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Motor Vehicle**
CROSS-REFERENCE	**Procedure/PR 400.05: Representation, general**

The claimant's position as a customer service technician required that he have a valid driver's license. The claimant was arrested for drunk driving. The employer's rule required that a worker report any arrest upon returning to work, but the claimant did not report the arrest until several days after his return, telling his supervisor that he was unaware of the rule. The record showed that he had received and read the employee handbook containing the rule and had attended a meeting, held two weeks before his arrest, at which the rule had been discussed. The claimant was subsequently discharged for failing to report his arrest to the employer.

HELD: Initially, the appellate court held that the claimant had waived the issue that the rule did not govern his behavior in the performance of his work and, thus, could not form the basis for a finding of misconduct by not raising this issue in administrative proceedings before the Referee or the Board of Review. Despite its ruling of waiver, the court found that the rule related to the claimant's work since the failure to report his arrest occurred at the workplace and had a direct effect on his ability to perform his job duties which required possession of a valid driver's license.

The court found that (1) the claimant's failure to adhere to the rule was deliberate and wilful since he had received and read the employee handbook containing the rule and had attended a meeting where the rule was discussed two weeks before his arrest; and, (2) the claimant caused harm by impeding the employer's ability to ascertain whether he had a valid driver's license, exposing the employer to potential liability for injuries caused by the claimant while driving on an invalid license when performing his duties, and negatively impacting the employer's interest in maintaining an orderly workplace. The court concluded that the Board of Review's decision that the claimant was disqualified from receiving benefits because his behavior constituted misconduct was not against the manifest weight of the evidence.

Lastly, the court found that the claimant received a fair hearing because the Referee did not prevent him from fully presenting his case and was not unobjective in conducting the hearing, even though she took a strong negative position on the plaintiff's claim that he was allowed to keep his old driver's license when he renewed it.

ISSUE/DIGEST CODE	**Misconduct/MC 485.7**
DOCKET/DATE	***Washington v. Board of Review*, 570 N.E. 2d 566 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Personal Comfort and Convenience (Sleeping)**
CROSS-REFERENCE	**MC 310.15, Manner of Performing Work**

The claimant, a secretary, was assigned to take minutes of a committee meeting. At the start of the meeting, she took an aspirin because she was suffering from a headache. During the meeting, she rested an elbow on the table and leaned her head against her hand. She dozed off and awoke 30 minutes later. She was discharged for sleeping on the job.

HELD: Misconduct requires "willful" behavior. Falling asleep on the job is willful only if an individual purposely takes a nap, or, knowing that she might fall asleep, fails to follow the employer's procedures (fails to inform the employer).

Here, nothing in the facts indicated that the claimant purposely took a nap or expected to fall asleep. She accidentally fell asleep. Accidents are not willful. There was no misconduct.

ISSUE/DIGEST CODE	**Misconduct/MC 485.7**
DOCKET/DATE	**ABR-85-6507/2-21-86**
AUTHORITY	**Section 602 of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Personal Comfort and Convenience**
CROSS-REFERENCE	**MC 602.05, Felony or Theft**

The claimant, a Licensed Practical Nurse, was discharged for placing personal, long distance calls - which the employer determined to be "excessive" - from the employer's telephone.

Both the Adjudicator and the Referee concluded that the claimant was discharged for theft, pursuant to the provisions of Section 602B.

HELD: Whether an individual commits a theft is not dependent upon either the quantity or value of property taken. An accusation that implies that some unspecified but lesser amount of property taken would be permissible is patently inconsistent with a finding of theft.

In the instant case, the claimant's "excessive" long distance telephone calls were undoubtedly placed at the employer's expense. But, for that matter, based upon the evidence presented, any personal long distance call she made would have been at the employer's expense (not to mention any personal local calls). Because the employer implied that some (an unspecified number of) personal calls were acceptable, it could not be concluded that the "excessive" personal calls constituted theft.

At the same time, the claimant's actions were cognizable under Section 602A of the Act. Whether or not an employer has an express rule on the subject, a worker knows - or should know that the work place is a place for work, not personal business. Further, a worker knows - or should know -that there are charges for long distance telephone calls, and that "excessive" calls of this nature can be expensive. In the instant case, the claimant should have known that her continuous use of the employer's telephone for personal calls was adverse to the employer's interests, and she could have foreseen that her actions would result in her discharge. She was discharged for misconduct within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 485.7**
DOCKET/DATE **ABR-85-7221/3-13-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Personal Comfort and Convenience (Taking Personal Telephone Calls)**
CROSS-REFERENCE **MC 310.05, Neglect of Duty**

The employer's rules provided that workers should make and/or accept personal telephone calls only during breaks or lunch hour, or in the case of emergencies. The claimant, an Apprentice Photo Re-toucher, had been warned to discontinue his practice of accepting personal telephone calls at his work station during business hours. Nonetheless, the claimant continued to receive personal telephone calls, until, finally, the employer discharged him for that reason. The claimant contended that the only reason he continued to accept personal phone calls was that the switchboard operator had put the calls through to him, and, therefore, he could not be held responsible for accepting the calls.

HELD: Excessive, non-work related (telephone) conversations which waste the employer's time and interfere with the normal operation of the employer's business may constitute misconduct. If the worker knows, or should know, that he should desist, then his actions will constitute misconduct. In the instant ease, the claimant had been put on notice, both by the employer's stated rule and by specific warnings. The claimant's contention that he did not have the ability to desist was without merit: He could have told his family, relatives, friends and acquaintances to call him at designated times, other than working hours. His actions constituted misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.7**
DOCKET/DATE ***Odie v. Department of Employment Security*, 377 Ill.App.3d 710, 317 Ill.Dec. 190, 881 N.E.2d 358 (1st Dist., 2007)**
AUTHORITY **Section 602(A) of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Personal Comfort and Convenience**
CROSS-REFERENCE **MC 310.15 Personal Comfort and Convenience**

The claimant, a certified nurse's assistance, was assigned to monitor approximately 25 residents in the employer's dayroom and to provide assistance as necessary, which required her to be awake and alert. Without informing anyone, the claimant, suffering from a toothache, took extra-strength Tylenol, which she believed to cause drowsiness, and fell asleep for 10 to 20 minutes. When awakened by a visitor and informed that a resident was shouting for help, the claimant told the visitor that the resident does that all the time and went back to sleep. The claimant knew that her job was in jeopardy due to previous infractions of the employer's policies, although she had never received a warning for sleeping on the job. The claimant knew that sleeping on the job was a cause for termination.

HELD: The court found that the claimant's violation of the employer's reasonable policy was deliberate and willful. The claimant was aware that her job was in jeopardy due to prior infractions of the employer's rules. Nevertheless, without informing anyone, she took a drug which she knew caused drowsiness and subsequently fell asleep. When awakened by a visitor who told her that a resident was shouting for help, her response was one of indifference rather than alarm and embarrassment, even though it was her responsibility to ensure the well-being of the nursing home's residents. Such circumstances demonstrate that the claimant's acts cannot be excused as being unintentional, thereby distinguishing the instant case from the court's prior rulings in *Washington v. Board of Review*, 570 N.E.2d 556 (1st Dist., 1991) and *Wrobel v. IDES*, 801 N.E.2d 29 (1st Dist., 2003).

ISSUE/DIGEST CODE **Misconduct/MC 485.8**
DOCKET/DATE **ABR-85-4050/10-4-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Knowledge of Safety Regulation, Actual or Implied**
CROSS-REFERENCE **MC 490.05, Violation of Law**

The claimant worked for a restaurant franchise as its Food Service Manager. He was discharged after it was reported that he had instructed employees to rinse and re-use disposable items, such as drinking cups and cup lids, even if they had been picked up off the floor.

At a hearing before a Referee, the employer testified that published company rules prohibited the re-use of single service items. The claimant testified that he was unaware of any such company rules. The employer testified that each manager who had attended its training course had received a copy of the rules. The claimant testified that, while he had attended the training course, he had never received a copy of the rules. The employer further testified that State rules and regulations on food service sanitation prohibited the re-use of single service items.

HELD: In order for a disqualification for a rule violation to be imposed, it would have to be established that the claimant violated a known rule. Knowledge can be actual or implied; that is, it is sufficient that the worker knew - or should have known - that his actions were not in compliance with the reasonable standards of behavior expected of him as an employee.

In the instant case, even if, as the claimant contended, he was unaware of precise company rules, he should have known that the practice of re-using disposable service items was an unsanitary practice, and, as such, was a violation of not only his employer's policy, but also of State regulations pertaining to sanitary requirements in the service of food to the public. The totality of the evidence established that the claimant's failure to comply with either his employer's rules or the State's regulations was inexcusable and constituted misconduct connected with the work within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.8**
DOCKET/DATE	**ABR-85-3359/10-2-85**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Safety Regulation**
CROSS-REFERENCE	**MC 363.05, Personal Appearance; MC 485.2**

The claimant was employed as a Carpenter in a nuclear power plant. His job would require him to work in potentially radioactive areas, where the wearing of a securely fitted mask, to protect against contamination, was mandatory. So that the claimant's mask would fit properly, he was requested to cut off his beard. When the claimant refused to cut off his beard, he was discharged.

HELD: Employers have the right to prescribe certain standards of dress for their employees. Such standards may be prescribed because the employer wishes to maintain a certain "atmosphere," or appearance of neatness or cleanliness, or to protect employees' safety. A rule requiring the wearing of certain items deemed necessary for safety is generally reasonable, unless outweighed by special considerations, and a worker who is discharged for a willful violation of such a rule is generally discharged for misconduct connected with his work. In the instant case, the employer's need for safety measures outweighed the claimant's interest in maintaining his beard. The claimant's refusal to comply with his employer's reasonable safety regulation constituted misconduct connected with his work within the meaning of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 485.8**
DOCKET/DATE	**84-BRD-3829/3-19-84**
AUTHORITY	**1./S-602A**
TITLE	**Violation of Company Rule**
SUBTITLE	**Safety Regulation**
CROSS-REFERENCE	**None**

The claimant had received written warnings about horseplay, and the employer held regular safety meetings with all employees. On the date of discharge, the claimant and co-worker pulled a ladder out of a pit as a joke with the idea of marooning other workers in the pit. Unbeknown to them, there were workers on the ladder, who fell to the bottom of the pit. No one was injured in the fall.

HELD: The claimant could have caused physical injury to his co-workers and a loss of time and money to the employer. The claimant's carelessness or negligence was of such a degree as to manifest intentional disregard of a standard of behavior which the employer had a right to expect of him and of the duties and obligations he owed to his employer. In light of the prior warnings, we must conclude that the claimant knew or should have known that such conduct could result in his discharge.

He was discharged for misconduct connected with his work and is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 485.8**
DOCKET/DATE **ABR-85-5864/1-16-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS-REFERENCE **None**

The employer promulgated a rule designed to reduce the number of industrial accidents believed to be related to the use of drugs by employees. That rule was that any employee suffering from the results of an industrial accident who was being treated at the employer's medical clinic, had to submit to a urine test to determine the presence of drugs.

The claimant was a Welder. Welders frequently suffer from an eye irritation known as "Welder's Flash," which is treated with eye drops. The claimant suffered from such an eye irritation, and requested that his employer furnish him with the necessary eye drops. The employer, which usually kept eye drops at the plant, had run out of them. It was suggested that the claimant report to the medical clinic to obtain them.

When the claimant reported to the medical clinic and picked up the eye drops, he was asked to furnish a urine sample. He refused. Upon his refusal, he was discharged, for having violated the employer's rule.

HELD: Generally, the violation of a reasonable safety rule will constitute misconduct connected with work. Whether or not a rule is reasonable is determined not only by its intended result or the procedures by which it is enforced, but by examining its application in terms of its scope as well.

In the instant case, the claimant did go to the employer's medical clinic for treatment of an industrial injury. But he should not have been subject to the employer's rule. His injury did not fall within the purview of the employer's policy; it was not the result of an accident, but was a normal result of welding.

Under this set of facts, the application of the employer's rule was unreasonable. The claimant was discharged for reasons other than misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 485.8**
DOCKET/DATE **ABR-84-FE-23/7-14-86**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Company Rule**
SUBTITLE **Safety Regulation**
CROSS-REFERENCE **None**

The claimant, a custodial worker, had been found in the employer's boiler room washroom, where she had propped the door shut with a chair. The claimant's action of propping the washroom door shut violated the employer's safety rule which stated that aisles, stairways, doorways, and emergency exits were to be kept unobstructed at all times. The employer stated that the claimant was discharged for her violation of that safety rule.

The claimant testified that she worked with 8 male custodial workers. She shared with them a common washroom off the boiler room. Due to the respective locations, whenever anyone opened the boiler room door, the washroom door would blow open, unless it was secured by a lock. The claimant stated that the lock on the bathroom door had been inoperable. Therefore, in order not to be disturbed while she was occupied in the washroom, the claimant had propped the chair against the door to prevent its blowing open. The claimant urged that, because, under the circumstances, her actions had been reasonable, her discharge for violating the employer's safety rule was not a discharge for misconduct.

HELD: A worker who is discharged for the violation of an employer's known and reasonable rule regarding safety regulations is generally discharged for misconduct connected with her work. However, if a worker has good cause for her violation of the rule, then no misconduct is involved. Good cause may be determined by balancing the employer's generally reasonable interest in its employees' safety (including the loss of time and money involved in accidents) against special considerations or reasonable accommodations, depending upon the facts of each case.

In the instant case, the employer had promulgated a rule which, on its face and in its general application, was reasonable. However, the claimant also had a legitimate interest in securing her privacy. Compelling circumstances, constituting good cause, required the claimant to secure the door. Therefore, even though there was a technical violation of the employer's rule, no misconduct was involved.

ISSUE/DIGEST CODE	**Misconduct/MC 485.8**
DOCKET/DATE	***Brodde v. Didrickson*, 645 N.E. 2d 990 (1995)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Company Rule**
SUBTITLE	**Safety Regulation**
CROSS REFERENCE	**MC 5.05, Definition**

When a carton-opening machine jammed, the claimant, a production supervisor, out of frustration at not meeting her production schedule, bypassed the machine's safety system by deactivating its safety shield, then reached into the machine with her hands, while it was still operating. She was advised this was a rules violation, but responded it was her safety alone at stake. The claimant suffered no injuries from her actions but was fired anyway.

HELD: Section 602A defines "misconduct" as the deliberate and willful violation of an employer's work rule which harms the employer. Here, the employer's rule was reasonable (designed to safeguard employees). The claimant's violation of the rule was deliberate (irrespective of her intent not to cause anyone else injury). Although the claimant escaped actual harm, the term "should be viewed in the context of potential harm and not in the narrow context of actual harm." The claimant could have been injured, and, by her example, she suggested to subordinates that safety rules could be ignored, which could also result in harm. This was misconduct under Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 490.05**
DOCKET/DATE	***Farmers State Bank v. IDES*, 576 N.E. 2d 532 (1991)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Violation of Law**
SUBTITLE	**Awareness of Law**
CROSS-REFERENCE	**MC 485.05, Violation of Company Rule**

Farmers Bank kept a special drawer, designated "drawer five," as an accommodation to customers. Customers could write checks that would ordinarily result in overdrafts, except, checks put in drawer five would not immediately be debited to the customer's checking account. They would be kept in drawer five until the customer deposited the necessary amount, usually within a matter of a few days. Aside from customers, there were employees, officers, and directors of the bank who used drawer five to prevent overdrafts in their personal checking accounts.

The claimant was an assistant cashier with no supervisory responsibilities. She discovered that a fellow employee put three personal checks, totaling $12,000, into drawer five, and that the checks had been there for at least two weeks. Another six days went by before the claimant reported this to management.

Farmers Bank fired the claimant for delaying in reporting the misapplication of funds. The bank cited an Illinois statute requiring the bank to report any misapplication of funds within 48 hours of discovery.

HELD: There is no misconduct unless an individual violates a reasonable rule. A rule is not reasonable unless it provides guidelines that are, or should be, known by the worker. A State law that is applicable to an employing unit's business may constitute an implicit rule that should be known by the worker.

Here, however, the statute cited applied to management's reporting requirements, not the claimant's. Therefore, there was no basis for concluding that the claimant should have known about it.

In this case, the claimant's delay in bringing the matter to management's attention did not violate a reasonable rule, as misconduct under Section 602A requires.

ISSUE/DIGEST CODE **Misconduct/MC 490.05**
DOCKET/DATE ***Employment Division v. Smith*, 110 S. Ct. 1595 (1990)**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Law**
SUBTITLE **Religious Practice that Violates Criminal Law**
CROSS-REFERENCE **MC 5.05, Misconduct; MC 270.05, Use of Intoxicants**

The claimants were discharged from their jobs at a private drug rehabilitation organization because they ingested peyote, a hallucinogenic drug. Generally, the use of peyote violated Oregon's controlled substance law. However, the claimants ingested the drug for sacramental purposes in connection with their Native American Church.

The question presented to the United States Supreme Court was whether the claimants could be disqualified for unemployment benefits for misconduct, or whether such a disqualification would violate the First Amendment's Free Exercise Clause.

HELD: Unemployment insurance benefits cannot be denied when the denial is specifically directed at religious beliefs (see, e.g., MC 5.05, *Hobbie*; RW 90.05, *Frazee*). However, benefits can be denied when there is a neutral, across-the-board, criminal prohibition on a particular form of conduct. Here, based upon Oregon's drug law, unemployment benefits could be denied.

ISSUE/DIGEST CODE **Misconduct/MC 490.05**
DOCKET/DATE **ABR99133/l-30-90**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Law**
SUBTITLE **Possession and Sale of Drugs Off the Job**
CROSS-REFERENCE **MC 85.05, Connect w/ Work; MC 270.05, Use of Drugs**

The claimant worked for the Department of Corrections as a youth supervisor. He was arrested, then convicted, for possession of a controlled substance with intent to deliver. Neither the drug incident nor arrest took place during working hours or on the employer's premises. Still, after he was convicted, the employer fired him.

HELD: To constitute "misconduct," an act must violate a policy that governs the individual's performance of work. Ordinarily, a distinction would be made between an individual's personal affairs and his obligations to his employer. However, a worker's obligations to his employer are broader in some occupations than in others, such as where the worker is a public servant and the public's trust and confidence are involved. Here, the claimant owed a duty to the public through his employer and he breached that duty. This was a discharge for misconduct.

ISSUE/DIGEST CODE **Misconduct/MC 490.05**
DOCKET/DATE **83-BRD-12654/11-9-83**
AUTHORITY **1./S-602A**
TITLE **Violation of Law**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was on layoff status and collecting unemployment benefits until he was called back to work by the employer. On August 30, 1983, he began to perform his usual work for the employer. However, he did not report his return to work to the local unemployment insurance office. In addition, from August 30, 1983, through September 25, 1983, the claimant simultaneously collected unemployment benefits and worked for the employer for wages. When it was discovered that the claimant collected unemployment benefits while working for the employer, the claimant was discharged.

HELD: The claimant's misrepresentation increased the employer's liability for payment of unemployment benefits at a time in which the employer was also paying the claimant for the work he performed. The claimant was discharged for misconduct in connection with his work, and he is ineligible to receive benefits.

ISSUE/DIGEST CODE **Misconduct/MC 490.05**
DOCKET/DATE **84-BRD-3047/2-29-84**
AUTHORITY **2./S-602A**
TITLE **Violation of Law**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was employed as a service technician for a telephone company. A criminal complaint was filed by a customer of the employer, and the claimant was convicted of soliciting the minor child of the customer while making a service call in the customer's home. The claimant was discharged after the conviction.

HELD: The claimant's act was clearly against the interest of the employer who might well have been subjected to a suit for civil damages. The claimant was discharged for misconduct connected with his work, and he is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 490.05**
DOCKET/DATE **ABR-85-4050/10-4-85**
AUTHORITY **Section 602A of the Act**
TITLE **Violation of Law**
SUBTITLE **Knowledge of Law, Actual or Implied**
CROSS-REFERENCE **MC 485.8, Violation of Company Rule**

The claimant worked for a restaurant franchise as its Food Service Manager. He was discharged after it was reported that he instructed employees to rinse and re-use disposable items, such as drinking cups and cup lids, even if they had been picked the floor.

At a hearing before a Referee, the employer testified that published company rules prohibited the re-use of single service items. The claimant testified that he was unaware of any such company rules. The employer testified that each manager who had attended its training course had received a copy of the rules. The claimant testified that, while he had attended the training course, he had never received a copy of the rules. The employer further testified that State rules and regulations on food service sanitation prohibited the re-use of single service items.

HELD: In order for a disqualification for a rule violation to be imposed, it would have to be established that the claimant violated a known rule. Knowledge can be actual or implied; that is, it is sufficient that the worker knew - or should have known - that his actions were not in compliance with the reasonable standards of behavior expected of him as an employee.

In the instant case, even if, as the claimant contended, he was unaware of precise company rules, he should have known that the practice of re-using disposable service items was an unsanitary practice, and, as such, was a violation of not only his employer's policy, but also of State regulations pertaining to sanitary requirements in the service of food to the public. The totality of the evidence established that the claimant's failure to comply with either his employer's rules or the State's regulations was inexcusable and constituted misconduct connected with the work within the meaning of Section 602A.

ISSUE/DIGEST CODE **Misconduct/MC 490.2**
DOCKET/DATE **83-BRD-6617/5-31-83**
AUTHORITY **1./S-602A**
TITLE **Violation of Law**
SUBTITLE **Motor Vehicle Law**
CROSS-REFERENCE **MC 485.65. Motor Vehicle under Violation of Company Rule**

The claimant worked for the employer as a school bus driver until she was discharged. The school district had specific rules and regulations pertaining to the operation of buses, and the drivers were to observe the rules of the road of the State of Illinois. The claimant admitted driving a bus containing student passengers through a railroad crossing when the warning gates were down and the warning lights were flashing.

HELD: The violation of State and school district driving rules evidenced intentional and wilful disregard of the employer's interests. Therefore, the claimant was discharged for misconduct connected with her work, and she is ineligible for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 490.2**
DOCKET/DATE **84-BRD-3454/3-12-84**
AUTHORITY **2./S-602A**
TITLE **Violation of Law**
SUBTITLE **Motor Vehicle Law**
CROSS-REFERENCE **None**

The claimant, a truck driver, was discharged when he received his fourth speeding ticket which resulted in the suspension of his chauffeur's license for six months. He alleged that the employer's scheduling required him to exceed the speed limit in order for him to obtain sufficient rest between runs. The employer stated that there was a company rule requiring drivers to leave for destinations in time to drive within the speed limits, and it denied "close" scheduling. Claimant did not file a grievance over the scheduling.

HELD: The claimant knew he was violating the law and the employer's work directives; if he felt that his trips were scheduled too closely together to allow for proper rest, he should have filed a complaint or a grievance. His termination resulted from misconduct connected with his work because he chose to disregard the law and his employer's rules. He is disqualified for benefits.

ISSUE/DIGEST CODE **Misconduct/MC 602.05**
DOCKET/DATE **83-BRD-12609/11-8-83**
AUTHORITY **1./S-602B**
TITLE **Discharge For Felony Or Theft**
SUBTITLE **General**
CROSS-REFERENCE **None**

The employer submitted a timely "Notice of Possible Ineligibility," which stated that the claimant was discharged for theft. The employer stated that the claimant misappropriated hospital property.

In a statement to the claims adjudicator (a representative of the Director of Labor), the claimant stated as follows: "...I did take a handful of individual packages of Sanka coffee from the ingredient room of the hospital, and I put them in my pants pocket...I took the Sanka for my mother who had been asking for it."

The claimant took approximately twenty packages of the Sanka coffee, which had been allocated for consumption by the employer's patients.

HELD: The Illinois Unemployment Insurance Act provides for a loss of benefit rights in unemployment insurance where a claimant is discharged because of the commission of a felony or theft in connection with his work, provided the employer notified the Director of such possible ineligibility in a timely manner, and one of the following has occurred:

1) the claimant has admitted his commission of a felony or theft to representative of the Director;

2) he has signed a written admission of such act and such admission has been presented to a representative of the Director;

3) such act has resulted in a conviction by a court of competent jurisdiction.

In this instance, the claimant admitted the commission of the theft to the claims adjudicator, who is a representative of the Director, and the employer filed a timely notice of possible ineligibility. The theft was connected with the work, and no benefit rights shall accrue to the claimant based upon wages earned for service rendered by the claimant prior to the date of his discharge.

ISSUE/DIGEST CODE **Misconduct/MC 602.05**
DOCKET/DATE **83-BRD-13407/11-21-83**
AUTHORITY **2./S-602B**
TITLE **Discharge For Felony Or Theft**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked as a security guard. On March 20, 1983, another security guard observed the claimant placing a television stand in the trunk of his car. He was arrested and convicted of a theft. The employer filed a timely protest alleging theft.

HELD: Section 602B, while not a criminal statute, is penal in nature, and imposes a forfeiture of rights which would otherwise have accrued on taxed employment. Accordingly, it is construed strictly. The conditions for application of Section 602B are as follows:

"First: There must be a commission of a felony or theft by the claimant in connection with his work for which the employer is not responsible;

Second: The employer must give timely notice to the Director of the possible application of this Section; and

Third: There must be a written confession by the claimant presented to the department, or an admission by the claimant of the act to a representative of the Director, or a conviction by a court of competent jurisdiction."

All of the above conditions were met. Therefore, the claimant was discharged for theft connected with the work, and no benefit rights shall accrue to the claimant based upon wages from any employer for services rendered prior to the date on which the claimant was discharged for the theft.

ISSUE/DIGEST CODE **Misconduct/MC 602.05**
DOCKET/DATE **ABR-85-7085/3-13-86**
AUTHORITY **Section 602B of the Act**
TITLE **Felony or Theft**
SUBTITLE **What Constitutes an Admission**
CROSS-REFERENCE **None**

In its timely Notice of Possible Ineligibility, the employer alleged that the claimant had been "discharged on the basis of consuming food which he had not paid for (stealing)." During a subsequent interview with the Claims Adjudicator (a representative of the Director), the claimant stated, in pertinent part:

> I did tell (the employer) that I had consumed a (food item) prior to paying for it...I was going to borrow the money from a co-worker to pay for the (food item), but before I could do this, (the employer) called me...

HELD: Section 602B provides for disqualification where a claimant has been discharged for the commission of a theft connected with work. One of the (disjunctive) conditions for such a disqualification is that the claimant has admitted the commission of a theft to a representative of the Director. For a claimant's statement to constitute an admission of theft, it must be inferred from that statement that there was not only a physical act of taking and carrying away the property belonging to another, but, concurrently, an intent to permanently deprive the rightful owner of that property.

In the instant case, the claimant admitted that he had taken the employer's property. The claimant's statement to the Adjudicator indicated that, at the time the claimant took the employer's property, he did not have sufficient funds to pay for it, nor had he even ascertained whether he ever would have sufficient funds, nor had he spoken with the employer about taking food prior to making payment. Therefore, it could have been inferred that, concurrent with the physical act of taking, the claimant had the requisite, objective intent to permanently deprive the employer of the merchandise in question. The claimant's statement set forth sufficient facts for the Adjudicator, and subsequently the Referee, to conclude that the claimant had been discharged for theft connected with his work within the meaning of Section 602B.

ISSUE/DIGEST CODE **Misconduct/MC 602.05**
DOCKET/DATE **ABR-85-1017/8-16-85**
AUTHORITY **Section 602B of the Act**
TITLE **Felony or Theft**
SUBTITLE **Theft - What Constitutes an Admission**
CROSS-REFERENCE **None**

In its Notice of Possible Ineligibility, the employer alleged that the claimant, a Cashier, had been stealing money from its cash drawer. Later, when the claimant spoke with a Claims Adjudicator (a representative of the Director), the claimant admitted that she had taken money from the cash drawer:

> The owner...allowed us (the claimant and her husband, the store manager) to borrow from the cash drawer and re-pay at payday. We had borrowed $60 and I handed the money (back) to him. I'm not responsible for shortages - nor did I steal any monies.

The Claims Adjudicator issued a determination, subsequently affirmed by the Referee, which imposed a disqualification under the provisions of Section 602B.

HELD: Section 602B provides for a disqualification where a claimant has been discharged for the commission of a felony or theft connected with work. One of the (disjunctive) conditions for such a disqualification is that the claimant has admitted the commission of the felony or theft to a representative of the Director. For a claimant's statement to constitute an admission of theft, it must be inferred from that statement that there was not only a physical act of taking and carrying away belonging to another, but concurrently an intent to deprive the rightful owner of that property.

In the instant case, although the claimant admitted utilizing the employer's funds, her statement to the Claims Adjudicator was that the employer had permitted the borrowing of funds and that she was only borrowing the money. The statement did not establish that the claimant intended to permanently deprive the employer of that money. Therefore, because the claimant's statement to the Claims Adjudicator failed to establish the requisite intent, it did not constitute an admission of theft, and, accordingly, the disqualifying provisions of Section 602B could not be applied.

ISSUE/DIGEST CODE **Misconduct/MC 602.05**
DOCKET/DATE **ABR-85-3983/9-9-85**
AUTHORITY **Section 602A of the Act**
TITLE **Felony or Theft**
SUBTITLE **Section 602A in lieu of Section 602B**
CROSS-REFERENCE **None**

The employer submitted a Notice of Possible Ineligibility, in which it alleged that the claimant had been discharged for theft connected with his work. The Claims Adjudicator issued a determination, allowing benefits to the claimant without disqualification under Section 602B, Felony or Theft, because the statutory requirements for such a disqualification had not been met: The claimant had not admitted an act of theft to a representative of the Director; no admission signed by the claimant had been submitted; the claimant had not been convicted by a court of competent jurisdiction.

The employer appealed that determination, and a hearing was held, at which the evidence established that the claimant had admitted, verbally, to his employer that he had taken property from the employer for his personal use. Based upon that finding, the Referee concluded that the claimant had been discharged for misconduct connected with his work and was subject to a disqualification under the provisions of Section 602A of the Act.

The claimant appealed that decision, contending that "theft" was cognizable only under Section 602B of the Act, and, that being the case, the Referee was precluded from rendering a decision that the claimant was subject to a disqualification under the provisions of Section 602A.

HELD: Section 602B of the Act is penal in nature as it cancels all wage credit earned by a worker on or prior to the date of his discharge. The Legislature has provided that this penalty of wage credit cancellation cannot be imposed unless certain conditions (previously cited) are met. If these conditions are not met, but the evidence establishes felony or theft, then the provisions of Section 602A of the Act are applicable.

In the instant case, the claimant's verbal admission to his employer did not meet the statutory standard set forth in Section 602B. However, his verbal admission did establish that he had committed a theft. Therefore, it was not incorrect for the Referee to consider the disqualifying provisions of Section 602A.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**84-BRD-221/1-9-84**
AUTHORITY	**3./S-602B**
TITLE	**Discharge For Felony or Theft**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant gave a signed statement to the claims adjudicator in which he admitted that he took two cans of chili belonging to the vending company from behind the vending machine in the employer's cafeteria. He was stopped by the security guard and, at his grievance hearing, he offered to buy the whole case to avoid a discharge. Although the chili was not actually owned by the employer, it would have been required to compensate the vending company for the loss. He was discharged because of the theft.

HELD: The statute requires that certain conditions must be met before an individual loses accumulated benefit rights due to a job-related theft:

1) a timely notice of possible ineligibility filed by the employer within the specified time period.

2) the claimant's discharge was directly due to the offense, and the offense was connected with the work.

3) the claimant admitted the commission of the offense to a representative of the Director of Labor, has signed a written admission submitted to such representative, or has been convicted by a court of competent jurisdiction.

Since the claimant admitted the theft to the representative of the Director of Labor, the employer filed a timely notice of it, and the theft was connected with the work, no benefit rights shall accrue to the claimant based upon wages earned for service rendered by him prior to the date of his discharge.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**ABR-85-5351/12-19-85**
AUTHORITY	**Section 602B of the Act**
TITLE	**Felony or Theft**
SUBTITLE	**Connection with Work**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MS 95.1, Construction**

The claimant worked as Office Manager for a Dentist. In her statement to the Adjudicator, the claimant admitted that she had knowingly filed a false insurance claim - for dental services allegedly performed upon her by her employer. The claim for those non-existent services was filed against the claimant's husband's insurance policy. The claimant had used, without authorization, her employer's signature stamp, in order to ensure that the claim would be processed without question. The claimant stated that she had filed the false claim because she needed the money.

The claimant received payment from her husband's insurance company. When her employer learned what had transpired, he discharged the claimant for "insurance fraud."

The issue presented was whether the claimant had committed a theft within the meaning of Section 602B, since, technically, she had committed a theft against the insurance company and not her employer.

HELD: The disqualifying provisions of Section 602B of the Act do not require that the theft for which the claimant is discharged be committed against the employer, but only that the theft be connected with her work.

In the instant case, the claimant's unauthorized use of the employer's signature stamp implicated the employer in the fraud, even if only to the extent that it required the employer to take time away from his work to deal with the matter by accounting for his services. There was also the potential for damage to the employer's reputation and business.

The claimant's actions were sufficiently material to the employer's interests as to be connected with her work. The claimant was properly subject to the disqualifying provisions of Section 602B.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	***Cetnar v. Board of Review*, 495 N.E. 2d 1128**
AUTHORITY	**Section 602 of the Act**
TITLE	**Felony or Theft**
SUBTITLE	**What Constitutes an Admission**
CROSS-REFERENCE	**MC 5.05, Misconduct, Sole Accountability**

The employer discovered that a large-scale construction project was being carried out at the residence of its maintenance superintendent, and that employees were working on that project on company time, using materials transported from the employer's plants. The claimant, a Maintenance Electrician. was discharged for his part in what was deemed the misappropriation of company property (theft).

In his written statement to the Adjudicator the claimant stated that on certain occasions his general foreman would send him out of the employer's plant to work on private property and would tell him what materials he needed for the job. The claimant would punch out for the day, then give his time card to the foreman. The claimant maintained that he was given authorization by his foreman to remove materials from the plant and specifically stated, "I have not taken any materials from (the employer) without authorization." The claimant stated that it was customary for maintenance department workers to perform work at the residences of management personnel, and testified that in the early years of his employment he had performed such work at the home of the company's owner.

HELD: The offense of theft is defined as the knowing exercise of unauthorized control over the property of the owner with the intent to permanently deprive the owner of its use or benefit. Section 602B is properly interpreted as requiring the employee to admit facts sufficient to satisfy each essential element of the offense of theft. It does not matter whether or not a claimant's testimony is credible or that underlying facts reveal that a theft has occurred; a denial of guilt, no matter how incredible, does not constitute an admission.

The record in this case clearly established that, throughout the course of the administrative proceedings, the claimant maintained that he believed he was authorized to remove materials from the employer's plant and to use them in performing work at the homes of management personnel. From the claimant's statement to the Adjudicator, it could not have been inferred that he knowingly exercised unauthorized control over the employer's property.

ISSUE/DIGEST CODE	**Misconduct/MC 602.05**
DOCKET/DATE	**ABR-85-6507/2-21-86**
AUTHORITY	**Section 602 of the Act**
TITLE	**Felony or Theft**
SUBTITLE	**Quantity or Value of Property Taken**
CROSS-REFERENCE	**MC 485.7, Violation of Company Rule**

The claimant, a Licensed Practical Nurse, was discharged for placing personal, long distance calls - which the employer determined to be "excessive" - from the employer's telephone.

Both the Adjudicator and the Referee concluded that the claimant was discharged for theft, pursuant to the provisions of Section 602B.

HELD: Whether an individual commits a theft is not dependent upon either the quantity or value of property taken. An accusation that implies that some unspecified but lesser amount of property taken would be permissible is patently inconsistent with a finding of theft.

In the instant case, the claimant's "excessive" long distance telephone calls were undoubtedly placed at the employer's expense. But, for that matter, based upon the evidence presented, any personal long distance call she made would have been at the employer's expense (not to mention any personal local calls). Because the employer implied that some (an unspecified number of) personal calls were acceptable, it could not be concluded that the "excessive" personal calls constituted theft.

At the same time, the claimant's actions were recognizable under section 602A of the Act. Whether or not an employer has an express rule on the subject, a worker knows - or should know that the work place is a place for work, not personal business. Further, a worker knows - or should know - that there are charges for long distance telephone calls, and that "excessive" calls of this nature can be expensive. In the instant case, the claimant should have known that her continuous use of the employer's telephone for personal calls was adverse to the employer's interests, and she would have foreseen that her actions would result in her discharge. She was discharged for misconduct within the meaning of Section 602A.

VOLUNTARY LEAVING

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **ABR-87-7823/4-26-88**
AUTHORITY **Section 601A the Act**
TITLE **Voluntary Leaving**
SUBTITLE **vs. Layoff**
CROSS-REFERENCE **None**

The claimant was granted a leave of absence so that he could look after the needs of his daughter, a newborn who was seriously ill. Seven weeks later, the child died. Shortly thereafter, the claimant returned to his job, but the employer had no work for him. The Referee held that the claimant left work voluntarily for personal reasons not attributable to his employer.

HELD: An individual who is granted a leave of absence leaves work voluntarily if he fails to return to work at the expiration of that leave. But if, instead, at the expiration of a leave, a worker is advised by the employer that work is not available, the separation is a layoff.

In this case, the claimant was granted a leave of absence of indefinite duration and returned to work at the expiration of that indefinite leave of absence. Upon his return, he was told that work was not available. Therefore, this was a layoff.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **ABR85003/1-20-89**
AUTHORITY **Section 601A of the Act**
TITLE **Voluntary Leaving**
SUBTITLE **Day-to-Day or As-Needed Work**
CROSS-REFERENCE **None**

The claimant worked as a laborer for a newspaper's circulation department. Each day, he would report to the circulation department's labor pool, from which he might or might not be selected to work. He would be paid a day's wages only if he was selected to work. After three months, he decided to stop reporting, because he was being selected to work only one or two days per week.

HELD: Section 601A provides, in pertinent part, that an individual will be ineligible if he has "left work ..." When an individual is hired and paid for work on a daily basis, and that day's work is completed, there is no more work, and, therefore, no work for him to leave. Here, there was no work for the claimant to leave. He could not be denied benefits under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **83-BRD-11723/10-20-83**
AUTHORITY **l./S-601A**
TITLE **Voluntary Leaving**
SUBTITLE **General**
CROSS-REFERENCE **VL 135. 1, Absence From Work under Discharge Or Leaving**

On February 20, 1983, the claimant requested and was granted a month's leave of absence to visit her sick father in Mexico. She did not report to work on the scheduled return date, March 20, 1983. She wrote the employer on March 28, 1983, from Mexico, to request her job when she returned. She did not advise her employer prior to her leave' s expiration, and she made no attempt to extend the leave. She had been removed from the payroll.

HELD: The claimant's failure to return to work on schedule at the end of her leave of absence constituted a voluntary leaving. If she had a compelling reason for failing to return from her leave as scheduled, she failed to provide timely notification of it. Her voluntary leaving was without good cause attributable to her employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **84-BRD-2756/2-28-84**
AUTHORITY **2./S-601B1. and S-602A**
TITLE **Voluntary Leaving**
SUBTITLE **General**
CROSS-REFERENCE **MC 5.05, Distinguishing The Issue under Misconduct**

The claimant was given an indefinite leave of absence to care for her mother who was seriously ill. Four months later, the claimant's sister became available to care for the mother, and she notified the employer that she could return to work. The company told her work was slow and asked her to check back with them in a month. She was subsequently placed on layoff without returning to work.

HELD: The claimant's separation was neither a voluntary leaving nor a discharge but was due to lack of work. Therefore, the claimant cannot be subject to a disqualification for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **84-BRD-3089/3-2-84**
AUTHORITY **3./S-601A**
TITLE **Voluntary Leaving**
SUBTITLE **General**
CROSS-REFERENCE **VL 450.4, Part-time Or Full-time under Time**

The claimant was on a disability leave of absence for a period of fourteen months. When she applied for work with her last employer, she was offered a job but was told that the hours of work for all employees were being reduced. The claimant refused the job because she did not like the part-time work, and she then retired on social security.

HELD: Part-time work is not unsuitable per se, and a leaving because the work is less than full-time hours is generally without good cause attributable to the employing unit if the hours of work or reporting requirements do not prevent the claimant from seeking full-time work. The claimant could have looked for work, in this case, while working part-time. It must be concluded that she voluntarily left her job without good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 5.05**
DOCKET/DATE **ABR-85-5408/12-27-85**
AUTHORITY **Sections 601 and 603 of the Act**
TITLE **Voluntary Leaving**
SUBTITLE **vs. Refusal of Work**
CROSS-REFERENCE **VL 315.05, New Work; RW 5.05, Refusal of Work**

The claimant was working as a Secretary when her employer notified her that her job would be abolished, and that, at the same time, a job as a Riveter would be made available to her. The claimant feared that, if she took a job as a Riveter, her secretarial skills would decline, so she rejected the Riveter position, telling her employer she would rather quit.

The issue presented was whether the claimant's separation from work was a Voluntary Leaving cognizable under Section 601 or a Refusal of Work under Section 603.

HELD: Unless there is an interruption in the employment relationship, resulting in a worker becoming an unemployed individual prior to an offer of new work, a Refusal of Work issue under Section 603 cannot arise. In the instant case, the claimant was employed when her employer approached her about changing jobs. Therefore, Section 603 was inapplicable.

(See VL 315.05, New Work, for disposition of this case.)

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 5.05**
DOCKET/DATE	**ABR-88-338/3-25-88**
AUTHORITY	**Sections 601 and 603 of the Act**
TITLE	**Voluntary Leaving**
SUBTITLE	**vs. Refusal of Work**
CROSS-REFERENCE	**RW 5.05, Refusal of Work; RW 330.05, Offer of Work**

The claimant obtained work as a machinist through a temporary employment service (his employer) which would refer him to its clients. The employment service's policy was that workers, upon completion of assignments, should contact the service and apply for other assignments. Upon completion of an assignment which had run from February 13 through March 25, the claimant chose not to contact the employer's service.

The threshold issue was whether the claimant's actions were to be considered under Section 601A, Voluntary Leaving, or Section 603, Refusal of Work.

HELD: Whether a worker has quit a job or refused a job is determined by whether the worker was employed or unemployed at the time of a purported offer of new work. In this case, the claimant completed an assignment and was unemployed at the time new work was purportedly made available. Therefore, the issue was Refusal of Work, cognizable under Section 603 of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	***Grant v. Board of Review*, 558 N.E. 2d 438 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Failure to Return after Maternity Leave**
CROSS-REFERENCE	**VL 385.05, Relation of Alleged Cause to Leaving**

After her child was born and her maternity leave had expired, the claimant informed her employer that she wished to stay at home with her baby. She asked if the employer would hold her job open. The employer responded that the job could not be held open indefinitely, but that every effort would be made to help her if, eventually, she was ready to return to work. When the claimant eventually decided to return to work, the employer informed her that there was a hiring freeze.

HELD: Whether a leaving is attributable to the employer depends upon the employer's conduct. Here, the employer did nothing to cause the work separation. The work separation occurred when the claimant did not return immediately from her maternity leave. The hiring freeze occurred after the work separation. The claimant was ineligible for benefits because she left work voluntarily for personal reasons unrelated to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR06487/3-9-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Personal Matters that Carry Over into Work Place**
CROSS-REFERENCE	**VL 515.4, Working Conditions, Fellow Employee**

The claimant helped her son get a job with her employer. Over the next three years, she loaned her son several thousand dollars, which he did not repay. As time went by, her son would demand more money, and, if she hesitated to pay it, he would threaten her. The son began making demands and threats at work. The claimant asked her supervisor to talk to her son about harassing her at work. The supervisor did, but the son continued to seek her out at work. Finally, the claimant quit.

HELD: The term "attributable to the employer" includes a failure to act where some action should be taken. However, an employer does not have a duty to act in a parental capacity and cannot be expected to resolve every family problem that carries over into the workplace. Here, there was a family problem. The claimant left work because of the family problem, not because the employer failed to take action. The leaving was not attributable to the employer. Benefits were denied.

ISSUE/DIGEST CODE **Voluntary Leaving/ VL 50.05**
DOCKET/DATE **ABR-86-9166/7-15-87**
AUTHORITY **Section 601A of the Act**
TITLE **Attributable To or Connected With Employment**
SUBTITLE **Early Retirement**
CROSS-REFERENCE **VL 210.05, Good Cause; VL 495.05, Voluntary**

The employer's witness testified that the employer intended to reduce its work force. This was to be accomplished in 2 parts: the first part was an early retirement program; the second part was conditional upon the success of the first part - that is, if not enough workers took advantage of the retirement program, there would have to be layoffs.

The claimant, an Assistant Mine Manager, had heard a rumor that his position was to be eliminated. Then he was offered the early retirement package, which included financial incentives. Fearing that, if he did not accept the package, he would be demoted, which would have resulted in a financial loss, the claimant accepted the early retirement package.

HELD: The Unemployment Insurance Act provides that benefits shall be paid to individuals who are out of work due to the lack of suitable work and through no fault of their own. Accordingly, there can be no separation disqualification when a worker has been laid off, since no action taken by the worker, but, rather a unilateral action by the employer, has caused the work separation.

In this case, the employer decided the number of positions it wanted eliminated. Had the requisite number of workers not resigned, the employer would have laid off the number necessary to meet its goal. The same number of people would have been unemployed, whether they quit or were laid off. This work separation, therefore, had the same effect as a lay off.

Further, the employer, on one hand, offered financial incentives to those workers who left; on the other hand, the employer did not interpose any safeguards or job protection for those who did not resign - those who stayed, even if they were not laid off, faced the prospect of loss of wages through demotions. It was clear then that the employer was the moving party, desirous of having workers accept an early retirement package; and those who, like the claimant, did the employer's bidding, acted as reasonable persons would have under the same or similar circumstances.

The claimant became involuntarily unemployed due to economic conditions beyond his control. This was a leaving with good cause attributable to the employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 50.05**
DOCKET/DATE **85-BRD-06063/8-21-85**
AUTHORITY **Section 601A the Act**
TITLE **Attributable To or Connected With Employment**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked as a Clerk for 1 year until September 28, 1984, at which time she was approximately 8 months pregnant and was to begin her maternity leave. The maternity leave, per the employer's standard policy, was to expire 6 weeks after the birth of the claimant's child, or depending upon a doctor's determination and release. Prior to taking her leave, the claimant requested instead that she be given an extended leave of absence of 2 to 6 months, because she wished to nurse her child. The employer refused the request.

The claimant's baby was born on November 5, 1984. The claimant's doctor released the claimant to work as of December 17, 1984. The claimant did not contact her employer until January 4, 1985, by which time her position had been filled.

HELD: The question of attributability arises when an employer either fails to meet legal or implied obligations to maintain conditions of employment, or when an employer changes conditions or commits acts which create a substantially less favorable work situation for the claimant. A threshold requirement is that the conditions or acts be something that the employer has the ability to control.

In the instant case, the employer met its contractual obligations by offering the claimant a standard maternity leave, the expiration of which was determined by a medical release. It was not the employer's action, but the claimant's action which resulted in the work separation. The claimant's desire to nurse her child beyond the duration of her maternity leave was not a factor which could be deemed attributable to the employer because that was not something which the employer had the ability to control.
The claimant was disqualified for benefits because she left work voluntarily without good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR-83-12308/8-9-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Change in Hours**
CROSS-REFERENCE	**VL 155.1, Domestic Circumstances**

The claimant worked as a Station Clerk on the 11 p.m. to 7 a.m. shift for 2-1/2 years. In May, 1983, she was informed that due to staff shortages she was being temporarily assigned to the 3 p.m. to 11 p.m. shift. Upon being informed, the claimant immediately complained that she had no one to watch her children during that shift, explaining that her brother normally took care of her children but was unavailable on a permanent basis for those hours. The claimant also explained that she wished to continue to supervise her young children's activities after school. An employer's memorandum, dated May 2, 1983, acknowledged that the claimant had expressed concern about working the 3 p.m. to 11 p.m. shift, and stated that the change would exist only for 2 months, until the regular employees on that shift returned from their vacations.

In June, 1983, the claimant received a memorandum informing her that she would be permanently assigned to the 3 p.m. to 11 p.m. shift, beginning in July, 1983. The claimant again informed her employer that she could not work that shift. The employer did not offer the claimant any alternative. When the claimant did not report to work as scheduled in July, she was deemed to have resigned.

HELD: Generally, it is the responsibility of a worker to arrange her family and domestic affairs so as to permit her to be gainfully employed. However, it should be noted that there is sometimes misunderstanding as to whether or not a voluntary leaving is due to domestic circumstances or a change in working conditions. If there are any significant changes in working conditions which affect domestic circumstances, then the voluntary leaving may be due to the change in working conditions and attributable to the employer.

In the instant case, it was the employer's action which precipitated the claimant's separation from work. The claimant left work not because of domestic circumstances alone, but because of a change in working conditions brought about by the employer. The evidence established that the claimant would have continued working, but for the employer's action. The fact that the claimant could not accept the change because of her domestic circumstances did not mean that the separation was not attributable to the employer, but, rather, that the claimant had good cause for separating from employment. The claimant left work with good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**84-BRD-1005/1-24-84**
AUTHORITY	**2./S-601A**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was employed by a credit union as an assistant manager, performing a variety of duties. She hoped to eventually become the manager. When her employer merged with another credit union, she felt that she no longer had the chance of becoming manager so she accepted a counter job when given a choice of positions. After two months in this job, she quit because she felt she was not fully using all of her skills.

HELD: Attributability may arise when the employer changes conditions or when it commits acts which affect the employment and cause the claimant to quit. The record, however, must show immediate and continuing non-acceptance of the conditions or acts. If the worker agrees to work despite the conditions or acts and then decides at some later date to leave, she has not shown good cause.

The claimant's acceptance and continuation of the employment after the merger indicated that she considered the work suitable despite the changes. Therefore, her leaving was not good cause attributable to the employer, and she is disqualified.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	***Davis v. Board of Review*, 465 N.E.2d (576 Ill. App. 1 Dist. 1984)**
AUTHORITY	**Section 601A of Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Fault**
CROSS-REFERENCE	**VL 210.05, Good Cause; VL 160.05, Efforts to Retain Employment**

The claimant was hired as School Child Development Coordinator, whose duties were primarily administrative and consisted of hiring and supervising teachers, working with parents, and recruiting children -- ages three to five. Subsequently, the claimant was required to incorporate into her program emotionally disturbed teen-ages referred from an agency. Due to diminished funding, the claimant, in addition to performing her administrative duties, was required to teach the emotionally disturbed teenagers. The claimant was not qualified to teach emotionally disturbed teenagers, encountered numerous problems, and resigned.

The Referee and the Board of Review concluded that the claimant had left work without good cause attributable to her employer. Upon judicial review, it was decided that the claimant had left work with good cause attributable to her employer.

Upon further appeal, it was argued that (even if the claimant was determined to have had good cause for leaving) the work separation was not attributable to the employer: The employer's actions had been the reasonable consequence of economic considerations, and the employer had acted reasonably in modifying the claimant's tasks and assigning her additional duties.

HELD: Section 601A does not require that the employer's actions be unreasonable before the employee is determined to be eligible for benefits, but focuses, instead, upon the issue of "...attributable to the employing unit." The statute does not require that the employer be at fault. A substantial, unilateral change in the employment may, in conjunction with good cause, entitle a worker to benefits. In the instant case, the claimant's uncontradicted testimony established that a substantial change in her working conditions took place, significantly changing her duties. Her leaving was attributable to the employing unit within the meaning of the statute.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 50.05**
DOCKET/DATE	**85-BRD-05033/7-8-85**
AUTHORITY	**Section 601A of Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Case Compared with *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984)**
CROSS-REFERENCE	**VL 210.05, Good Cause; VL 160.05, Efforts to Retain Employment**

The claimant was employed by a day-care facility. Her duties included caring for kindergarten-age children at times when they were not in school. There were two other kindergarten-age units on the premises, operating under similar circumstances, so that the day-care workers and their assistants could work with each other, or cover for one another during breaks or absences.

After eight years, due to economic circumstances, the day-care facility's preschool and school-age programs merged, to the extent that one Director now administered to both programs. The claimant still worked in a distinct, kindergarten-age unit. However, after working ten months under the newly formed administration, the claimant resigned.

The claimant explained to the adjudicator: "(There was) too much stress dealing with the kids." The Referee asked the claimant to elaborate. She stated that most importantly she was no longer working exclusively with kindergarten-age children, four-and-one-half to five years old: On those occasions when another worker was on break or absent, she might have to cover in a unit which included children as young as three-and-one-half years old.

The Director of the facility testified that the claimant's job description made reference to flexibility. She added that the claimant's fill-in duties usually occurred during times when her own kindergarten-age children were in fact off the premises, attending kindergarten, so that the claimant would have had no other responsibilities. Also, there always would have been another teacher or assistant on duty, so that the claimant would not have been solely responsible for the pre-school-age children.

In closing, counsel for the claimant cited *Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984), and contended that even if the employer did not behave unreasonably, the leaving was still attributable to the employer on account of the changes which had been made.

HELD: In *Davis*, the court held that a "substantial" change, one which significantly affected the claimant's duties, might result in a finding of attributability. In *Davis*, an administrator in a school which served children ages three to five was required to incorporate into her program, and teach, emotionally disturbed teenagers who presented aggressive and destructive behavior disorders. That was a substantial departure from the working agreement. In the instant case, the only change was that the claimant might occasionally fill-in to care for three-and-one-half year olds instead of four-and-one-half year olds. This was not a substantial departure from the working agreement. Therefore, this leaving was not attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**85-BRD-05041/7-8-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Fault**
CROSS-REFERENCE	**VL 210.05, Good Cause**

The claimant, a forty-seven year old woman, was employed as a Driver for one-and-one-half years, until her promotion to Transportation Manager, a position she held for two years. The claimant quit her job upon being demoted back to Driver (though at her managerial rate of pay).

There was no competent evidence to suggest that the claimant had not performed her work satisfactorily. However, the employer was contemplating expansion, and told the claimant it was not felt that she would be able to handle the managerial position in light of expansion. Subsequently, during the latter part of the claimant's tenure as Transportation Manager, her relationships with supervisor personnel began to deteriorate, through no fault of her own.

HELD: Attributability does not require "fault" on the employer's part. Notwithstanding that the changes in question might have been
justified because of business conditions, they substantially changed the terms of the working agreement. Therefore, the leaving was attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR-85-2581/12-24-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Change in Hours**
CROSS-REFERENCE	**VL 135.05: VL 155.1, Domestic Circumstances; MC 135.05**

The claimant was employed by a hospital as a Respiratory Therapy Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled -- as were other Therapists -- to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: Generally, it is the responsibility of workers to arrange their family and domestic affairs so as to permit them to be gainfully employed. A worker who leaves work voluntarily, in order to devote time to family or domestic affairs, does so for reasons not attributable to his employer, and is subject to a disqualification -- unless the employer has substantially changed the work requirements, thereby placing an undue burden upon the claimant's family or domestic affairs.

In the instant case, the employer made no substantial change in the work requirements; the claimant did. From the onset, the nature of the claimant's work, that of a Respiratory Therapist, was manifestly such that the claimant might -- from time-to-time, or even often, with little or no advance notice -- have been needed in emergency, life-threatening situations. This necessity, whether it was express or implied, was one of the conditions under which the claimant had been hired. It was common in the health care field. The claimant had been well aware of the requirements of such work when he accepted the job. Under those circumstances, his decision to devote more time to his family, at the expense of his job, constituted a voluntary leaving not attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 50.05**
DOCKET/DATE	**ABR-87-5552/4-7-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Attributable To or Connected With Employment**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**VL 235.45 Health; VL 515.65, Working Conditions**

The claimant worked in a hospital as a Registered Pediatric Nurse whose duties included providing nursing care to children with various diseases - including Acquired Immune Deficiency Syndrome (AIDS).

The hospital informed nurses as to how AIDS could be transmitted. The hospital formally instructed nurses concerning the treatment of AIDS patients. On the doors of patients who had been exposed to the AIDS virus were notices reminding nurses about blood and secretion precautions to be taken. In addition, the hospital followed established procedures that were taken for other infectious diseases transmitted through the blood, such as hepatitis, which involved precautions against contact with patients' blood and secretions.

The claimant became separated from employment because she refused to provide care for an infant who had been exposed to the AIDS virus.

HELD: Dangers inherent in a job are not necessarily attributable to the employer. Only where the risks of a job are disproportionately high, because the employer either acts or fails to act, will such a risk result in a finding of attributability.

Nursing, as an occupation, involves contact with patients who might have contracted contagious diseases. The claimant, as a nurse, assumed this risk as the ordinary risk of the nursing occupation. The evidence in this matter did not establish that the risk of the claimant's contraction of the AIDS virus was disproportionately high. This was because of the precautions taken by the employer.

The claimant did not make herself available for work despite the employer's reasonable precautions. As such, she did not have good cause attributable to the employer for leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 50.05**
DOCKET/DATE	***Hawkins v. IDES*/12-21-94**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Attributable To Or Connected With Employment**
SUBTITLE	**Licensing Requirement**
CROSS-REFERENCE	**VL 135.15; MC 135.3; MC 165.05**

The claimant was a bus driver. In March, 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him. The claimant contended that he was entitled to benefits because the work separation was attributable to the employer.

HELD: The term "attributable" in Section 601A means a substantial, unilateral change in working conditions. Here, there was no unilateral action that changed the nature of the work. The claimant's lack of qualification for continued employment resulted from his own inaction in failing to obtain a CDL rather than from any action of the employer. The leaving was not attributable to the employer. Benefits were denied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 90.05**
DOCKET/DATE	**ABR-87-1354/4-14-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Conscientious Objection**
SUBTITLE	**Religion**
CROSS-REFERENCE	**VL 385.05, Cause of Leaving; VL 515.5, Morals**

The claimant worked as a Supervisor in a medical center's kitchen. His schedule was such that he was able to attend either a Jehovah's Witness church meeting on Tuesday evening or a ministers' training session on Thursday evening.

Then the employer decided to institute a new 1 a.m. to 3 a.m. shift. The employer asked the claimant to supervise this shift, in addition to his regular shift. These additional responsibilities would have lasted 1 month. The claimant refused to work the additional hours.

In order to begin operations on its new shift, and as a result of the claimant's refusal, the employer was compelled to rearrange other supervisors' schedules. This, in turn, impacted upon the claimant. The claimant was told that his work schedule would have to be changed, temporarily, regardless. He was offered a variety of schedules, before he accepted a part-time position as a relief cook.

The relief cook job had 2 weeks left to run - after which the claimant would be returned to his regular supervisory position and shift - when the claimant observed that he would be scheduled to work both Tuesday and Thursday evenings. He promptly gave the employer 2-weeks' notice of his intention to resign.

The claimant stated that he quit because he wished to attend either the Tuesday or the Thursday church meeting - or, preferably, both. He acknowledged that he was not required by the church to attend such meetings, but that it was his personal decision to do so.

HELD: Unemployment insurance is designed to guarantee benefits to employees who are out of work through no fault of their own. The determination of fault is to be made in light of the First Amendment freedom of religion provision - and not solely on the basis of the language of a statute defining eligibility. Accordingly, if there is a true religious conviction present, benefits cannot be withheld.

In this case, the claimant was not compelled to leave work on account of a true religious conviction. His attendance at church meetings was, by his admission and by his prior attendance at only 1 of 2 meeting, per week, non-obligatory. He had refused temporary work which would not have conflicted with his desire to attend 1 meeting per week. Finally, at the time he quit, the reason for his quit no longer existed - when his 2-week notice of quit expired, so did his temporary assignment.

Neither the employer nor the state conditioned the claimant's receipt of benefits upon conduct proscribed by his faith. There was no burden upon religion. The claimant was disqualified for benefits under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**ABR-85-2581/12-24-85**
AUTHORITY	**Section 601A and Section 602A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**VL 50.05, Attributability; VL 155.1; MC 135.05**

The claimant was employed by a hospital as a Respiratory Therapy Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled -- as were other Therapists -- to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: An individual is discharged when the employer takes the action which results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action which results in his unemployment and he has a choice of remaining at work at the time that he ceases working.

In the instant case, the claimant could have remained employed, but he refused to comply with a condition of work made at the time of hire. In effect, the claimant quit rather than agree to this condition. This then was a case of a voluntary leaving, and not a discharge.

(See also, VL 155.1, Domestic Circumstances, Children, Care of.)

ISSUE/DIGEST CODE	**Voluntary Leaving/ VL 135.05**
DOCKET/DATE	***Randell D. Ivy v. Board of Review*, 88 L 50532**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**MC 135.05, Discharge or Leaving**

The claimant found a new job. He gave his employer 2 weeks' notice that he was leaving. The employer told him to leave immediately. The claimant filed a claim for benefits for the 2 weeks until his new job began.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when he takes the action that results in his unemployment and he has a choice of remaining at work at the time that he ceases working.

In this case, the claimant did not intend to leave on the date he gave notice, but was willing to work until the effective date of his resignation. He did not have the choice of remaining at work at the time that he ceased working.

This was a discharge.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**ABR92416/8-21-89**
AUTHORITY	**Section 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Option to Remain Employed**
CROSS-REFERENCE	**MC 135.05, Discharge or Leaving**

The claimant, a maintenance worker, was taking typing classes. Her employer was aware that, when she completed the classes, she would seek secretarial work. On October 24, the employer asked when the claimant's last class was and when she would begin looking for other work. The claimant responded that her last class was December 9, after which she would seek other work, and that she would give the employer appropriate notice. On December 7, the employer asked her when she was leaving; The claimant responded that she did not intend to leave until she obtained other work. On December 10, the employer hired a replacement for the claimant.

HELD: An individual is discharged when the employer takes the action that results in the unemployment and the worker does not have a choice of remaining in employment. An individual leaves work when she takes the action that results in her unemployment and she has a choice of remaining at work at the time that she ceases working.

In this case, at no time did the claimant disclose a definite or ascertainable date upon which she intended to leave work or that she was unwilling to continue working for the employer during any interim. All she did was assure the employer - in response to its questions - that she would provide notice at the appropriate time (when she obtained a job). The employer initiated the claimant's separation from work by replacing her, at which time she no longer had the choice or remaining in employment. Therefore, this was a discharge, not a leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	***Jones v. IDES*/11-15-95**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Approved Leave of Absence**
CROSS-REFERENCE	**MC 135.05, Discharge or Leaving**

The claimant was granted a five-months leave of absence. She was not told that, by taking a leave, she was in any way jeopardizing her position or that her return was conditional upon the employer finding a permanent replacement. Nonetheless, when her leave ended, she was told that the employer had restructured itself, and, further, that it had decided to keep the temporary replacement who had been sitting in for her, because that person was working for less money. The claimant then filed a claim for benefits.

HELD: The leaving was involuntary because the employer, not the claimant, severed the relationship. Had the leave of absence been in any way disapproved or made conditional, there would have been a voluntary leaving, but this was not the case. Therefore, the disqualifying provisions of Section 601A do not apply.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.05**
DOCKET/DATE ***Arroyo v. IDES*, 695 N.E. 2d 1350 (1998)**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **DISCHARGE OR LEAVING**
SUBTITLE **Option to Remain Employed**
CROSS REFERENCE **MC 135.05, Discharge or Leaving; PR 195.05, Notice**

On June 14, approximately eight months into her pregnancy, the claimant experienced complications and was admitted to the hospital, where she gave birth to a still-born child. The claimant was released from the hospital on June 18, with orders to refrain from work for six weeks. The employer learned of her circumstances, but, on July 23, when the claimant advised her employer she could resume work, the employer would not take her back, contending she had Aterminated voluntarily@ because she hadn=t shown up for work for more than a month. The Board of Review considered this a Voluntary Leaving.

HELD: Whether an employee voluntarily discontinues her employment is a question of intent and is to be determined from the totality of the evidence presented. Here, there is no evidence to prove the claimant intended to leave her job. The employer discharged her.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.05**
DOCKET/DATE **ABR-97-12111 / 5-18-97**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **DISCHARGE OR LEAVING**
SUBTITLE **Option to Remain Employed**
CROSS REFERENCE **MC 135.05, Discharge or Leaving**

On July 23, the claimant tendered his resignation, to become effective July 28. The employer told him to leave immediately.

HELD: Generally, if a claimant gives at least two weeks= notice, and is told to separate from work before the expiration of the notice period, without wages for what would have been the remaining weeks of his employment, the separation is a discharge.

However, where the claimant has given less than two weeks= notice, we are reluctant to hold that the claimant was discharged. In those instances, the claimant=s voluntary leaving is merely accelerated.

This was a voluntary leaving.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.05**
DOCKET/DATE **ABR-97-1665 / 4-14-97**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Option to Remain Employed**
CROSS REFERENCE **MC 135.05, Discharge or Leaving**

The claimant was absent for several days due to a physical condition and her employer called her at home, requesting that, if she intended to return to work, she should bring in a doctor=s statement, showing she had been released to work. Instead, the claimant said she was quitting, adding: AI will give you my two weeks notice.@ The employer told her not to return to work at all.

HELD: Generally, if a claimant gives two weeks= notice, and is told to separate from work before the expiration of the notice period, the separation is a discharge. However, there are exceptions to that general rule, including where it appears the notice period is merely a formality and there is no real intent to continue working. Here, the claimant=s conduct (her abrupt resignation and intent not to obtain a doctor=s release which would have allowed her to work the next two weeks anyway) indicated the notice period was simply a formality. This was a voluntary leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.05**
DOCKET/DATE	**White v. Department of Employment Security, 376 Ill.App.3d 668, 314 Ill.Dec. 867, 875 N.E.2d 1154 (1st Dist., 2007)**
AUTHORITY	**Section 601(A) of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**General**
CROSS-REFERENCE	**PR-25.05/Appearance-General; PR-380.1/Rehearing or Review-Additional Proof**

The claimant worked for the employer=s roofing company as a foreman. The claimant believed working conditions were dangerous because of a recent blizzard. He testified that he contacted the manager who told him he could come to work if he wanted to. At some point thereafter, according to his testimony, he again called the manager who told him he was too busy to talk just then but would call him back. When the manager did not call back, the claimant left a voice message, which the manager also failed to return. The claimant testified that he never did hear from the manager. The manager testified that he had issued the claimant a warning on December 21, 2005 with regard to his rude treatment of a customer and told him that another such incident would result in his discharge. The following day the claimant came into work and stated that AI can=t deal with this; I quit@, but did not mention the warning. There was work available for the claimant on December 22, 2005. The Referee held that the claimant quit his job without good cause attributable to the employer and was disqualified from receiving benefits pursuant to Section 601(A) of the Act. The claimant appealed the Referee=s decision to the Board of Review, attaching to his appeal telephone records which he believed substantiated his testimony that he had called the manager several times. Declining to consider the claimant=s telephone records because he failed to show that he was not at fault for not submitting them at the hearing, the Board of Review affirmed the Referee=s decision.

HELD: Noting that Aa reviewing court may not judge the witnesses= credibility, resolve conflicts in testimony or re-weigh evidence@, the court found that there was sufficient evidence to support the Board of Review=s decision that the claimant voluntarily quit his job without good cause attributable to the employer where (1) two employer witnesses testified that there was continuing work available to the claimant when he decided to quit because he Acouldn=t take this@ and (2) the claims adjudicator=s report indicated that the claimant had told her that he had left his job for personal reasons without informing the employer.

In its opinion, the court rejected the claimant=s contention on appeal that the employer should not have been allowed to testify at the hearing before the Referee because it had not filed a timely protest in accordance with the agency=s benefit rules, noting that those rules provide that an employer filing a late protest is only prohibited from appealing an adverse decision by a Referee and not from testifying at the hearing.

The court also rejected the claimant=s contention on appeal that the Board of Review erred in not considering his telephone records. The court found that the claimant did not adhere to the agency=s rules regarding the filing of additional evidence where he did not submit such evidence within 20 days of filing his appeal and did not provide an explanation of why he was not at fault for not submitting such evidence at the time of the hearing.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.1**
DOCKET/DATE	**84-BRD-3118/3-5-84**
AUTHORITY	**4./S-601A and S-601B1**
TITLE	**Discharge or Leaving**
SUBTITLE	**Absence From Work**
CROSS-REFERENCE	**None**

The employer gave the claimant a three-month medical leave of absence on recommendation of the company doctor and her own doctor. She also followed the advice of the doctors and moved to a warm climate to recuperate. Both doctors certified that the claimant was unable to return to work when the leave period expired so the employer changed it to an indefinite leave until such time as her doctor released her to return to work.

After an additional six months, the claimant's doctor released her to return to work either in Chicago or in Florida where she had been recuperating. The claimant never notified the employer of the release, and, a month later, the employer notified the claimant that her job was to be eliminated the first of the year (a month and a half later). She had, however, previously requested a change to another position which was still available to her. When the claimant filed for benefits, she stated that no work was available for her with the employer.

HELD: When the claimant failed to return to work after her doctor released her, the condition which occasioned the leave no longer existed. At this point, she voluntary quit her job without good cause, and the subsequent elimination of her job was not relevant since other suitable work was available.

The claimant was on an approved medical leave of absence of indefinite duration until she was released by her physician to return to work. When she was released by her physician, she failed to notify the employer and did not return to available, suitable work. These facts indicate a voluntary leaving rather than a discharge, and it is concluded that the leaving was without good cause attributable to the employer. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.1**
DOCKET/DATE	**83-BRD-10105/8-31-83**
AUTHORITY	**1./S-601A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Absence From Work**
CROSS-REFERENCE	**None**

On October 19, the claimant was granted a two-week leave for personal reasons and was scheduled to return to work on November 8. She requested an extension of the leave, but this request was denied. She did not return to work on November 8 because she was still occupied with personal problems.

HELD: The employment relationship ended when the claimant did not return to work on November 8. A failure to return to available work at the expiration of a leave of absence is a voluntary quitting.

The claimant's reasons for leaving were personal and were not attributable to the employer. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.1**
DOCKET/DATE	**83-BRD-11723/10-20-83**
AUTHORITY	**2./S-601A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Absence From Work**
CROSS-REFERENCE	**VL 5.05, General under Voluntary Leaving**

On February 20, 1983, the claimant requested and was granted a month's leave of absence to visit her sick father in Mexico. She did not report to work on the scheduled return date, March 20, 1983. She wrote the employer on March 28, 1983, from Mexico, to request her job when she returned. She did not advise her employer prior to her leave's expiration, and she made no attempt to extend the leave. She had been removed from the payroll.

HELD: The claimant's failure to return to work on schedule at the end of her leave of absence constituted a voluntary leaving. If she had a compelling reason for failing to return from her leave as scheduled, she failed to provide timely notification of it. Her voluntary leaving was without good cause attributable to her employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.1**
DOCKET/DATE **83-BRD-12269/10-31-83**
AUTHORITY **3./S-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Absence From Work**
CROSS-REFERENCE **None**

The claimant was suspended for two days. At the end of his suspension, the claimant did not return to his job.

HELD: The claimant's failure to return to work at the end of the two-day suspension constitutes an abandonment of his job and is not a discharge. The claimant's actions constitute a voluntary leaving without good cause attributable to her employer, and, therefore, he is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.15**
DOCKET/DATE **ABR12059/3-14-91**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Quit**
CROSS-REFERENCE **MC 135.3, Discharge/Leaving; MC 165.05, Requirements**

The claimant was a bus driver. He was required to have a valid driver's license. His driver's license was revoked due to an off-duty accident. His employer could no longer retain his services.

HELD: When an occupational license, a tool of an individual's trade, is within his control to obtain and maintain, a work separation that occurs as a result of not obtaining or maintaining that license is a voluntary leaving (constructive quit), not a discharge.

Here, the claimant constructively quit his job when he lost his license.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.15**
DOCKET/DATE **83-BRD-3789/4-5-83**
AUTHORITY **1./S-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Quit**
CROSS-REFERENCE **None**

The claimant worked as a teller. The employer talked with the claimant on the date of separation about his attitude toward his co-workers and about being discourteous with the customers and asked him to improve in these respects. The claimant responded by stating that he was unhappy with his job. He added that he had no intention of improving his attitude toward the customers or his co-workers and that he wished to be discharged so that he would be eligible to collect unemployment benefits. The claimant was then discharged.

HELD: The claimant solicited his separation from work when he challenged the employer to discharge him. This amounts to a constructive quit or leaving; and, since the reasons for leaving were neither attributable to the employer nor for good cause, the claimant is ineligible for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.15**
DOCKET/DATE **ABR-85-9614/7-10-86**
AUTHORITY **Section 601A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Quit**
CROSS-REFERENCE **None**

During his 2 years of employment, the claimant, a 61 year old Meat Cutter in a grocery, had worked 40 hours per week. Due to a lack of business, coupled with the claimant's low seniority work status, his hours were reduced to 24 and then to 16 per week, whereupon he expressed his desire to retire by age 62 anyway.

His separation from work -- at age 61 -- came about because, after his hours were cut, he said to the employer, "Why don't you lay me off?" and, subsequently, he refused to service customers and in other ways stopped working up to his capabilities. According to the employer's witnesses, he began "dogging it" so that he could collect unemployment benefits and "coast into his retirement."

Finally, the claimant was told, "O.K., you are laid off, but not fired. you get your wish."

HELD: Whether or not an employer characterizes a work separation as a discharge or a lay off, circumstances may dictate that the issue be more accurately defined as a constructive quit. A constructive voluntary leaving differs from a discharge depending upon the worker's intent. In a discharge, it is understood that the worker may have been at fault for his action, but it is presumed that, despite his actions, he intended to preserve his employment. In a constructive voluntary leaving, the worker's behavior is premeditated, designed with the intention to compel the employer to discharge him or lay him off.

In the instant case, the claimant acted with the intent to compel the employer to discharge him or lay him off. This was a constructive voluntary leaving, for which the claimant was disqualified.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.15**
DOCKET/DATE **ABR-85-6626/1-16-86**
AUTHORITY **Section 601A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Quit**
CROSS-REFERENCE **VL 475.75, Union Relations**

Pursuant to the terms of the employer's collective bargaining agreement with the union, the payment of union dues was a mandatory condition of employment. The claimant had been aware of this unchanging condition. He also acknowledged receiving letters from his employer concerning his non-payment of union dues; the employer had given him a deadline by which to pay his dues. When the deadline passed, and the claimant had still failed to pay his union dues, he was discharged.

HELD: When there is a union shop and a worker is aware that maintaining membership in the union is a requisite to continued employment, a separation which results from the worker's failure to meet this requisite constitutes a voluntary leaving, even if the employer "discharges" the worker at the union's insistence, since the worker has the choice of remaining employed. Generally, such a voluntary leaving is without good cause attributable to the employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.15**
DOCKET/DATE ***Hawkins v. IDES*/12-21-94**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Constructive Quit**
CROSS-REFERENCE **VL 50.05; MC 135.3; MC 165.05**

The claimant was a bus driver. In March, 1990, he was informed that he had to obtain a commercial driver's license (CDL) by April 1, 1992. The employer made training and study materials available to him. He was advised that he would have three opportunities to pass. The claimant did not attend any training sessions and first took the CDL examination on March 23, 1992, and failed. By the time he passed, on April 28, 1992, the employer had already replaced him.

HELD: When an occupational license is within an individual's control to obtain, a work separation that occurs as a result of not obtaining that license is a voluntary leaving (constructive quit), not a discharge. Here, it was within the claimant's control to obtain his license. The claimant constructively quit by not making a reasonable effort to take the test in time to meet the licensing requirement. He left work without good cause attributable to his employer and benefits were denied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL-135.15**
DOCKET/DATE	***Horton v. IDES*, 781 N.E.2d 545, 335 Ill.App.3d 537, 269 Ill.Dec. 748 (1st Dist., 11/26/02)**
AUTHORITY	**Sections 601(A) and 602(A) of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Constructive Quit**
CROSS-REFERENCE	**MC-135.15; Discharge or Leaving, Constructive Discharge**

The claimant was employed as a service agent for a car rental agency. A requirement of the job was that the claimant maintain a current, valid driver=s license. Any suspension of the license had to be immediately reported to the employer. Failure to do so would result in the claimant=s immediate termination. Employees who do so inform the company are given a 30-day leave of absence to secure a valid driver=s license. Notice of the suspension of the claimant=s license, effective July 25, 2000, was mailed to the claimant=s last address known by the Illinois Secretary of State. On September 13, 2000, the claimant was discharged by the employer for failing to notify the employer of the suspension. At the hearing, the claimant testified that he could not have deliberately and wilfully failed to inform his employer of the suspension because he had never received notice of the suspension. According to the claimant, he had moved from the address listed on his driver=s license prior to the date the suspension was mailed. He had not informed the Secretary of State of his change of address but had obtained a State identification card with the new address on September 16, 1999 and had filed a change of address form with the local U.S. Post Office in January, 2000.

HELD: The Appellate Court held that the claimant was disqualified from receiving benefits pursuant to Section 601(A) of the Act. Relying on *Hawkins v. IDES*, 268 Ill.App.3d 927, 206 Ill.Dec. 423, 645 N.E.2d 428 (1994), the court found that the claimant=s Afailure to maintain a valid driver=s license rendered him unable to meet a necessary condition of his employment. As plaintiff voluntarily left his job without good cause attributable to the employer, he is ineligible for unemployment insurance benefits.@

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.2**
DOCKET/DATE	**ABR-84-12229/10-4-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation of Remark or Action**
CROSS-REFERENCE	**VL 160.05, Efforts To Retain Employment; MC 135.2**

The claimant worked as a Jewelry Salesman, and enjoyed a familiar relationship with the store's owner, for whom he had worked for 25 years. From May, 1983, through September 2, 1983, the claimant had been absent from work due to illness. On September 3, he returned to work, unannounced, and was preparing to open the store, when the owner told him that he had hired a new employee. Upon hearing this, the claimant handed the owner his keys and left.

At a hearing, the employer testified that the new employee had not been hired as a replacement for the claimant. The claimant testified that he had assumed that he had been replaced by the new employee.

HELD: There are some situations in which it is difficult to determine whether a separation is a discharge or a voluntary leaving, as both the employer and worker have made some remark or have taken some action which has contributed to the initiation of a separation. Generally, if an employer makes a remark or takes some action which initiates the separation, then a discharge has occurred. However, if the employee is given a choice of remaining at work, it is a voluntary leaving. In either case, the reasonableness of the parties' actions must be considered.

Even though an employer's remark might generally give rise to a discharge, in the instant case, the claimant's belief that he had been discharged was not reasonable. Considering his many years of employment, and his familiar relationship with the owner, the claimant should have taken steps to ascertain his status. His failure to do so by departing abruptly constituted a voluntary leaving without good cause attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.2**
DOCKET/DATE	**84-BRD-742/1-19-84**
AUTHORITY	**l./S-601A and S-602A**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation Of Remark Or Action Of Employer Or Employee**
CROSS-REFERENCE	**None**

On October 19th, the claimant informed his supervisor that he had arranged for a job interview on October 21st in New York, and he asked for permission to take the day off. The supervisor refused permission because the claimant was working on an assignment that could not be completed before October 25th. In an interview with the adjudicator, the claimant stated, "I was told by my supervisor that if I left, I no longer needed to come back." The claimant went to the interview and was then terminated.

HELD: The employer made it clear that if the claimant took the time off he would no longer be employed. By remaining at work, the claimant could have continued the employment. However, by electing to make the trip, he took the action which severed the relationship. The separation was a voluntary leaving for a personal reason which was not attributable to the employer. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 135.2**
DOCKET/DATE	**ABR-85-9144/7-14-86**
AUTHORITY	**Sections 601 and 602 of the Act**
TITLE	**Discharge or Leaving**
SUBTITLE	**Interpretation Of Remark Or Action**
CROSS-REFERENCE	**MC 45.05, Attitude Toward Employer; MC 135.2**

The claimant, an Automobile Service Manager, did not receive the wage increase he had anticipated. Subsequently, during his lunch hour, he pored over job advertisements in a newspaper. He was observed doing this by a superior, who questioned the claimant's intentions. The claimant stated that, as a result of the lack of a wage increase, he felt compelled to seek other work. He informed his superior that, when he found other work, he would give the employer appropriate (2 or 3 week) notice. The claimant worked the rest of his shift that day, after which he was again questioned about his intentions. He repeated what he had said earlier, whereupon he was instructed to leave work immediately.

HELD: At some point in time, either the employer no longer has the option of continuing the worker in employment or the worker no longer has the option of remaining at work. The separation occurs at such point in time. If the employer has made a remark or committed an action which prevents the worker from remaining in employment, the separation is a discharge; if the worker has made a remark or committed an action which prevents the employer from retaining him in employment, the separation is a voluntary leaving.

In the instant case, the claimant's statements did not indicate that he would be leaving his job at any ascertainable time, nor did his actions indicate that he had ceased, or would imminently cease, performing his duties under the terms of hire. The employer had the option of continuing the claimant in employment, but chose not to do so. This, then, was a discharge, not a voluntary leaving.

(This was a discharge not for misconduct -- See MC 45.2 & .3.)

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.2**
DOCKET/DATE ***Dunn v. Director*, 476 N.E. 2d 77 (1985)**
AUTHORITY **Sections 601A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Interpretation of Remark or Action of Employee**
CROSS-REFERENCE **VL 500.4, Wages, Increase Refused**

The claimant worked for 3 years as a retail clerk and was earning $5.25 per hour. There was no evidence that this was an unsuitable wage. On a Friday, he wrote his employer a note: "Starting Monday...I must have $7.60 per hour, or please send [me] my pink-slip." On Monday, the claimant did not report to work or notify the employer of the reasons for his absence. That evening, the employer responded: "You are considered to have self-terminated yourself from employment." The claimant asked whether his claim for unemployment benefits would be contested. The employer informed him that it would. On Tuesday, the claimant attempted to report to work but was escorted from the premises by security guards.

The claimant contended that, because his note gave the employer a choice (give him a 46% pay raise or a pink-slip), this was not a voluntary leaving.

HELD: Generally, if a worker has a choice of remaining employed, his work separation is a voluntary leaving, but, if the employer is unwilling to allow the worker to continue working, the separation is a discharge.

In any case, in order to determine whether a party is exercising a choice, it is necessary to determine his intent. Intent is to be garnered from the totality of the evidence presented, including an examination of a party's words and actions.

In this case, the claimant contended that the employer chose to discharge him. However, the claimant's use of the term "pink-slip," which ordinarily means discharge by the employer, was not dispositive of the issue of intent. The claimant's words (the note) and his actions (an absence without notice and the fact that he would not report again if unemployment benefits were uncontested) indicated that it was his intent, and he chose, to discontinue the employment relationship.

This was a voluntary leaving. Because there was no showing that the claimant's current wage was unsuitable, the leaving was without good cause attributable to the employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.35**
DOCKET/DATE **83-BRD-10405/9-8-83**
AUTHORITY **1./S-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Leaving In Anticipation Of Discharge**
CROSS-REFERENCE **None**

The claimant was questioned about his possible involvement in some thefts committed by employees. He was asked to take a polygraph test in connection with this investigation, but he quit rather than take the test. He denied committing any thefts. The claimant had no prospect of other employment at the time he resigned.

HELD: At the time that the claimant resigned, he had no definite knowledge that he would be discharged if he refused to take a polygraph test. The claimant voluntarily left work without good cause since he has not established that a discharge was imminent. The claimant is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.35**
DOCKET/DATE **83-BRD-11134/9-30-83**
AUTHORITY **2./S-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Leaving In Anticipation Of Discharge**
CROSS-REFERENCE **None**

The claimant quit her job because she felt that she might be discharged because of her poor attendance record. She had been taking time off due to illness. She was not informed by the employer that she was going to be discharged for any reason, prior to her leaving.

HELD: The claimant voluntarily left work in anticipation of being discharged; however, she was never told by her employer that her discharge was imminent. The claimant's separation was a voluntary leaving which was not attributable to the employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.35**
DOCKET/DATE **ABR-85-7421/4-7-86**
AUTHORITY **Sections 601A and 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Leaving in Anticipation of Discharge**
CROSS-REFERENCE **VL 138.05, Disciplinary Action; MC 135.35**

The claimant was employed by the Department of Transportation, which had undertaken an investigation to see whether the claimant had misused vehicles assigned to him and/or whether he had kept improper time records. The claimant volunteered to resign if the employer would not pursue its investigation, the outcome of which was as yet unknown (to the employer); no formal charges had been filed against the claimant. The employer did not object to the claimant's suggestion. The claimant resigned.

HELD: A worker who leaves work in anticipation of a discharge for misconduct cannot evade the attendant disqualification by leaving. In cases where a discharge is imminent, the separation is considered a discharge and the claim is adjudicated accordingly.

In cases where the claimant suspects that he will be discharged, but is under no threat of imminent discharge, the separation is considered a voluntary leaving and the claim is adjudicated accordingly.

In the instant case, the claimant left work voluntarily. He did not show that the work had become unsuitable, so as to affect his well being, only that the employer was exercising its prerogative to conduct, in a reasonable fashion, an investigation into its business affairs. The claimant left work without good cause attributable to his employer and was subject to the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE **VOLUNTARY LEAVING / VL 135.35**
DOCKET/DATE **ABR-93-10137 / 4-20-94**
AUTHORITY **Section 601A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Leaving in Anticipation of Discharge**
CROSS-REFERENCE **MC 135.35, Discharge or Leaving**

The claimant's employer was served with a court order to withhold payments to the claimant, for child support. The employer wanted "nothing to do with it" and told the claimant to "take a walk" unless he intended to catch up with a lump sum payment to his wife by the end of the week. There was nothing the claimant could do, because he had no money and needed the job in order to continue to pay child support, so he left.

HELD: A discharge occurs when an employer gives an individual no genuine option to remain employed. Leaving work to avoid a definite and imminent discharge does not change a discharge to a voluntary leaving. In the instant case, the claimant did not have any option to continue working, inasmuch as he would be unable to comply with the employer's directive within the time provided. This was a discharge.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **ABR-90-7139/10-15-90**
AUTHORITY **Sections 601A and 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **None**

During a discussion with the employer's manager about pay, the claimant gave two weeks' notice that he would quit. Following the discussion, the claimant engaged in behavior that disrupted the workplace. The manager informed the claimant that the employer would forego the two week notice period and that he should leave immediately.

HELD: A discharge occurs when a worker is given no option to remain employed. A voluntary leaving occurs when the worker chooses not to remain employed. Whether a worker has an option to remain employed or chooses not to remain employed is determined by examining his and the employer's words and actions.

Here, the claimant gave two weeks' notice that he would quit. But the two weeks was a formality and not an expression that the claimant actually intended to work two more weeks, as evidenced by his disruptive behavior. This was a voluntary leaving.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **BR91921/9-20-89**
AUTHORITY **Sections 601A and 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **MC 135.1, Discharge or Leaving**

The claimant, an administrative assistant, worked from 9 to 5, then requested a change to part-time hours, noon to 5, because she wanted to work mornings as a trader at the Board of Trade. Her supervisor agreed to a 30-day trial period. After 30 days, on February 9, the supervisor told her that he really needed a full-time administrative assistant.

At that February 9 meeting, both the claimant and her supervisor became upset. The supervisor told her that she had until February 11 to make up her mind. After the claimant left for the day, the supervisor removed the claimant's work from her desk and cleaned off the desk-top, including removing her computer. On February 10, the claimant called in sick. When the claimant reported to work on February 11, she saw that her desk had been cleaned out. A secretary told her she was fired.

HELD: An individual is discharged when the employer takes the action that results in her unemployment and she does not have a choice of remaining employed. An individual leaves work when she has a choice of remaining at work, but takes the action that results in unemployment.

Here, the claimant's desire to try part-time hours was not the cause of her unemployment. The employer took the action that resulted in her unemployment. When the supervisor cleaned out the claimant's desk, the claimant no longer had any choice. This occurred on February 9, pre-dating the claimant calling in sick on February 10, as well as the February 11 ultimatum date, so whatever the claimant might have intended on those subsequent days was irrelevant.

This was a discharge, not an intended resignation.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **83-BRD-7837/6-30-83**
AUTHORITY **1./S-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **None**

The claimant notified the employer on April 6th that April 16th would be her last day of work because she was going to get married and move out of town. She called in sick the next two working days, and, when the employer telephoned her home, her mother stated that she was out shopping. She did not report or telephone on the third day, and she was told her services were no longer required. The employer filled her position.

HELD: The claimant gave notice to quit her job because she was getting married and moving to another area. Her actions subsequent to giving the notice were consistent with the abandonment of her job, and the employer rightfully accelerated her date of leaving. The claimant's decision to quit her job for reasons of marriage and relocation was a matter of personal choice and is not attributable to the employer. She is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **83-BRD-9680/8-23-83**
AUTHORITY **2./S-601A**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **None**

In December, the claimant announced her resignation effective the end of January. Her husband had accepted a new job, and they would be relocating to another state. Her replacement was hired on January 8 and was to begin work on January 20. The claimant and her husband reconsidered their decision to move, and, on January 10, she attempted to rescind her resignation, but the employer refused her request.

HELD: The claimant initiated the separation by informing the employer that she intended to resign because she was moving out of state. The employer's refusal to accept the claimant's later attempt to withdraw her resignation did not change the separation from a voluntary leaving to a discharge. Therefore, the claimant voluntarily left work without good cause attributable to the employer and is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **83-BRD-14515/12-7-83**
AUTHORITY **3./S-601A and S-602A**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **VL 150.15, Removal From Locality under Distance To Work**

The claimant relocated to a community a considerable distance away from the employer and notified the employer that she intended to quit work in two weeks. She called in sick two days before she was scheduled to quit, and the employer told her not to report after that date.

HELD: The evidence established that the claimant quit work because of her relocation and that the employer merely accelerated her last day of work. The claimant's reason for leaving work was personal and did not constitute good cause attributable to the employer. She is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 135.4**
DOCKET/DATE **ABR-85-1566/6-20-85**
AUTHORITY **Section 601A and Section 602A of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **VL 365.25, Prospect of Other Work, Uncertain**

The claimant had been employed for 5 years as a Machine Operator and Laborer. In announcing, 2 weeks prior to his departure, that he would be relocating to Texas where he hoped to obtain a higher paying job, he did not request a leave of absence, and withdrew what was due him from the employer's retirement fund. When, 8 weeks later, the claimant returned from Texas, after the job he had hoped to obtain did not materialize, he attempted to return to work for his former employer.

At an appeal hearing, the employer testified that the claimant had not been rehired due to a "hiring and firing freeze." The claimant testified that he had been told that if he returned from Texas he would be able to get his prior job back.

HELD: Whether an individual leaves work voluntarily or is discharged is determined from an examination of the intentions of the parties as evidenced by their words and actions. A voluntary leaving occurs when the worker takes the action which results in his unemployment and the worker has a choice of remaining in employment at the time he ceases to work. In the instant case, not only did the claimant announce his intention to leave during a period when continuing work was available, he forewent a leave of absence, withdrew his retirement money, and did in fact relocate to Texas. To that extent, the claimant's actions constituted a voluntary leaving.

When a worker's attempt to withdraw a previously submitted resignation is refused by his employer, the refusal does not generally make the employer the moving party, resulting in a discharge instead of a voluntary leaving, unless it has been established that there existed an ongoing job tenure. Although, in the instant case, the claimant may have been told that he would be able to get his old job back, the evidence did not establish that there existed an ongoing job tenure supported by any contractual obligation, binding reciprocity, or consideration. Therefore, the employer's refusal to rehire the claimant did not result in a discharge instead of a voluntary leaving.

(See also VL 365.25.)

ISSUE/DIGEST CODE **Voluntary Leaving/VL135.4**
DOCKET/DATE ***Champaign-Urbana Public Health District v. The Board of Review of the Department of Employment Security, et al,* 395 Ill. App. 3d 182, 338 Ill.Dec. 536, 924 N.E. 2d 1062 (4th Dist., 2009)**
AUTHORITY **Section 601(A) of the Act**
TITLE **Discharge or Leaving**
SUBTITLE **Resignation Intended**
CROSS-REFERENCE **None**

In early May, 2007, the plaintiff's Finance Director anonymously reported to the plaintiff that her supervisor had engaged in financial impropriety with plaintiff's funds. On May 4, 2007, she removed all personal items from her office and submitted an unsolicited letter of resignation to the plaintiff's Chairperson citing her difficulty with her supervisor as the reason for her departure, which she noted was "effective immediately". After receiving the letter of resignation, the Chairperson asked the Finance Director if she would be willing to stay at her job if her supervisor was no longer employed, to which the Finance Director responded affirmatively. In their testimony before the Referee, the Chairperson stated that her question to the Finance Director was merely hypothetical, while the Finance Director interpreted the question as an offer of continued employment which she accepted.

The Finance Director returned to her office on May 7, 2007, and began working on the plaintiff's budget. She went home sick on May 8th and on May 9th sent a letter to the Chairperson, attempting to negotiate a severance package. She again went home sick on May 10th. On Friday, May 11, 2007, the plaintiff's legal counsel informed the Finance Director's Acting Supervisor that the letter of resignation of May 4, 2007 was final as of that date. The Acting Supervisor immediately informed the Finance Director in writing that her resignation had become final on May 4, 2007. The Finance Director filed for, and was granted, unemployment benefits, a decision that was eventually appealed by the plaintiff to the Appellate Court.

HELD: The Appellate Court found that the Finance Director's unsolicited resignation was final and irrevocable at the time she hand-delivered the resignation letter, which stated it was "effective immediately", to the Chairperson on May 4, 2007. According to the Appellate Court, public policy requires that there be certainty as to who are or are not public officers or employees, and, thus, in Illinois, it has long been the law that, when a public officer or employee tenders his or her resignation, the resignation is an unalterable fact that cannot be withdrawn and cannot be negated by the resignee's continued performance of his or her job duties. Because the Finance Director's resignation became effective on May 4, 2007, her part-time work on the plaintiff's budget after that date was irrelevant as to her employment status. Since the Finance Director's resignation was voluntary and without good cause attributable to the plaintiff, she was disqualified for benefits pursuant to Section 601(A) of the Act. The court remanded the matter to the Department to determine if the Finance Director was eligible for benefits pursuant to the other provisions of Section 601.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 138.05**
DOCKET/DATE	**83-BRD-10166/8-31-83**
AUTHORITY	**1./S-601**
TITLE	**Disciplinary Action**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

When the claimant was placed on a five day suspension for poor attendance, she walked off the job before the end of her shift. The claimant had received three prior warnings and two suspensions because of absenteeism.

HELD: The right of an employer to reprimand his employees is recognized, and a reasonable reprimand is not good cause for voluntary leaving. If the imposition of a penalty is warranted and not severe in relation to the offense, the worker who leaves because of such penalty voluntarily leaves work without good cause. The receipt of previous warnings regarding the same offense is a factor in deciding whether the penalty is unduly severe. In this instance, the claimant's prior warnings and suspensions for the same offense justified the last suspension which was neither too severe nor unwarranted. The claimant's reason for leaving, although attributable to the employer, was not for good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 138.05**
DOCKET/DATE	**83-BRD-11419/10-7-83**
AUTHORITY	**2./S-601**
TITLE	**Disciplinary Action**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a computer operator. Her principal duty was the scheduling of the maids. She had received written warnings for improper scheduling, the last one on March 2, 1983, and she was told on that date that the next infraction would result in further disciplinary action up to and including a 3-day suspension. She quit on March 4, 1983, without notice, because of the last written warning.

HELD: The right of an employer to reprimand his employees is recognized, and a reasonable reprimand is not a good cause for voluntary leaving. If the imposition of a penalty is warranted and not severe in relation to the offense, the worker who leaves because of such penalty voluntarily leaves without good cause. The fact that the claimant had received prior warnings regarding the offense is a factor in deciding whether the penalty is too severe.

In this instance, the claimant had received prior warnings for the same offense; so the threat of more severe disciplinary action in the future is not unreasonable. The claimant's voluntary leaving, while attributable to the employer, was not for good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 138.05**
DOCKET/DATE **83-BRD-12269/10--31-83**
AUTHORITY **3./S-601A and S-602A**
TITLE **Disciplinary Action**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was suspended for two days for an unsatisfactory attendance record. He previously had received a written warning regarding his attendance. When he reported late to work, he was suspended. At the expiration of the suspension, the claimant did not return to his job because he believed the suspension was unjustified.

HELD: When the claimant decided not to return to work at the expiration of the two-day suspension, he voluntarily left work. The reason for his leaving is attributable to his employer but was not for good cause. The suspension was justified since the claimant had received a prior written warning for the same offense. The claimant voluntarily left work without good cause and is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 138.05**
DOCKET/DATE **ABR-86-141/4-7-86**
AUTHORITY **Section 601A of the Act**
TITLE **Disciplinary Action**
SUBTITLE **Probation**
CROSS-REFERENCE **VL 235.45, Health or Physical Condition**

The claimant's supervisor told her that her work needed improvement. There was a possibility that the claimant might be placed on 30 day probation, after which, if her work did not improve, she might be discharged. Following the conversation with her supervisor, the claimant did not avail herself of the employer's grievance procedure; instead, she submitted her resignation, stating that she found it too stressful to return to her work environment.

HELD: A disciplinary action which is unwarranted, unduly harsh, or which subjects a worker to undue embarrassment may afford that worker good cause for a voluntary leaving. However, a claimant who leaves work because she considers a disciplinary act, or the manner in which it is applied, to be unjustified or unduly harsh, but does not pursue a reasonable opportunity to remedy the situation, leaves work without good cause. In the instant case, the claimant failed to demonstrate that she would in fact have been subject to discipline, or that such possible discipline would have been unwarranted or unduly harsh, or that she had pursued a reasonable opportunity to remedy the situation. Therefore, she left work without good cause attributable to her employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 138.05**
DOCKET/DATE **ABR-85-7421/4-7-86**
AUTHORITY **Sections 601A and 602A of the Act**
TITLE **Disciplinary Action**
SUBTITLE **Leaving in Anticipation of Discharge**
CROSS-REFERENCE **VL 135.35, Discharge or Leaving; MC 135.35**

The claimant was employed by the Department of Transportation, which had undertaken an investigation to see whether the claimant had misused vehicles assigned to him and/or whether he had kept improper time records. The claimant volunteered to resign if the employer would not pursue its investigation, the outcome of which was as yet unknown (to the employer); no formal charges had been filed against the claimant. The employer did not object to the claimant's suggestion. The claimant resigned.

HELD: A worker who leaves work in anticipation of a discharge for misconduct cannot evade the attendant disqualification by leaving. In cases where a discharge is imminent, the separation is considered a discharge and the claim is adjudicated accordingly. In cases where the claimant suspects that he will be discharged, but is under no threat of imminent discharge, the separation is considered a voluntary leaving and the claim is adjudicated accordingly.

In the instant case, the claimant left work voluntarily. He did not show that the work had become unsuitable, so as to affect his well being, only that the employer was exercising its prerogative to conduct, in a reasonable fashion, an investigation into its business affairs. The claimant left work without good cause attributable to his employer and was subject to the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 139.05**
DOCKET/DATE **ABR-85-3377/9-24-85**
AUTHORITY **Section 601A of the Act**
TITLE **Discrimination**
SUBTITLE **General**
CROSS-REFERENCE **VL 385.05, Relation of Alleged Cause of Leaving**

The claimant, who had been employed as a Secretary, gave a number of reasons for quitting her job; among them, discrimination. The claimant was of Mexican origin. She testified without contradiction that, from the time she became employed until the day she quit, her employer made disparaging remarks in her presence about Mexicans and belittled her by name-calling in front of her co-workers.

HELD: When multiple reasons are presented for leaving work, good cause is found if one genuine reason constitutes good cause attributable to the employing unit. Discrimination on account of race is an unjustifiable business practice with respect to unemployment insurance eligibility, and good cause will be found in a voluntary leaving based upon such discrimination.

In the instant case, although the claimant cited a number of reasons for quitting, the Board of Review considered it necessary to discuss only one. The record established that the employer was responsible for a work environment which the claimant reasonably perceived to be unfair and abusive. The voluntary leaving was, therefore, on that basis alone, with good cause attributable to the employer. The claimant was not subject to a disqualification under Section 601A of the Act.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.15**
DOCKET/DATE **83-BRD-14515/12-7-83**
AUTHORITY **1./S-601A and S-602A**
TITLE **Distance To work**
SUBTITLE **Removal From Locality**
CROSS-REFERENCE **VL 135.4 Resignation Intended under Discharge Or Leaving**

The claimant relocated to a community a considerable distance away from the employer and notified the employer that she intended to quit work in two weeks. She called in sick two days before she was scheduled to quit, and the employer told her not to report after that date.

HELD: The evidence established that the claimant quit work because of her relocation and that the employer merely accelerated her last day of work. The claimant's reason for leaving work was personal and did not constitute good cause attributable to the employer. She is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.15**
DOCKET/DATE **83-BRD-14716/12-9-83**
AUTHORITY **2./S-601A**
TITLE **Distance To work**
SUBTITLE **Removal From Locality**
CROSS-REFERENCE **VL 150.2, Transportation And Travel under Distance To Work**

The claimant left work to move to a more distant community when her son sold the building in which she formerly resided. She did not have an automobile, and her new community did not have public transportation on Saturdays and Sundays, days on which she worked. The claimant left work because of the lack of transportation on weekends.

HELD: The claimant relocated to a new community where she no longer had public transportation to work. The claimant's transportation problems are not attributable, in this instance, to the employer. The claimant voluntarily left work without good cause attributable to the employer and is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.2**
DOCKET/DATE **83-BRD-7270/6-28-83**
AUTHORITY **1./S-601A**
TITLE **Distance To work**
SUBTITLE **Transportation And Travel**
CROSS-REFERENCE **None**

The claimant worked as a medical assistant for approximately four months. She was having difficulty learning how to draw blood from patients. As a result the employer transferred her to a facility approximately one hour's driving time from the claimant's home, where she could learn the procedure. The employer has numerous facilities in the area, and the claimant knew when she was hired that her job site could change, based upon a monthly posting. The claimant refused the transfer and thereby quit her job. She shared an automobile with her husband, and public transportation to the new job site would be difficult.

HELD: Inconvenient transportation does not constitute good cause for voluntarily leaving work attributable to the employer unless the employer violates the conditions of employment agreed to at the time of hire, which is not the case here. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.2**
DOCKET/DATE **83-BRD-10817/9-22-83**
AUTHORITY **2./S-601A**
TITLE **Distance To work**
SUBTITLE **Transportation And Travel**
CROSS-REFERENCE **None**

The claimant's automobile was wrecked in an accident. He requested and was given a one-month leave of absence in order to find new transportation. He was unable to make suitable transportation arrangements and quit his job when he was due to return to work.

HELD: While the claimant quit his job for a compelling personal reason, it was not attributable to his employer. The claimant voluntarily left work without good cause attributable to the employer and is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.2**
DOCKET/DATE **83-BRD-14716/12-9-83**
AUTHORITY **3./S-601A**
TITLE **Distance To work**
SUBTITLE **Transportation And Travel**
CROSS-REFERENCE **VL 150.15, Removal From Locality under Distance To Work**

The claimant left work to move to a more distant community when her son sold the building in which she formerly resided. She did not have an automobile, and her new community did not have public transportation on Saturdays and Sundays, days on which she worked. The claimant left work because of the lack of transportation on weekends.

HELD: The claimant left work voluntarily because she was without a means of transportation to and from work following her relocation. The claimant's transportation difficulties are not attribute to the employer. Therefore, she is ineligible for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 150.2**
DOCKET/DATE **ABR-86-1747/7-31-86**
AUTHORITY **Section 601A of the Act**
TITLE **Distance to Work**
SUBTITLE **Transportation and Travel**
CROSS-REFERENCE **VL 450.153, Time, Hours; VL 500.752**

The claimant traveled 68 miles each way to his work, as a Heavy Equipment Operator, which he performed 5 days per week, 9 to 10 hours per day. Then his work schedule was changed: He was assigned 2 days of work per week, and sometimes those were half days. The claimant testified that, due to his reduced work schedule, he was compelled to quit; he could no longer afford to travel the 68 miles to and from work.

HELD: A reduction in wages - which occurs only as a result of a reduction in hours - does not constitute good cause attributable to the employing unit for leaving, unless the time or costs of transportation become disproportionate to the earnings. In the instant case, the time and money spent by the claimant in order to travel to and from his work had become disproportionate to his earnings. He left work with good cause attributable to his employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL-150.2**
DOCKET/DATE ***Jamie v. IDES*, 301 Ill.App.3d 930, 235 Ill.Dec. 148, 704 N.E.2d 721 (1st Dist., 11/25/98)**
AUTHORITY **Section 601(A)**
TITLE **Distance to Work**
SUBTITLE **Transportation and Travel**
CROSS-REFERENCE **None**

The claimant had worked for 10 years at the employer=s location on Chicago=s south side when the employer decided to move its facility 16 miles further south into the suburbs. For a period of between six weeks to two months, the claimant was able to commute to work by riding with a fellow employee. However, when that employee quit, the claimant also quit, asserting to the claims adjudicator that she quit due to a lack of transportation.

HELD: The employer=s unilateral decision to move its plant 16 miles away from its former location constituted Agood cause attributable to the employer@ with respect to the claimant=s leaving work. The claimant=s testimony at the hearing demonstrated that she made a reasonable attempt to maintain her job of 10 years by riding with a co-worker for approximately six weeks. She should not be penalized for making an attempt to keep her job. While an employee=s transportation to and from work is generally not the responsibility of the employer, this claimant=s inability to keep her job was the direct result of the employer=s decision to move its plant, which significantly changed the conditions of the claimant=s employment.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.1**
DOCKET/DATE **83-BRD-3122/3-24-83**
AUTHORITY **1./S-601A**
TITLE **Domestic Circumstances**
SUBTITLE **Children, Care Of**
CROSS-REFERENCE **None**

The claimant's mother usually took care of the claimant's minor children while she worked but could no longer do so due to illness. The claimant's inability to find alternative suitable child supervision forced her to leave her job.

HELD: Although the claimant's reason for leaving work was due to a compelling personal circumstance, it was not attributable to the employer. Therefore, the claimant is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.1**
DOCKET/DATE **ABR-83-12308/8-9-85**
AUTHORITY **Section 601A of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Children, Care Of**
CROSS-REFERENCE **VL 50.05, Attributable To or Connected With Employment**

The claimant worked as a Station Clerk on the 11 p.m. to 7 a.m. shift for 2-1/2 years. In May, 1983, she was informed that due to staff shortages she was being temporarily assigned to the 3 p.m. to 11 p.m. shift. Upon being informed, the claimant immediately complained that she had no one to watch her children during that shift, explaining that her brother normally took care of her children but was unavailable on a permanent basis for those hours. The claimant also explained that she wished to continue to supervise her young children's activities after school. An employer's memorandum, dated May 2, 1983, acknowledged that the claimant had expressed concern about working the 3 p.m. to 11 p.m. shift, and stated that the change would exist only for 2 months, until the regular employees on that shift returned from their vacations

In June, 1983, the claimant received a memorandum informing her that she would be permanently assigned to the 3 p.m. to 11 p.m. shift, beginning in July, 1983. The claimant again informed her employer that she could not work that shift. The employer did not offer the claimant any alternative. When the claimant did not report to work as scheduled in July, she was deemed to have resigned.

HELD: Generally, it is the responsibility of a worker to arrange her family and domestic affairs so as to permit her to be gainfully employed. However, it should be noted that there is sometimes misunderstanding as to whether or not a voluntary leaving is due to domestic circumstances or a change in working conditions. If there are any significant changes in working conditions which affect domestic circumstances, then the voluntary leaving may be due to the change in working conditions and attributable to the employer.

In the instant case, it was the employer's action which precipitated the claimant's separation from work. The claimant left work not because of domestic circumstances alone, but because of a change in working conditions brought about by the employer. The evidence established that the claimant would have continued working, but for the employer's action. The fact that the claimant could not accept the change because of her domestic circumstances did not mean that the separation was not attributable to the employer, but, rather, that the claimant had good cause for separating from employment. The claimant left work with good cause attributable to her employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.1**
DOCKET/DATE **ABR-85-2581/12-24-85**
AUTHORITY **Section 601A of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Children, Care Of**
CROSS-REFERENCE **VL 50.05, Attributability; VL 135.05; MC 135.05**

The claimant was employed by a hospital as a Respiratory Technician. The claimant was regularly scheduled to work the day shift, but was also scheduled - as were other Therapists - to work the night shift. After 2 years of such employment, the claimant told his employer that he would not be able to work the night shift; but the employer demanded that he make a commitment to his work and agree to work at any time the employer might schedule him, or be discharged. The employer's Chief Therapist stated:

> I told (the claimant) it was unfair that other staff had to work another shift occasionally if he did not. I told him it was not very often that this would be required. He asked if I could guarantee that (it would not be often) and I said no...I told (the claimant) that everyone is expected to work a different shift if needed and that if he was not willing to accept that job responsibility he would have to be terminated...

The claimant, who was divorced and had custody of his children, ages 5 and 3, had had regular day care arrangements for them. He testified that had regular day care arrangements for them. He testified that he refused to work an occasional night shift because he could not afford to pay a baby-sitter for nights, and because he wished to spend more time with his children.

Following his refusal to work a night shift, the claimant was taken off the employer's schedule.

HELD: Generally, it is the responsibility of workers to arrange their family and domestic affairs so as to permit them to be gainfully employed. A worker who leaves work voluntarily, in order to devote time to family or domestic affairs, does so for reasons not attributable to his employer, and is subject to a disqualification - unless the employer has substantially changed the work requirements, thereby placing an undue burden upon the claimant's family or domestic affairs.

In the instant case, the employer made no substantial change in the work requirements; the claimant did. From the onset, the nature of the claimant's work, that of a Respiratory Therapist, was manifestly such that the claimant might -- from time-to-time, or even often, with little or no advance notice -- have been needed in emergency, life-threatening situations. This necessity, whether it was express or implied, was one of the conditions under which the claimant had been hired. It was common in the health care field. The claimant had been well aware of the requirements of such work when he accepted the job.

Under those circumstances, his decision to devote more time to his family, at the expense of his job, constituted a voluntary leaving not attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.1**
DOCKET/DATE	**ABR-88-3688/7-14-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Children, Care Of**
CROSS-REFERENCE	**VL 160.05, Efforts to Retain Employment**

The employer was about to transfer the claimant to work at a different location with different hours. The change in hours would affect her child care situation. She explained this to the employer. The employer offered to delay her transfer to give her time to resolve the child care problem. Instead, she quit.

HELD: When an individual leaves work in order to care for her children, the factor that determines whether she leaves with good cause is the necessity that exists at the time of leaving.

In this case, the employer was willing to make a reasonable accommodation, in terms of time, so that a child care problem might be resolved. Whether or not the problem would be resolved eventually, no necessity to leave existed at the time the claimant left. Therefore, she left work without good cause and was subject to disqualification under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.2**
DOCKET/DATE	**83-BRD-14150/6-28-83**
AUTHORITY	**1./S-601A**
TITLE	**Domestic Circumstances**
SUBTITLE	**Home Or Spouse In Another Locality**
CROSS-REFERENCE	**None**

When the claimant was separated from her husband and found that she was unable to support her family, she decided to quit her job and move to Alabama, where she has relatives.

HELD: While the claimant may have left work for valid personal reasons, they were not attributable to her employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.2**
DOCKET/DATE **83-BRD-7398/6-15-83**
AUTHORITY **2./S-601A**
TITLE **Domestic Circumstances**
SUBTITLE **Home Or Spouse In Another Locality**
CROSS-REFERENCE **None**

The claimant worked as an iron worker out of state for fifteen months at a wage of $16.25 per hour. He quit his job because he felt his absence was a strain on his family. He also believed that he had a fairly good chance of finding work through his union affiliations near his home.

HELD: The claimant's decision to quit his job to obtain work near his home was a matter of choice and not a factor which can be deemed attributable to the employer. The claimant voluntarily left work without good cause attributable to the employer and is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.2**
DOCKET/DATE **83-BRD-1119/9-30-83**
AUTHORITY **3./S-601A**
TITLE **Domestic Circumstances**
SUBTITLE **Home Or Spouse In Another Locality**
CROSS-REFERENCE **None**

The claimant worked as a production clerk for 15 years before she quit her job. Her husband was transferred out of state on a job promotion, and she relocated with him.

HELD: The claimant voluntarily left work to relocate with her husband. Although she quite her job for a good personal reason, it is not attributable to her employer, and she is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.2**
DOCKET/DATE **83-BRD-14855/12-13-83**
AUTHORITY **4./S-601A**
TITLE **Domestic Circumstances**
SUBTITLE **Home Or Spouse In Another Locality**
CROSS-REFERENCE **None**

The claimant left her job to move to Mississippi when her husband was transferred.

HELD: The sole reason for leaving work was to relocate to Mississippi to be with her husband. This is a compelling personal reason but is not attributable to the employer. Therefore, her leaving was without good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.35**
DOCKET/DATE **ABR-85-9787/8-20-86**
AUTHORITY **Section 601 of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Illness or Death of Others**
CROSS-REFERENCE **None**

The Referee found that the claimant left her job to relocate to Arkansas to tend to her terminally ill mother; her mother had falling spasms and was unable to get up by herself. In making that finding, the Referee relied upon a doctor's statement, which read, in pertinent part:

> (The claimant's mother) does have some post-stroke hemiparesis along with poorly controlled diabetes. She does have considerable disability as far as taking care of her home and her needs.

The Referee then concluded that, because the claimant was not specifically advised by a doctor to leave her work to minister to her mother, she did not meet the conditions for a Section 601B-1 exception to the disqualifying provisions of Section 601A.

HELD: Section 601B-1 of the Act provides, in pertinent part, that a disqualification for Voluntary Leaving, under Section 601A, shall not apply, if an individual has left work -

> upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for...a parent who is in poor physical health and such assistance will not allow (the claimant) to perform the usual and customary duties of...employment...

Section 601B-1 does not state that a doctor must tell a worker to leave her job.

In this case, it was immaterial that the doctor did not tell the claimant to leave her job. What was decisive was that the claimant's mother, according to her doctor, could not take care of herself, and that the doctor advised the claimant that care was necessary for her mother.

The claimant was not subject to a disqualification for benefits by reason of having left work, because of the exemption set forth under Section 601B-1 of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.35**
DOCKET/DATE	**83-BRD-3343/3-31-83**
AUTHORITY	**1./S-601A and 601B1**
TITLE	**Domestic Circumstances**
SUBTITLE	**Illness or Death of Others**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a clerk for eleven years. She began her vacation, and, before she was scheduled to return to work, her husband suffered a heart attack. The claimant notified her supervisor she would be unable to return to work as planned. She did not request a leave of absence, nor did she understand that she had been granted one, Her supervisor told her that he understood the problem and that she should keep the employer informed of her intentions.

The husband's doctor had not advised the claimant that it was necessary for her to be with her husband full time, but she felt that this was the proper thing to do.

Although the claimant contacted co-workers on several occasions, she did not contact her supervisor again and did not respond to a letter which inquired as to when she planned to return to work. The employer assumed that the claimant had quit. The claimant stated that she had not received the employer's letter because it was sent to her old address.

HELD: The claimant voluntarily quit her employment when she did not return to available work at the end of her vacation. She might have avoided this consequence if she had requested and been granted a leave of absence, but she did not do so. This result was confirmed in the mind of the employer when the claimant made no further effort to contact him and when she did not reply to his letter of inquiry.

While the claimant quit her job for a compelling domestic reason, it was not a cause which was attributable to the employer, and she is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.35**
DOCKET/DATE **83-BRD-10482/3-31-83**
AUTHORITY **2./S-601B1.**
TITLE **Domestic Circumstances**
SUBTITLE **Illness or Death of Others**
CROSS-REFERENCE **None**

The claimant was granted a two-month leave of absence to care for her mother, who was seriously ill. Prior to the expiration of her leave, the claimant telephoned the employer and stated that her mother's doctor advised her that she was needed to care for her mother. The claimant indicated she could not return to work in the foreseeable future. The doctor's statement indicated that the claimant "must be accessible to assist with the full body care her mother required."

HELD: The claimant left work on the advice of a licensed and practicing physician to provide necessary assistance in the care of her mother. Such assistance would not allow her to perform her usual and customary duties, and she notified the employer of the reasons for her absence from work. Under these circumstances, the claimant would not be subject to any disqualification of benefits for voluntarily leaving her work without good cause attributable to the employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 155.35**
DOCKET/DATE ***Flex v. Board of Review*, 466 N.E. 2d 1050 (1984)**
AUTHORITY **Section 601 of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Illness or Death of Others (and Section 601B-1)**
CROSS-REFERENCE **VL 235-25, Health or Physical Condition; MS 95.4**

The claimant was employed as a Stenographer until July, 1981, when she went on maternity leave, which was to expire in September, 1981. During that time, the claimant gave birth to a son whose spinal cord was damaged. The claimant was granted an extended leave of absence until January, 1982, because of the child's condition. No further extension was granted. On January 15, 1982, the claimant's supervisor informed her that if she did not return to work as scheduled, the employer would have to hire someone to replace her. The claimant explained that she needed more time off in order to provide care for her child. When the claimant did not report to work as scheduled, she was replaced.

The claimant then filed a claim for unemployment benefits. The Claims Adjudicator determined that the claimant was ineligible for benefits pursuant to Section 601A of the Act, because she had left work voluntarily without good cause attributable to her employer. A Referee affirmed the Claims Adjudicator's determination.

In support of her appeal to the Board of Review, the claimant presented a letter from her son's pediatrician. The letter stated that the claimant's son suffered from "a right Erb's palsy, spinal cord lesion and hypospadias" and that he needed "physical therapy and infant stimulation." In addition, the letter stated:

> It is important that his mother spend as much time with the child as possible. She is a very good mother and the child shows the results of her time.

The claimant contended that based upon the doctor's letter she was entitled to a medical exception to the disqualifying provisions of Section 601A, in that she had left work upon the advice of a licensed and practicing physician, who had determined that the claimant's assistance was necessary for the purpose of caring for her child who was in poor physical health, and such assistance would not have allowed the claimant to perform the usual and customary duties of her employment.

The Agency's position was that the doctor's letter did not specifically state that caring for her child made it impossible for the claimant to continue her employment: The statement "It is important that his mother spend as much time...as possible" was insufficient to show that she could not have continued working.

HELD: Section 601B-1 provides an exception to the disqualifying provisions of Section 601A, provided that an individual shows that she left work:

> ...upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for her child who is in poor physical health...

In the instant case, the doctor's letter clearly indicated that the claimant's child suffered severe and disabling injuries at birth. The doctor was an expert on the type of assistance necessary to care for an ill child. Accordingly, the first provision of Section 601B-1 was satisfied.

> ...and such assistance will not allow the claimant to perform the usual and customary duties of her employment...

Although a physician is an expert on the type of assistance necessary to care for an ill child, her opinion on how such assistance will affect the parent's job duties is wholly outside her area of expertise and should not be required as a predicate for the award of benefits. A physician cannot be expected to know the implications of her advice for the receipt of unemployment insurance. Therefore, it would be unreasonable to require that a physician employ the exact wording of Section 601B-1. In the instant case, independent of the doctor's express language, the advice "spend as much time as possible" could properly have been interpreted to have precluded the continuation of full-time employment. Accordingly, the second provision of section 601B-1 was satisfied. The claimant was entitled to an exception under Section 601B-1 of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.35**
DOCKET/DATE	**ABR-85-4487/2-6-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Illness or Death of Others (Brother)**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant quit his job to move to California, where his brother, who suffered from a cardiac condition, resided. The claimant testified that, because of the cardiac condition, his brother could not live alone and needed someone with him in case of an emergency. The claimant testified that he had notified the employer that he was quitting work because of his brother's illness and because of the necessity of providing care for him.

HELD: Section 601B-1 of the Act provides an exception to the disqualifying provisions of Section 601A, provided that a licensed and practicing physician has determined that -

> assistance is necessary for the purpose of caring for a spouse, child, or parent who is in poor physical health...

Because the statute has delineated certain classes of individuals concerning whom an exception might be made, and "brother" does not fall within any classification, the claimant's reason for leaving work did not fall within the purview of Section 601B-1. Accordingly, he was not entitled to an exemption.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 155.35**
DOCKET/DATE	***Jenkins v. IDES*, 805 N.E.2d 363 (1st Dist., 2/27/04)**
AUTHORITY	**Section 601(B)(1) of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Illness or Death of Others**
CROSS-REFERENCE	

The claimant gave her employer two-week notice that she was quitting her job to relocate to Chicago to take care of her ailing father. In response to the Referee=s inquiry at the hearing, the claimant testified that she was not advised by a doctor to leave her job in order to care for her father. The claimant submitted to the Board of Review an affidavit and a letter from the doctor who was treating her father. The letter stated, in part, that A[Plaintiff] is the daughter of my patient...She has moved home to help assist her father who does have multiple medical problems. Because of his dementia and inability to carry out all household tasks, she does need to assist him in these activities.@

HELD: The Appellate Court held that the claimant was not disqualified from receiving benefits, relying on Section 601(B)(1) of the Act, which provides, in part, that an individual will not be disqualified under Section 601(A) of the Act for leaving work without good cause attributable to the employer where the individual Ahas left work voluntarily upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for his spouse, child, or parent who is in poor physical health and such assistance will not allow him to perform the usual and customary duties of his employment, and he has notified the employing unit of the reasons for his absence@. The court found that the Board of Review improperly construed Section 601(B)(1) to mean that the doctor must have specifically advised the claimant to leave her job in order to care for her father. According to the court, Section 601(B)(1) only requires the doctor to advise that the parent, child, or spouse is in need of assistance. The issue of whether an employee must leave her job to tend to an ailing family member is independent of whether that family member is in need of assistance. In the instant case, the claimant met the requirements of Section 601(B)(1) by showing that a doctor had advised her that her father was suffering from multiple medical problems and needed assistance carrying out household tasks and that she had adequately informed her employer that she was leaving her job to take care of her father.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL-160.05**
DOCKET/DATE	***Henderson v. IDES*, 230 Ill.App.3d 536, 172 Ill.Dec. 33, 595 N.E.2d 96 (1st Dist., 5/26/92)**
AUTHORITY	**Section 601(A)**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**VL-500.75; Wages, Reduction**

The claimant worked as a janitor for a school district. On February 6, 1989, after a hearing conducted by his employer, he was demoted for illegally entering the school and attempting to steal school property. His demotion resulted in a $10,000 loss of pay per year. From that date until August 4, 1989, when he informed the employer that he was resigning, the claimant was off of work due to injury, vacation or leave of absence, except for the period July 3 through July 17, 1989. The claimant testified that he did not file a grievance contesting the demotion because the union steward first told him to wait until the criminal charges were resolved and then told him it would do no good. He also testified that his employer told him on August 4th to put off the effective of his resignation until September 17, 1989.

HELD: The court held that the claimant was disqualified under Section 601(A) based on the facts in the record showing that he did not file a grievance or take any other action to resolve the situation and did not resign until seven months after his demotion and pay cut went into effect. Since the claimant took no action, the court found that he acquiesced in his demotion, and when he quit the job seven months later, it was not due to good cause attributable to the employer. Because the claimant failed to contest his demotion and take steps to resolve that conflict, the court did not deem it necessary to address the issue of whether the reduction in wages would have constituted Agood cause@ under Section 601(A).

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**Pearson v. Board of Review, 551 N.E. 2d 1021 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**When Employer Limits Alternatives**
CROSS-REFERENCE	**VL 475.75, Union Relations**

The claimant's union dues were automatically deducted from her paycheck, until she was transferred, at a reduced wage, to another job location. There, her paycheck reflected a wage reduction, but, under a different union local, dues were not automatically deducted. For three months, the claimant was unaware of this and accumulated $80 in back dues. When she was informed, she signed an authorization that directed the employer to "deduct membership dues from pay." She asked if the $80 in back dues, in addition to future dues, would be deducted. She was told no; instead, she had to pay the $80 up front or lose her job. The claimant had no money and was already heavily in debt. She refused her supervisor's offer of a loan because she know she would be unable to pay him back. So she lost her job. The Board of Review denied benefits, finding that the claimant failed to exhaust reasonable means of remaining employed (e.g., borrowing from her supervisor).

HELD: Section 601A demands that the employer not be even *one* causal factor in the work separation. (Court's emphasis).

In light of this, whether a worker makes a reasonable effort to retain employment must be considered in light of what the employer has or has not done.

Here, it was erroneous to consider the claimant's effort or lack of effort to retain employment (e.g., not borrowing from her supervisor) without also considering the employer's lack of effort. The employer failed to inform the claimant of the need for a new authorization and failed to offer her an alternative payment plan, which would have been permissible according to the language of the new authorization. In short, the reasonable means of repaying the debt and retaining employment were those that the employer did not make available; therefore, it was not relevant what steps the claimant pursued.

Benefits were allowed.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**83-BRD-10304/9-7-83**
AUTHORITY	**1./S-601A**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked for the employer in Joliet as an assistant manager and head cook. He requested a transfer to the Springfield office and accepted it when it became available two months later. After another individual was hired to train for his job in Joliet, the claimant began to doubt whether he could afford to make the move. At the suggestion of the manager, the claimant went to discuss it with his wife and never returned. The employer testified that the claimant could have remained employed at his former location had he asked to stay. The claimant was subsequently rehired after the period under review.

HELD: The claimant caused his own separation from work. He was subsequently rehired as head chef, which position would have been open to him if he had decided to stay in Joliet.

Accordingly, the claimant voluntarily left work without good cause attributable to the employer and, therefore, is disqualified for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**83-BRD-12659/11-9-83**
AUTHORITY	**2./S-601A**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked as a sales representative for two months and quit her work. The claimant stated that she took the job with the employer on a two-month trial basis. She met with the employer after the trial period and was told that she needed to put in more concentrated time on the work. The employer offered to provide additional training. The claimant was neither willing to put in the extra time nor to take the training. The claimant contends that the work was not suitable for her and that she decided to quit.

HELD: When the claimant left work because she was unwilling to take the opportunity to be trained, she did not demonstrate a genuine interest in remaining employed. The evidence is sufficient to support a finding that the claimant left work voluntarily without good cause attributable to the employer, and she is disqualified for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	***Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984)**
AUTHORITY	**Sect. 601A of Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 210.05, Good Cause**

The claimant was hired as School Child Development Coordinator, whose duties were primarily administrative and consisted of hiring and supervising teachers, working with parents, and recruiting children -- ages three to five. Subsequently, the claimant was required to incorporate into her program emotionally disturbed teenagers referred from an agency. Due to diminished funding, the claimant, in addition to performing her administrative duties, was required to teach the emotionally disturbed teenagers.

The claimant explained to her Director that the emotionally disturbed children presented behavior disorders, involving aggressive and destructive behavior, and she maintained that she was not trained, qualified, or experienced in teaching emotionally disturbed children. But when she explained that she did not feel qualified and asked for assistance, she received none.

Then the employer hired a second Director. The claimant found herself reporting to two Directors, with no means of resolving her own conflicts or conflicts between them. She asked for some resolution of the problem, but without results.

Finally, the claimant began to suffer headaches, and became very upset, causing her to consult a professional psychotherapist, who advised her that the job was causing her stress which would continue for as long as she remained employed in her current position. She explained this to her superiors, but, again, was offered no assistance. Subsequently, the claimant resigned.

HELD: An individual should make reasonable efforts to resolve conflicts arising from employment before voluntarily terminating such employment and seeking unemployment benefits. In the instant case, the record was uncontradicted that the claimant made numerous and substantial attempts to resolve the situation with her superiors, but her efforts were unsuccessful. Having made such reasonable efforts and having established that she left work with good cause attributable to her employer, the claimant was eligible for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**85-BRD-05033/7-8-85 (84-C-16062/10-31-84)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**Case Compared with *Davis v. Board of Review,* 465 N.E. 2d 576 (Ill. App. 1 Dist. 1984)**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 210.05, Good Cause**

The claimant was employed by a day-care facility. Her duties included caring for kindergarten-age children at times when they were not in school. There were two other kindergarten-age units on the premises, operating under similar circumstances, so that the day-care workers and their assistants could work with each other, or cover for one another during breaks or absences.

After eight years, due to economic circumstances, the day-care facility's preschool and school-age programs merged, to the extent that one Director now administered to both programs. The claimant still worked in a distinct, kindergarten-age unit. However, after working ten months under the newly formed administration, the claimant resigned.

The claimant explained to the adjudicator: "(There was) too much stress dealing with the kids." The Referee asked the claimant to elaborate. She stated that most importantly she was no longer working exclusively with kindergarten-age children, four-and-one-half to five years old: On those occasions when another worker was on break or absent, she might have to cover in a unit which included children as young as three-and-one-half years old.

However, at the time the claimant separated from employment, she did not mention to her employer that she was suffering from "stress." She told her employer that she was resigning in order to return to school. The Director of the facility testified that the claimant's work was highly regarded, and that her resignation was a complete surprise: The claimant had never even hinted that she was uncomfortable.

In closing, counsel for the claimant cited *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984), and contended that the fact situations were nearly identical.

HELD: In *Davis*, the court re-affirmed the principle that an individual should make reasonable efforts to resolve conflicts arising from employment before voluntarily terminating such employment and seeking unemployment benefits. In Davis, the claimant "made numerous and substantial attempts to resolve the situation with her superiors." In the instant case, the claimant made no attempts. Because unemployment benefits are payable to persons who have exhausted all reasonable means of remaining employed, as an alternative to collecting unemployment benefits, and the claimant did not fall within that category of persons, she was not eligible for benefits.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**ABR-85-2898/9-20-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**Efforts Made Prior to a Final Incident**
CROSS-REFERENCE	**None**

The claimant was employed as a Laborer for 7 years, until December 31, 1984, when, at about 1:30 p.m., he was cleaning his work bench as a part of his regular duties. The claimant's foreman told him to "stop that!" because the noise was giving him a headache. The claimant asked the foreman if he wanted an aspirin. The foreman (construing the claimant's remark as sarcasm) said that he was tired of seeing the claimant's face, ordered him to leave the work site, and added that he would see to it that the claimant would lose pay for the remainder of the holiday and for the ensuing New Year's holiday. Complying with the foreman's demand that he leave, the claimant was waiting in the employer's "break room," when the foreman, seeing him there, told him to go outside and wait in the rain for his "f-ing wife." After the New Year's holiday, the claimant informed his foreman that he "did not need the harassment and was not coming back."

At an appeal hearing before a Referee, the claimant testified that the foreman had been mistreating him for quite some time, causing the claimant to several times appeal to the foreman's superior (the employer's assistant to the president) for relief. Finally, in November, 1984, the claimant told the foreman's superior that if the foreman persisted in mistreating him, he would leave. The superior promised to do something about it, but nothing was ever done.

As to the specifics of the earlier mistreatment, the claimant, and a witness on his behalf, attempted to testify as to "violent" tendencies on the foreman's part. The claimant's witness began by saying that the foreman had been "picking on other people" in addition to the claimant, and that the foreman had tried to "choke me to death." The Referee stated that such testimony was not relevant to the issue, and, subsequently, the Referee issued a decision disqualifying the claimant for benefits. The Referee based his decision on the fact that, no matter what had transpired earlier, the claimant, after the final incident on December 31, should have appealed once again to a higher employer authority; because he did not do so, he did not make a "reasonable effort" to remain employed.

HELD: A worker's efforts to remain employed need not be made subsequent to, or simultaneous with, the final incident that results in the work separation in order to constitute the "reasonable efforts to remain employed" contemplated by the Act. Events occurring prior to the final incident may constitute such reasonable efforts.

In the instant case, the Referee erred by discouraging and disregarding testimony as to matters occurring prior to the final incident and by applying the "reasonable efforts" standard as he did. The evidence established that the employer's foreman had, with apparent impunity, mistreated employees over a long period of time. The claimant feared the foreman's propensity for violence. The employer had promised that something would be done, but nothing was, and the foreman's mean and vindictive actions culminated in his ordering the claimant off the job at a time calculated to deprive the claimant of holiday pay, and using vulgar and provocative language toward the claimant, including a reference to the claimant's wife. In view of the foregoing, the claimant could not have had any reason to expect that further efforts to ameliorate the conditions of his job would have been any more effective than his previous efforts. Under the circumstances, he had already exhausted reasonable means of remaining employed. He left work with good cause attributable to his employer.

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE **ABR-85-756/6-25-85**
AUTHORITY **Section 601A of the Act**
TITLE **Efforts to Retain Employment**
SUBTITLE **Obtaining a License**
CROSS-REFERENCE **MC 135.3, Discharge or Leaving; MC 165.05**

In October, 1979, the claimant was hired as a Nurse's Assistant. Pursuant to a statute passed in 1980, Nurse's Assistants were required to be licensed by the State. The claimant's certificate that had been issued in 1968 was not recognized by the 1980 statute, and, moreover, the claimant had not had sufficient work experience prior to the passage of the statute to take advantage of that portion of the statute which allowed licensing based upon work experience. Subsequent to the passage of the 1980 statute, the claimant was notified that her employer could not continue to employ her because of her lack of the requisite license.

HELD: There are instances in which an employer cannot retain a worker in its employ because the worker has failed to meet a legal requirement for continued employment. Even though the employer does not have the option to retain the worker, the resulting separation is generally considered a discharge as opposed to a voluntary leaving, unless it is established that was contemplated in the working agreement and was within the control of the affected worker to satisfy the legal condition for continued employment. In the instant case, the requirement for State certification was mandated at some time after the claimant's hire and there was no assurance that the claimant had within her control the ability to obtain the requisite certification. Therefore, the claimant's work separation was a discharge (not for misconduct) and not a voluntary leaving.

(The Board of Review compared the instant case to its previous decision, ABR-84-237, dated October 17, 1984: In that case, the claimant was hired with the understanding that, within a relatively brief time after hire, she would be required to attend a training course in order to become certified. The claimant chose not to attend the training course, and, thereby, precluded any opportunity to maintain the certification required to keep her job. The distinguishing feature of that case, as opposed to the instant case, was that the claimant was aware of, and accepted the responsibility for, obtaining the proper State certification, which was within her control to obtain.)

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE **ABR-84-12229/10-4-85**
AUTHORITY **Section 601A of the Act**
TITLE **Efforts to Retain Employment**
SUBTITLE **Interpretation of Remark or Action**
CROSS-REFERENCE **VL 135.2, Discharge or Leaving; MC 135.2**

The claimant worked as a Jewelry Salesman, and enjoyed a familiar relationship with the store's owner, for whom he had worked for 25 years. From May, 1983, through September 2, 1983, the claimant had been absent from work due to illness. On September 3, he returned to work, unannounced, and was preparing to open the store, when the owner told him that he had hired a new employee. Upon hearing this, the claimant handed the owner his keys and left.

At a hearing, the employer testified that the new employee had not been hired as a replacement for the claimant. The claimant testified that he had assumed that he had been replaced by the new employee.

HELD: There are some situations in which it is difficult to determine whether a separation is a discharge or a voluntary leaving, as both the employer and worker have made some remark or have taken some action which has contributed to the initiation of a separation. Generally, if an employer makes a remark or takes some action which initiates the separation, then a discharge has occurred. However, if the employee is given a choice of remaining at work, it is a voluntary leaving. In either case, the reasonableness of the parties' actions must be considered.

Even though an employer's remark might generally give rise to a discharge, in the instant case, the claimant's belief that he had been discharged was not reasonable. Considering his many years of employment, and his familiar relationship with the owner, the claimant should have taken steps to ascertain his status. His failure to do so by departing abruptly constituted a voluntary leaving without good cause attributable to his employer.

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE **ABR-85-5358/11-27-85**
AUTHORITY **Section 601 of the Act**
TITLE **Efforts to Retain Employment**
SUBTITLE **Reasonable Accommodation**
CROSS-REFERENCE **VL 235.25, Health or Physical Condition**

The employer had a policy of placing employees -- who had verified medical problems -- on light duty work.

The claimant had been employed as an Assembler for 19 years. She was absent 1 week, reportedly due to a backache. When she returned to work, she asked her foreman to place her on light duty work. The foreman declined to do so. The claimant then went to the employer's personnel office, but, instead of requesting, in a proper fashion, light duty work, she applied for retirement.

At an appeal hearing, the claimant acknowledged that she had been aware of the employer's formal procedures concerning medical verification in order to obtain light duty work, that she had not been advised by a physician to restrict her work, and that she had not presented the employer with any verification of an injury.

HELD: The disqualifying provisions of Section 601A do not apply when, pursuant to Section 601B-1, a worker has been deemed unable to work by a licensed and practicing physician, provided that the worker has notified the employing unit of the reason(s) for his or her inability to work.

The purpose of the notice requirement is to afford the employer an opportunity to make a reasonable accommodation. Where the employer would do so, and would make available work which would be suitable in light of the worker's special circumstances, a worker who forgoes such a reasonable accommodation and quits is not unemployed for lack of suitable work. Because the purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work and for no other reason, an individual who does not avail himself or herself of a reasonable accommodation will be disqualified.

In the instant case, the claimant made no effort to utilize the known procedures established by her employer for obtaining light duty work, when such work would have been made available. Rather than make a reasonable effort to remain employed, she chose to quit. She left work without good cause attributable to her employer and the disqualifying provisions of Section 601A were applicable.

ISSUE/DIGEST **Voluntary Leaving/VL 160.05**
DOCKET/DATE ***Alfonso Barron v. Ward*, No. 86-1630 (1987)**
AUTHORITY **Section 601A of the Act**
TITLE **Efforts to Secure Employment**
SUBTITLE **Failure to File a Union Grievance**
CROSS-REFERENCE **VL 515.4, Working Conditions, Fellow Employee**

The claimant, who was Mexican, worked with an employee who made repeated derogatory remarks about Mexicans in general and the claimant in particular. Finally, the claimant and the co-worker were engaged in an altercation, during which the co-worker struck the claimant in the face, injuring him.

The co-worker was transferred to another department. After the transfer, the co-worker threatened to kill the claimant and would laugh at him whenever he would see him in the plant.

For business reasons, the employer decided to transfer the co-worker back to the claimant's department. When the claimant learned of this, he told superiors and the union steward he could not and would not work with the co-worker, but they insisted that the transfer was a business necessity and that the claimant should just stay on and work.

The claimant quit without filing a union grievance.

HELD: In order to have good cause to quit, an employee must indicate an effort to work out problems - unless he can show that such effort would be futile.

There is no per se rule that an employee must follow established union grievance procedures before he may be found to have quit with good cause. A failure to file a union grievance, standing alone, does not require a finding that a claimant lacked good cause for quitting. A failure to file a union grievance is but one factor in determining whether an individual quits with or without good cause.

In this case, the employer had indicated that it was going to transfer the co-worker back into the claimant's department, regardless of the claimant's misgivings and complaints. It would have been futile for the claimant to pursue the matter with his employer. Since the union steward was also present, the claimant could reasonably have concluded that a union grievance would have been futile as well.

In this case, the claimant exhausted reasonable alternatives before quitting his job. He quit with good cause.

ISSUE/DIGEST	**Voluntary Leaving/VL 160.05**
DOCKET/DATE	**ABR-88-3688/7-14-88**
AUTHORITY	**Section 601A of the Act**
TITLE	**Efforts to Retain Employment**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 155.1, Domestic Circumstances, Children**

The employer was about to transfer the claimant to work at a different location with different hours. The change in hours would affect her child care situation. She explained this to the employer. The employer offered to delay the transfer to give her time to resolve the child care problem. Instead, she quit.

HELD: A worker has good cause for leaving when there are no reasonable alternatives at the time she leaves.

In this case, the employer was willing to make an accommodation, in terms of time, so that a child care problem might be resolved. Whether or not the problem would be resolved eventually, the claimant could have continued to work under unchanged conditions while exploring child care arrangements. This was a reasonable alternative to leaving at the time she did. Therefore, she left work without good cause and was subject to disqualification under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**ABR-86-9166/7-15-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Early Retirement**
CROSS-REFERENCE	**VL 50.05, Attributable; VL 495.05, Voluntary**

The employer's witness testified that the employer intended to reduce its work force. This was to be accomplished in 2 parts: the first part was an early retirement program; the second part was conditional upon the success of the first part - that is, if not enough workers took advantage of the retirement program, there would have to be layoffs.

The claimant, an Assistant Mine Manager, had heard a rumor that his position was to be eliminated. Then he was offered the early retirement package, which included financial incentives. Fearing that, if he did not accept the package, he would be demoted, which would have resulted in a financial lost, the claimant accepted the early retirement package.

HELD: The Unemployment Insurance Act provides that benefits shall be paid to individuals who are out of work due to the lack of suitable work and through no fault of their own. Accordingly, there can be no separation disqualification when a worker has been laid off, since no action taken by the worker, but, rather, a unilateral action by the employer, has caused the work separation.

In this case, the employer decided the number of positions it wanted eliminated. Had the requisite number of workers not resigned, the employer would have laid off the number necessary to meet its goal. The same number of people would have been unemployed, whether they quit or were laid off. This work separation, therefore, had the same effect as a lay off.

Further, the employer, on one hand, offered financial incentives to those workers who left; on the other hand, the employer did not interpose any safeguards or job protection for those who did not resign - those who stayed, even if they were not laid off, faced the prospect of loss of wages through demotions. It was clear then that the employer was the moving party, desirous of having workers accept an early retirement package; and those who, like the claimant, did the employer's bidding, acted as reasonable persons would have under the same or similar circumstances.

The claimant became involuntarily unemployed due to economic conditions beyond his control. This was a leaving with good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**85-BRD-05041/7-8-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Demotion**
CROSS-REFERENCE	**VL 50.05, Attributable To or Connected With Employment**

The claimant, a forty-seven year old woman, was employed as a Driver for one-and-one-half years, until her promotion to Transportation Manager, a position she held for two years. The claimant quit her job upon being demoted back to Driver (though at her managerial rate of pay).

There was no competent evidence to suggest that the claimant had not performed her work satisfactorily. However, during the latter part of the claimant's tenure as Transportation Manager, her relationships with supervisory personnel had deteriorated to the point where she was being screamed at frequently. This coincided with the employer contemplating expansion, telling the claimant it was not felt that she would be able to handle the managerial position in light of expansion. A supervisor added that the claimant "did not deserve the job anymore."

HELD: An individual who leaves work does not do so for good cause unless the evidence establishes that she quit her job because the conditions of her work had become so incompatible with her well being as to compel her to quit. Whether an individual has good cause for voluntarily leaving her work must be measured by what the ordinary prudent person would have done under similar circumstances.

In the instant case, the claimant left work for compelling reasons The changed terms of the working agreement were to the detriment of the claimant. Although she had not suffered a loss of pay as a result of her demotion, she did sustain a substantial lowering of status and authority in a demeaning fashion. The ordinary prudent person would have quit under similar circumstances. Accordingly, the claimant was not subject to a disqualification for voluntarily leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	***Davis v. Board of Review*, 465 N.E. 2d 576 (Ill. App. 1 Dist.1984)**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Evidence of, Distinguished from Requirements of Section 601B-1**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 160.05, Efforts Retain Employment**

The claimant was hired as School Child Development Coordinator, whose duties were primarily administrative and consisted of hiring and supervising teachers, working with parents, and recruiting children -- ages three to five. Subsequently, the claimant was required to incorporate into her program emotionally disturbed teenagers referred from an agency. Due to diminished funding, the claimant, in addition to performing her administrative duties, was required to teach the emotionally disturbed teenagers.

The emotionally disturbed teenagers presented behavior disorders involving aggressive and destructive behavior. The claimant had not been trained, qualified, or experienced in teaching emotionally disturbed persons. She received no assistance. As a result of her increased duties, she was required to work late, and, occasionally, on weekends to keep up with her work. She began developing headaches and became very upset. She consulted a professional psychotherapist, who was not a physician, who advised her that her job was causing her stress which would continue for a long as she remained employed in her current position. The claimant resigned.

The Referee and the Board of Review concluded that the claimant had not presented medical evidence to show that she was physically unable to perform her work, and was, therefore, not exempt under the provisions of Section 601B-1 from the disqualifying provisions of Section 601A. However, upon judicial review, it was decided that the claimant left work with good cause attributable to her employer.

Upon further appeal, it was argued that "stress" did not constitute "good cause" within the meaning of Section 601A, and that the claimant was required to produce evidence from a licensed, practicing physician that she was physically unable to perform her work in order to satisfy the evidentiary requirements of Section 601B-1.

HELD: Evidence which might support a finding of work-related "good cause" under Section 601A is distinguishable from evidence which would establish an existing, not necessarily work-related disability under Section 601B-1: A reasonable, subjective fear of harm to an employee's health, even absent the advice of a physician, should be considered "some evidence" of good cause under Section 601A. In the instant case, the claimant did present evidence that the work was causing her stress which would continue for as long as she remained employed in her position, and it would have been proper to consider this as "some evidence," which, along with her lack of training and assistance, increased duties and hours, supported a finding that the claimant left work with good cause.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**85-BRD-05033/7-8-85 (84-C-16062/10-31-84)**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Case Compared with *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984)**
CROSS-REFERENCE	**VL 50.05, Attributable to Employment; VL 160.05, Efforts Retain Employment**

The claimant was employed by a day-care facility. Her duties included caring for kindergarten-age children at times when they were not in school. There were two other kindergarten-age units on the premises, operating under similar circumstances, so that the day-care workers and their assistants could work with each other, or cover for one another during breaks or absences.

After eight years, due to economic circumstances, the day-care facility's preschool and school-age programs merged, to the extent that one Director now administered to both programs. The claimant still worked in a distinct, kindergarten-age unit. However, after working ten months under the newly formed administration, the claimant resigned.

The claimant explained to the adjudicator: "(There was) too much stress dealing with the kids." The Referee asked the claimant to elaborate. She stated that most importantly she was no longer working exclusively with kindergarten-age children, four-and-one-half to five years old: On those occasions when another worker was on break or absent, she might have to cover in a unit which included children as young as three-and-one-half years old.

The Director of the facility testified that the claimant's job description made reference to flexibility. She added that the claimant's fill-in duties usually occurred during times when her own kindergarten-age children were in fact off the premises, attending kindergarten, so that the claimant would have had no other responsibilities. Also, there always would have been another teacher or assistant on duty, so that the claimant would not have been solely responsible for the children.

The claimant presented no tangible evidence of any medical condition, related or unrelated to her work, nor had she consulted a physician or any other professional regarding "stress."

In closing, counsel for the claimant cited *Davis v. Board of Review*, 465 N.E.2d 576 (Ill. App. 1 Dist. 1984), and contended that the claimant had cited reasons sufficient to constitute "good cause" within the meaning of Section 601A.

HELD: In *Davis*, the court held that a reasonable, subjective fear of harm to an employee's health, even absent the advice of a physician, should be considered "some evidence" of good cause. In *Davis*, the reasonableness of the claimant's fear was in part determined by advice she had received from a professional psychotherapist that her work was causing her stress and would continue to do so. In addition to that ("some") evidence, the claimant established that she was not qualified to teach emotionally disturbed teenagers who had been incorporated into her program for three to five year olds, that she did not receive any assistance, and that she was working increased hours -- including weekends, which resulted in the headaches and emotional state which lead her to consult the psychotherapist. In contrast, in the instant case, the evidence established that the claimant was capable of working at brief intervals with normal three-and-one-half year olds, that she did receive assistance, that she was working her usual hours, and that she did not feel constrained by any physical or emotional condition to seek professional advice. The qualitative difference between the evidence presented in these cases was striking. In the instant case, the claimant's subjective fear was unreasonable and the totality of the evidence established that she did not have good cause for leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**ABR-85-3276/9-18-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Demotion**
CROSS-REFERENCE	**None**

The claimant worked for a fast-food franchise which employed a Manager and an Assistant Manager. The claimant worked as a Shift Manager, meaning that he performed the same work as non-supervisory crew-members, except that he was in charge when the Manager and the Assistant Manager were not on the premises.

The employer's Manager believed the claimant to be a good crew-member, but also felt that the claimant lacked leadership qualities necessary to be a good Shift Manager. On February 9, 1985, the Manager notified the claimant that he was about to be demoted from Shift Manager to crew-member, though continuing at his previous (Shift Manager) rate of pay. The claimant decided to quit.

HELD: An individual who leaves work does not do so for good cause unless the evidence establishes that he quit his job because the conditions of his work had become so incompatible with his well-being as to compel him to quit. Whether an individual has good cause for voluntarily leaving his work must be measured by what the ordinary prudent person would have done under similar circumstances.

In the instant case, the claimant left work for non-compelling reasons. Although he was about to be demoted, his demotion from Shift Manager to crew-member was not so drastic -- either in the manner in which it was accomplished or in terms of the substance of the claimant's duties -- as to render the work unsuitable. The claimant would have continued to receive his same wage, for performing essentially the same work which had not proven harmful to his health or beyond his physical capabilities in the past. The ordinary prudent person, under those circumstances, would not have created his own unemployment. The claimant left work without good cause.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 210.05**
DOCKET/DATE	**ABR-85-8546/6-10-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Good Cause**
SUBTITLE	**Apportionment of Work**
CROSS-REFERENCE	**VL 515.2, Working Conditions, Appointment of Work**

The claimant worked as a Sales Clerk in a health food store. Her work shift would run from 6 to 8 hours during which time she would be the only employee in the store. The employer had a rule which forbade eating at one's work station, except during rest periods or lunch breaks. The claimant testified that because there were no workers to provide her relief, she could not take a lunch break. Also, she could not take a break to go to the washroom, since that would mean leaving her work station unattended. She complained to her supervisor (whose testimony corroborated the claimant's) to no avail.

HELD: A leaving of work because of objection to the distribution of work will be without good cause attributable to the employing unit unless the distribution of work causes undue hardship for the claimant.

In the instant case, the employer's rule clearly demonstrated that workers were entitled to relief. Because the claimant was afforded no relief, she not only found herself as the only employee in the store, with full responsibility for its operation, but in a position where she either forewent lunch and rest periods to which she was entitled or was compelled to violate the employer's rule and subject herself to possible disciplinary action.

The claimant established that the employer, by not providing her any relief, distributed work in such a fashion as to cause her undue hardship. The average reasonable person subjected to the same conditions would in all likelihood have reacted as the claimant did. She left work with good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.05**
DOCKET/DATE	**83-BRD-11574/10-18-83**
AUTHORITY	**1./S-601B1.**
TITLE	**Health Or Physical Condition**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a clerk until February 14, 1983. The claimant had surgery on February 16, 1983, and she was too weak to return to work. She did not obtain a medical leave of absence.

The claimant was under doctor's care and, according to her medical certification on record, she was unable to work from February 14, 1983 through April 4, 1983. This information was given to the employer.

HELD: The claimant was deemed physically unable to perform her work by a licensed and practicing physician from February 14, 1983 through April 4, 1983, and she notified the employer of her reasons for leaving work. She was not disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.05**
DOCKET/DATE	**83-BRD-982-EB/11-4-83**
AUTHORITY	**2./S-601A and S-601B1.**
TITLE	**Health Or Physical Condition**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 235.45, Risk Of Illness Or Injury under Health Or Physical Condition**

The claimant left her work as a machine operator after six weeks because she felt under stress and believed that her health was threatened. She testified that she did not see a physician prior to her decision to quit work.

HELD: The Act establishes an exemption from disqualification for a claimant who has left work voluntarily without good cause attributable to the employer, if two conditions have been met:

1. The claimant must have been deemed physically unable to perform his work by a licensed and practicing physician, and

2. He must have communicated this information to the employing unit.

The claimant has failed to meet either of these requirements prior to leaving work. Therefore, she is not exempt from disqualification and is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.25**
DOCKET/DATE **83-BRD-12990/11-15-83**
AUTHORITY **1./S-601**
TITLE **Health Or Physical Condition**
SUBTITLE **Illness Or Injury**
CROSS-REFERENCE **None**

The claimant, who is 65 years of age, was employed as a security guard. The claimant worked from 4 p.m. to midnight and was stationed in a trailer in a large parking lot. When the claimant started work in the summer, there was light and air conditioning in the trailer. As the weather changed in the fall, there was neither light nor heat in the trailer. The claimant complained about the lack of heat to her supervisor on several occasions. The claimant asked to be transferred but was told that there was no other job available for a woman. The claimant contended that the lack of heat was affecting her health, and, after several repeated requests for heat, the claimant voluntarily quit her job.

HELD: The conditions of the claimant's work changed substantially and adversely due to seasonal changes. The working conditions adversely affected the claimant's health, and she has a compelling reason to leave the job when the employer failed to correct the situation. She voluntarily left her employment with good cause attributable to the employer and is not subject to any disqualification.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.25**
DOCKET/DATE ***Flex v. Board of Review*, 466 N.E. 2d 1050 (1984)**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Illness Or Injury (and Section 601B-1)**
CROSS-REFERENCE **VL 155.35, Domestic Circumstances; MS 95.4**

The claimant was employed as a Stenographer until July, 1981, when she went on maternity leave, which was to expire in September, 1981. During that time, the claimant gave birth to a son whose spinal cord was damaged. The claimant was granted an extended leave of absence until January, 1982, because of the child's condition. No further extension was granted. On January 15, 1982, the claimant's supervisor informed her that if she did not return to work as scheduled, the employer would have to hire someone to replace her. The claimant explained that she needed more time off in order to provide care for her child. When the claimant did not report work as scheduled, she was replaced.

The claimant then filed a claim for unemployment benefits. The Claims Adjudicator determined that the claimant was ineligible for benefits pursuant to Section 601A of the Act, because she had left work voluntarily without good cause attributable to her employer. A Referee affirmed the Claims Adjudicator's determination.

In support of her appeal to the Board of Review, the claimant presented a letter from her son's pediatrician. The letter stated that the claimant's son suffered from "a right Erb's palsy, spinal cord lesion and hypospadias" and that he needed "physical therapy and infant stimulation." In addition, the letter stated:

> It is important that his mother spend as much time with the child as possible. She is a very good mother and the child shows the results of her time.

The claimant contended that based upon the doctor's letter she was entitled to a medical exception to the disqualifying provisions of Section 601A, in that she had left work upon the advice of a licensed and practicing physician, who had determined that the claimant's assistance was necessary for the purpose of caring for her child who was in poor physical health, and such assistance would not have allowed the claimant to perform the usual and customary duties of her employment.

The Agency's position was that the doctor's letter did not specifically state that caring for her child made it impossible for the claimant to continue her employment: The statement "It is important that his mother spend as much time...as possible" was insufficient to show that she could not have continued working.

HELD: Section 601B-1 provides an exception to the disqualifying provisions of Section 601A, provided that an individual shows that she left work:

> ...upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for her child who is in poor physical health...

In the instant case, the doctor's letter clearly indicated that the claimant's child suffered severe and disabling injuries at birth. The doctor was an expert on the type of assistance necessary to care for an ill child. Accordingly, the first provision of Section 601B-1 was satisfied.

> ...and such assistance will not allow the claimant to perform the usual and customary duties of her employment...

Although a physician is an expert on the type of assistance necessary to care for an ill child, her opinion on how such assistance will affect the parent's job duties is wholly outside her area of expertise and should not be required as a predicate for the award of benefits. A physician cannot be expected to know the implications of her advice for the receipt of unemployment insurance. Therefore, it would be unreasonable to require that a physician employ the exact wording of Section 601B-1. In the instant case, independent of the doctor's express language, the advice "spend as much time as possible" could properly have been interpreted to have precluded the continuation of full-time employment. Accordingly, the second provision of Section 601B-1 was satisfied. The claimant was entitled to an exception under Section 601B-1 of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	***Dubinin v. Ward*, et al., 484 N.E. 2d 870 (1985)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury (and Section 601B-1)**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes; (Compare with *Flex*)**

In 1981, the claimant was hired as a Tool Grinder. Between 1981 and 1983, his job duties were increased to include the tasks of an Equipment Washer and Tool Room Attendant. His work load was further increased when his apprentice left the company in March, 1983. Two months later, the claimant quit, citing concerns for his health, among other reasons. The claimant was disqualified for benefits under Section 601A.

At an appeal hearing, the claimant explained that the employer's actions in increasing his job duties adversely affected his health. He presented a medical report from the Veterans Administration, indicating that he had very high blood pressure. When asked about his doctor's advice, the claimant stated:

> All doctor told me was that I was mainly, it was mainly up to me. That I am working there and that I should know if I should continue to work or should not work. If I can handle the pressure or not.

Upon further appeal, the claimant cited *Flex v. Board of Review* (See VL 155.35, VL 235.25, and MS 95.4). The claimant argued that his physician's statement should have been interpreted as an indication that he was physically unable to perform his work, thereby entitling the claimant to an exemption under Section 601B-1.

HELD: Section 601B-1 provides, in pertinent part, that the provisions of Section 601A shall not apply to an individual who has left work because "he is deemed physically unable to perform his work by a licensed and practicing physician..."

In *Flex v. Board of Review*, it was held that "(s)ince a physician cannot be expected to know the implications of his advice for the receipt of unemployment insurance, it is unreasonable to require that he employ the exact wording of the statute." Therefore, such advice is subject to interpretation in the context of whether a claimant is entitled to unemployment benefits. However, *Flex* does not stand for the proposition that any statement by a physician, no matter how ambiguous or equivocal, will satisfy the statutory requirement.

In the instant case, the doctor's statement was ambiguous and equivocal and was insufficient to establish that the claimant left work upon the advice of a physician. Accordingly, the claimant was not entitled to an exemption under Section 601B-1.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.25**
DOCKET/DATE **ABR-85-46-FE/9-3-85**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Illness Or Injury (Quit vs. Leave of Absence)**
CROSS-REFERENCE **None**

The claimant became employed in 1981. In August, 1982, he was promoted into an accounting position as a Voucher Examiner. The claimant had had no experience in the area of accounting, and the demands of his job, both in terms of the volume of work and the accuracy required, caused him to suffer from stress, which manifested itself in physical symptoms. In April, 1983, the claimant was compelled to seek medical treatment. In May, 1983, the claimant's physician advised him to change his job situation, but not necessarily leave work altogether, in view of his age and financial status. The claimant made his employer aware of the doctor's recommendation. The employer was unable to arrange an immediate transfer, but suggested that the claimant apply for positions as they became available. The claimant did apply, but was never selected for other positions. In March, 1984, the claimant was again compelled to seek medical treatment. It was necessary for him to be treated again on June 1, 1984. On June 12, the claimant's physician contacted the employer directly, requesting a medical leave of absence for his patient, and the claimant began his leave of absence that day. On June 23, 1984, the claimant resigned from his job as a Voucher Examiner.

The issue presented was whether the claimant had left work voluntarily without good cause attributable to his employer, since a leave of absence had been available.

HELD: Section 601B-1 provides, in pertinent part, that the disqualifying provisions of Section 601A shall not apply to an individual who has left work voluntarily:

> Because he is deemed physically unable to perform his work by a licensed and practicing physician...and he has notified the employing unit of the reasons for his absence.

In the instant case, the claimant had been advised by his physician, as early as 1983, that he should change his job situation because of health problems. The claimant continued to experience ill health, until June 12, 1984, when he began a medical leave of absence -- at his doctor's insistence, which established that the doctor had determined that the claimant was physically unable to perform his work. The employer had at all times been aware of the claimant's ill health and had been unable to remedy the work situation; there was no prospect that the work situation would have been remedied. In light of that consideration, it was not material that a leave of absence had been made available. With or without the leave of absence, the claimant would have quit, for medical reasons, within the purview of Section 601B-1.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.25**
DOCKET/DATE **ABR-85-5358/11-27-85**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Illness Or Injury (Reasonable Accommodation)**
CROSS-REFERENCE **VL 160.05, Efforts to Retain Employment**

The employer had a policy of placing employees -- who had verified medical problems -- on light duty work.

The claimant had been employed as an Assembler for 19 years. She was absent 1 week, reportedly due to a backache. When she returned to work, she asked her foreman to place her on light duty work. The foreman declined to do so. The claimant then went to the employer's personnel office, but, instead of requesting, in a proper fashion, light duty work, she applied for retirement.

At an appeal hearing, the claimant acknowledged that she had been aware of the employer's formal procedures concerning medical verification in order to obtain light duty work, that she had not been advised by a physician to restrict her work, and that she had not presented the employer with any verification of an injury.

HELD: The disqualifying provisions of Section 601A do not apply when, pursuant to Section 601B-1, a worker has been deemed unable to work by a licensed and practicing physician, provided that the worker has notified the employing unit of the reason(s) for his or her inability to work.

The purpose of the notice requirement is to afford the employer an opportunity to make a reasonable accommodation. Where the employer would do so, and would make available work which would be suitable in light of the worker's special circumstances, a worker who forgoes such a reasonable accommodation and quits is not unemployed for lack of suitable work. Because the purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work and for no other reason, an individual who does not avail himself or herself of a reasonable accommodation will be disqualified.

In the instant case, the claimant made no effort to utilize the known procedures established by her employer for obtaining light duty work, when such work would have been made available. Rather than make a reasonable effort to remain employed, she chose to quit. She left work without good cause attributable to her employer and the disqualifying provisions of Section 601A were applicable.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	**ABR-86-9-FE/7-16-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury**
CROSS-REFERENCE	**VL 385.05, Relation of Alleged Cause of Leaving**

The claimant worked for the United States Postal Service for 36 years.

The claimant testified that, for the last 5 or 6 years, his job had caused him stress, and that his employer was aware that he had been under the care of a physician for hypertension and migraine headaches. The claimant added that, in March, 1985, his physician had advised him to seek a less stressful job.

Nonetheless, the claimant forewent a disability leave and decided to continue working for 8 more months, until November, 1985, so that he would become eligible to receive his retirement pension.

HELD: Section 601B-1 provides an exception to the disqualifying provisions of Section 601A, provided that an individual leaves work as a result of a physician's determination that he is unable to continue working in his customary occupation.

In the instant case, the claimant did not leave his job as a result of his physician's determination that he was unable to work, but, rather, upon becoming eligible to collect his retirement pension. Retirement, not health, was the genuine reason for the work separation, and, therefore, the claimant was not entitled to an exception under Section 601B-1.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	**ABR-89-2689/6-7-89**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury**
CROSS-REFERENCE	**None**

The claimant worked as a delivery driver-laborer. The job involved frequent heavy lifting.

The claimant was required to undergo a medical examination. The company doctor determined that the claimant should not perform such work, due to a bad back. The claimant wished to continue working, so he received permission to obtain a second opinion. The second doctor stated that the claimant could attempt to do the job, as long as he did not experience serious back pain.

The claimant went back to work, then began to experience pain. He again consulted the second doctor, who prescribed an exercise program, but instructed the claimant that, if the pain did not subside, he should discontinue the work.

The claimant went back to work, then the pain increased, until he gave notice that he had to leave work.

HELD: Section 601B-1 provides a medical exception to the disqualifying provisions of Section 601A. The exception applies if a physician has deemed a worker unable to work.

The fact that a worker wants to work and that a doctor might give him a conditional go-ahead to work does not necessarily mean that the worker is, in fact, able to work.

Here, the claimant was deemed unable to work by not only the company doctor, but the second doctor as well.

The exception applied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.25**
DOCKET/DATE	**ABR-94-11626/2-8-95**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant took a leave of absence, then resigned, saying it was at the recommendation of his therapist, a licensed clinical psychologist. The psychologist had said that the claimant needed time off to deal with anxiety and stress management issues.

HELD: Section 601B-1 of the Act provides an exception to the disqualifying provisions of Section 601A. However, the exception only applies if the leaving is predicated upon the statements of a "licensed and practicing physician." Psychologists may be licensed professionals, but they are not physicians. Accordingly, the claimant's leaving was not within the purview of Section 601B-1 and he was not entitled to an exception from disqualification under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**85-BRD-04365/6-11-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was employed as a Receptionist. In February, she told her employer that she was pregnant. Then the claimant became increasingly ill as her pregnancy progressed. It was obvious to her employer: Her work product deteriorated; she was frequently absent. In May, she explained to her employer that she could no longer handle her work, on account of her illness, and she resigned.

HELD: The evidentiary and notice requirements of Section 601B-1 serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. Notwithstanding the literal requirements of Section 601B-1, the evidence in the instant case established that the employer was aware that due to a pregnancy-related illness the claimant would be unable to continue working. Such circumstances were within the purview of Section 601B-1. Therefore, the claimant was exempt from the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.4**
DOCKET/DATE **85-BRD-05427/7-18-85**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Pregnancy**
CROSS-REFERENCE **None**

The claimant worked as a Seamstress for approximately 3 years. On July 21, 1984, the claimant, being 8 1/2 months pregnant, chose to separate from employment. She did not submit any doctor's statement to her employer. The employer was aware that the claimant was 8 1/2 months pregnant.

HELD: The evidentiary and notice requirements of Section 601B-1 serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. Notwithstanding the literal requirements of Section 601B-1, the evidence in the instant case established that the employer was aware that due to the imminent birth of the claimant's child the claimant would be unable to continue working. Such circumstances were within the purview of Section 601B-1. Therefore, the claimant was exempt from the disqualifying provisions of Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.4**
DOCKET/DATE **ABR-85-3491/9-30-85**
AUTHORITY **Section 601A of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Pregnancy (Constructive Discharge)**
CROSS-REFERENCE **MC 135.1, Discharge or Leaving**

The claimant was 6 months pregnant, when, according to her employer's standard policy, she was given a choice: She could be placed on "Maternity Leave Status," which meant she could no longer work, but would be eligible to be rehired, if there was an opening, after her baby was born; or, she could continue working by signing a "Release of Liability" form, which stated that she would release all rights to recovery for injury to herself or the unborn child, regardless of the cause of such injury. The claimant refused to sign a "Release of Liability," was placed on "Maternity Leave Status," and was told she could re-apply for work after her baby was born.

HELD: If a company rule requires separation at a certain stage of pregnancy, the separation, if it occurs at that stage, is a discharge, not a voluntary leaving. Even though the worker may take some action which results in the separation, a separation which arises out of the employer's rule will constitute a constructive discharge. In the instant case, the claimant's refusal to sign a "release" constituted a constructive discharge cognizable under Section 601A of the Act. Because compelling circumstances caused the claimant to refuse to sign the form, her actions in refusing to sign did not exhibit a willful disregard of duties owed to the employer. The claimant was discharged for reasons other than misconduct connected with her work.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.4**
DOCKET/DATE **ABR-85-3401/10-3-85**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Pregnancy**
CROSS-REFERENCE **None**

The claimant was employed as a Secretary for 4 years, until October, 1984, toward the end of her 8th month of pregnancy. The claimant gave her employer 2 weeks' notice of her intention to leave, then trained her replacement in the interim.

The claimant stated that, while she was in regular contact with her obstetrician, he had not specifically advised her to leave work when she did. The claimant testified, however, that her physical condition had been interfering with the performance of her duties.

The claimant's child was born in November.

Subsequently, the claimant was disqualified for benefits, a Referee concluding that she "...left work for personal, domestic reasons." The claimant was determined not to have qualified for a medical exemption under Section 601B-1, because she "...did not present proof that she had been advised medically to leave her job."

HELD: The evidentiary and notice requirements of Section 601B-1 serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. However, there is no requirement that for every circumstance the corroboration be express, rather than implied. Where the latter stages of pregnancy are concerned, it is quite common for an obstetrician to permit the patient to continue working for as long as she feels able, and, as a practical matter, it is often the patient who determines when she should discontinue working.

In the instant case, the evidence established that the claimant was 8 months pregnant, that she was receiving regular prenatal care, that her physical condition was causing her difficulty on the job, and that her employer was aware of her condition. From such facts, it could reasonably have been inferred that the claimant had been deemed unable to continue working. All of the pertinent elements of Section 601B-1 having been satisfied, the claimant should not have been disqualified for benefits under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**ABR-85-2840/9-9-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was employed as a Supervisor. A physician's statement, dated August 22, 1984, indicated that the claimant -- who was 8 months pregnant -- would be able to continue to work until the onset of labor. However, on August 24, the claimant chose to separate from employment, at the same time declining to accept a 6 week maternity leave. The claimant told her employer that she did not wish to return to work for 6 months, in order to nurse her baby.

The claimant's child was born on September 20.

HELD: The evidentiary and notice requirements of Section 601B-1 serve to corroborate the existence of conditions which render an individual unable to continue working for a particular employer. In the instant case, there was neither any express or implied doctor's advice -- let alone any evidence -- that the claimant, at the time of leaving, was no longer able to perform her job duties. The time of the claimant's leaving, together with her statement that she did not wish to return to work for 6 months, indicated that the claimant's reasons for leaving were personal and non-medical. Therefore, this leaving was not within the purview of Section 601B-1. The disqualifying provisions of Section 601A were applicable.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.4**
DOCKET/DATE	**ABR-85-7145/2-25-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was a part-time Cashier. At a time when she was 3-1/2 months pregnant, she gave 2 weeks notice of her intention to resign. She did not request a maternity leave of absence, nor did she present evidence that a physician had determined that she was unable to perform her work. The claimant later testified: "I was pregnant and having a difficult pregnancy."

The issue presented was whether the claimant met the requirements, under Section 601B-1, for an exception to the disqualifying provisions of Section 601A.

HELD: Generally, in order for an exception under Section 601B-1 to apply, it must be shown by competent medical evidence that a worker's pregnancy has rendered her physically unable to continue working in her customary occupation, or that the work itself will have an adverse effect upon the health or well being of the worker or her unborn child. Further, the employer must be given notice of the claimant's condition, so that a reasonable accommodation might, if possible, be made.

In the instant case, the claimant was in the early stages of pregnancy. There was no evidence presented to show that the claimant had been precluded from working by a doctor's determination (either express, or, as a practical mater -- when childbirth is imminent -- implied), or that her work might have been harmful to her unborn child. Further, the pregnancy not being advanced, the employer may not have had notice of the claimant's condition, or, even if it did, should have been given an opportunity to make some accommodation; however, the claimant eliminated this possibility by quitting outright.

The claimant did not qualify for a Section 601B-1 exception.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	***Eggleston v. IDES*, 557 N.E. 2d 534 (1990)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness or Injury (Reasonable Accommodation)**
CROSS-REFERENCE	**None**

The claimant's work involved substantial telephone duty. She told her branch manager that she needed a telephone headset because using an ordinary handset caused poor posture and chronic muscular pain. The claimant also told him that she suffered from ringing in the ears, resulting from stress. The branch manager told her to buy a telephone headset and she would be reimbursed. The claimant did not buy the headset. Instead, she resigned.

The claimant informed her branch manager that she was quitting because of her "mistrust" of him and, from her perspective, their personality conflict.

When the claimant filed her claim for unemployment benefits, she stated that she left for health reasons. She submitted to the Department a statement from a doctor who advised her to quit because of "tension and stress on her job."

HELD: When risk of illness or injury is an issue under Section 601A, the claimant must:

1) offer competent testimony (some medical evidence) that adequate health reasons justified leaving;

2) have informed the employer of the health problem; and

3) have been available where a reasonable accommodation was made by the employer.

Here, the claimant's failure to purchase the headset after being informed that she would be reimbursed made her unavailable for a reasonable accommodation and ineligible under Section 601A.

Section 601B-1 provides an exemption to the disqualifying provisions of Section 601A. In order for the exception to apply, the claimant must:

1) have been deemed unable to work by a licensed, practicing physician; and

2) have informed the employer that this was her reason for leaving (the purpose of this condition being that, if the employer is given notice, some accommodation might be made).

Here, the claimant failed to inform the employer that she was quitting because of a health problem and, therefore, there could be no exception under Section 601B-1.

The claimant was ineligible for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE **ABR-89-5257/10-10-89**
AUTHORITY **Section 601A of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness (Due to Cigarette Smoke)**
CROSS-REFERENCE **VL 515.35, Working Conditions, Environment**

The claimant stated that he left work because of cigarette smoke in the office. He never told his employer that cigarette smoke was bothering him.

HELD: If a worker asserts that he had good cause for leaving, because his working environment posed a risk to his health, he must:

1) offer competent testimony (some medical evidence) that adequate health reasons justified quitting;

2) have informed the employer of the problem; and

3) have been available for a reasonable accommodation.

Here, at the least, the claimant failed to inform the employer of any problem. Therefore, he did not establish that he had good cause for leaving. Benefits were denied.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE **ABR-86-141/4-7-86**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **VL 138.05, Disciplinary Action**

The claimant's supervisor told her that her work needed improvement. The claimant became so upset after the conversation with her supervisor that she decided to consult a therapist; the therapist was not a licensed physician, but a social worker. The social worker determined that the claimant's supervisor's statements had created an "intolerable situation" which was "threatening to (the claimant's) emotional balance." On that basis, the social worker advised the claimant to quit her job, and she did.

HELD: Section 601B-1 of the Act reads, in pertinent part:

> The (disqualifying) provisions of this Section (601A) shall not apply to an individual who has left work voluntarily because he is deemed physically unable to perform his work by a licensed and practicing physician...

In the instant case, the claimant had not been deemed unable to work by a licensed practicing physician, but had been advised to quit her job by a social worker. Therefore, the claimant was not entitled to a Section 601B-1 exception.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE ***Patrick Burke v. Board of Review*, 477 N.E. 2d 1351**
AUTHORITY **Section 601A of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **VL 515.65, Working Conditions, Safety**

The claimant, a worker in a nuclear facility, testified that 2 fellow employees had been found to be contaminated with radiation. The extent of their contamination, he testified, was that, upon leaving the facility, they had to take showers and some work clothing was lost. The claimant himself was found not to be contaminated. Nonetheless, believing that there were areas of radiation still unknown, making working conditions unduly hazardous for him, the claimant quit. At no time had he sought medical treatment or advice, nor had he complained to superiors about the purportedly hazardous conditions. He stated that he did not complain because he did not wish to be branded a troublemaker.

HELD: In order to demonstrate that health is a compelling reason or terminating employment, a claimant must:

(1) offer competent testimony (some medical evidence) that adequate health reasons existed to justify termination at the time of termination;

(2) have informed the employer of the health problem, and

(3) be available, where a reasonable accommodation is made by the employer, for work which is not inimical to his health.

The failure to satisfy any one of the three conditions explicated above will bar a claim for unemployment compensation.

In the case at bar, the claimant did not establish good cause attributable to his employer based upon health reasons. He did not adduce any medical evidence to support the allegations concerning alleged health problems. He did not report purportedly unsafe conditions to his employer. His conduct did not meet the standard of ordinary common sense; in short, he did not act in good faith. As a result, he was disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE **85-BRD-04632/6-20-85**
AUTHORITY **Section 601A of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **None**

The claimant was employed as a Prison Guard for two years. He resigned, contending that working as a prison guard was stressful.

HELD: An employee's reasonable fear that his work constitutes a hazard to his safety is some evidence of good cause. However, certain occupations carry an unusually high risk of injury and accompanying stress. A person entering one of these occupations assumes these as "ordinary" risks of that occupation. Accordingly, in order to show good cause, the worker must present additional evidence to show that the risks were disproportionately high for the occupation. In this case, the claimant knew, or should have known, that his work as a correctional officer entailed a degree and type of stress dissimilar to that of more conventional work. He did not show that, given the nature of his work, the working conditions were unusually stressful. The claimant did not establish that he had good cause for leaving his job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	**83-BRD-982-EB/11-4-83**
AUTHORITY	**1./S-601A and S-601B1.**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**VL 235.05, General under Health Or Physical Condition**

The claimant left her work as a machine operator after six weeks because she felt under stress and believed that her health was threatened. She testified that she did not see a physician prior to her decision to quit work.

HELD: The Act establishes an exemption from disqualification for a claimant who has left work voluntarily without good cause attributable to the employer, if two conditions have been met:

1. The claimant must have been deemed physically unable to perform his work by a licensed and practicing physician, and

2. He must have communicated this information to the employing unit.

The claimant has failed to meet either of these requirements prior to leaving work. Therefore, she is not exempt from disqualification and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 235.45**
DOCKET/DATE	**ABR-86-1950/7-31-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Risk of Illness or Injury**
CROSS-REFERENCE	**None**

The claimant worked in a Hospital Developmental Center as a Mental Health Technician. During her 2 years of employment, in addition to being involved in scuffles in attempts to control or work with unruly patients, she was knocked down and hit in the face. The injuries were severe enough to cause her to be absent from work for days and weeks at a time.

During the claimant's shift, there were no male employees available to help out. The claimant requested to be transferred to other areas of the facility where she would not be exposed to such problems. However, on the basis of seniority, she did not qualify for a transfer.

Subsequent to another assault by a patient, the claimant quit.

HELD: Certain occupations carry an unusually high risk of injury, and a person entering one of these occupations assumes that risk as "ordinary" for the occupation. However, an individual who presents evidence to show that the risk was disproportionately high for the occupation will have demonstrated that she had good cause attributable to the employer of leaving work voluntarily, provided that the she gave the employer an opportunity to remedy the situation.

In the instant case, although the claimant entered a profession involving a degree of risk due to the unpredictability of her patients, she suffered repeated and serious injuries to her person during a relatively short period of time. The claimant demonstrated that the employer, by not hiring male staffers for her shift, may have been in part responsible, or at least ought to have made some accommodation. The claimant established that the risk of injury was disproportionately high for her occupation as a Mental Health Technician and that she gave her employer an opportunity to remedy the situation. That failing, she had good cause attributable to her employer for leaving.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE **ABR-87-5552/4-7-88**
AUTHORITY **Section 601A of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **VL 50.05, Attributable; VL 515.65, Working Conditions**

The claimant worked in a hospital as a Registered Pediatric Nurse whose duties included providing nursing care to children with various diseases - including Acquired Immune Deficiency Syndrome (AIDS).

The hospital informed nurses as to how AIDS could be transmitted. The hospital formally instructed nurses concerning the treatment of AIDS patients. On the doors of patients who had been exposed to the AIDS virus were notices reminding nurses about blood and secretion precautions to be taken. In addition, the hospital followed established procedures that were taken for other infectious diseases transmitted through the blood, such as hepatitis, which involved precautions against contact with patients' blood and secretions.

The claimant became separated from employment because she refused to provide care for an infant who had been exposed to the AIDS virus.

HELD: Dangers inherent in a job are not necessarily attributable to the employer. Only where the risks of a job are disproportionately high, because the employer either acts or fails to act, will such a risk result in a finding of attributability.

Nursing, as an occupation, involves contact with patients who might have contracted contagious diseases. The claimant, as nurse, assumed this risk as the ordinary risk of the nursing occupation. The evidence in this matter did not establish that the risk of the claimant's contraction of the AIDS virus was disproportionately high. This was because of the precautions taken by the employer.

The claimant did not make herself available for work despite the employer's reasonable precautions. As such, she did not have good cause attributable to the employer for leaving her job.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 235.45**
DOCKET/DATE **ABR-88-1316/5-31-88**
AUTHORITY **Section 601 of the Act**
TITLE **Health Or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **VL 425.05, Suitability of Work**

The claimant accepted a job as a machine operator. Shortly after acceptance, she learned that, despite the job's title, she was required to lift metal shafts, some weighing 100 lbs. During the first week of training, other workers assisted her. During the second week of training, knowing she would not be able to lift the shafts when left to herself, she quit.

She was disqualified for benefits because she did not consult a physician before leaving.

HELD: Section 601B-5 provides that there will be no disqualification if a job is unsuitable at the time of acceptance. When it is the suitability of the work for the individual and not a medical condition that causes her to quit, it is unnecessary for her to seek the advice of a physician.

In this case, the claimant left work that was unsuitable due to her size and strength limitations. She was not disqualified.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 315.05**
DOCKET/DATE **ABR-85-5408/12-27-85**
AUTHORITY **Section 601A of the Act**
TITLE **New Work**
SUBTITLE **Good Cause for Refusing**
CROSS-REFERENCE **VL 5.05, Voluntary Leaving; RW 5.05, Refusal of Work**

The claimant had been working as a Secretary when her employer notified her that, although her secretarial position was about to be abolished, there was still work for her, at 20 cents more per hour, with no loss of benefits -- as a Riveter.

The claimant feared that if she accepted such work her secretarial skills would decline and she would be denying herself opportunities for career advancement. She rejected the Riveter job, thereby quitting.

HELD: A transfer to substantially different work constitutes "new work." A worker who refused such new work does so with good cause if the new work is unsuitable. Only if the conditions of the new work are substantially less favorable to the worker than her customary work may the new work be defined as unsuitable. The skills which an individual has acquired, and the extent to which those skills might be eroded, is a consideration in determining whether new work is substantially less favorable.

In the instant case, the employer wished to transfer the claimant to work which was substantially different from her customary work and, accordingly, constituted "new work." The claimant's acceptance of work as a Riveter would have resulted in the erosion of skills she had acquired as a Secretary, and, in turn, would have lessened her opportunities for career advancement. Because the conditions of the new work would have been substantially less favorable to the claimant than her customary work, the new work was unsuitable. The claimant had good cause for quitting.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **ABR-86-5060/3-30-87**
AUTHORITY **Section 601A of the Act**
TITLE **Pension - Retirement**
SUBTITLE **Early Retirement**
CROSS-REFERENCE **VL 450.25, Lay-off Imminent; VL 500.1, Wage, Agreement**

The claimant had been employed, as a Tool Maker, for 18 years. The employer was contemplating a reduction in work force, and, toward that end, told the claimant that if he were to retire on or before April 18, 1986, he would be entitled to his retirement pension, which included a medical package which included his sick wife. He was also told that if the were to retire after April 18, 1986, he would not be granted the medical package and benefits which included his sick wife. On April 18, 1986, the claimant applied for early retirement, so that his sick wife would be covered by his medical benefits.

HELD: Some employers have adopted special early retirement programs for the purpose of encouraging older workers to retire early and gain certain advantages, such as bonuses or increased benefits. In those cases, whether a worker leaves with good cause attributable to the employer is determined by examining, where applicable, the following factors: the period of time between early retirement and mandatory retirement; the degree of encouragement by supervisory personnel to retire early; whether the inducement to retire is financially substantial; in short, the question to be asked is whether a reasonably prudent person, under the same or similar circumstances, would accept early retirement.

Notwithstanding the above, care must be taken to distinguish cases such as the instant one. In the instant case, the employer did not offer the claimant a package containing any advantages; rather, the employer sought to discontinue existing medical coverage. The claimant was confronted by an imminent and material breach of the continued working agreement. His apprehension was reasonable, in that this would impose a financial burden upon him; he had a compelling reason for leaving - a reasonable person would not have waited to suffer the actual detriment. The work had been rendered unsuitable, and the claimant left work with good cause attributable to his employer, without disqualification under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **83-BRD-121-FE/10-7-83**
AUTHORITY **1./S-601A and S-601B1.**
TITLE **Pension**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant worked as a letter carrier for 10 years. He left his job to retire and collect his pension on February 28, 1983, and his retirement was not compulsory. The work involved considerable walking and his legs had begun to bother him but he had not been advised to quit by a physician. In his appeal the claimant submitted a letter from his physician, dated June 3, 1983, stating that the claimant had been under his care. It did not state he had been deemed physically unable to perform his work prior to leaving the job.

HELD: A worker who leaves work when retirement is not compulsory leaves work voluntary. The claimant left work because he had sufficient seniority to retire and to collect his pension and not on the advice of his physician. This is voluntary leaving without good cause attributable to the employer. The claimant is ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **83-BRD-13124/11-16-83**
AUTHORITY **2./S-601A**
TITLE **Pension**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant is sixty-two years old and had worked for the employer thirty-five years as a packer. The claimant voluntarily left employment to receive union retirement benefits, which were more than the wages he received by working. The employer testified that there was no mandatory retirement age for employees and that other employees worked while in their late sixties or seventies.

HELD: While the claimant quit for a compelling personal reason, it was not attributable to the employer. He is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **ABR-94-11677/2-8-95**
AUTHORITY **Section 601A of the Act and 56 Ill. Adm. Code 2840.125**
TITLE **Pension**
SUBTITLE **Early Retirement / Buyout Incentive**
CROSS-REFERENCE **None**

The claimant, a part-time deli-clerk, accepted a buyout incentive package. Her job was not in jeopardy, nor would working conditions change. The sole reason she accepted the buyout offer was because she had become dissatisfied with part-time work.

HELD: Rule 2840.125 provides, in pertinent part, that an individual who accepts a buyout package is ineligible unless she reasonably believes her employment will be terminated under terms and conditions substantially less favorable than those of the offer, or that her employment will continue, but under terms and conditions substantially less favorable than those immediately prior to the offer. In the instant case, the claimant had no reasonable belief that her job would be terminated or that working conditions would become less favorable. Therefore, the claimant was ineligible for benefits under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **ABR-95-6150/8-2-95**
AUTHORITY **Section 601A of the Act and 56 Ill. Adm. Code 2840.125**
TITLE **Pension**
SUBTITLE **Early Retirement / Buyout Incentive**
CROSS-REFERENCE **None**

The claimant accepted an early retirement offer because he had heard a rumor that his position had been declared "surplus." He was never notified officially of this fact and never discussed the situation with anyone in management prior to accepting the offer. The employer testified that, had the claimant not accepted the offer, he could have continued working under the same conditions as he had always worked.

HELD: Rule 2840.125 provides, in pertinent part, that an individual who accepts a buyout package is ineligible unless he reasonably believes his employment will be terminated under terms and conditions substantially less favorable than those of the offer. The rule further provides that a "reasonable belief" includes an individual's seeking but not receiving assurances. Here, the claimant's belief was not reasonable, but was instead based upon mere speculation, because he never discussed his situation with anyone in management. He was ineligible for benefits under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 345.05**
DOCKET/DATE **ABR-95-3439/8-2-95**
AUTHORITY **Section 601A of the Act and 56 Ill. Adm. Code 2840.125**
TITLE **Pension**
SUBTITLE **Early Retirement / Buyout Incentive**
CROSS-REFERENCE **None**

In April, 1994, the employer made a buyout offer of six months continued wages and insurance coverage if the claimant would leave work by July, 1994. At the time of the offer, there were rumors the claimant's store was closing; also, some workers had already been laid off without being replaced. The claimant asked for assurances the store was not closing or that she could transfer to another store. Such assurances were not given. The claimant then accepted the buyout offer.

HELD: Rule 2840.125 provides, in pertinent part, that an individual who accepts a buyout package is ineligible unless she reasonably believes her employment will be terminated under terms and conditions substantially less favorable than those of the offer. The rule further provides that a "reasonable belief" includes an individual's seeking but not receiving assurances. Here, the layoffs and the rumors, coupled with the employer's unresponsiveness to the claimant's attempts to receive assurances, constituted a reasonable belief in accordance with the rule. The claimant was not ineligible.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 350.5**
DOCKET/DATE **83-BRD-14635/12-8-83**
AUTHORITY **1./S-601B2.**
TITLE **Period Of Disqualification**
SUBTITLE **Subsequent Employment**
CROSS-REFERENCE **VL 365.15, Definite under Prospect Of Other Work**

The claimant was on a medical leave of absence due to an injury, and, when he returned to work, he was placed in a lower paying position. He worked at this new job for five weeks, became dissatisfied with it, and located other bona fide work. He remained employed at this job for seven weeks.

HELD: The evidence clearly established that the claimant left work in order to accept new bona fide work which he then held for a period of more than two weeks. Under the circumstances, he is not subject to any disqualification for benefits for voluntarily leaving work.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 350.5**
DOCKET/DATE **ABR-85-5139/11-27-85**
AUTHORITY **Section 601A of the Act**
TITLE **Period Of Disqualification**
SUBTITLE **Subsequent Employment**
CROSS-REFERENCE **MS 95.3, Construction of Statutes**

The claimant had worked part-time, on a commission basis, as a Jewelry Salesperson. When she quit that job, she was disqualified for benefits under Section 601A.

Subsequently, an appeal hearing was held to consider the claimant's contention that she had requalified for benefits pursuant to the requalification provisions of Section 601A. At that hearing, the claimant stated that, since leaving her Jewelry Salesperson job, she had worked for more than the required 4 weeks, earning more than her weekly benefit amount in each week. She stated that she had been working 8 to 10 hours per week, as a Bartender, in a tavern owned by her husband.

The tavern did not list the claimant as an employee. The claimant testified that this was because she had been paid in cash, without any withholding for Federal or State taxes. At the time she had certified for benefits, she did not report any earnings from her work as a Bartender.

HELD: Section 601A of the Act requires, for requalification, that an individual become reemployed, and have earnings equal to or in excess of her weekly benefit amount in each of 4 calendar weeks. Such earnings --

> must be for services in employment, or have been or will be reported pursuant to the provisions of the Federal Insurance Contributions Act...

It would be inconsistent with the purpose of the Act if the phrase "services in employment" was to be interpreted to include work which was a sham. In the instant case, the claimant failed to establish that, upon leaving her work as a Jewelry Salesperson, she had performed bona fide work as a Bartender. Therefore, it could not be concluded that she had earned wages from services in employment.

Further, the claimant's earnings had not and would not be reported pursuant to the provisions of the Federal Insurance Contributions Act.

Because the claimant did not show that she had earned wages from services in employment or that her earnings had or would be reported pursuant to the provisions of the Federal Insurance Contributions Act, she did not requalify for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 360.05**
DOCKET/DATE **83-BRD-10125/8-13-83**
AUTHORITY **1./S-601A**
TITLE **Personal Affairs**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant quit work to go to California to seek custody of his children who were living in that state with his wife from whom he was separated. The claimant requested a leave of absence for 6 months or one year which was denied him.

HELD: The claimant voluntarily left work for compelling personal reasons which were not attributable to the employer. He is ineligible for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 365.05**
DOCKET/DATE **83-BRD-11423/10-7-83**
AUTHORITY **1./S-601A**
TITLE **Prospect Of Other Work**
SUBTITLE **General**
CROSS-REFERENCE **VL 365.25, Uncertain under Prospect Of Other Work**

The claimant worked as a delivery driver. He was offered a similar job by another employer at a higher wage and gave his employer two weeks' notice. Prior to the expiration of the two-week period, he fell and injured his back at work. He informed his new employer that he would not be able to begin work until his situation improved, and he was told to contact them when he could begin work. One and a half weeks later, he contacted the new employer but was told the position had been filled.

HELD: The claimant quit work to accept a new job. The job did not materialize because of the claimant's inability to begin work as scheduled. The claimant is disqualified from benefits for voluntarily leaving his first job without good cause attributable to his employer. Had he been able to enter into his second employment and either worked in each of two weeks or had earnings equal to twice his weekly benefit amount, he would have avoided the disqualification.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 365.05**
DOCKET/DATE **ABR-85-933/9-4-85**
AUTHORITY **Section 601 of the Act**
TITLE **Prospect Of Other Work**
SUBTITLE **Section 601B-2, Exception to Section 601A Disqual.**
CROSS-REFERENCE **None**

A travel agency in Lake Forest, Illinois advertised for an employee. The claimant, who was working in Kankakee, Illinois at the time, replies to the advertisement, was accepted for employment, resigned from her Kankakee position, and relocated with her family to Lake Forest, where she began working for her new employer. After 1 week, the claimant resigned. She was paid $400 for her week's work. She then filed for unemployment benefits. It was determined that her weekly benefit amount was $161.

HELD: Section 601B-2 provides an exception to the disqualifying provisions for Section 601A, where an individual voluntarily leaves work for the purpose of accepting other bona fide work. In order to qualify for the exception, an individual must be employed in the new position in each of 2 weeks or earn from work in the new position at least twice his or her weekly benefit amount.

In the instant case, the claimant left her Kankakee job for the purpose of accepting other bona fide work, from which she earned more than twice her weekly benefit amount. As a consequence, with respect to leaving the Kankakee job, the claimant had met the requirements for a Section 601B-2 exception.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 365.05**
DOCKET/DATE **ABR-84-518-FSC/7-1-85**
AUTHORITY **Section 601 of the Act**
TITLE **Prospect Of Other Work**
SUBTITLE **Section 601B-2, Exception to Section 601A Disqual.**
CROSS-REFERENCE **None**

The claimant was employed as a Customer Service Manager. The work was part-time and during his tenure at the job the claimant was drawing partial unemployment benefits. On April 12, 1984, the claimant quit his Customer Service job in order to accept work as a Vacuum Cleaner Salesman. This work was part-time also and the claimant continued drawing partial unemployment benefits. The claimant became separated from his Vacuum Cleaner Salesman job on May 19, 1984.

HELD: Section 601B-2 provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work for the purpose of accepting other bona fide work. In order to qualify for the exception, an individual must be employed in the new position in each of 2 weeks or earn from work in the new position at least twice his or her weekly benefit amount.

In the instant case, although the claimant left his Customer Service Job for the purpose of accepting other work, and then did work during the ensuing 5 weeks, he was also an unemployed individual during that 5 week period (because he was drawing unemployment benefits). As a consequence, with respect to leaving his Customer Service job, he did not meet the requirements for a Section 601B-2 exception.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.05**
DOCKET/DATE	**ABR-85-3379/9-9-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Section 601B-2, Case Where Exception Did Not Apply**
CROSS-REFERENCE	**None**

The claimant was employed as a Clerk until November, 1984, when she gave her employer notice that she intended to quit in order to join the United States Air Force. After quitting her job, the claimant failed the Air Force's physical examination. Subsequently, the claimant filed for unemployment benefits.

HELD: Section 601B-2 provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work for the purpose of accepting other bona fide work. In order to qualify for the exception, an individual must be employed in the new position in each of 2 weeks or earn from work in the new position at least twice his or her weekly benefit amount.

In the instant case, because the claimant did not work in each of 2 weeks or earn at least twice her weekly benefit amount from such work, the exception did not apply.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.05**
DOCKET/DATE	***Woodliff v. Ill. Dept. of Labor*, 487 N.E. 2d 645 (1985)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Self-Employment**
CROSS-REFERENCE	**MS 95.1/.2/.3, Construction of Statutes**

The claimant, a Carpenter with 18 years experience -- which included self-employment -- worked for a company from January, 1981 until June, 1982 when he quit to again become self-employed. From that self-employment, the claimant earned $1,160 in June, $1,442 in July, $925 in August, and $704 in September. In October, he filed for unemployment benefits.

The sole issue in the instant case was whether the claimant's leaving the company to become a self-employed carpenter was a leaving to "accept other bona fide work" within the meaning o Section 601B-2.

HELD: Section 601B-2 of the Act provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work to "accept other bona fide work."

The court determined that "accept" and "work" should have their popularly understood meanings; neither requires that a strict employer-employee relationship exist; "acceptance of work" would include individual tasks undertaken by a self-employed person, for the people who hired that person (e.g., the carpentry jobs the claimant accepted and performed while self-employed). The court stated that, if the legislature had intended to limit "accept other bona fide work" to situations involving an employer-employee relationship, it could have done so very easily, by requiring that the work be "for an employer other than the individual applying for benefits." Even more simply, the legislature could have used the word "employment" rather than work, since the statute (Section 206 of the Act) defines "employment" to require an employer-employee relationship. The legislature's failure to draft Section 601B-2 in such a fashion was a further indication that the statutory exception at issue included self-employment such as the claimant's.

More importantly, the "bona fide" requirement was to safeguard against individuals who might leave one job to accept another which was a sham. In the instant case, the court examined the claimant's self-employment to determine if it was genuine:

(1) The claimant had experience in the occupation; and

(2) He had a history of self-employment; and

(3) He had been relatively successful at his self- employment.

Because the claimant's self-employment was genuine it was concluded that he had accepted other bona fide work within the meaning of Section 601B-2 and was entitled to the exception.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.15**
DOCKET/DATE	**83-BRD-14635/12-8-83**
AUTHORITY	**1./S-601B2.**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Definite**
CROSS-REFERENCE	**VL 350.5, Subsequent Employment under Period Of Disqualification**

The claimant worked as a service advisor and quit his job. The claimant was on a medical leave of absence due to injury, and when he returned to work, he was placed in a lower paying position. He worked at this new job for five weeks, became dissatisfied with it, and located other work. He remained employed at this job for seven weeks.

HELD: The evidence clearly established that the claimant left work in order to accept a new job which he then held for a period of more than two weeks. Under the circumstances, he is not subject to any disqualification for voluntarily leaving work.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.25**
DOCKET/DATE	**83-BRD-11423/10-7-83**
AUTHORITY	**1./S-601A**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Uncertain**
CROSS-REFERENCE	**VL 365.05,General under Prospect Of Other Work**

The claimant worked as a delivery driver. He was offered a similar job by another employer at a higher wage and gave his employer two weeks' notice. Prior to the expiration of the two-week period, he fell and injured his back at work. He informed his new employer that he would not be able to begin work until his situation improved, and he was told to contact them when he could begin work. One and a half weeks later, he contacted the new employer but was told the position had been filled.

HELD: The claimant quit work to accept a new job. The job did not materialize because of the claimant's inability to begin work as scheduled. The claimant is disqualified from benefits for voluntarily leaving his first job without good cause attributable to his employer. Had he been able to enter into his second employment and either worked in each of two weeks or had earnings equal to twice his weekly benefit amount, he would have avoided the disqualification.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.25**
DOCKET/DATE	**83-BRD-12664/11-9-83**
AUTHORITY	**2./S-601A**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Uncertain**
CROSS-REFERENCE	**None**

The claimant was last employed as a furnace knockout man. He quit his job to accept work with his brother in the Ottawa-Marseilles area, where his brother was supposed to receive an entire route of campground maintenance work. In contemplation of working for his brother, the claimant moved to Marseilles, Illinois. After the claimant moved, the job with his brother did not materialize.

HELD: The claimant left work to accept alternate work under more favorable conditions. The claimant's reasons for leaving were not attributable to the employer, and he is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 365.25**
DOCKET/DATE	**ABR-85-1566/6-20-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Prospect Of Other Work**
SUBTITLE	**Uncertain**
CROSS-REFERENCE	**VL 135.4 Discharge or Leaving**

The claimant had been employed for 5 years as a Machine Operator and Laborer. He announced that he would be relocating to Texas, where he hoped to obtain a higher paying job. The claimant forewent a leave of absence, withdrew his retirement money, and went to Texas. However, he was unsuccessful in obtaining work there.

HELD: A worker does not have good cause attributable to the employer to quit a job if the reason for leaving is only to look for other work, even if the worker has reasonably presumed that he had definite prospects for other work. The desire to obtain work which is more advantageous or personally satisfying does not make the most recent work unsuitable per se, nor does it establish compelling reasons for leaving. Accordingly, in the instant case, because the evidence established that the claimant left work solely to obtain other work, which did not materialize, he left work without good cause attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	***Grant v. Board of Review*, 558 N.E. 2nd 438 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE:	**Relation of Alleged Cause to Leaving**
SUBTITLE	**Failure to Return after Maternity Leave**
CROSS-REFERENCE	**VL 50.05, Attributable To or Connected with Employment**

After her child was born and her maternity leave had expired, the claimant informed her employer that she wished to stay at home with her baby. She asked if the employer would hold her job open. The employer responded that the job could not be held open indefinitely, but that every effort would be made to help her if, eventually, she was ready to return to work. When the claimant eventually decided to return to work, the employer informed her that there was a hiring freeze.

HELD: Whether a leaving is attributable to the employer depends upon the employer's conduct prior to or at the time of the work separation. The work separation occurred when the claimant did not return immediately from her maternity leave. The hiring freeze occurred after the work separation. The claimant was ineligible for benefits because she left work voluntarily for personal reasons unrelated to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**ABR-87-1354/4-14-87**
AUTHORITY	**Section 601A of the Act**
TITLE:	**Relation of Alleged Cause of Leaving**
SUBTITLE	**Alleged Burden upon Religion**
CROSS-REFERENCE	**VL 90.05, Conscientious Objection; VL 515.5, Morals**

The claimant worked as a Supervisor in a medical center's kitchen. His schedule was such that he was able to attend either a Jehovah's Witness church meeting on Tuesday evening or a ministers' training session on Thursday evening.

Then the employer decided to institute a new 1 a.m. to 3 a.m. shift. The employer asked the claimant to supervise this shift, in addition to his regular shift. These additional responsibilities would have lasted 1 month. The claimant refused to work the additional hours.

In order to begin operations on its new shift, and as a result of the claimant's refusal, the employer was compelled to rearrange other supervisors' schedules. This, in turn, impacted upon the claimant. The claimant was told that his work schedule would have to be changed, temporarily, regardless. He was offered a variety of schedules, before he accepted a part-time position as a relief cook.

The relief cook job had 2 weeks left to run - after which the claimant would be returned to his regular supervisory position and shift - when the claimant observed that he would be scheduled to work both Tuesday and Thursday evenings. He promptly gave the employer 2-weeks' notice of his intention to resign.

The claimant stated that he quit because he wished to attend either the Tuesday or the Thursday church meeting - or, preferably, both. He acknowledged that he was not required by the church to attend such meetings, but that it was his personal decision to do so.

HELD: If an alleged cause of leaving is to be considered good cause, it must exist at the time of leaving. If the alleged grievance or condition has been remedied or is about to be remedied, it cannot be considered good cause for leaving.

In this case, regardless of any alleged burden upon religion, at the time the claimant left work, no such burden existed. At the time the claimant's 2-weeks' notice of quit expired, so did his temporary job; he would have been back in his supervisory position, working the same shift as had always been acceptable. Because the claimant's alleged cause of leaving did not exist at the time of leaving, he was disqualified under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**85-BRD-05589/7-25-85**
AUTHORITY	**Section 601 of the Act**
TITLE	**Relation of Alleged Cause of Leaving**
SUBTITLE	**Immediate and Continuing Non-acceptance of Conditions (Sexual Harassment)**
CROSS-REFERENCE	**VL 515.5, Working Conditions**

The claimant was employed as a Secretary and Payroll Clerk for 3 years, until September, 1984. She testified that immediately after her divorce in April, 1984, the owner of the corporation for which she worked began to harass her with lewd remarks, sexual advances, and offensive touching. She testified that she ignored or expressed displeasure at the remarks, and that she rebuffed the advances and offensive physical contacts. The claimant testified that she did not quit immediately because she had two children to support and needed the income from her job to support them. The claimant testified that finally, in August, 1984, she sought the advice of a Claims Adjudicator, who advised the claimant that prior to quitting her job she should first demand that the harassment stop. When the harassment did not stop, the claimant quit.

HELD: When an individual, employed in other than a temporary or probationary capacity, has continued to work under allegedly unsuitable conditions, that individual must show that she expressed her immediate and continuing non-acceptance of such conditions. Otherwise, it would be assumed that the individual had acquiesced to such conditions, rendering them not unsuitable at the time of the work separation, in which case it could not be concluded that the individual left work with good cause attributable to the employer, or if at all for the reason stated.

In the instant matter, despite the employer-owner's conduct, the claimant continued to work in other than a temporary or probationary capacity for 6 months. However, by expressing displeasure at the owner's remarks and by rebuffing his advances, the claimant showed immediate and continuing non-acceptance of such conduct. The claimant established that she left work solely because of sexual harassment.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**ABR-85-3377/9-24-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Relation of Alleged Cause of Leaving**
SUBTITLE	**When Multiple Reasons are Presented for Leaving Work**
CROSS-REFERENCE	**VL 139.05. Discrimination**

The claimant, who had been employed as a Secretary, gave a number of reasons for quitting her job; among them, discrimination. The claimant was of Mexican origin. She testified without contradiction that, from the time she became employed until the day she quit, her employer made disparaging remarks in her presence about Mexicans and belittled her by name-calling in front of her co-workers.

HELD: When multiple reasons are presented for leaving work, good cause is found if one genuine reason constitutes good cause attributable to the employing unit. Discrimination on account of race is an unjustifiable business practice with respect to unemployment insurance eligibility, and good cause will be found in a voluntary leaving based upon such discrimination.

In the instant case, although the claimant cited a number of reasons for quitting, the Board of Review considered it necessary to discuss only one. The record established that the employer was responsible for a work environment which the claimant reasonably perceived to be discriminating, unfair and abusive. The voluntary leaving was, therefore, on that basis alone, with good cause attributable to the employer. The claimant was not subject to a disqualification under Section 601A of the Act.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 385.05**
DOCKET/DATE	**ABR-86-9-FE/7-16-86**
AUTHORITY	**Section 601 of the Act**
TITLE	**Health Or Physical Condition**
SUBTITLE	**Illness Or Injury**
CROSS-REFERENCE	**VL 235.25, Illness or Injury**

The claimant worked for the United States Postal Service for 36 years.

The claimant testified that, for the last 5 or 6 years, his job had caused him stress, and that his employer was aware that he had been under the care of a physician for hypertension and migraine headaches. The claimant added that, in March, 1985, his physician had advised him to seek a less stressful job.

Nonetheless, the claimant forewent a disability leave and decided to continue working for 8 more months, until November, 1985, so that he would become eligible to receive his retirement pension.

HELD: Section 601B-1 provides an exception to the disqualifying provisions of Section 601A, provided that an individual leaves work as a result of a physician's determination that he is unable to continue working in his customary occupation.

In the instant case, the claimant did not leave his job as a result of his physician's determination that he was unable to work, but, rather, upon becoming eligible to collect his retirement pension. Retirement, not health, was the genuine reason for the work separation, and, therefore, the claimant was not entitled to an exception under Section 601B-1.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 425.05**
DOCKET/DATE **ABR-85-2592/10-4-85**
AUTHORITY **Section 601 of the Act**
TITLE: **Suitability Of Work**
SUBTITLE **Section 601B-5**
CROSS-REFERENCE **VL 500.5, Wages, Low; MS 95.1, Construction of Statutes**

After being laid-off from his job, the claimant saw an advertisement in a newspaper for work as a Sales Representative. Although the claimant had no experience in the field (selling vacuum cleaners), he concluded that, if he applied himself diligently, he could earn $980 per month. The work first required the claimant to attend initial training sessions, 60 miles from his home, at his own expense. The claimant attended these sessions, as well as follow-up sessions, which were administered during the work week. The claimant's regular schedule involved driving to facilities where he would pick up merchandise and obtain sales leads, then proceeding to homes where he would give demonstrations of the vacuum cleaners he had been trained to sell.

At the time of hire, the claimant had been told he would be paid on a commission basis, dependent upon sales of vacuum cleaners. After 5 weeks, the claimant had sold 1 vacuum cleaner, for which he was paid $75 commission. Since this was substantially less than he had hoped to earn, he quit.

HELD: Section 601B contains several exceptions to the provision that a voluntary leaving must be with good cause attributable to the employing unit in order for the claimant to qualify for unemployment insurance benefits. The exception provided for in Section 601B-5 concerns voluntary leaving of work after separation from other employment. Disqualification does not apply to an individual who has voluntarily left work which he had accepted after separation from other work, provided that the most recent work would be deemed unsuitable under the provisions of Section 603. Section 603 provides that, in determining whether or not any work is suitable for an individual, consideration shall be given to the individual's prior training and experience.

The purpose of the Section 601B-5 exception is to not penalize industrious individuals who prefer work to unemployment benefits and to not discourage unemployed individuals from venturing into new fields of work. In the instant case, a disqualifying decision would have penalized an industrious individual who preferred work to benefits, and, in general, would have discouraged unemployed individuals from venturing into new fields of work. Accordingly, the claimant was not subject to a disqualification under Section 601A of the Act.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 425.05**
DOCKET/DATE **ABR-88-1316/5-31-88**
AUTHORITY **Section 601 of the Act**
TITLE: **Suitability Of Work**
SUBTITLE **Section 601B-5**
CROSS-REFERENCE **VL 235.45, Health or Physical Condition**

The claimant accepted a job as a machine operator. Shortly after acceptance, she learned that, despite the job's title, she was required to lift metal shafts, some weighing 100 lbs. During the first week of training, other workers assisted her. During the second week of training, knowing she would not be able to lift the shafts when left to herself, she quit.

She was disqualified for benefits because she did not consult a physician before leaving.

HELD: Section 601B-5 provides that there will be no disqualification if a job is unsuitable at the time of acceptance. When it is the suitability of the work for the individual and not a medical condition that causes her to quit, it is unnecessary for her to seek the advice of a physician.

In this case, the claimant left work that was unsuitable due to her size and strength limitations. She was not disqualified.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 440.05**
DOCKET/DATE **83-BRD-14154/11-30-83**
AUTHORITY **1./S-601A**
TITLE **Termination of Employment**
SUBTITLE **General**
CROSS-REFERENCE **None**

After approximately 17 years as a packer for the employer, the claimant accepted retirement. The representative stated that all individuals who had worked in excess of ten years could elect to retire or to continue to work until the mandatory retirement age of seventy. The claimant elected to take retirement since he was going to be sixty-five in June 1983. The claimant testified that he was aware that he could have continued working but decided to retire.

HELD: The claimant left work voluntarily without good cause attributable to the employer. The claimant's job was not in jeopardy, and he could have continued working had he chosen to do so. His decision to retire was completely voluntary and not attributable to the employer. He was, therefore, ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.153**
DOCKET/DATE **83-BRD-532-FSC/10-5-83**
AUTHORITY **1./S-601A**
TITLE **Time**
SUBTITLE **Hours Long or Short**
CROSS-REFERENCE **None**

The claimant left work because his scheduled hours were reduced from 19 to 13 hours per week.

HELD: While attributable to the employer, this is not a good cause for leaving. If the claimant's wages are reduced to less than his weekly benefit amount, he can file a claim for unemployment benefits while he works the reduced hours and looks for other work. He is disqualified for voluntary leaving work without good cause and is disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.153**
DOCKET/DATE **ABR-86-1747/7-31-86**
AUTHORITY **Section 601A of the Act**
TITLE **Hours**
SUBTITLE **Long or Short (Reduction in Hours)**
CROSS-REFERENCE **VL 150.2, Distance to Work; VL 500.752**

The claimant traveled 68 miles each way to his work, as a Heavy Equipment Operator, which he performed 5 days per week, 9 to 10 hours per day. Then his work schedule was changed: He was assigned 2 days or work per week, and sometime those were half days. The claimant testified that, due to his reduced work schedule, he was compelled to quit; he could no longer afford to travel the 68 miles to and from work.

HELD: A reduction in wages -- which occurs only as a result of a reduction in hours -- does not constitute good cause attributable to the employing unit for leaving, unless the time or costs of transportation become disproportionate to the earnings. In the instant case, the time and money spent by the claimant in order to travel to and from his work had become disproportionate to his earnings. He left work with good cause attributable to his employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.154**
DOCKET/DATE **ABR-95-6237/8-2-95**
AUTHORITY **Section 601A of the Act**
TITLE **Time**
SUBTITLE **Night**
CROSS-REFERENCE **None**

The claimant worked as a convenience store cashier. For four years, she worked the day shift, and never alone. Then the employer reassigned her to the night shift, working alone. The claimant feared for her safety and complained to the employer. When no accommodation was made, she quit.

HELD: Leaving work because of a mere preference for working days or objection to working nights is without good cause attributable to the employer. Here, however, the employer made a unilateral, substantial change in working conditions; the leaving was attributable to the employer. Also, the claimant had a reasonable subjective fear of working at night alone; this constituted good cause. The claimant left work with good cause attributable to her employer and was not ineligible under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.25**
DOCKET/DATE **ABR-86-5060/3-30-87**
AUTHORITY **Section 601A of the Act**
TITLE **Time**
SUBTITLE **Lay-off Imminent**
CROSS-REFERENCE **VL 345.05, Retirement; VL 500.1, Wages, Agreement**

The claimant had been employed, as a Tool Maker, for 18 years. The employer was contemplating a reduction in work force, and, toward that end, told the claimant that if he were to retire on or before April 18, 1986, he would be entitled to his retirement pension, which included a medical package which included his sick wife. He was also told that if he were to retire after April 18, 1986, he would not be granted the medical package and benefits which included his sick wife. On April 18, 1986, the claimant applied for early retirement, so that his sick wife would be covered by his medical benefits.

HELD: Some employers have adopted special early retirement programs for the purpose of encouraging older workers to retire early and gain certain advantages, such as bonuses or increased benefits. In those cases, whether a worker leaves with good cause attributable to the employer is determined by examining, where applicable, the following factors: the period of time between early retirement and mandatory retirement; the degree of encouragement by supervisory personnel to retire early; whether the inducement to retire is financially substantial; in short, the question to be asked is whether a reasonably prudent person, under the same or similar circumstances, would accept early retirement.

Notwithstanding the above, care must be taken to distinguish cases such as the instant one. In the instant case, the employer did not offer the claimant a package containing any advantages; rather, the employer sought to discontinue existing medical coverage. The claimant was confronted by an imminent and material breach of the continued working agreement. His apprehension was reasonable, in that this would impose a financial burden upon him; he had a compelling reason for leaving - a reasonable person would not have waited to suffer the actual detriment. The work had been rendered unsuitable, and the claimant left work with good cause attributable to his employer, without disqualification under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.35**
DOCKET/DATE **ABR-85-5217/13-3-85**
AUTHORITY **Section 601A of the Act**
TITLE **Time**
SUBTITLE **Overtime**
CROSS-REFERENCE **VL 500.753, Wages, Overtime Without Compensation**

When the claimant was hired as Office Manager, at $25,000 per year, she was told that she would be expected to work overtime -- more than her usual 37-1/2 hours per week -- for an indeterminable period of time. This was due to the employer's conversion to and installation of automated systems in its plant and offices.

After 7 months on the job, the claimant quit. She testified that she had been working 45 hours per week, without being compensated for her overtime hours.

HELD: Overtime work is not unsuitable per se. But a voluntary leaving will be with good cause if the hours worked or wages paid are in violation of statute, or if the work is otherwise determined to be unsuitable.

Certain types of employment are exempted from the provisions of Illinois' applicable overtime statute among these, managerial positions. The claimant held a managerial position, for which she was paid on an annual, not hourly, basis. Therefore, she was not automatically entitled to compensation for overtime work. Nor was it shown, by any express or implied terms of hire, that the claimant was promised overtime pay or that the employer deviated from those terms.

The claimant did not present any evidence to show that the overtime work adversely impacted her domestic life or her health. She failed to show the existence of any conditions which made her work incompatible with her well-being -- other than her dislike for overtime work. The mere dislike of overtime work does not, in and of itself, constitute good cause for leaving work.

The claimant left work without good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.35**
DOCKET/DATE	***Hamilton v. Board of Review*, 482 N.E. 2d 1126 (1985)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Time**
SUBTITLE	**Overtime**
CROSS-REFERENCE	**None**

The claimant, a shipping clerk, was an hourly employee. The employer offered to place her on salary at an increase in regular pay. She accepted.

At the time of acceptance, the claimant knew that, as a salaried worker as opposed to an hourly worker, she would be required to work overtime. Also, she would be paid less for overtime than would an hourly worker (although her total of regular and overtime pay would be greater).

One month passed. The claimant was dissatisfied with her overtime pay. Her family was dissatisfied with her working overtime hours. On a Friday, the claimant asked to be reinstated as an hourly worker upon whom no overtime demands would be made.

The employer agreed to reinstate her as of the following Monday, the start of the next payroll period. In the meantime, she was directed to report for weekend overtime work as scheduled.

The claimant told her employer that she would not work that weekend. The employer responded that overtime work was a condition of the job she had accepted, and, until Monday, she would have to live with the salaried conditions.

The claimant did not report for work on Saturday or Sunday. On Monday, she reported to the employer's office, not to work, but to inquire about vacation pay and profit-sharing.

HELD: Overtime work is not per se unsuitable and does not constitute good cause for leaving. Other factors might render overtime work unsuitable; for example, if it is at unilaterally and substantially reduced compensation.

In this case, the claimant was paid pursuant to an agreement and the employer did nothing to alter the terms of that agreement. If anything, the employer demonstrated that it was willing to accommodate the claimant.

The evidence showed only that the claimant was dissatisfied with overtime work. That alone did not render the work unsuitable. She left without good cause and was ineligible for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.4**
DOCKET/DATE ***Hart v. Jackson*, No. 1-90-0276 (1990)**
AUTHORITY **Section 601A of the Act**
TITLE **Time**
SUBTITLE **Primary (full-time) and Secondary (part-time) Work**
CROSS-REFERENCE **MS 95.3, Construction of Statutes**

The claimant became separated from full-time work, upon which his claim for benefits could be based. He then quit his part-time job, located near the full-time job, because his travel expenses were now excessive in relation to his part-time wages (which were less than one-half what his weekly benefit amount would be). He was denied benefits, under Section 601A, for voluntarily leaving his last job.

The claimant argued that, even though he quit work for reasons not attributable to his part-time employer, he should not be denied benefits under Section 601A.

HELD: Section 601A applies whether a claimant leaves full-time or part-time work. (See *Minfield v. Bernardi*, this Digest, VL 450.4.)

However, the term "work" in Section 601A does not mean work upon which no claim is made and which has no effect upon entitlement to and the amount of benefits. Therefore, Section 601A does not apply where the following conditions exist:

1) the claimant becomes separated from primary full-time work upon which his claim is based;

2) the claimant's entitlement and benefit amount would be unaffected by whether or not he remained at the secondary part-time job; that is, if he remained at the part-time job, he would still be unemployed under Section 239 and would not have his benefits reduced under Section 402.

However, the claimant left his part-time job under those circumstances. He was not ineligible under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 450.4**
DOCKET/DATE ***Minfield v. Bernardi*, 460 N.E. 2d 766 (1984)**
AUTHORITY **Section 601A of the Act**
TITLE **Time**
SUBTITLE **Part-time or Full-time**
CROSS-REFERENCE **None**

The claimant worked full-time for the city of Chicago and also worked part-time for Field's. On December 9, 1981, she was discharged by the city of Chicago.

The claimant had an 8 year old son, who had a speech problem and learning disability. Alone, her wages from her part-time work at Field's were insufficient to pay expenses, including the cost of a baby sitter. On January 3, 1982, the claimant quit her job with Field's.

At her appeal hearing, she told the Referee that, although Field's had been paying her the rate agreed upon at the time of hire and did not do anything to break the contract of hire, "I needed more money. I couldn't afford to pay my baby sitter. I needed more hours. They didn't have any available. They had a freeze on hiring."

HELD: Generally, dissatisfaction with the number of working hours does not constitute good cause to leave employment. An employee who works at unsteady employment may well be dissatisfied with the job and seek another which provides more regular employment and better weekly wages. But she has an opportunity to pursue that course on the days or at the times when she is not working.

There are circumstances which might give rise to good cause for leaving - for example, if: the hours of work or reporting requirements prevent the claimant from seeking full-time work; there is an obligation to report to work regularly, without an assurance of actual work; there is a reduction in wages as well as hours; transportation time or costs, in relation to total remuneration, have become excessive. But, none of these existed in the case at bar.

The claimant's employment at Field's was dependable and in accordance with the terms, conditions, hours, and compensation she had accepted at the time of hire. It was suitable work. It was not rendered unsuitable simply because the claimant became separated from other work. The claimant was not unemployed due to the lack of suitable work, and was disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.4**
DOCKET/DATE	**84-BRD-3089/3-2-84**
AUTHORITY	**2./S-601A**
TITLE	**Time**
SUBTITLE	**Part-time or Full-time**
CROSS-REFERENCE	**VL 5.05, General under Voluntary Leaving**

The claimant was on a disability leave of absence for a period of fourteen months. When she reapplied for work with her last employer, she was offered a job but was told that the hours of work for all employees were being reduced. The claimant refused the job because she did not like the part-time work, and then she retired on social security.

HELD: Part-time work is not unsuitable per se, and a leaving because the work is less than full-time hours is generally without good cause attributable to the employing unit if the hours of work or reporting requirements do not prevent the claimant from seeking full-time work. The claimant could have looked for work in this case while working part-time. It must be concluded that she voluntarily left her job without good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.4**
DOCKET/DATE	**Ill. App. 1st Div. 83-146 2/2-6-84**
AUTHORITY	**3./S-601A**
TITLE	**Time**
SUBTITLE	**Part-time or Full-time**
CROSS-REFERENCE	**None**

The claimant worked to support an 8 year old son who had a speech problem and a learning disability. She left her work at Marshall Field's after her request for full-time work was denied. She testified, "I needed more money. I couldn't afford to pay my baby sitter. I needed more hours. They said they didn't have any available because they had a freeze on hiring."

HELD: The claimant's decision to leave her work because of her dissatisfaction with wages and hours did not constitute "good cause attributable to the employer within the meaning of the statute."

The employer did nothing to alter the terms, conditions, hours or compensation of the job plaintiff originally accepted.

Therefore, the claimant is disqualified from receiving benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.4**
DOCKET/DATE	***Carol Rodgers v. IDES*, 542 N.E. 2d 168 (1989)**
AUTHORITY	**Sections 239, 402, and 601A of the Act**
TITLE	**Time**
SUBTITLE	**Part-time or Full-time**
CROSS-REFERENCE	**MS 95.4, Construction of Statutes**

The claimant held 2 jobs, 1 full-time, 1 part-time. On December 31, she was laid off from her full-time job. She continued to work at her part-time job, 10 hours per week, at $4 per hour.

On January 6, she filed claim for unemployment benefits.

Because she was working less than full-time and earning less than her weekly benefit amount ($142), she was "unemployed" within the meaning of Section 239 of the Act and eligible for benefits.

On January 11, she quit her part-time job, for reasons not attributable to the part-time employer.

The Referee and Board of Review held that, because the claimant left work for reasons not attributable to her employer, Section 601A required that she be held ineligible. The circuit court reversed and the Department appealed.

HELD: The appellate court made the following observations:

The Act is designed to provide some form of economic security to persons involuntarily unemployed. When the claimant was involuntarily laid off from full-time work, she became unemployed, under Section 239. No part of her part-time earnings of $40 per week exceeded 50% of her weekly benefit amount, so whether or not she continued working part-time, there would have been no reduction in her weekly benefit amount, under Section 402. The part-time employer would not have been charged as a result of the claimant receiving benefits. To deny benefits would work in favor of her former full-time employer, which would have been charged.

The court held that, in this case, the Department's "literal and rigid" interpretation of Section 601A did not serve the Act's purpose and was "unnecessarily harsh." Benefits were allowed.

(See *Minfield v. Bernardi*, this Digest, VL 450.4.)

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 450.55**
DOCKET/DATE	**83-BRD-12161/10-31-83**
AUTHORITY	**1./S-601A**
TITLE	**Time**
SUBTITLE	**Temporary**
CROSS-REFERENCE	**None**

The claimant was employed as a research assistant on a temporary assignment for about six weeks. The claimant left her work to go to another state to look for work. At the time she left, there remained work available for her.

HELD: Although the nature of the claimant's assignments was temporary, there nevertheless continued to be work available to the claimant at the time she quit her job. The claimant initiated her own unemployment for personal reasons not attributable to the employer and is ineligible to receive benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.05**
DOCKET/DATE	**84-BRD-2902/2-29-84**
AUTHORITY	**1./S-601A**
TITLE	**Union Relations**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant resigned after his union voted to accept a contract which reduced wages and benefits. The claimant felt that he should not be forced to accept changes that he did not agree with, even though they were accepted by a majority of the employees.

HELD: When a union agreement has been accepted by both the union and the employer, the terms of the agreement become a part of the employment contract. Both the union members and the employer are expected to follow the terms of their agreement.

The claimant's refusal to accept the terms of an agreement negotiated by his union was a voluntary leaving without good cause attributable to the employer, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.7**
DOCKET/DATE	**ABR-899-3121/11-29-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Union Relations**
SUBTITLE	**Requirement to Join Company Union (vs. Paying Dues)**
CROSS-REFERENCE	**None**

The claimant worked as a home health care aide. She as informed by the employer's director that she was required to join the company union or forfeit her job. She was not given the option to retain her job by the mere payment of union dues and initiation fees (without the additional requirement that she join the union). The claimant informed the director that she would not join the union. This resulted in her separation from work.

HELD: Under federal statutes, it is an unfair labor practice to compel a worker to join a union. It is not an unfair practice to require a worker to pay dues or initiation fees (which may provide the basis for union benefits, even if the worker does not join the union).

Here, the employer's requirement that the claimant join a union was contrary to federal law. Her leaving was with good cause attributable to the employer. Benefits were allowed.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.75**
DOCKET/DATE	***Pearson v. Board of Review*, 551 N.E. 2d 1021 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Union Relations**
SUBTITLE	**Requirement to Pay Union Dues**
CROSS-REFERENCE	**VL 160.05, Efforts to Retain Employment**

The claimant's union dues were automatically deducted from her paycheck, until she was transferred, at a reduced wage, to another job location. There, her paycheck reflected a wage reduction, but, under a different union local, dues were not automatically deducted. For three months, the claimant was unaware of this and accumulated $80 in back dues. When she was informed, she signed an authorization that directed the employer to "deduct membership dues from pay." She asked if the $80 in back dues, in addition to future dues, would be deducted. She was told no; instead, she had to pay the $80 up front or lose her job. The claimant had no money and was already heavily in debt. She refused her supervisor's offer of a loan because she knew she would be unable to pay him back. So she lost her job. The Board of Review denied benefits, finding that the claimant failed to exhaust reasonable means of remaining employed (e.g., borrowing from her supervisor).

HELD: Section 601A demands that the employer not be even *one* causal factor in the work separation. (Court's emphasis).

In light of this, whether a worker makes a reasonable effort to retain employment must be considered in light of what the employer has or has not done.

Here, it was erroneous to consider the claimant's effort or lack of effort to retain employment (e.g., not borrowing from her supervisor) without also considering the employer's lack of effort. The employer failed to inform the claimant of the need for a new authorization and failed to offer her an alternative payment plan, which would have been permissible according to the language of the new authorization. In short, the reasonable means of repaying the debt and retaining employment were those that the employer did not make available; therefore, it was not relevant what steps the claimant pursued.

Benefits were allowed.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 475.75**
DOCKET/DATE	**ABR-85-6626/1-16-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Union Relations**
SUBTITLE	**Requirement to Retain Membership in Bona Fide Union**
CROSS-REFERENCE	**VL 135.15, Discharge or Leaving, Constructive Quit**

Pursuant to the terms of the employer's collective bargaining agreement with the union, the payment of union dues was a mandatory condition of employment. The claimant had been aware of this unchanging condition. He also acknowledged receiving letters from his employer concerning his non-payment of union dues; the employer had given him a deadline by which to pay his dues. When the deadline passed, and the claimant had still failed to pay his union dues, he was discharged.

HELD: When there is a union shop and a worker is aware that maintaining membership in the union is a requisite to continued employment, a separation which results from the worker's failure to meet this requisite constitutes a voluntary leaving, even if the employer "discharges" the worker at the union's insistence, since the worker has the choice of remaining employed. Generally, such a voluntary leaving is without good cause attributable to the employer. In the instant case, the claimant voluntarily separated himself from employment without good cause attributable to the employer.

ISSUE/DIGEST	**Voluntary Leaving/VL 495.05**
DOCKET/DATE	**ABR-86-9166/7-15-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Voluntary**
SUBTITLE	**Early Retirement**
CROSS-REFERENCE	**VL 50.05, Attributable; VL 210.05, Good Cause**

The employer's witness testified that the employer intended to reduce its work force. This was to be accomplished in 2 parts: the first part was an early retirement program; the second part was conditional upon the success of the first part - that is, if not enough workers took advantage of the retirement program, there would have to be layoffs.

The claimant, an Assistant Mine Manager, had heard a rumor that his position was to be eliminated. Then he was offered the early retirement package, which included financial incentives. Fearing that, if he did not accept the package, he would be demoted, which would have resulted in a financial loss, the claimant accepted the early retirement package.

HELD: The Unemployment Insurance Act provides that benefits shall be paid to individuals who are out of work due to the lack of suitable work and through no fault of their own. Accordingly, there can be no separation disqualification when a worker has been laid off, since no action taken by the worker, but, rather, a unilateral action by the employer, has caused the work separation.

In this case, the employer decided the number of positions it wanted eliminated. Had the requisite number of workers not resigned, the employer would have laid off the number necessary to meet its goal. The same number of people would have been unemployed, whether they quit or were laid off. This work separation, therefore, had the same effect as a lay off.

Further, the employer, on one hand, offered financial incentives to those workers who left; on the other hand, the employer did not interpose any safeguards or job protection for those who did not resign - those who stayed, even if they were not laid off, faced the prospect of loss of wages through demotions. It was clear then that the employer was the moving party, desirous of having workers accept an early retirement package; and those who, like the claimant, did the employer's bidding, acted as reasonable persons would have under the same or similar circumstances.

The claimant became involuntarily unemployed due to economic conditions beyond his control. This was a leaving with good cause attributable to the employer.

ISSUE/DIGEST **Voluntary Leaving/VL 495.05**
DOCKET/DATE **85-BRD-04668/6-25-85**
AUTHORITY **Section 601A of the Act**
TITLE **Voluntary**
SUBTITLE **Distinguished from Lay Off**
CROSS-REFERENCE **None**

The claimant had been employed as an Electrician for twenty-two years. His son was a co-worker. The employer planned to lay off the claimant's son as part of a reduction in its work force due to economic conditions. The claimant, feeling that he could better afford being laid off than a younger man with a family, requested to be laid off in the place of his son. The employer consented and the claimant became separated from employment.

HELD: This was not a voluntary leaving, but a lay off. Viewing the total picture, it was not decisive that it was the claimant and not his son who became unemployed. Although the claimant chose to accept the lay off in the place of his son, it was the employer which affected the reduction in force, and the claimant's decision had no impact on the number of unemployed, since, had he not decided to accept the lay off in his son's stead, his son would have been laid off. Because this was a lay off resulting from economic conditions beyond the claimant's control, he was in that class of unemployed persons for whom the Act was designed to provide benefits.

ISSUE/DIGEST **Voluntary Leaving/VL 495.05**
DOCKET/DATE **85-BRD-62-FE/6-25-85**
AUTHORITY **Section 601A & 602A of the Act**
TITLE **Voluntary**
SUBTITLE **Definition**
CROSS-REFERENCE **MC 135.1, Discharge or Leaving, Constructive Discharge**

The claimant was employed by the United States government, as a clerk-typist, in West Germany. She was a "dependent spouse," working during her husband's tour of military duty in that country. When her husband's tour of duty ended, and he was transferred back to the United States, the claimant left her Clerk-Typist position, submitting a letter of resignation. Later, she testified that her resignation had been a formality only: Army personnel rules directed that a dependent spouse was not permitted to remain in a foreign country upon her husband's transfer.

HELD: The claimant had no option to remain at work, due to the rules promulgated by her employer. Therefore, she did not leave work voluntarily, and no disqualification for benefits under Section 601A could be imposed.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 495.05**
DOCKET/DATE **CTA v. IDES/11-22-95**
AUTHORITY **Section 601A of the Act**
TITLE **Voluntary**
SUBTITLE **End of a Temporary Assignment**
CROSS-REFERENCE **None**

The claimant worked in a summer-only program administered by the CTA, then, at the expiration of the program, applied for unemployment benefits. It was argued that she should be denied benefits because, by agreeing to the terms of the summer employment program, she represented that she did not want to work beyond the summer, and that this constituted a voluntary leaving.

HELD: It is an erroneous view that the voluntary leaving provisions of Section 601A apply to those employees who are separated from the work force upon the expiration of predetermined contract terms. Section 601A does not contain an express disqualification of employees hired for a specified term (nor does the Act otherwise disqualify workers who are hired for temporary positions and find themselves unemployed upon the expiration of the employment term). Where the employment terms imposed by the employer allow the employee no alternative but to relinquish a position, the separation is not voluntary, and the disqualifying provisions of Section 601A do not apply.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 495.05**
DOCKET/DATE ***CTA v. Doherty*, 684 N.E.2d 867 (1997)**
AUTHORITY **Section 601A of the Act**
TITLE **Voluntary**
SUBTITLE **End of a Temporary Assignment**
CROSS REFERENCE **None**

The CTA hired students to work during the summer months. Before they started working, each individual signed an agreement which stated, in pertinent part: AI do not desire any employment ... beyond [the summer months].@ The question presented is whether the separation that occurred after the summer months was a (disqualifying) voluntary leaving or merely the (non-disqualifying) expiration of an employment term.

HELD: This case is distinguishable from *CTA v. Didrickson*, 659 N.E.2d 28 (1995) [in this Digest, *CTA v. IDES*], in which it was held that nothing in Section 601A disqualifies employees hired for a specified term who find themselves unemployed for no other reason than the expiration of that term. Unlike that case, here, the controlling factor is that the decision to continue working or not was solely that of the workers, who did nothing to put the CTA on notice they wanted to stay on the job; in fact, they did just the opposite, as evidenced by signing the agreement. Benefits were denied under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.1**
DOCKET/DATE **ABR91783/5-11-89**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Agreement Concerning**
CROSS-REFERENCE **None**

The employer advised its workers that it could no longer afford to pay their premiums for medical and dental coverage. The claimant, who earned $17 per hour, would now have to pay $20 per week for medical and dental coverage. Instead, he quit.

HELD: A substantial breach of the terms of hire or working agreement constitutes good cause for leaving. However, a relatively insignificant change in the terms of hire or working agreement does not constitute good cause; i.e., a reasonable person, who wishes to remain employed, would not leave.

Here, the claimant was faced with a wage reduction of less than 3%. This was not a substantial breach of the terms of hire or working agreement. Further, a reasonable person, under the same or similar circumstances, would not have left work - after which he would still pay for medical and dental coverage.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.1**
DOCKET/DATE **ABR-86-5060/3-30-87**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Agreement Concerning (and Early Retirement)**
CROSS-REFERENCE **VL 345.05, Pension - Retirement; VL 450.25, Lay-off**

The claimant had been employed, as a Tool Maker, for 18 years. The employer was contemplating a reduction in work force, and, toward that end, told the claimant that if he were to retire on or before April 18, 1986, he would be entitled to his retirement pension, which included a medical package which included his sick wife. He was also told that if he were to retire after April 18, 1986, he would not be granted the medical package and benefits which included his sick wife. On April 19, 1986, the claimant applied for early retirement, so that his sick wife would be covered by his medical benefits.

HELD: Some employers have adopted special early retirement programs for the purpose of encouraging older workers to retire early and gain certain advantages, such as bonuses or increased benefits. In those cases, whether a worker leaves with good cause attributable to the employer is determined by examining, where applicable, the following factors: the period of time between early retirement and mandatory retirement; the degree of encouragement by supervisory personnel to retire early; whether the inducement is financially substantial; in short, the question to be asked is whether a reasonably prudent person, under the same or similar circumstances, would accept early retirement.

Notwithstanding the above, care must be taken to distinguish cases such as the instant one. In the instant case, the employer did not offer the claimant a package containing any advantages; rather, the employer sought to discontinue existing medical coverage. The claimant was confronted by an imminent and material breach of the continued working agreement. His apprehension was reasonable, in that this would impose a financial burden upon him; he had a compelling reason for leaving - a reasonable person would not have waited to suffer the actual detriment. The work had been rendered unsuitable, and the claimant left work with good cause attributable to his employer, without disqualification under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.1**
DOCKET/DATE	**ABR-85-8565/5-30-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Agreement Concerning (Wage Increase)**
CROSS-REFERENCE	**None**

The claimant was hired as a Mechanic, at a wage of $5 per hour. On the date of hire, April 29, 1985, he was told that he would receive a wage increase to $5.50 per hour, after he had worked 30 days; there were no other conditions attached. The claimant did receive his raise, although he had to wait 2 weeks beyond the time promised.

In July, 1985, the claimant was told by his employer that there would be another wage increase, this time to $6 per hour, and that the claimant would receive it by July 12, 1985; there were no conditions attached. When the claimant did not receive his raise on July 12, he spoke with the employer, who assured him that there would be no problem. During the ensuing 3 weeks, the wage increase was never implemented. The claimant quit.

HELD: Remuneration paid for work is a material condition at the very heart of the employment relationship. If an employer promises, without attaching conditions, to pay a definite or ascertainable figure by a definite or ascertainable date, then that becomes a term of the working agreement, and its arbitrary breach will constitute good cause attributable to the employer for leaving.

In the instant case, the evidence showed that the claimant was given a definite figure and a definite time for payment of a wage increase. There were no conditions attached to the increase. There was no evidence to show that the employer's failure to pay the increase within a reasonable time was due to a miscalculation or other good faith error. Therefore, it could only be concluded that the employer arbitrarily breached its contract with the claimant, and, as a result, the claimant had good cause attributable to the employer for leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.3**
DOCKET/DATE	**83-BRD-9444/8-16-83**
AUTHORITY	**1./S-601A**
TITLE	**Wages**
SUBTITLE	**Failure or Refusal to Pay**
CROSS-REFERENCE	**None**

The claimant left work voluntarily because the employer's checks used to pay her wages were being continually returned as a result of insufficient funds in the employer's account. The currency exchange at which she cashed the checks refused further transactions involving these checks. The claimant complained to the employer about the returned wage checks, but the situation did not improve.

HELD: After making a reasonable attempt to correct the situation without success, the claimant left work voluntarily because checks given by the employer, representing her wages, were constantly being returned as a result of insufficient funds in the employer's account. Payment of wages is within the control of the employer and therefore attributable to it.

The prompt payment of wages for work performed is a material factor in a worker's condition of hire, and the employer's continued failure to pay the claimant her wages in a timely manner is a compelling circumstance rendering the work unsuitable for the claimant. The claimant left work voluntarily with good cause and is eligible for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.3**
DOCKET/DATE	**ABR-85-2289/8-21-85**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Failure to Pay**
CROSS-REFERENCE	**None**

The claimant worked as a Waitress for an employer whose rule required employees to reimburse the employer for coffee pots broken during the course of use in the employer's business. On October 17, 1984, the claimant broke a coffee pot. The employer insisted that the claimant pay $5 for the broken coffee pot, but the claimant refused to do so, stating that the coffee pot had been broken accidentally. When the employer refused to give the claimant her paycheck for her services until she paid the $5 for the broken coffee pot, the claimant quit her job.

HELD: The Wage Payment and Collection Act reads, in pertinent part:

> Deductions by employers from wages...are prohibited unless such deductions are (1) required by law; or (2) to the benefit of the employee; or (3) in response to a valid wage assignment or wage deduction order; or (4) made with the express written consent of the employee, given freely at the time the deduction is made. (Ill. Rev. Stat., 1983, ch. 48, par. 39m-9)

Further, aside from any deduction, an employer who willfully refuses to pay wages when due is acting in violation of Illinois State Labor Laws. A claimant will have good cause attributable to her employer for quitting whenever her employer willfully refuses to pay her wages which are due.

In the instant case, the employer's rule set forth a procedure for deducting from wages, without satisfying any of the legal conditions prescribed by the Wage Payment and Collection Act. Therefore, the employer's rule was contrary to Illinois law, and the claimant's refusal to reimburse her employer for the broken coffee pot was justified. Further, the employer made such reimbursement a condition upon which the claimant's wages, which were due, would be paid. The employer willfully refused to pay the claimant wages which were due, in violation of Illinois law, and, as a result, the claimant had good cause attributable to her employer for quitting.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.4**
DOCKET/DATE	***Dunn v. Director*, 476 N.E.2d 77 (1985)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Increase Refused**
CROSS-REFERENCE	**VL 135.2, Discharge or Leaving**

The claimant worked for 3 years as a retail clerk and was earning $5.25 per hour. There was no evidence that this was an unsuitable wage. On a Friday, he wrote his employer a note: "Starting Monday ...I must have $7.60 per hour, or please send (me) my pink-slip." On Monday, the claimant did not report to work or notify the employer of the reasons for his absence. That evening, the employer responded: "You are considered to have self-terminated yourself from employment." The claimant asked whether his claim for unemployment benefits would be contested. The employer informed him that it would. On Tuesday, the claimant attempted to report to work but was escorted from the premises by security guards.

The claimant contended that, because his note gave the employer a choice (give him a 46% pay raise or a pink-slip), this was not a voluntary leaving.

HELD: Generally, if a worker has a choice of remaining employed, his work separation is a voluntary leaving, but, if the employer is unwilling to allow the worker to continue working, the separation is a discharge.

In any case, in order to determine whether a party is exercising a choice, it is necessary to determine his intent. Intent is to be garnered from the totality of the evidence presented, including an examination of a party's words or actions.

In this case, the claimant contended that the employer chose to discharge him. However, the claimant's use of the term "pink-slip," which ordinarily means discharge by the employer, was not dispositive of the issue of intent. The claimant's words (the note) and his actions (an absence without notice and the fact that he would not report again if unemployment benefits were uncontested) indicated that it was his intent, and he chose, to discontinue the employment relationship.

This was a voluntary leaving. Because there was no showing that the claimant's current wage was unsuitable, the leaving was without good cause attributable to the employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.5**
DOCKET/DATE	**ABR-85-2592/10-4-85**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Low (Commission)**
CROSS-REFERENCE	**VL 425.05, Suitability of Work; MS 95.1, Statutes**

After being laid-off from his job, the claimant saw an advertisement in a newspaper for work as a Sales Representative. Although the claimant had no experience in the field (selling vacuum cleaners), he concluded that, if he applied himself diligently, he could earn $980 per month. The work first required the claimant to attend initial training sessions, 60 miles from his home, at his own expense. The claimant attended these sessions, as well as follow-up sessions, which were administered during the work week. The claimant's regular schedule involved driving to facilities where he would pick up merchandise and obtain sales leads, then proceeding to homes where he would give demonstrations of the vacuum cleaners he had been trained to sell.

At the time of hire, the claimant had been told he would be paid on a commission basis, dependent upon sales of vacuum cleaners. After 5 weeks, the claimant had sold 1 vacuum cleaner, for which he was paid $75 commission. Since this was substantially less than he had hoped to earn, he quit.

HELD: If remuneration, in full or in part, is on a piece-rate or commission basis, good cause attributable to the employing unit for leaving may be found because of low wages, provided that the individual has remained on the job long enough to give the work a fair trial. What constitutes a fair trial must be determined by the facts in each case.

In the instant case, the employing unit had fixed the rate of pay as commission only, and this was the basis upon which the claimant had determined the work to be unsuitable. The evidence established that the claimant diligently devoted himself to his work, which included training sessions at his own expense and 5 weeks' work as a Sales Representative. The claimant gave the work a fair (albeit unsuccessful) trial, and, as a result, his conclusion that the work was not suitable for him was reasonable. He left work with good cause attributable to the employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.752**
DOCKET/DATE **ABR-86-1747/7-31-86**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Reduction Proportionate to Change in Hours**
CROSS-REFERENCE **VL 150.2, Distance to Work; 450.153, Time, Hours**

The claimant traveled 68 miles each way to his work, as a Heavy Equipment Operator, which he performed 5 days per week, 9 to 10 hours per day. Then his work schedule was changed: He was assigned 2 days of work per week, and sometimes those were half days. The claimant testified that, due to his reduced work schedule, he was compelled to quit; he could no longer afford to travel the 68 miles to and from work.

HELD: A reduction in wages -- which occurs only as a result of a reduction in hours -- does not constitute good cause attributable to the employing unit for leaving, unless the time or costs of transportation become disproportionate to the earnings. In the instant case, the time and money spent by the claimant in order to travel to and from his work had become disproportionate to his earnings. He left work with good cause attributable to his employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL-500.752**
DOCKET/DATE ***Acevedo v. IDES*, 324 Ill.App.3d 768, 258 Ill.Dec. 12, 755 N.E.2d 93 (1st Dist., 8/7/01)**
AUTHORITY **Section 601(A)**
TITLE **Wages**
SUBTITLE **Hours, Change in**
CROSS-REFERENCE **None**

The claimant asserted that he quit work because his supervisor told him that there was no work for him and had reduced his schedule from 40 hours per week to between 13 to 20 per week. At the hearing, at which the claimant failed to appear, the employer testified that the claimant failed to report to work for three consecutive days. The company had reduced employee hours temporarily because of an administrative problem. However, there was work for the claimant on the days he missed. The claimant-s partner continued to work during this period.

HELD: The appellate court held that the reduction of the claimant-s work hours did not constitute good cause for the claimant to voluntarily quit his job. The evidence showed that there was work available for the claimant on the days that he missed work. There was no evidence showing that his duties had been changed or his rate of pay had been reduced such as to render the job unsuitable. The effect on the claimant-s personal finances of the reduction in hours was deemed by the court not to be attributable to the employer. The court noted that a reduction in hours could render an individual eligible for unemployment benefits if the reduction causes his/her wages to fall below the individual-s weekly benefit amount.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 500.752**
DOCKET/DATE ***Irene Collier v. IDES*, No. 86-1397 (1987)**
AUTHORITY **Section 601A of the Act**
TITLE **Wages**
SUBTITLE **Reduction - Change in Hours**
CROSS-REFERENCE **None**

The claimant worked as an assembler. For 2 years she worked an 8-hour shift, 5 days per week, at an hourly rate of $3.95. Because of a business slowdown, the company reduced her workload to 30 hours, 5 mornings per week. The claimant quit.

The claimant stated that she quit when she did because continuing to work mornings would prevent her from seeking full-time work during the time of day when, she believed, most companies did their hiring. She also cited her financial situation, particularly private school tuition for her children.

The Board of Review held that, in the absence of a binding promise to furnish full-time work, the reduction in hours did not so materially vary conditions of work as to render the work unsuitable. The Board of Review issued a decision disqualifying the claimant.

The circuit court determined that the 25% reduction in the claimant's hours was a unilateral and substantial change in her condition of employment which translated into a 25% reduction in pay and that she was entitled to unemployment benefits.

HELD: Dissatisfaction with the number of working hours does not constitute good cause for leaving employment. Generally, if there is no change in the rate of pay, there is no good cause for leaving. Insofar as reduced hours also diminish salary and may be considered a reduction in pay, good cause is dependent upon all attendant circumstances; for example: was there a contractual agreement to furnish 40 hours' work/pay; or, did the hours of employment preclude seeking other work?

In this case, there was no agreement to furnish a 40-hour work week. The claimant's contention that she could not explore work opportunities in the afternoon was her belief, not supported by any evidence. The claimant's personal financial circumstances were not attributable to the employer, nor did they constitute good cause, because the claimant could have continued to draw wages while seeking other work, or, if she was earning less than her weekly benefit amount, while collecting unemployment benefits. The claimant was disqualified for Voluntary Leaving under Section 601A.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.752**
DOCKET/DATE	**ABR-88-6848/1-25-89**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Reduction, Change in Hours**
CROSS-REFERENCE	**None**

The claimant, a waitress, worked a shift that began at 8 a.m. and included the breakfast rush, from which she derived a substantial amount of her tips. The employer changed her starting time to 9 a.m., which meant that she would not be working during the breakfast rush and would be deprived of a substantial amount of her tips.

HELD: A change or reduction in hours, with a corresponding and proportionate change in wages, generally does not constitute good cause for leaving. However, a change or reduction in hours, with a disproportionate and substantial reduction in wages, constitutes good cause for leaving.

Here, the claimant's wages were disproportionately and substantially reduced by the change in hours. She left work with good cause and benefits were allowed.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.753**
DOCKET/DATE	**ABR-85-5217/12-3-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Overtime Without Compensation**
CROSS-REFERENCE	**VL 450.35, Time, Overtime**

When the claimant was hired as Office Manager, at $25,000 per year, she was told that she would be expected to work overtime -- more than her usual 37-1/2 hours per week -- for an indeterminable period of time. This was due to the employer's conversion to and installation of automated systems in its plant and offices.

After 7 months on the job, the claimant quit. She testified that she had been working 45 hours per week, without being compensated for her overtime hours.

HELD: Overtime work is not unsuitable per se. But a voluntary leaving will be with good cause if the hours worked or wages paid are in violation of statute, of if the work is otherwise determined to be unsuitable.

Certain types of employment are exempted from the provisions of Illinois' applicable overtime statute; among these, managerial positions. The claimant held a managerial position, for which she was paid on an annual, not hourly, basis. Therefore, she was not automatically entitled to compensation for overtime work. Now was it shown, by any express or implied terms of hire, that the claimant was promised overtime pay or that the employer deviated from those terms.

The claimant did not present any evidence to show that the overtime work adversely impacted her domestic life or her health. She failed to show the existence of any conditions which made her work incompatible with her well-being -- other than her dislike for overtime work. The mere dislike of overtime work does not, in and of itself, constitute good cause for leaving work.

The claimant left work without good cause attributable to her employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 500.754**
DOCKET/DATE	**ABR-85-8861/5-28-86**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Wages**
SUBTITLE	**Reduction (Due to Change in Territory)**
CROSS-REFERENCE	**None**

The claimant, an Insurance Salesman working on a commission basis, had been assigned to work a particular territory. Then the employer assigned another salesman to share the territory with the claimant. The other salesman had previously worked the territory, reestablished contact with his former clients, and continually diverted business from the claimant. The claimant discussed the situation with the district sales manager; however, no further changes in territory were made. The claimant quit.

HELD: Individuals employed in field or route sales are typically assigned to pursue their sales in territories of well-defined limits. The potential for making commission wages is often dependent upon marketing suitability of a given territory. When an individual leaves work because of a change in territorial assignment, comparisons between the old and new circumstances must be made. If it is established that the sales potential in the new territory would have been substantially less favorable, resulting in a substantial reduction in commission, good cause attributable to the employing unit for voluntary leaving will be established.

In the instant case, the claimant established that, as a result of the employer assigning another salesman to his territory, business was diverted from the claimant, to the extent that his wages were reduced substantially. Accordingly, the claimant left work with good cause attributable to his employer.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.2**
DOCKET/DATE	**ABR-85-8546/6-10-86**
AUTHORITY	**Section 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Apportionment of Work**
CROSS-REFERENCE	**VL 210.05, Good Cause**

The claimant worked as a Sales Clerk in a health food store. Her work shift would run from 6 to 8 hours, during which time she would be the only employee in the store. The employer had a rule which forbade eating at one's work station, except during rest periods or lunch breaks. The claimant testified that because there were no workers to provide her relief, she could not take a lunch break. Also, she could not take a break to go to the washroom, since that would mean leaving her work station unattended. She complained to her supervisor (whose testimony corroborated the claimant's) to no avail.

HELD: A leaving of work because of objection to the distribution of work will be without good cause attributable to the employing unit unless the distribution of work causes undue hardship for the claimant.

In the instant case, the employer's rule clearly demonstrated that workers were entitled to relief. Because the claimant was afforded no relief, she not only found herself as the only employee in the store, with full responsibility for its operation, but in a position where she either forewent lunch and rest periods to which she was entitled or was compelled to violate the employer's rule and subject herself to possible disciplinary action.

The claimant established that the employer, by not providing her any relief, distributed work in such a fashion as to cause her undue hardship. The average reasonable person subjected to the same conditions would in all likelihood have reacted as the claimant did. She left work with good cause attributable to her employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.35**
DOCKET/DATE **ABR-89-5257/10-10-89**
AUTHORITY **Section 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Environment (Cigarette Smoke)**
CROSS-REFERENCE **VL 235.45, Health or Physical Condition**

The claimant stated that he left work because of cigarette smoke in the office. He never told his employer that cigarette smoke was bothering him.

HELD: If a worker asserts that he had good cause for leaving, because his working environment posed a risk to his health, he must:

1) offer competent testimony (some medical evidence) that adequate health reasons justified quitting; 2) have informed the employer of the problem; and 3) have been available for a reasonable accommodation.

Here, at the least, the claimant failed to inform the employer of any problem. Therefore, he did not establish that he had good cause for leaving. Benefits were denied.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.35**
DOCKET/DATE **ABR-88-2843/5-31-88**
AUTHORITY **Section 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Environment**
CROSS-REFERENCE **None**

The claimant had an allergy to cigarette smoke. An assistant manager kept blowing smoke in her direction in the office. Despite her complaints, the situation persisted, until, finally, she quit.

HELD: If an individual leaves work because of a physical condition surrounding the work, she must show that the physical condition was attributable to the employer and that it resulted in undue hardship for her.

In this case, the smoke in the office was attributable to the employer because the claimant brought it to the employer's attention and no accommodation was made. The claimant had good cause for leaving because she had a medical condition that was adversely affected by the smoke.

The claimant left work with good cause attributable to her employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.4**
DOCKET/DATE **ABR06487/3-9-89**
AUTHORITY **Section 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Fellow Employee**
CROSS-REFERENCE **VL 50.05, Attributable to Employer**

The claimant helped her son get a job with her employer. Over the next three years, she loaned her son several thousand dollars, which he did not repay. As time went by, her son would demand more money, and, if she hesitated to pay it, he would threaten her. The son began making demands and threats at work. The claimant asked her supervisor to talk to her son about harassing her at work. The supervisor did, but the son continued to seek her out at work. Finally, the claimant quit.

HELD: If a worker quits because of annoyance with a fellow employee, the leaving is attributable to the employer only if it has a duty, but fails, to act. However, an employer does not have a duty to act in a parental capacity and cannot be expected to resolve every family problem that carries over into the workplace. Here, the claimant left work because of a family problem, not because the employer failed to take action. The leaving was not attributable to the employer. Benefits were denied.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.4**
DOCKET/DATE **83-BRD-14394/12-2-83**
AUTHORITY **1./S-601A**
TITLE **Working Conditions**
SUBTITLE **Fellow Employee**
CROSS-REFERENCE **None**

The claimant quit her job as a cook because she disliked a co-worker and felt job duties were not evenly distributed. She became upset when she learned the co-worker would continue working for the employer the next school year.

HELD: The dislike for a fellow employee does not, in itself, establish a good cause for leaving a job. There is no evidence that the claimant was subject to such conditions or abuse as would have rendered the job unsuitable for her. As such, the claimant's reason for leaving work was purely personal and not attributable to the employer. She is, therefore, ineligible to receive benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.4**
DOCKET/DATE ***Alfonso Barron v. Ward*, No. 86-1630 (1987)**
AUTHORITY **Section 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Fellow Employee**
CROSS-REFERENCE **VL 160.05, Efforts to Secure Employment**

The claimant, who was Mexican, worked with an employee who made repeated derogatory remarks about Mexicans in general and the claimant in particular. Finally, the claimant and the co-worker were engaged in an altercation, during which the co-worker struck the claimant in the face, injuring him.

The co-worker was transferred to another department. After the transfer, the co-worker threatened to kill the claimant and would laugh at him whenever he would see him in the plant.

For business reasons, the employer decided to transfer the co-worker back to the claimant's department. When the claimant learned of this, he told superiors and the union steward he could not and would not work with the co-worker, but they insisted that the transfer was a business necessity and that the claimant should just stay on and work.

The claimant quit.

HELD: An employee is not justified in quitting his job because of a minor, isolated confrontation with a fellow employee. This is particularly true if the abused employee does not have reason to believe that further abuse will result if he stays on the job. An aggrieved employee has a duty to cooperate in some common-sense action to eliminate the problem.

But the general rule indicated above would not apply if an employee were seriously injured, had a genuine fear of assault if he returned to work, had good reason to believe that attempts to work out the problem would be futile, or attempts to stop the abuse had failed.

In this case, the claimant had a genuine fear of further abuse and assault, and good reason to believe that attempts to work out the problem would be futile. He left work with good cause attributable to the employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.5**
DOCKET/DATE **ABR-87-1354/4-14-87**
AUTHORITY **Section 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Morals**
CROSS-REFERENCE **VL 90.05, Conscien. Obj.; VL 385.05, Cause of Leaving**

The claimant worked as a Supervisor in a medical center's kitchen. His schedule was such that he was able to attend either a Jehovah's Witness church meeting on Tuesday evening or a ministers' training session on Thursday evening.

Then the employer decided to institute a new 1 a.m. to 3 a.m. shift. The employer asked the claimant to supervise this shift, in addition to his regular shift. These additional responsibilities would have lasted 1 month. The claimant refused to work the additional hours.

In order to begin operations on its new shift, and as a result of the claimant's refusal, the employer was compelled to rearrange other supervisors' schedules. This, in turn, impacted upon the claimant. The claimant was told that his work schedule would have to be changed, temporarily, regardless. He was offered a variety of schedules, before he accepted a part-time position as a relief cook.

The relief cook job had 2 weeks left to run - after which the claimant would be returned to his regular supervisory position and shift - when the claimant observed that he would be scheduled to work both Tuesday and Thursday evenings. He promptly gave the employer 2-weeks' notice of his intention to resign.

The claimant stated that he quit because he wished to attend either the Tuesday or the Thursday church meeting - or, preferably, both. He acknowledged that he was not required by the church to attend such meetings, but that it was his personal decision to do so.

HELD: Unemployment insurance is designed to guarantee benefits to employees who are out of work through no fault of their own. The determination of fault is to be made in light of the First Amendment freedom of religion provision - and not solely on the basis of the language of a statute defining eligibility. Accordingly, if there is a true religious conviction present, benefits cannot be withheld.

In this case, the claimant was not compelled to leave work on account of a true religious conviction. His attendance at church meetings was, by his admission and by his prior attendance at only 1 of 2 meetings per week, non-obligatory. He had refused temporary work which would not have conflicted with his desire to attend 1 meeting per week. Finally, at the time he quit, the reason for his quit no longer existed - when his 2-week notice of quit expired, so did his temporary assignment.

Neither the employer nor the state conditioned the claimant's receipt of benefits upon conduct proscribed by his faith. There was no burden upon religion. The claimant was disqualified for benefits under Section 601A.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.5**
DOCKET/DATE **83-BRD-10841/9-23-83**
AUTHORITY **1./S-601B4.**
TITLE **Working Conditions**
SUBTITLE **Morals**
CROSS-REFERENCE **None**

The claimant worked for four months as a housekeeper for a motel managed by a husband and wife.

On one occasion, the manager came into the motel room where the claimant was bent over cleaning and slapped her on her posterior. On another occasion he came into the room where she was working and, after some small talk, put his arms around her and asked her for a kiss. The claimant refused. She reported the incident to her head maid and finished her work shift, but she did not report to work again. The next morning, the manager telephoned the claimant at home, apologized for the incident the day before, and told her that he would not do it again. The employer did not rebut the claimant's testimony.

HELD: The claimant left her job immediately after her supervisor placed his arms around her and asked for a kiss. Both this incident and the prior incident were unsolicited by the claimant. The claimant complained to the head maid. For the claimant to complain to the manager would have been a useless act. The employer offered no evidence to contradict the claimant's testimony. The owner is responsible for the activities of the manager which, in this instance, amounted to sexual harassment. The claimant voluntarily left work for good cause attributable to the employer, and she is not disqualified from the receipt of benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.5**
DOCKET/DATE	**85-BRD-04467/6-14-85**
AUTHORITY	**Sect. 601 of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Morals (Sexual Harassment)**
CROSS-REFERENCE	**None**

The claimant had been employed as a Data Processing Supervisor for 2 1/2 years.

On November 29, 1982, in response to an Agency questionnaire (Claimant's Statement on Voluntary Leaving), the claimant wrote:

> I was treated fairly until we had a manager change...Instead of letting me train, promote, and fire my employees they took it upon themselves to call my people in behind my back...Management was telling me to supervise my people but how could I when they were writing reviews, promoting and firing people against my wishes. I would come up with new ideas and they...would laugh...I had enough.

On December 16, 1982, during an interview with the Claims Adjudicator, the claimant signed a statement in which she alleged that a co-worker had been "constantly making degrading remarks about going to bed with him." That statement also indicated that the claimant had taken the matter to the employer's Personnel Department, to no avail.

On January 13, 1983, the claimant testified at an appeal hearing, at which time she stated that the main reason she quit her job was on account of sexual harassment, which she had endured for at least 4 months. She testified that she had not apprised anyone in management about the situation, because the employer's general policy was that employees should work things out among themselves first.

The employer's witness, its Personnel Manager, testified that the claimant's statements at the hearing were the first mention of sexual harassment. He testified that the employer had a strict policy regarding sexual harassment, and had the claimant taken the matter to the Personnel Department, the matter would have been dealt with immediately.

HELD: Section 601B-4 of the Act provides an exemption from the disqualifying provisions of Section 601A, but only if an individual has separated from employment solely because of sexual harassment, and only where the employer knew or should have known of the existence of such harassment and failed to take timely or appropriate action.

In the instant case, the claimant testified that sexual harassment was the "main" -- as opposed to "only" -- reason she quit her job, suggesting that there were other reasons. Her prior written statement confirmed the existence of other reasons. Because she did not separate from employment solely because of sexual harassment, no exemption would apply.

Further, it was not established that the employer knew or should have known of any sexual harassment. The claimant's statements to the Adjudicator and to the Referee were contradictory as to whether she had informed her employer about the co-worker's alleged conduct. Contradictory statements lessen a witness' credibility. The employer's witness' testimony was entitled to greater weight. Because the employer was unaware of any acts of sexual harassment, again, no exemption would apply.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.5**
DOCKET/DATE	**85-BRD-05589/7-25-85**
AUTHORITY	**Sect. 601 of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Morals (Sexual Harassment by Owner of Company)**
CROSS-REFERENCE	**VL 385.05, Relation of Alleged Cause of Leaving**

The claimant was employed as a Secretary and Payroll Clerk for 3 years, until September, 1984, when she quit because the owner of the corporation for which she worked had been harassing her with lewd remarks, sexual advances, and offensive touching. The claimant testified that she had ignored or expressed displeasure at the owner's remarks, and that she had rebuffed the advances and offensive physical contacts, and that, finally, she had demanded that the harassment stop. When the harassment did not stop, the claimant quit.

HELD: Section 601B-4 of the Act provides an exemption from the disqualifying provisions of Section 601A, when an individual has separated from employment solely because of sexual harassment, and where the employer knew or should have known of the existence of such harassment and failed to take timely or appropriate action. In the instant case, the claimant left work solely because of sexual harassment. Since the owner of the corporation was the person responsible for the harassment, it followed that the employer knew and did not take timely or appropriate action to stop the harassment. The exemption was applicable.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.5**
DOCKET/DATE	**ABR-85-6665/2-28-86**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Morals (Sexual Harassment by Owner of Company)**
CROSS-REFERENCE	**None**

The claimant worked as Acting Director of Finance for a company whose Executive Director instructed her to alter certain financial records. In June, 1985, the Executive Director was paid $2508 in lieu of taking a vacation. He figured that, from a tax standpoint, it would be to his advantage to have the $2508 reported as 1986, instead of 1985, income. He turned over to the claimant his vacation check for $2508, marking thereon "DONATION," and instructed the claimant to pay him the $2508 come January, 1986.

The claimant testified that she suspected that the transaction was illegal, investigated the matter and learned from the IRS that such a change was illegal and could subject her to the loss of her C.P.A. license and criminal prosecution. In the alternative, she could refuse the Executive Director's demand, and face a possible discharge for being insubordinate. She chose to resign.

HELD: A worker has good cause attributable to the employing unit for quitting if continuance on the job would involve an undue risk to the worker's morals and therefore her well-being. An undue risk to the worker's morals is clearly involved if the worker is required to do anything which is dishonest, illegal or unethical; this includes a reasonably grounded apprehension that an act is dishonest, illegal or unethical, and will work to the claimant's detriment -- even if it might later prove not to be so.

In the instant case, the claimant was experienced in financial and tax matters, had consulted the IRS, and, therefore, her conclusion -- that her employer had required her to perform an act which was illegal -- had a reasonable basis. Also, the claimant had a reasonably grounded apprehension that performing such an act could subject her to loss of her license and criminal sanctions. It was not necessary for the claimant to continue on the job and await such consequences. The undue risk to the claimant's morals and therefore her well-being established good cause attributable to the employer for leaving.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.6**
DOCKET/DATE	**83-BRD-12533/11-7-83**
AUTHORITY	**1./S-601A**
TITLE	**Working Conditions**
SUBTITLE	**Production Requirement Or Quantity Of Duties**
CROSS-REFERENCE	**None**

The claimant was counseled about her work performance on two occasions. The employer told the claimant that her production was at the 60% level and tried to encourage the claimant to raise it to 100%. The employer offered to give the claimant assistance to increase her performance, but this was not accepted. At the second meeting, after the employer again explained that the claimant's performance had not improved, the claimant decided to leave her job and quit work; she didn't believe she could do any better.

HELD: The claimant left her job voluntarily without good cause attributable to the employer. An employer has a right to set a production goal for its employees and to try to help the employees achieve that goal. The claimant's quitting after being encouraged to produce more work does not constitute good cause for leaving work, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.6**
DOCKET/DATE	**85-BRD-05980/8-14-85**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Production Requirement or Quantity of Duties**
CROSS-REFERENCE	**None**

The claimant, a 58 year old married woman with a family, was employed by a retail department store for 18 years, last holding the position of Area Sales Manager, from which she resigned following a change in top management. The claimant testified that during the final weeks of employment there had been pressure put upon her to produce more sales. She testified that she could not adjust to the pressure. She stated that she went home physically and mentally exhausted. Prior to resigning, the claimant had spoken with her manager, who told her to do the best she could.

HELD: An employer's production requirement becomes unreasonable and therefore affords a claimant good cause attributable to the employer for quitting -- when it is set so high that it adversely affects, or can adversely affect, the health of the claimant. On the other hand, a claimant's statement, standing alone, that she was not capable of meeting the employer's production requirement, generally will not afford good cause attributable to the employer for quitting.

In the instant case, while the new management undoubtedly put pressure on the claimant to increase sales, this was an expected condition of her work. Further, the claimant had been told to do the best she could, so, in fact, the production requirement was not intended or applied in such a way as to exceed the claimant's capabilities. Although the claimant may have gone home exhausted, work is, by its nature, arduous and exhausting. Because the claimant did not establish that the employer's production requirement was unreasonable or that it had an adverse effect upon her health, aside from fatigue, the claimant was disqualified for benefits for leaving work without good cause attributable to her employer.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.65**
DOCKET/DATE ***Patrick Burke v. Board of Review*, 477 N.E. 2d 1351**
AUTHORITY **Sect. 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Safety**
CROSS-REFERENCE **VL 235.45, Health, Risk of Illness or Injury**

The claimant, a worker in a nuclear facility, testified that 2 fellow employees had been found to be contaminated with radiation. The extent of their contamination, he testified, was that, upon leaving the facility, they had to take showers and some work clothing was lost. The claimant himself was found not to be contaminated. Nonetheless, believing that there were areas of radiation still unknown, making working conditions unduly hazardous for him, the claimant quit. At no time had he sought medical treatment or advice, nor had he complained to superiors about the purportedly hazardous conditions. He stated that he did not complain because he did not wish to be branded a troublemaker.

HELD: In order to demonstrate that health is a compelling reason for terminating employment, a claimant must:

(1) offer competent testimony (some medical evidence) that adequate health reasons existed to justify termination at the time of termination;
(2) have informed the employer of the health problem; and
(3) be available, where a reasonable accommodation is made by the employer, for work which is not inimical to his health.

The failure to satisfy any one of the three conditions explicated above will bar a claim for unemployment compensation.

In the case at bar, the claimant did not establish good cause attributable to his employer based upon health reasons. He did not adduce any medical evidence to support the allegations concerning alleged health problems. He did not report purportedly unsafe conditions to his employer. His conduct did not meet the standard of ordinary common sense; in short, he did not act in good faith. As a result, he was disqualified for benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.65**
DOCKET/DATE **ABR-87-5552/4-7-88**
AUTHORITY **Section 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Safety**
CROSS-REFERENCE **VL 50.05, Attributable; VL 235.45 Health**

The claimant worked in a hospital as a Registered Pediatric Nurse whose duties included providing nursing care to children with various diseases - including Acquired Immune Deficiency Syndrome (AIDS).

The hospital informed nurses as to how AIDS could be transmitted. The hospital formally instructed nurses concerning the treatment of AIDS patients. On the doors of patients who had been exposed to the AIDS virus were notices reminding nurses about blood and secretion precautions to be taken. In addition, the hospital followed established procedures that were taken for other infectious diseases transmitted through the blood, such as hepatitis, which involved precautions against contact with patients' blood and secretions.

The claimant became separated from employment because she refused to provide care for an infant who had been exposed to the AIDS virus.

HELD: Dangers inherent in a job are not necessarily attributable to the employer. Only where the risks of a job are disproportionately high, because the employer either acts or fails to act, will such a risk result in a finding of attributability.

Nursing, as an occupation, involves contact with patients who might have contracted contagious diseases. The claimant, as a nurse, assumed this risk as the ordinary risk of the nursing occupation. The evidence in this matter did not establish that the risk of the claimant's contraction of the AIDS virus was disproportionately high. This was because of the precautions taken by the employer.

The claimant did not make herself available for work despite the employer's reasonable precautions. As such, she did not have good cause attributable to the employer for leaving her job.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.8**
DOCKET/DATE	**83-BRD-11730/10-20-83**
AUTHORITY	**1./S-601A**
TITLE	**Working Conditions**
SUBTITLE	**Supervisor**
CROSS-REFERENCE	**None**

The claimant quit because her supervisor made "unreasonable demands and wouldn't let anyone have an opinion without clearing with her first." She quit without notice to the employer.

At the hearing before the referee, the claimant testified that she considered it an insult when her supervisor told her that she "didn't like the way the project was done and that she couldn't afford to spoon-feed me." The employer's sales manager testified that the claimant had never discussed any problem with him.

HELD: An individual's dislike or disapproval of his supervisor or her employer's method of doing business is not, in and of itself, good cause for leaving work, unless the evidence shows discrimination, abuse, or violence. There is no evidence that the claimant was subjected to any of these conditions which would have rendered the work unsuitable for her. She voluntarily quit without good cause, and she is disqualified for benefits.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.8**
DOCKET/DATE	**ABR-85-2841/9-11-85**
AUTHORITY	**Sect. 601A of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Supervisor**
CROSS-REFERENCE	**None**

The claimant was employed as a Teacher, whose work was normally subject to classroom evaluations, conducted by the Chairperson of her department, 3 times per year. The claimant resigned her position after the Chairperson, during a 3 month period, conducted 18 classroom evaluations of the claimant's work. The evaluations included interrupting lessons and asking the claimant's students questions critical of the claimant's performance, which was not normal procedure.

HELD: A course of conduct on the part of a supervisor which amounts to abuse, hostility, unreasonable discrimination, or which threatens the worker's mental well-being, will constitute a compelling reason, and therefore good cause, for leaving work. In the instant case, the evidence established that the claimant was subjected to evaluations which were excessive both in their number and manner. The Chairperson engaged in a course of conduct which amounted to harassment. Therefore, the claimant had good cause attributable to her employer for leaving work.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.8**
DOCKET/DATE **84-BRD-499/1-13-84**
AUTHORITY **Sect. 601A of the Act**
TITLE **Working Conditions**
SUBTITLE **Supervisor**
CROSS-REFERENCE **None**

The claimant alleged that for a period of six months she was subjected to harassment by her supervisor. She cited instances in which her supervisor had criticized her for issuing an excessive number of credit slips and had then questioned her as to the reasons for issuing the slips. She also told of another instance in which the supervisor had called her attention to a shortage in the cash receipts. She felt that her honesty had been questioned and that the supervisor had not given her an opportunity to explain the circumstances. She resigned her position after one of these incidents.

HELD: The evidence established that the claimant became sensitive to certain characteristics of her supervisor. Dislike or friction between a supervisor and a worker is not in itself good cause for leaving which is attributable to the employer. There must be additional evidence that the supervisor's conduct amounted to unreasonable discrimination, abuse or hostility. In the instant case, the supervisor's conduct in questioning the claimant was within the scope of her duties. Therefore, the claimant voluntarily left work without good cause attributable to the employer. She is disqualified from receiving benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.8**
DOCKET/DATE **84-BRD-413/1-12-84**
AUTHORITY **2./S-601A**
TITLE **Working Conditions**
SUBTITLE **Supervisor**
CROSS-REFERENCE **None**

In the presence of co-workers, the claimant's supervisor constantly yelled at him, cursed him, called him a dummy, and told him he was stupid. The claimant complained to the management, and relations with the supervisor improved. Eventually, however, the supervisor reverted to the same practices, and, on the date the claimant quit, the supervisor yelled at him in the presence of another supervisor.

HELD: The repeated attacks of verbal abuse by the supervisor were good cause for the claimant's leaving. Since he had made reasonable and unsuccessful efforts to remedy the situation by reporting the matter to the employer, the circumstances were within the employer's knowledge and control. It is concluded that the claimant quit for good cause attributable to the employer, and he is not disqualified from receiving benefits.

ISSUE/DIGEST CODE **Voluntary Leaving/VL 515.9**
DOCKET/DATE **ABR-85-9196-10-86**
AUTHORITY **Sect. 601 of the Act**
TITLE **Transfer to Other Work**
SUBTITLE **Section 601B-3**
CROSS-REFERENCE **None**

The employer informed the claimant that he was being transferred to a job as a Drill Press Operator. Under the terms of a collective bargaining agreement, another employee would have had to vacate that Drill Press position to make the job available to the claimant, who had more seniority. The claimant objected to the transfer and quit.

HELD: Section 601B-3 of the Act provides that the disqualifying provisions of Section 601A shall not apply to an individual who has left work voluntarily in lieu of accepting a transfer to other work under the terms of a collective bargaining agreement or pursuant to an established employer plan, if the acceptance of such other work would require the separation from that work of another individual currently performing it.

The claimant's separation from work was within the purview of Section 601B-3 and the exception applied.

ISSUE/DIGEST CODE	**Voluntary Leaving/VL 515.9**
DOCKET/DATE	**83-BRD-14848/12-13-83**
AUTHORITY	**1./S-601A**
TITLE	**Working Conditions**
SUBTITLE	**Transfer to Other Work**
CROSS-REFERENCE	**None**

The claimant worked for approximately three years until she quit her job. She had been promoted on two previous occasions during her employment. Her most recent position was that of an Administrative Clerk. The employer notified her that she was being transferred to a Billing Clerk position at the same rate of pay. The employer was confident that she would be able to learn the new position. The claimant reviewed the job description of the Billing Clerk position, believed that she was not qualified to fill it, and notified the employer that she would not accept the job reassignment.

HELD: The claimant was to be transferred from her position as an Administrative Clerk to that of a Billing Clerk, with no reduction in her salary. While the employer expressed confidence in her ability to perform her new duties, the claimant decided that she was unqualified for the position and left work. Although the claimant's leaving work was attributable to the employer in that it unilaterally changed the claimant's work assignment, the claimant left without good cause. Other than her subjective conclusion that she could not perform her new duties, the claimant did not make any effort to attempt the new job before leaving work and therefore could not show that the work was in fact unsuitable. The claimant is ineligible to receive benefits.

ABLE AND AVAILABLE

ISSUE/DIGEST CODE **Able and Available/AA 5**
DOCKET/DATE **ABR-85-7949/3-28-86**
AUTHORITY **Sections 500C and 702 of the Act**
TITLE **General**
SUBTITLE **Sufficiency of Employer's Protest**
CROSS-REFERENCE **PR 405.2, Right of Review, Persons Entitled**

The claimant filed a claim for benefits and the Claims Adjudicator mailed a notice of the claim to the employer. The employer filed a timely protest, in which it stated, in pertinent part:

> The Claimant was employed in a seasonal capacity with our company, working for the 1984 Christmas season only. The Claimant was aware of the temporary status of her position at the time of the acceptance. The Claimant has not shown an attachment to the full-time labor force through (such employment, and) in addition, the Claimant does have marketable skills for which there are positions available in the full-time labor market. This is evident by the fact that the Claimant did secure employment subsequent to working (for us). Based on this information, we question the Claimant's efforts to secure full-time permanent employment.

The issue presented was whether the employer was entitled to receive a determination with respect to the availability for work.

HELD: An employer is entitled to receive a claimant's determination when it has filed a timely and sufficient protest. In order to be sufficient a protest must contain a reason which would tend to support its conclusion. In cases involving an individual's availability for work, the employer must provide a reason which would tend to support a conclusion that the individual was unavailable for work during the period under review. The mere (and self-evident) fact that an individual is unemployed does not mean that it is presumed that the person wishes to remain unemployed and is therefore unavailable for work.

In the instant case, the employer provided reasons why the claimant may have been available -- not unavailable -- for work. The employer established that the claimant had marketable skills and had applied them by accepting 2 jobs. Other than that, the employer merely restated the fact that the claimant was unemployed.

The employer's protest was insufficient and the employer was not entitled to receive notice of the Claims Adjudicator's determination.

ISSUE/DIGEST CODE **Able & Available/AA 40.05**
DOCKET/DATE ***Moss v. IDES*, 357 Ill. App. 3d 980 (1st Dist. 2005)**
AUTHORITY **Section 500C4 of the Act**
TITLE **Attendance at School or Training Course**
SUBTITLE **Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE **None**

The claimant's hours were reduced after she had been employed as a full-time security officer with the defendant security services company for 1-½ years. The claimant subsequently enrolled in a college program to become a medical assistant. The claimant attended classes from 7:00 a.m. until noon Wednesday through Saturday. The claimant testified she chose morning classes so she would be available for afternoon or evening shift work with the defendant, and she was looking for whatever work she could get, full-time or part-time. She said she only went to school five hours a day and still had time to work. The Hearing Referee observed, "Most jobs are Monday to Friday, X number of hours," and asked the claimant if she would drop school if she were offered a full time job. The claimant responded she would not leave school because she would need to repay her student loan whether or not she finished the college program. The Hearing Referee found the claimant ineligible for UI benefits under Section 500C4 because her principal occupation was that of a student. The claimant appealed to the BOR, stating she was a part-time student and would change her class schedule to fit her work schedule, and explaining the security business was not conducted just from 9 a.m. to 5 p.m. and people in the security field seldom get a 9 to 5 shift. The BOR affirmed the Hearing Referee. The Circuit Court affirmed the BOR. The Appellate Court reversed and remanded the case.

HELD: In determining if a claimant's principal occupation is that of a student, the focus should be on whether the claimant has placed restrictions on her job search because of her status as student. That is, is work subordinate to and geared around an educational program, and is a claimant available to work a full-time job in light of school commitments? In this case, the BOR incorrectly interpreted the claimant's response to the Hearing Referee that she would not quit school if offered a full-time job to mean she was not looking for full-time work. The claimant said she would not leave school, but she did not say she would turn down the job. She never said she was not available or willing to work a full-time job, and in fact testified she would take full-time work if she could get it. A claimant can be available for work and remain a student. The circumstances in this case show the claimant wanted to remain available for work, and scheduled school around work, not the other way around. In addition, the focus on a Monday through Friday, 9 to 5 workweek was incorrect. In some fields such as the claimant's, jobs are primarily available for second or third shifts. In such circumstances a claimant can go to school and be available for full-time work at the same time. A claimant's circumstances must be considered on a case-by-case basis.

ISSUE/DIGEST CODE	**Able and Available/AA 40.05**
DOCKET/DATE	**83-BRD-8543/7-21-83**
AUTHORITY	**1./S-500C4**
TITLE	**Attendance At School Or Training Course**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant had begun a full-time college schedule of eighteen credit hours, and she was continuing this schedule during the two weeks under review. She stated that she would not accept any work which had to be performed during her class hours and that she would not revise her class schedule to allow her to accept such work.

HELD: The claimant's principal occupation was that of a student during the two weeks under review. She was deemed to be unavailable for work, and she is ineligible for benefits.

Note: Had the claimant previously attended school full-time while working full-time, and if she had given evidence of seeking similar full-time work such that neither the work nor school would interfere with each other, she would not be ineligible.

ISSUE/DIGEST CODE	**Able and Available/AA 40.05**
DOCKET/DATE	**ABR-87-7121/12-30-87**
AUTHORITY	**Section 500C4 of the Act**
TITLE	**Attendance At School**
SUBTITLE	**Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE	**None**

The claimant worked as a cook for 4 years. She worked late afternoon shift commencing at 3 p.m. Due to the nature of the employer's business, she worked full-time each April through October and part-time each November through March.

In July, 1987, she became unemployed because the employer's business establishment was ruined by fire. In August, 1987, she began attending college courses full-time, in order to obtain an Associate Degree in Law Enforcement. Her classes were primarily from 9 a.m. through 12:30 p.m. When the employer reopened in September, she returned to work on the late afternoon/evening shift.

The claimant was denied unemployment benefits for the period July 26 through August 8, because, when she filed for benefits, she indicated that she would prefer to work in the late afternoon or evening so as to avoid a conflict with her schooling. She also testified that she would forego attendance at college classes in order to accept full-time work on any shift.

HELD: Section 500C-4 of the Act provides that an individual shall be deemed unavailable for work if her principal occupation is that of a student in attendance at or on vacation from school.

Whether or not an individual's principal occupation is that of a student is determined by considering the individual's work history, the type of work sought, and any labor market restrictions which would result from activities connected with school.

In this case, examination of these factors indicated that the claimant's principal occupation was that of a worker. Her work experience and the availability of second shift work for a cook showed that there were no undue restrictions upon her opportunities for obtaining remunerative work. Her testimony further indicated that school did not take priority over her work.

The claimant was available for work and eligible for benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 40.05**
DOCKET/DATE	***Sonia I. James v. IDOL*, 465 N.E. 2d 879 (1983)**
AUTHORITY	**Section 500C-4 of the Act**
TITLE	**Attendance At School**
SUBTITLE	**Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE	**MS 95.2, Construction of Statutes**

The claimant worked as a psychological consultant. After 2 years at the job, she executed an employment agreement. The agreement provided that she would work only 16-20 hours per week. This would allow her to pursue a doctorate in psychology during off-hours. She needed the doctorate to become a registered psychologist and eventually obtain a better job.

The claimant enrolled in 3 courses that she attended 2 evenings per week. She also enrolled in a clinical training program in a Chicago hospital, from 9 a.m. to 4 p.m., 2 days per week. In addition to devoting 18-20 hours to attending classes and training, it was necessary for the claimant to study 6-8 hours each week.

The claimant became separated from employment, and, shortly thereafter, during a vacation between semesters, she filed for unemployment benefits. She told the Claims Adjudicator that any employer would have to be flexible in order to accommodate the requirements of her educational program.

HELD: The fact that a student also works does not mean she is automatically available for work and eligible for benefits. The issue is not simply availability under Section 500C.

The legislature has considered the common circumstance of a claimant who is employed on a part-time basis while attending school and has unambiguously declared, under Section 500C4, that, if she is principally occupied as a student, she shall be "deemed" unavailable for work, irrespective of Section 500C.

In this case, the claimant contended that, because she could balance both work and continuing education, she was available for work under Section 500C. But, as stated, that was not the issue. The issue was whether her principal occupation was that of a student. The time requirements of her work were less than those necessary for her studies. The evidence showed that any employment would be geared around and subordinated to her educational program. Therefore, her principal occupation was that of a student. Because her principal occupation was that of a student, she was deemed unavailable for work, and was ineligible for benefits, under Section 500C-4.

ISSUE/DIGEST CODE	**Able & Available / AA 40.05**
DOCKET/DATE	***Miller v. IDES* (1994)**
AUTHORITY	**Section 500C4 of the Act**
TITLE	**Attendance at School or Training Course**
SUBTITLE	**Whether Principal Occupation is Worker or Student**
CROSS-REFERENCE	**None**

The claimant attended classes on Monday, Wednesday, and Friday from 8 a.m. until noon, on Tuesday from 9 a.m. to 10 a.m., and on Thursday from 1 p.m. to 3 p.m. He indicated to IDES that he would prefer to work evening or afternoon shifts, and not on Monday through Thursday, because of school. At his hearing, he qualified his statements by explaining that he had worked and attended school in the past and, if offered an 8 to 5 job, he would have accepted it and made arrangements with teachers to complete his courses. The Board of Review denied benefits.

HELD: Section 500C4 provides that a claimant is "deemed" unavailable for work when his principal occupation is that of a student. Here, although the claimant indicated he would forego taking classes in order to obtain a full-time job and had in the past successfully worked full-time while attending classes, the evidence ***also*** demonstrated that he was a full-time student who sought part-time work that would not interfere with his classes. Thus, the Board's finding that his principal occupation was that of a student was not against the manifest weight of the evidence.

ISSUE/DIGEST CODE	**Able and Available/AA 105.05**
DOCKET/DATE	**ABR-85-5971/1-16-86**
AUTHORITY	**Sections 239 and 500C of the Act**
TITLE	**Contract Obligation**
SUBTITLE	**Effect Upon Eligibility**
CROSS-REFERENCE	**AA 375.05, Receipt of Other Payments**

The claimant, a Janitor, worked for his employer for 36 years, until his position was eliminated, in March, 1985. Still, the employer intended to keep him on the payroll for 2 months more, during which time the claimant would not be required to sign in or perform any work; this, the employer explained, would be its "farewell gift" to the claimant for his "long and faithful years of service."

When the claimant filed a claim for unemployment benefits, for the period March 10, 1985 through March 30, 1985, the employer asserted that, because the claimant had been and would be kept on the payroll until May, 1985, he was not an unemployed individual; and, accordingly, this would bar eligibility under Section 500C.

HELD: Section 500C of the Act requires, as a condition of eligibility, that a claimant be an "unemployed individual."

Section 239 of the Act provides that:

> An individual shall be deemed unemployed in any week with respect to which no wages are payable to him and during which he performs no services...

In the instant case, the evidence established that, subsequent to the elimination of the claimant's position in March, 1985, he performed no services for his employer. Further, he was not under any contractual obligation to perform services for his employer. Because the money which he was to receive was to be paid to him in consideration of services previously rendered -- for which he had already been paid wages, this money did not constitute wages with respect to the weeks under review, but, instead, was, as the employer originally stated, a gift.

Accordingly, because no wages were payable for services performed during the period under review, the claimant was an unemployed individual and the money paid to him by his employer was not a bar to his eligibility under Section 500C. Further, because the claimant was not contractually obligated to perform any future services for his employer, it was not shown that his availability for work was unduly restricted by the employer's arrangement.

ISSUE/DIGEST CODE	**Able and Available/AA 150.2**
DOCKET/DATE	**83-BRD-14621/12-8-83**
AUTHORITY	**1./S-500C**
TITLE	**Distance To Work**
SUBTITLE	**Transportation And Travel**
CROSS-REFERENCE	**None**

The claimant, a resident of Peoria, testified that she would accept employment within a radius of fifteen to twenty miles from her home. She conducted a reasonable search for work and was physically able to accept work.

HELD: A travel restriction of fifteen to twenty miles in the Peoria area is not an undue restriction. The claimant is available for work and is eligible for benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 155.1**
DOCKET/DATE	**ABR-85-3083/7-25-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Domestic Circumstances**
SUBTITLE	**Children, Care of**
CROSS-REFERENCE	**None**

The claimant filed a claim for benefits for the 7 week period from November 4, 1984 through December 22, 1984, during which time she reportedly contacted 4 prospective employers. The claimant explained that during the period under review she did not have the services of her regular baby sitter; the claimant had been and would be needed at home to care for her minor children until a new baby sitter could begin work on January 7, 1985.

HELD: Once it is determined that a claimant has small children who require care, it becomes necessary to establish to what extent the child care limits the claimant's availability for work. A claimant who must devote her full time to the care of her children, and who has no arrangements for their care should she be offered work, must be held unavailable for work. In the instant case, the claimant's lack of reliable child care precluded her from making a realistic number of employer contacts or accepting an offer of work during the period under review. Accordingly, the claimant was denied benefits for being unavailable for work.

ISSUE/DIGEST CODE **Able and Available/AA 155.1**
DOCKET/DATE **ABR-86-1912/7-28-86**
AUTHORITY **Section 500C of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Children, Care of**
CROSS-REFERENCE **AA 160.25, Refusal of Work**

The claimant worked full-time, as a Nursing Supervisor, from January through December, 1984. During that period, she also accepted work -- as many as 15 assignments -- from a medical employment agency, which continued to employ her into January, 1985. On both January 18 and 19, 1985, the employment agency telephoned the claimant at 5:30 a.m. and offered her temporary work to start at 7 a.m. the same day.

The claimant stated that, upon such short notice, she would be unable to arrange for the services of her customary baby sitter, who lived 1-1/2 hours away. The claimant later testified that she had to be particular about who would baby sit, since her 3 year old child had previously been abused. She stated that she would have accepted the assignments had she had more time to arrange for child care. Her customary baby sitter also testified that she would have been available to baby sit on the days in question.

Although the claimant established, by the number and quality of her other job contacts, that she was actively seeking work, she was denied benefits on the basis of being generally unavailable due to her domestic responsibilities.

HELD: Once it is determined that a worker has a child who requires care, it becomes necessary to establish to what extent the child care limits the claimant's availability for work. As long as the worker is able to demonstrate an active work search and that, should she secure employment, child care arrangements could be made during normal working hours, an immediate lack of child care should not affect her availability.

In the instant case, the claimant established that she had made an active search for work. She also established that, in the event that she secured employment, child care arrangements could be made during normal working hours. The difficulty in this case was not that the claimant lacked child care, but that, with respect to one particular prospective employer, the claimant was given a relatively brief period between the time she was notified of work and the time she was to report to work. It would be wrong to conclude from this that the claimant's inability to arrange for child care placed an undue restriction upon her employability, or that these specific refusals of work evidenced a general unwillingness to work. The claimant made a genuine effort to find work, and met the requirements of Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 155.15**
DOCKET/DATE **ABR-85-4128/10-28-85**
AUTHORITY **Section 500C of the Act**
TITLE **Domestic Circumstances**
SUBTITLE **Financial Circumstances**
CROSS-REFERENCE **AA 500.05, Wages**

The claimant's work experience consisted of 2 years of various assignments, obtained through a temporary employment placement agency, for which she was paid $5.25 per hour. The claimant stated that, during the period under review, she would accept similar work only if it paid $7 or $8 per hour, so that she could afford a baby sitter for her 3 young children.

HELD: When a worker imposes wage demands which materially reduce her possibilities of obtaining suitable work, such demands constitute an undue restriction, and render her unavailable for work. Generally, a worker's personal financial problems bear no relationship to the suitability of work.

In the instant case, the claimant placed an undue restriction upon her employability by stipulating a minimum acceptable wage, which bore no relationship to her training or experience and which she could not reasonably expect to receive. She was unavailable for work within the meaning of Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE ***Winnie Kelley v.IDOL*, 513 N.E. 2d 988 (1987)**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment and Willingness to Work**
SUBTITLE **Mental Attitude Evidenced by Work Search**
CROSS-REFERENCE **AA 450.45, Time, Seasonal**

The claimant worked for the police department as a school crossing guard. She worked every regular school term for 15 years and was laid off every summer. She filed for, and was initially denied, benefits during her most recent layoff period.

At an appeal hearing, she testified that, although she expected to return to her regular job in the fall, she was looking, and always had looked, for work during the summer. She had held a summer job, in a city streets cleanup program, 4 years earlier. During the current period, she was seeking a sales job. One week, she contacted 2 department stores in the same shopping mall, the contacts being on consecutive days; in another week, she made 1 employer contact in person and a telephone contact 3 days later; in 2 other weeks, she made 2 telephone contacts. She never made more than 3 contacts in any week, and, in that instance, all 3 were made on the same date.

HELD: A seasonal worker is not per se ineligible for benefits during the off-season of her regular employment. Still, she must meet the same eligibility requirements as all other claimants.

In general, whether one is available for work depends to a great extent upon the individual's mental attitude as evidenced by the effort put forth in the search for work.

In this case, the claimant's search constituted a perfunctory effort to secure employment. It indicated that she had made a career choice to remain in a field which involved a summer layoff and to remain detached from the labor market.

Benefits were denied.

ISSUE/DIGEST CODE **Able and Available/AA 160.2**
DOCKET/DATE ***Phyllis Dimodica v.IDES*, No.2-87-0173 (1987)**
AUTHORITY **Section 409(K)(5) of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Employment**
CROSS-REFERENCE **None**

The claimant resided and worked in Freeport, Illinois, a relatively small city (population 25,000) surrounded by a rural area. The 1982 recession resulted in widespread unemployment and unavailability of jobs.

The claimant had been employed for over 11 years until her layoff in July, 1981. During her last 7 years with the company, she worked as a silk screener, and her final rate of pay was $6.51 per hour.

Upon her layoff, she filed for and received regular unemployment insurance benefits until they expired in April, 1982. Upon the expiration of regular benefits, the claimant field for extended benefits. She was denied extended benefits.

In July, 1982, the claimant procured employment as a waitress at a rate of pay of $2.01 per hour. The claimant held this job until October 29, 1982. Then she obtained work as a waitress for a different employer from November 4 until December 13 at a rate of pay of $2.25 per hour.

In January, 1983, she again filed for extended benefits. Again, she was denied.

The claimant was denied benefits for 2 reasons: first, on forms which she had submitted to IDES, she indicated that the minimum wage acceptable to her was $5.80 per hour - this was determined to be an unreasonable wage demand, since most places to which she applied did not pay this amount; second, it was determined that the number of job contacts made by the claimant - 84 (not including repeat contacts) in 24 weeks - was insufficient to constitute the "systematic and sustained effort" required under Section 409(K)(5). The Claims Adjudicator, Hearings Referee, and Board of Review concluded that the claimant's efforts were not calculated to return her to the workplace.

HELD: Normally, the fact that an individual has obtained work is the best evidence that she was available for and actively seeking work.

In this case, it was difficult to imagine how it could have been concluded that the claimant's work search was not designed to return her to the work place when it did, in fact, return her to the work place for 5 months.

Although the claimant did list a minimum acceptable wage of $5.80 per hour on claim forms, it was obvious that she was willing to accept employment for a lesser figure since she actually did so by taking 2 waitress positions which paid $2.01 and $2.25 per hour.

Although the claimant was operating from a small city in a rural area in the midst of a devastating recession, she was still able to locate and contact 84 different employers during the relevant periods and was successful in finding work.

The claimant made a systematic and sustained effort to find work and was eligible for extended benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 160.25**
DOCKET/DATE	**ABR-86-1912/7-28-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Refusal of Work**
CROSS-REFERENCE	**AA 155.1, Domestic Circumstances**

The claimant worked full-time, as a Nursing Supervisor, from January through December, 1984. During that period, she also accepted work -- as many as 15 assignments -- from a medical employment agency, which continued to employ her into January, 1985. On both January 18 and 19, 1985, the employment agency telephoned the claimant at 5:30 a.m. and offered her temporary work to start at 7 a.m. the same day.

The claimant stated that, upon such short notice, she would be unable to arrange for the services of her customary baby sitter, who lived 1-1/2 hours away. The claimant later testified that she had to be particular about who would baby sit, since her 3 year old child had previously been abused. She stated that she would have accepted the assignments had she had more time to arrange for child care. Her customary baby sitter also testified that she would have been available to baby sitter on the days in question.

Although the claimant established, by the number and quality of her other job contacts, that she was actively seeking work, she was denied benefits on the basis of being generally unavailable due to her domestic responsibilities.

HELD: Once it is determined that a worker has a child who requires care, it becomes necessary to establish to what extent the child care limits the claimant's availability for work. As long as the worker is able to demonstrate an active work search and that, should she secure employment, child care arrangements could be made during normal working hours, an immediate lack of child care should not affect her availability.

In the instant case, the claimant established that she had made an active search for work. She also established that, in the event that she secured employment, child care arrangements could be made during normal working hours. The difficulty in this case was not that the claimant lacked child care, but that, with respect to one particular prospective employer, the claimant was given a relatively brief period between the time she was notified of work and the time she was to report to work. It would be wrong to conclude from this that the claimant's inability to arrange for child care placed an undue restriction upon her employability, or that these specific refusals of work evidenced a general unwillingness to work. The claimant made a genuine effort to find work, and met the requirements of Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.25**
DOCKET/DATE **ABR-85-2803/10-30-85**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Refusal of Work**
CROSS-REFERENCE **AA 190.15, Evidence, Weight and Sufficiency**

The claimant last worked from July, 1984 until December, 1984. She certified that during the period under review -- December 23, 1984 through January 5, 1985 -- she contacted department stores, hospitals, a bank, and other employers in an effort to secure work.

A former employer, which had laid off the claimant in March, 1984, testified that the claimant had refused offers of work:

> I called her in April (1984), and each time I called...she said she wasn't able to come back to work because her daughter was expecting a baby and she had to stay and be with her daughter...

HELD: Section 500C of the Act requires that an individual be able to work, available for work, and actively seeking work -- during the period under review.

The claimant certified that she had met those conditions. The employer's evidence, which did not take into account the claimant's July, 1984 through December, 1984 employment, and which proceeded to address a 9 month old refusal of work, was not relevant to the issue of the claimant's eligibility during the period under review.

There being no evidence of record to suggest that the claimant was unavailable for work during the period under review, the claimant was eligible for benefits under Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE ***Estella Galarza v. IDOL*, No. 2-87-0186 (1987)**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Multiple or Repeated Contacts**
CROSS-REFERENCE **AA 450.45, Time, Seasonal; AA 450.55, Time, Temporary**

The claimant, a Migrant Farm Worker in the Harvard, Illinois area, was laid off in the spring between crops. She made 17 job contacts during the 4-week period under review. Many of the contacts were with the same prospective employers. The claimant testified without contradiction that job opportunities in the Harvard-Woodstock area were extremely limited.

The claimant was denied benefits, in part because she made repeated job contacts.

HELD: An individual's efforts to secure employment or willingness to work cannot be judged solely upon the basis of the number of job contacts or whether the claimant has made multiple contacts. There is no authority for the proposition that multiple contacts are somehow invalid per se.

Where an individual shows that job opportunities in his field or in his area are extremely limited, multiple contacts may establish that an active work search was conducted.

The claimant's work search was determined to be adequate and benefits were allowed under Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE **ABR-86-2894/9-19-86**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Age**
CROSS-REFERENCE **AA 235.1, Health or Physical Condition, Age**

The claimant retired from government service, and during the next 3 years, she sought work exclusively through temporary employment agencies. During the period under review, the claimant contacted these temporary employment agencies, by telephone, and made no other efforts to secure employment. She testified that she did not attempt to make any direct employer contacts because her age was against her: she was 58 years old.

HELD: Unemployment Insurance benefits are payable to individuals who are out of work due to the lack of suitable work and for no other reason. If an individual's work opportunities are limited, by employers who are unwilling to hire or train her due to age or related reasons, it follows that there is a lack of suitable work, and it cannot be concluded on that basis, alone, that the individual is not available for or actively seeking work.

In this case, however, the evidence showed that the claimant had long ago and unilaterally determined that there was no suitable work to be had. She made no attempt to contact prospective employers who may in fact have had work for which she qualified, regardless of her age. The claimant's search for work was meager and inadequate and did not constitute the active search for work required by the Act.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE **ABR-86-2024/9-26-86**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Refusal of Work**
CROSS-REFERENCE **AA 165.05, Employer Requirements, Fees to be Paid**

The claimant had applied to a medical personnel service, for work as a companion or nurse's aide. The personnel service required that she undergo a thorough physical examination, including a TB test and x-rays, before she could be accepted for employment or assigned work. It was not the practice of the personnel service to pay for such physical examinations or tests. The claimant contacted her county health department and was told that none of the tests could be administered gratis. The claimant informed the personnel service that she could not follow through with her application for work, because she could not afford the cost of the tests.

The claimant had previously worked as an assembler and lunch room aide, and, during the period in question, in addition to applying for work with the medical personnel service, had applied for retail sales, factory, janitorial, and child care work.

HELD: An employer has the right to set forth certain requirements which must be met by an individual before that individual may obtain a position with that employer. The worker may be restricted from working for such an employer because of those requirements which she either cannot or will not meet. The inability or failure of the worker to meet the employer's requirements, although indicating unavailability for the position in question, will not render her unavailable for work in general, provided there are no undue restrictions upon her acceptance of other full-time employment for which she is qualified.

The Board of Review has consistently held that if a prospective employee is required to pay for a required physical examination she may have good cause for refusing to take the exam. But, aside from that, the evidence established that the claimant was seeking work in many fields, without placing any undue restrictions upon her employability. Therefore, although she may have been unavailable for 1 job, this did not render her unavailable for work in general. The claimant was available for and actively seeking work within the meaning of Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.25**
DOCKET/DATE ***Eddings (and Lee) v. IDOL*, 146 Ill. App. 3d 62 (1986)**
AUTHORITY **Section 500C of the Act**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **Refusal of Work**
CROSS-REFERENCE **AA 500.05, Wages**

The claimant was laid off from her job as a High School Teacher with the Chicago Board of Education. During the ensuing weeks, she directly contacted private and public educational institutions, as well as the Chicago Board of Education's personnel department, in the hope of obtaining suitable work as a Teacher.

She did not contact the Chicago Board of Education's Substitute Teaching Center. A representative of the Chicago Board of Education testified that, from a list of 5,000 substitute teachers, an average of 2,000 were called for work each day. Day-to-day substitute teachers were paid at an approximately 40% reduction in salary.

A Referee denied benefits, concluding that, although the claimant had otherwise conducted a good work search, she had failed to contact the Sub Center where work was available.

HELD: Whenever an individual fails to apply for work as directed by an employer, a determination must be made with respect to her availability, giving consideration to the suitability of the job opportunity. Work in the individual's usual occupation or work for which she is reasonably qualified by prior training or experience is suitable work, provided the conditions of the work are not substantially less favorable than those prevailing on her last job or for similar work in the locality.

Here, the claimant should not have been denied benefits, because the school system would have committed her to the uncertain status of a day-to-day substitute at an approximately 40% reduction in salary. That employment was substantially less favorable than the claimant's previous employment as a higher-salaried full-time teacher. Because the claimant otherwise actively sought work, she met the eligibility requirements of Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE **83-BRD-13800/11-22-83**
AUTHORITY **1./S-500C**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **General**
CROSS-REFERENCE **None**

When interviewed by the claims adjudicator, the claimant stated that he did not think he had contacted any prospective employers during the two weeks in question. At the hearing before the Referee, the claimant testified that he had made certain employer contacts, but he was uncertain about the dates on which the contacts were made.

HELD: The claimant's vague and uncertain testimony did not establish that he actively looked for work within the meaning of the Act during the two weeks under review, and he is ineligible to receive benefits.

ISSUE/DIGEST CODE **Able and Available/AA 160.05**
DOCKET/DATE **84-BRD-418/1-12-84**
AUTHORITY **2./S-500C**
TITLE **Efforts to Secure Employment or Willingness to Work**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant was working part-time during the two week period under review because she was unable to work on Saturday when she had no child care. She listed five personal contacts with employers in her work search, and she contacted her union which was certified by the Director of Labor as meeting the search requirements of the Act. She would travel an hour to work, and she would work any shift.

HELD: The claimant was seeking full-time work while working part-time. She placed no undue restrictions on the acceptance of work, and she met the active work search requirements by contacting her union and by making an independent work search as well. She is eligible for benefits for the two week period considered in the appeal.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**84-BRD-4255/3-29-84**
AUTHORITY	**3./S-500C**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was last employed on August 5, 1983. For the four week period from August 21, 1983 through September 17, 1983, she testified that she sought to save traveling expenses by seeking work only one day in each of the two week periods. She testified to having made five work search contacts on September 14th, but she had no recollection of seeking work the first week and could not list any employers contacted prior to September 24th.

HELD: Section 500C of the Act requires as a condition of eligibility that a claimant be able to work, available for work, and actively seeking work during the period for which a claim is filed.

The evidence established in this case that the claimant did not search for work during each week of the period. At most she looked for work on only two days, and she could identify only five contacts during the four weeks. The claimant's search was meager and constituted only a perfunctory effort to qualify for unemployment insurance. She is unavailable for work and ineligible for benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**84-BRD-4349/3-29-84**
AUTHORITY	**4./S-500C**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant, a furniture repairman, is 60 years of age, and he had been out of work for five weeks prior to the period of availability considered in this appeal. His work search during the four week period consisted of reading newspaper ads and making telephone calls to four employers.

HELD: Reading newspaper ads and making four telephone contacts in a four week period does not constitute an active search for work within the meaning of the Act. The claimant is ineligible for benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**ABR-85-3122/8-16-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Examining the Method and Quality of a Work Search**
CROSS-REFERENCE	**None**

During the 6 week period under review, the claimant sought secretarial, clerical or general office work, by making 5 employer contacts in-person, 4 contacts by telephone, and 10 contacts by sending out resumes. Although the Claims Adjudicator determined that the claimant was otherwise available for work, benefits were denied because it was determined that the claimant's method of contacting employers -- primarily by resume -- did not constitute an active search for work. Upon appeal, a Referee affirmed the Claims Adjudicator's determination, and the claimant appealed that decision to the Board of Review.

In her appeal to the Board of Review, the claimant stated that she mailed resumes in response to specific requests (or advertisements) for resumes. She further testified that her method of mailing resumes resulted in several personal interviews being granted, and led to subsequent employment.

HELD: The primary purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work, and for no other reason. Accordingly, the Act requires as a condition of eligibility that a claimant be able to work, available for work, and actively seeking work during the period for which a claim is filed. An active search for work establishes that the claimant is involuntarily unemployed, due to the lack of suitable work and for no other reason. It is the quality of the claimant's efforts to find work which must ultimately determine whether she has met the requirement that she must be actively seeking work.

Direct, in-person contact with an employer is not the only method the claimant may use to find work. Depending upon the circumstances, other methods may be equally or more effective. Some methods which may reasonably be utilized in a search for work are checking of newspaper advertisements, sending letters or making telephone calls to employers.

In the instant case, the evidence established that the claimant made her contacts in-person, by telephone, and by mailing resumes (a method preferred by the employers in question). The claimant contacted numerous employers by methods which were effective for her field of work. This was a thorough, extensive and productive search for work. Accordingly, the Board of Review concluded that the claimant had been actively seeking work during the period under review.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**ABR-85-5799/12-27-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Age**
CROSS-REFERENCE	**AA 235.1, Health or Physical Condition, Age**

The claimant, a 58 year old woman with 30 years experience as a Legal Secretary, sought work in that field by checking the want ads in the *Chicago Daily Law Bulletin* and by registering and maintaining contact with Job Service. She also contacted secretarial agencies, but her efforts, over a 3 month period, to secure general secretarial work were unsuccessful, in part because she lacked word processing skills and in part because employers who had that type of work to offer were seeking an "entry-level girl" and considered the claimant overqualified as a result of her experience as a Legal Secretary.

The claimant was denied benefits under Section 500C, the Referee concluding that, in light of those considerations, the claimant's work search was unrealistic and she was not genuinely attached to the labor force.

HELD: The reluctance of employers to hire older workers does not make an older worker unavailable for work. Also, it may be that technological advances will result in a more difficult period of adjustment and longer period of unemployment, but this does not necessarily mean that the claimant has imposed undue restrictions upon her availability.

In the instant case, the evidence showed that the claimant was able to work, and that, since she placed no undue restrictions upon her acceptance of work, she was available for work within the meaning of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 160.05**
DOCKET/DATE	**ABR-86-597/4-11-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Efforts to Secure Employment or Willingness to Work**
SUBTITLE	**Quality of Work Search**
CROSS-REFERENCE	**None**

The claimant last worked as a Merchandise Handler. She certified that, during the 2 week period under review, she made 6 in-person employer contacts.

On September 17, she made 1 contact. On September 18, her contact was the establishment next door. On September 24, 25, and 26, the claimant made 1 contact each day; all these establishments were within a one block radius, in the same area as the earlier contacts.

HELD: The purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work and for no other reason. Accordingly, the Act requires as a condition of eligibility that a claimant actively seek work; an active search for work establishes that a claimant is involuntarily unemployed due to the lack of suitable work and for no other reason.

In the instant case, the evidence showed that the claimant's efforts were meager and perfunctory at best. The claimant managed to accomplish in 2 weeks what she should have accomplished in 1 day. This was not a work search realistically designed to return the claimant to the full-time labor force. It was not an active work search. The claimant did not meet the active work search requirement of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 165.05**
DOCKET/DATE	**ABR-86-2024/9-26-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Employer Requirements**
SUBTITLE	**Fees to be Paid by a Claimant**
CROSS-REFERENCE	**AA 160.25, Refusal of Work**

The claimant had applied to a medical personnel service, for work as a companion or nurse's aide. The personnel service required that she undergo a thorough physical examination, including a TB test and x-rays, before she could be accepted for employment or assigned work. It was not the practice of the personnel service to pay for such physical examinations or tests. The claimant contacted her county health department and was told that none of the tests could be administered gratis. The claimant informed the personnel service that she could not follow through with her application for work, because she could not afford the cost of the tests.

The claimant had previously worked as an assembler and lunch room aide, and, during the period in question, in addition to applying for work with the medical personnel service, had applied for retail sales, factory, janitorial, and child care work.

HELD: An employer has the right to set forth certain requirements which must be met by an individual before that individual may obtain a position with that employer. The worker may be restricted from working for such an employer because of those requirements which she either cannot or will not meet. The inability or failure of the worker to meet the employer's requirements, although indicating unavailability for the position in question, will not render her unavailable for work in general, provided there are no undue restrictions upon her acceptance of other full-time employment for which she is qualified.

The Board of Review has consistently held that if a prospective employee is required to pay for a required physical examination she may have good cause for refusing to take the exam. But, aside from that, the evidence established that the claimant was seeking work in many fields, without placing any undue restrictions upon her employability. Therefore, although she may have been unavailable for 1 job, this did not render her unavailable for work in general. The claimant was available for and actively seeking work within the meaning of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.05**
DOCKET/DATE	***Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985)**
AUTHORITY	**Sections 500C and 801 of the Act**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 190-05, Evidence: PR 380.2, Review**

The claimant filed a claim for unemployment insurance benefits, for the period February 22, 1981 through July 5, 1981. The Claims Adjudicator determined that the claimant was ineligible, pursuant to the provisions of Section 500C of the Act, in that he had not met his burden of demonstrating that he had been available for and actively seeking work during the period under review.

The claimant appealed, requesting that certification forms which he had filed with the Local Office be considered at the appeal hearing. The forms listed the claimant's job contacts and had been filed by the claimant every 2 weeks, as required by the Department's rules. Those certification forms were never forwarded by the Local Office and were not made a part of the record at the appeal hearing, during which the claimant testified about his job contacts and his availability for work. After the hearing, the Referee issued a decision affirming the Adjudicator's determination that the claimant had not been available for or actively seeking work. The Board of Review also affirmed the denial of benefits.

The claimant filed an action for administrative review. His complaint alleged that the decision denying benefits violated Section 801 of the Unemployment Insurance Act, which stated, in pertinent part:

> At any hearing (bearing upon the issue) the...claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work...shall be a part of the record...

HELD: Under Section 801 of the Act, the Agency is required to submit certification forms which it has in its possession. If those forms are not submitted and made a part of the record, as a matter of law a decision denying benefits under Section 500C cannot stand. In the instant case, because the claimant's certification forms were not made a part of the record, the claimant could not be denied benefits. The decision of the Board of Review was reversed.

ISSUE/DIGEST CODE	**Able and Available/AA 190.01**
DOCKET/DATE	**85-BRD-05681/7-30-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumptions**
CROSS-REFERENCE	**AA 190.15, Evidence, Weight and Sufficiency**

On January 4, 1985, in the course of an interview in which the Claims Adjudicator was considering the claimant's search for work during the period under review -- December 2, 1984 through December 29, 1984 -- the claimant stated: "I had no idea that I have to look for work. I have no work search."

On February 11, 1985, during an appeal hearing in which the Referee was considering the claimant's search for work for that same period, the claimant testified that he had contacted nine prospective employers, both in-person and by telephone.

HELD: The claimant-appellant had the burden of establishing by credible evidence that he had actively sought work during the period under review. Because the claimant's testimony before the Referee had been impeached (discredited by his earlier statements to the Claims Adjudicator), it could not be concluded that his testimony before the Referee was entitled to greater weight. Therefore, the claimant did not establish that he had actively sought work in compliance with the requirements of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.01**
DOCKET/DATE	**ABR-85-9292/6-30-86**
AUTHORITY	**Section 500C and 56 Ill. Adm. Code 2720.245**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumptions**
CROSS-REFERENCE	**PR 190.05, Evidence; PR 380.2, Rehearing or Review**

In his decision, the Referee wrote:

> The employer appealed the determination allowing benefits under Section 500C. Therefore, the employer had the burden of going forward with the evidence. The testimony of the employer added nothing to the evidence submitted to the Claims Adjudicator... (Therefore) the employer did not go forward with the evidence (and) the claimant is eligible for benefits...

HELD: At an appeal hearing, the appellant has the burden of coming forward with evidence to show that the Adjudicator's determination is incorrect. This does not preclude the appellant from coming forward with some evidence previously presented, or with evidence in all respects identical to the evidence presented earlier. The burden of coming forward should not be confused with the weight of the evidence or a burden of proof.

Further, a finding of fact by a Referee identical to that of the Claims Adjudicator does not require that the Referee come to the same conclusion of law as the Adjudicator. A legal conclusion is one which must follow, as a matter of law, from a given set of facts. It is the Referee's responsibility -- as the appellate tribunal -- to render a legal conclusion. He is not absolved from this responsibility just because a Claims Adjudicator has made similar findings of fact, irrespective of the Adjudicator's conclusion.

As it happened, in this case, the Board of Review found that the Claims Adjudicator's conclusion -- and, therefore, the Referee's -- was incorrect.

ISSUE/DIGEST CODE	**Able and Available/AA 190.1**
DOCKET/DATE	**ABR-94-9575/12-16-94**
AUTHORITY	**Section 500C of the Act & 56 Ill. Adm. Code 2865.115**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof and Presumptions**
CROSS-REFERENCE	**None**

The claimant completed an assignment for a temporary help agency. Subsequently, that agency submitted a protest that the claimant did not contact it in an effort to find work. The claimant admitted this was true; he felt the agency ought to have contacted him.

HELD: 56 Ill. Adm. Code 2865.115 provides that if a temporary help agency submits a protest alleging that an individual did not contact it after completing an assignment, this creates a rebuttable presumption that the individual was not actively seeking work. The presumption may be rebutted if the individual shows good cause for his failure to contact the agency. Here, the agency's protest created a rebuttable presumption that the claimant was not actively seeking work. The claimant's response, which failed to explain why he could not have contacted the agency, did not establish good cause and did not rebut the presumption. The claimant was not actively seeking work.

ISSUE/DIGEST CODE	**Able and Available/AA 190.1/.15**
DOCKET/DATE	**ABR-85-6826/2-28-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Burden of Proof/Weight and Sufficiency**
CROSS-REFERENCE	**None**

The employer appealed an Adjudicator's determination that the claimant had been actively seeking work during the period under review. After the employer testified, the claimant, who had previously filed for unemployment benefits -- and knew that she should keep accurate records of her work search -- was called upon to testify and be cross-examined regarding her certification forms and work search efforts.

The claimant stated that she had looked for work every working day during the period under review and that she had contacted 2 or 3 employers daily. But she did not remember the names of the employers she had reportedly contacted. She said:

> I go to see so many places, it's hard for me to remember.

When the Referee asked how the claimant knew which date to attribute to each contact, the claimant responded:

> I was...guessing at random because I know I had went out that week looking for a job.

HELD: Evidence is the means for ascertaining the existence or non-existence, truth or falsity of a fact. To establish the existence and truth of an active work search under Section 500C, an individual must present evidence which is competent, authentic and reasonable.

In the instant case, after the employer had come forward, the burden was upon the claimant to establish that she had actively sought work during the period under review. But the claimant failed to present evidence which would have tended to prove the existence and truth of an active work search.

Because the claimant failed to establish that she had been actively seeking work during the period under review, she was denied benefits under Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**85-BRD-05681/7-30-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Credibility)**
CROSS-REFERENCE	**AA 190.1, Burden of Proof and Presumptions**

On January 4, 1985, in the course of an interview in which the Claims Adjudicator was considering the claimant's search for work during the period under review -- December 2, 1984 through December 29, 1984 -- the Claimant stated: "I had no idea that I have to look for work. I have no work search."

On February 11, 1985, during an appeal hearing in which the Referee was considering the claimant's search for work for that same period, the claimant testified that he had contacted nine prospective employers, both in-person and by telephone.

HELD: Inconsistent statements may impeach an individual's testimony. Because the claimant's testimony before the Referee had been discredited by his earlier statements to the Adjudicator, it could not be concluded that the claimant had met his burden of demonstrating by credible evidence that he had actively sought work in compliance with the requirements of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**ABR-87-3589/7-16-87**
AUTHORITY	**Sections 500C and 801 of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**None**

At an appeal hearing before a Referee, the claimant testified that she sought full-time work as a housekeeper, receptionist, baker, and food service worker. She named 11 employers whom she had contacted during the period under review. She stated that she would accept any shift and travel 1 hour each way to work by public transportation. She would accept a starting wage of $5 per hour (compared to her last wage of $9.67 per hour). She had made arrangements for child care in the event that she found work. The employer offered no evidence at the hearing.

The claimant had previously filed a certification form with her Local Office, purportedly listing those same employers and work search methods for the period under review; however, the certification form was not contained in the record.

Benefits were allowed to the claimant under Section 500C, whereupon the employer appealed. Citing *Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985), the employer contended that it was a requirement that the claimant's certification form be part of the record, in order to show that the claimant made an active and realistic search for work during the period under review. In the absence of that certification form, the employer argued, benefits could not be allowed.

HELD: Under *Johnson v. Board of Review*, where an individual's certification form is not made a part of the record, benefits cannot be denied under Section 500C. The reason for this is that, in a case involving Section 500C, the burden is placed upon the claimant to establish his or her eligibility by competent evidence, and such competent evidence cannot be withheld, even inadvertently, by the Agency.

On the other hand, benefits may be allowed to an individual, even in the absence of a certification form, provided that the individual can establish, by other, equally competent evidence, that she was able to work, available for work, and actively seeking work during the period in question.

In this case, the claimant's testimony was competent and sufficient evidence, which, in the absence of any contrary evidence offered by the employer, established that the claimant was able to, available for, and actively seeking work.

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**ABR-85-2803/10-30-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency**
CROSS-REFERENCE	**AA 160.25, Effort to Secure Employment**

The claimant last worked from July, 1984 until December, 1984. She certified that during the period under review -- December 23, 1984 through January 5, 1985 -- she contacted department stores, hospitals, a bank, and other employers in an effort to secure work.

A former employer, which had laid off the claimant in March, 1984, testified that the claimant had refused offers of work:

> I called her in April (1984), and each time I called...she said she wasn't able to come back to work because her daughter was expecting a baby and she had to stay and be with her daughter...

HELD: Section 500C of the Act requires that an individual be able to work, available for work, and actively seeking work -- during the period under review.

The claimant certified that she had met those conditions. The employer's evidence, which did not take into account the claimant's July, 1984 through December, 1984 employment, and which proceeded to address a 9 month old refusal of work, was not relevant to the issue of the claimant's eligibility during the period under review.

There being no evidence of record to suggest that the claimant was unavailable for work during the period under review, the claimant was eligible for benefits under Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 190.15**
DOCKET/DATE	**85-BRD-06335/9-3-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Evidence**
SUBTITLE	**Weight and Sufficiency (Inherently Incredible)**
CROSS-REFERENCE	**None**

The claimant had been employed for several summers as a Golf Course Inspector. At the time of his appeal hearing, in April, 1985, he had again accepted employment at that seasonal job. He did not appear at the appeal hearing.

During the period under review -- December 24, 1984 through February 8, 1985 -- the claimant purportedly made exactly one employer contact on each of the 35 weekdays of that period, including Christmas Eve, Christmas Day, New Year's Eve, and New Years Day. On the work search list which the claimant had submitted to the Agency, he indicated that on those days he had contacted the named employers' secretaries in-person.

HELD: Work search statements which are not only contrary to common sense but are inherently incredible cannot support a conclusion that an individual conducted a realistic, active search for work. The unrebutted evidence established that the claimant was a seasonal worker who did not conduct a realistic, active search for work in compliance with the requirements of Section 500C.

ISSUE/DIGEST **Able and Available/AA 215.1**
DOCKET/DATE **ABR-85-4196/9-9-85**
AUTHORITY **Section 500C of the Act**
TITLE **Government Requirements**
SUBTITLE **License or Permit**
CROSS-REFERENCE **None**

During the 4 week period under review, the claimant's work search consisted of repeated telephone calls to 2 real estate firms. The claimant was seeking work in Real Estate Sales and Management, for which he had neither previous experience nor the required state license.

HELD: An individual, to be eligible for unemployment benefits, must be available for work in his normal occupation, or one for which he is qualified by training and experience. If a license is required for the work which the individual seeks, and he does not have one, he is not available for work in that occupation. In that situation, the worker's eligibility will depend upon the extent to which he is available for other work.

In the instant case, the claimant did not possess a license required for the work which he sought. Therefore, he was not available for work in that occupation. Because he did not demonstrate that he was seeking work in any other occupation, he was determined to be ineligible for unemployment benefits.

ISSUE/DIGEST CODE **Able and Available/AA 235.05**
DOCKET/DATE **ABR-85-6293/2-25-86**
AUTHORITY **Section 500C of the Act**
TITLE **Health or Physical Condition**
SUBTITLE **Minor or Day-to-Day Ailment**
CROSS-REFERENCE **AA 350.05, Period of Ineligibility**

The period under review was April 21 through April 27. The claimant testified that she was ill with influenza on Monday, April 22 and Tuesday, April 23 and was unable to seek or accept work on those days. Although she had not completely recovered from the flu's effects, she nevertheless contacted numerous employers, including 3 in-person, during the remainder of the week. Despite her efforts, she was held to be unable to work for the entire week and was denied benefits.

HELD: It cannot be assumed that because a claimant had been ill that she remained unable to work. The material point is not whether she had been ill, but whether she was able to work. Where a worker has a touch of the flu or a cold or some other minor ailment, she may still be able to work and ready to accept work. In the instant case, the evidence showed that, although the claimant was unable to work on Monday and Tuesday, she was seeking work and ready to accept work during the remainder of the week. She was eligible for (reduced) benefits.

ISSUE/DIGEST CODE **Able and Available/AA 235.1**
DOCKET/DATE **ABR-86-2894/9-19-86**
AUTHORITY **Section 500C of the Act**
TITLE **Health or Physical Condition**
SUBTITLE **Age**
CROSS-REFERENCE **AA 160.05, Effort to Secure Employment, Age**

The claimant retired from government service, and during the next 3 years, she sought work exclusively through temporary employment agencies. During the period under review, the claimant contacted these temporary employment agencies, by telephone, and made no other efforts to secure employment. She testified that she did not attempt to make any direct employer contacts because her age was against her: she was 58 years old.

HELD: Unemployment Insurance benefits are payable to individuals who are out of work due to the lack of suitable work and for no other reason. If an individual's work opportunities are limited, by employers who are unwilling to hire or train her due to age or related reasons, it follows that there is a lack of suitable work, and it cannot be concluded on that basis, alone, that the individual is not available for or actively seeking work.

In this case, however, the evidence showed that the claimant had long ago and unilaterally determined that there was no suitable work to be had. She made no attempt to contact prospective employers who may in fact have had work for which she qualified, regardless of her age. The claimant's search for work was meager and inadequate and did not constitute the active search for work required by the Act.

ISSUE/DIGEST CODE	**Able and Available/AA 235.1**
DOCKET/DATE	**ABR-85-5799/12-27-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Age**
CROSS-REFERENCE	**AA 160.05, Effort to Secure Employment**

The claimant, a 58 year old woman with 30 years experience as a Legal Secretary, sought work in that field by checking the want ads in the *Chicago Daily Law Bulletin* and by registering and maintaining contact with Job Service. She also contacted secretarial agencies, but her efforts, over a 3 month period, to secure general secretarial work were unsuccessful, in part because she lacked word processing skills and in part because employers who had that type of work to offer were seeking an "entry-level girl" and considered the claimant overqualified as a result of her experience as a Legal Secretary.

The claimant was denied benefits under Section 500C, the Referee concluding that, in light of those considerations, the claimant's work search was unrealistic and she was not genuinely attached to the labor force.

HELD: The reluctance of employers to hire older workers does not make an older worker unavailable for work. Also, it may be that technological advances will result in a more difficult period of adjustment and longer period of unemployment, but this does not necessarily mean that the claimant has imposed undue restrictions upon her availability.

In the instant case, the evidence showed that the claimant was able to work, and that, since she placed no undue restrictions upon her acceptance of work, she was available for work within the meaning of Section 500C.

ISSUE/DIGEST CODE	**Able and Available/AA 235.25**
DOCKET/DATE	***Rosenbaum v. Johnson*, 377 N.E. 2d 258 (1978)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury**
CROSS-REFERENCE	**AA 450.4, Time, Part-Time**

For 5 years, the claimant worked in an office, part-time; she also worked as a substitute teacher. She had refused offers of full-time work, citing medical restrictions on her ability to work full-time. When she filed for unemployment benefits, she stated that she suffered from a heart condition, permitting her to work a maximum of 3 days per week.

Without making findings as to whether full-time work would have been suitable work for the claimant, or whether there was a labor market for the part-time services which the claimant stated she was willing to perform, the Agency denied benefits under Section 500C. It was ruled that because the claimant was available for part-time work only, she was ineligible per se.

HELD: The Unemployment Insurance Act does not require as a condition of eligibility that all workers be available for full-time work. There is no inflexible, hard-and-fast rule as to what constitutes availability for work. Availability depends in part on the facts and circumstances in each case. Even though a claimant's physical condition may prevent her from accepting certain types of employment, a labor market may exist for the type of work which she is able to do. Accordingly, in the instant case, the Agency's determination that the claimant was ineligible per se was incorrect.

What should have been resolved was whether the claimant had so limited her availability as to effectively remove herself from both the full-time and part-time labor markets. The first issue to be addressed was, in light of a purported medical restriction, whether, in fact, the claimant was compelled to abstain from full-time work. If the finding was that she was compelled to abstain from full-time work, then the second issue to be addressed was whether a labor market existed for the part-time services which the claimant may have been willing to provide.

Because those issues were not considered, the case was remanded for further findings.

ISSUE/DIGEST CODE	**Able and Available/AA 235.25**
DOCKET/DATE	**ABR-85-5023/6-10-86**
AUTHORITY	**Section 500C of the Act**
TITLE	**Health or Physical Condition**
SUBTITLE	**Illness or Injury**
CROSS-REFERENCE	**None**

The claimant worked as a Transportational Aide in a medical facility, until she suffered a back injury, leading her doctor to impose restrictions and finally recommend that she seek less strenuous work. The claimant became separated from her job on December 27, 1984, and, shortly thereafter, filed a claim for unemployment benefits. She was denied benefits, under Section 500C, for the period January 20 through February 2, 1985, and appealed.

At her appeal hearing, the claimant stated that she was still under her physician's care and that the doctor's restrictions concerning pushing and lifting still applied.

The Referee did not elicit any other evidence with respect to the claimant's availability for work during the period under review (for example, the type of work she was seeking, the employer contacts she had made), and proceeded to issue his decision with respect to her ability to work on the basis of the claimant's medical restriction. The Referee concluded that the claimant was unable to work.

HELD: The existence of an illness or injury does not, in itself, render an individual unable to work in terms of eligibility under Section 500C. Rather, a worker's ability is to be judged solely upon the basis of her personal capability of performing work for which she is qualified, in light of her handicap. In considering the issue of ability to work, the willingness of a previous or prospective employer to retain or hire such an individual is irrelevant.

In the instant case, the Referee concluded that the mere imposition of a medical restriction precluded the claimant from being determined able to work and eligible for benefits. The Referee's conclusion was drawn solely from findings concerning the claimant's experiences as a Transportational Aide with a bad back. Without evidence as to the type of work the claimant sought or the claimant's efforts to seek such work during the period under review, the record was inadequate and the Referee's conclusion unsupported.

The case was remanded for further findings regarding the claimant's ability to work.

ISSUE/DIGEST CODE	**Able and Available/AA 235.4**
DOCKET/DATE	**83-BRD-15727/12-18-83**
AUTHORITY	**1./S-500C**
TITLE	**Health or Physical Condition**
SUBTITLE	**Pregnancy**
CROSS-REFERENCE	**None**

The claimant was no longer physically able to perform her regular job duties in a factory because of her pregnancy, and she was placed on a medical leave of absence. She had prior work experience as a cashier and as a file clerk, and, during the one week period under review, she contacted four employers in search of office work. She last earned $5.00 per hour and was seeking a wage of $3.50 per hour.

HELD: In view of her previous work experience and the medical restriction placed on her ability to perform factory work, her work search was reasonable. The claimant was able to work, available to work, and actively seeking work during the period under review and is eligible for benefits.

ISSUE/DIGEST CODE **Able and Available/AA 350.05**
DOCKET/DATE **ABR-85-6293/2-25-86**
AUTHORITY **Section 500C of the Act**
TITLE **Period of Ineligibility**
SUBTITLE **Day-to-Day as opposed to Week**
CROSS-REFERENCE **AA 235.05, Health or Physical Condition**

The period under review was April 21 through April 27. The claimant testified that she was ill with influenza on Monday, April 22 and Tuesday, April 23 and was unable to seek or accept work on those days. However, she had recuperated sufficiently to make employer contacts and hold herself ready for work for the remainder of the week.

HELD: Section 500C provides that if an otherwise eligible individual is unable to work or is unavailable for work on any normal workday of the week, she shall remain eligible to receive benefits with respect to such week, but reduced by 1/5 of the weekly benefit amount for each day of such inability or unavailability.

The claimant was eligible to receive benefits for the week April 21 through 27, reduced by 2/5 of her weekly benefit amount.

ISSUE/DIGEST CODE **Able and Available/AA 350.05**
DOCKET/DATE ***Quincy School District #172*, 471 N.E. 2d 1056 (1984)**
AUTHORITY **Section 500C-2 of the Act**
TITLE **Period of Ineligibility**
SUBTITLE **Holidays**
CROSS-REFERENCE **MS 95.05, Construction of Statutes**

The employer School District went into recess at the close of the school day on December 18, 1981, and reopened on January 4, 1982. During that period, the claimant, a School District Bus Driver, did not work and was not paid wages. She applied for unemployment benefits for the period December 27, 1981 through January 2, 1982.

The School District contended that the claimant had been unavailable for work, pursuant to Section 500C-2 of the Act:

> An individual shall be considered to be unavailable for work on days listed as whole holidays...and on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday.

The Board of Review construed the "holidays" provision of Section 500C-2 to apply only to individual holidays, but not to any period of unemployment which preceded or followed such holidays. It was noted that the reference to "holidays within a trade or occupation" was intended to provide for single, non-legal holidays, such as April 1 for the United Mine Workers or May 1 as celebrated by the International Ladies' Garment Workers' Union.

The Board of Review stated:

> (I)t is evident that the claimant's failure to work during the period under review was a result of the (employer's) shutdown for a vacation period, and not because of the (Christmas) holiday, rendering Section 500C-2 inapplicable...(T)he claimant was subject to a short-term layoff of a definite duration during which she was available to accept suitable employment at any time...(T)he eligibility requirements of Section 500C-2 of the Act have thus been met.

HELD: The court concluded:

> There is perhaps no more widely recognized holiday period than that of the Christmas recess period as observed in Illinois schools, although the precise dates of the recess may vary from year to year and between districts. We therefore conclude that this period falls within the meaning of Section 500C-2 of the Act, as holidays according to the custom of the trade or occupation...clearly distinguishable from a shutdown for inventory or vacation purposes...

The claimant was determined to be unavailable for work and ineligible for benefits during the period under review.

ISSUE/DIGEST CODE	**Able & Available/AA 350.05**
DOCKET/DATE	***Echols v. Board of Review*, 676 N.E.2d 292 (1997)**
AUTHORITY	**Section 500C-2 of the Act**
TITLE	**Period of Ineligibility**
SUBTITLE	**Holidays**
CROSS REFERENCE	**MS 95.1, Construction of Statutes**

The claimant drove a school bus pursuant to a contract between her employer, a private bus company, and a school district. On December 19, she filed a claim for unemployment benefits, which was contested by the employer, on the grounds that she was not available for work because the period for which she sought benefits was the school Christmas break.

HELD: Section 500C-2 provides that an individual shall be considered unavailable for work on days Awhich are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday.@ This case is indistinguishable from *Quincy School District No. 172 v. Board of Review*, 471 N.E.2d 1056 (1984). Although the employer in that case was a school district, and not a private employer, in both cases, the claimant was a school bus driver. The reason for the unemployment status in both situations was the same: the Christmas holidays are non-work periods in that line of work. The claimant was considered unavailable for work, and therefore ineligible for benefits, during the holiday recess period.

ISSUE/DIGEST CODE	**Able & Available/AA-350.05**
DOCKET/DATE	***Leonard v. IDES*, 311 Ill.App.3d 354, 243 Ill.Dec. 937, 724 N.E.2d 536 (3rd Dist., 11/23/99)**
AUTHORITY	**Section 500(C)(2)**
TITLE	**Period of Ineligibility**
SUBTITLE	**General**
CROSS-REFERENCE	

The claimant drove a bus for a private bus company. Most of her driving involved busing children to school but she also trained new drivers, taught a defensive driving course and drove charter buses. During previous Christmas and spring break holidays, she had remained employed with these other duties. During the week of spring break for which she had sought benefits and was denied, she had driven a charter bus on two of the days. The employer required its laid off workers to remain available during break periods in order to accept charter bus assignments. The employer also bused students from schools having break periods different from the claimant=s, which allowed it to operate year-round.

HELD: Section 500(C)(2) provides in part that an individual Ashall be considered to be unavailable for work...on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday.@ In the instant case, where the facts showed that the claimant had other duties besides busing children to school and had performed other duties during prior holiday periods, the Christmas and spring break periods were not Aholidays@ within the custom of the claimant=s trade. The court distinguished the instant case from *Quincy School District No. 172 v. Board of Review*, 471 N.E.2d 1056 (1984) and *Echols v. Department of Employment Security*, 676 N.E.2d 292 (1997) on the basis that in those cases the claimants/bus drivers= sole function was to bus children to school unlike the claimant in this case who had other duties besides busing school children.

ISSUE/DIGEST CODE	**Able and Available/AA 375.05**
DOCKET/DATE	**ABR-85-5971/1-16-86**
AUTHORITY	**Sections 239 and 500C of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Effect Upon Eligibility**
CROSS-REFERENCE	**AA 10 5.05, Contract Obligation**

The claimant, a Janitor, worked for his employer for 36 years, until his position was eliminated, in March, 1985. Still, the employer intended to keep him on the payroll for 2 months more, during which time the claimant would not be required to sign in or perform any work; this, the employer explained, would be its "farewell gift" to the claimant for his "long and faithful years of service."

When the claimant filed a claim for unemployment benefits, for the period March 10, 1985 through March 30, 1985, the employer asserted that, because the claimant had been and would be kept on the payroll until May, 1985, he was not an unemployed individual; and, accordingly, this would bar eligibility under Section 500C.

HELD: Section 500C of the Act requires, as a condition of eligibility, that a claimant be an "unemployed individual." Section 239 of the Act provides that:

> An individual shall be deemed unemployed in any week with respect to which no wages are payable to him and during which he performs no services...

In the instant case, the evidence established that, subsequent to the elimination of the claimant's position in March, 1985, he performed no services for his employer. Further, he was not under any contractual obligation to perform services for his employer. Because the money which he was to receive was to be paid to him in consideration of services previously rendered -- for which he had already been paid wages, this money did not constitute wages with respect to the weeks under review, but, instead, was, as the employer originally stated, a gift.

Accordingly, because no wages were payable for services performed during the period under review, the claimant was an unemployed individual and the money paid to him by his employer was not a bar to his eligibility under Section 500C. Further, because the claimant was not contractually obligated to perform any future services for his employer, it was not shown that his availability for work was unduly restricted by the employer's arrangement.

ISSUE/DIGEST CODE	**Able and Available/AA 375.25**
DOCKET/DATE	**ABR-85-3914/8-23-85**
AUTHORITY	**Section 500C of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Social Security Benefits**
CROSS-REFERENCE	**None**

The claimant reached age 62 in September, 1984, at which time she filed for Social Security benefits. Later, she filed for Unemployment Insurance benefits.

The claimant explained to the Claims Adjudicator and the Referee that during the period under review she had been seeking part-time work to supplement her Social Security benefits. She explained that she did not wish to work full-time and earn more than $5,400 per year, because, if she did, her Social Security benefits would be decreased accordingly.

HELD: The primary purpose of the Unemployment Insurance Act is to provide benefits to individuals who are involuntarily unemployed due to the lack of suitable work and for no other reason. Accordingly, the Act requires as a condition of eligibility that the claimant be available for work during the period for which a claim is filed.

The receipt of Social security benefits does not, of itself, render an individual unavailable for work. However, many recipients of those benefits impose undue restrictions upon otherwise suitable work, rendering themselves unavailable for work.

In the instant case, the claimant stated that she would not accept full-time work because it would affect her Social Security benefits. The claimant restricted her availability and rendered herself an unemployed individual for reasons other than the lack of suitable work. Therefore, she was not eligible for Unemployment Insurance benefits.

ISSUE/DIGEST CODE **Able and Available/AA 450.45**
DOCKET/DATE **ABR-85-3125/7-31-85**
AUTHORITY **Section 500C of the Act**
TITLE **Time**
SUBTITLE **Seasonal**
CROSS-REFERENCE **None**

During the period under review, the claimant sought work in the field of lawn care and maintenance, from employers whom he had contacted in the past. The period under review was from December 16, 1984 through January 12, 1985, when such work was off-season. The claimant was denied benefits.

HELD: The seasonal nature of a worker's regular employment is not the factor which determines benefits eligibility. The issue to be decided in each case is whether the worker is able to, available for, and actively seeking work during the period of unemployment for which he is claiming benefits. Under most circumstances, a worker can justifiably restrict himself to off-season work which nearest approaches his customary seasonal work -- provided that there are some prospects of obtaining such work. If there are no prospects of obtaining such work, then the worker must consider other work for which he might be fitted. In the instant case, the claimant had no prospects of obtaining lawn care and maintenance work. Because he considered no other work, he was properly denied benefits.

ISSUE/DIGEST CODE **Able and Available/AA 450.4**
DOCKET/DATE ***Rosenbaum v. Johnson*, 377 N.E. 2d 258 (1978)**
AUTHORITY **Section 500C of the Act**
TITLE **Time**
SUBTITLE **Part-Time Work**
CROSS-REFERENCE **AA 235.25, Health or Physical Condition**

For 5 years, the claimant worked in an office, part-time; she also worked as a substitute teacher. She had refused offers of full-time work, citing medical restrictions on her ability to work full-time, When she filed for unemployment benefits, she stated that she suffered from a heart condition, permitting her to work a maximum of 3 days per week.

Without making findings as to whether full-time work would have been suitable work for the claimant, or whether there was a labor market for the part-time services which the claimant stated she was willing to perform, benefits were denied under Section 500C. It was ruled that because the claimant was available for part-time work only, she was ineligible per se.

HELD: The Unemployment Insurance Act does not require as a condition of eligibility that all workers be available for full-time work. There is no inflexible, hard-and-fast rule as to what constitutes availability for work. Availability depends in part on the facts and circumstances in each case. Even though a claimant's physical condition may prevent her from accepting certain types of employment, a labor market may exist for the type of work which she is able to do. Accordingly, in the instant case, the Agency's determination that the claimant was ineligible per se was incorrect.

What should have been resolved was whether the claimant had so limited her availability as to effectively remove herself from both the full-time and part-time labor markets. The first issue to be addressed was, in light of a purported medical restriction, whether, in fact, the claimant was compelled to abstain from full-time work. If the finding was that she was compelled to abstain from full-time work, then the second issue to be addressed was whether a labor market existed for the part-time services which the claimant may have been willing to provide.

Because those issues were not considered, the case was remanded for further findings.

ISSUE/DIGEST CODE	**Able and Available/AA 450.45**
DOCKET/DATE	***Estella Galarza v. IDOL*, No. 2-87-0186 (1987)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Time**
SUBTITLE	**Temporary**
CROSS-REFERENCE	**AA 160.05, Efforts; AA 450.55, Time Seasonal**

The claimant was a Migrant Farm Worker who was laid off every spring for approximately 6 weeks between crops. When she was laid off in March, 1982, she sought vegetable packing and other types of field work only for the duration of that interim period because she knew she would be recalled to work at her regular job.

The Referee found that, despite the claimant's 17 job contacts during the 6-week period, she was ineligible for benefits because she failed to show that "the work search conducted was reasonably designed for a return to the permanent full-time labor force."

Upon further appeal, the claimant argued that she was not required to look for or accept permanent full-time employment which would jeopardize her chances of returning to her regular job.

HELD: Section 500C of the Unemployment Insurance Act requires that an individual be able to, available for, and actively seeking suitable work. This is a flexible standard: what constitutes "suitable" work or an "active search" for work varies with the circumstances. Courts have held that:

> a ruling that a claimant must be available for full-time work per se was inconsistent with the flexible standard above;
>
> alternate work is not necessarily "suitable" where a reasonable possibility exists of the claimant being recalled to his previous job;
>
> if an applicant presents sufficient evidence to establish as a fact that there are prospects of returning to work in his own trade within a reasonable time, then work in some other trade for which he should otherwise be available and which would otherwise be deemed suitable becomes unsuitable.

In this case, the court stated:

> While we do not necessarily agree...that a claimant who has been temporarily laid off need not conduct any work search, the principles noted above are relevant in determining the scope of the search (the claimant) in the instant case was required to make...
>
> It seems clear that the Referee...applied the wrong legal standard...
>
> The Hearing Referee applied an improper standard in determining that (the claimant) was required to seek permanent employment. The claimant was allowed benefits under Section 500C.

ISSUE/DIGEST CODE **Able and Available/AA 450.45**
DOCKET/DATE ***Winnie Kelley v. IDOL*, 513 N.E. 2d 988 (1987)**
AUTHORITY **Section 500C of the Act**
TITLE **Time**
SUBTITLE **Seasonal**
CROSS-REFERENCE **AA 160.05, Efforts to Secure Employment**

The claimant worked for the police department as a school crossing guard. She worked every regular school term for 15 years and was laid off every summer. She filed for, and was initially denied, benefits during her most recent layoff period.

At an appeal hearing, she testified that, although she expected to return to her regular job in the fall, she was looking, and always had looked, for work during the summer. She had held a summer job, in a city streets cleanup program, 4 years earlier. During the current period, she was seeking a sales job. One week, she contacted 2 department stores in the same shopping mall, the contacts being on consecutive days; in another week, she made 1 employer contact in person and a telephone contact 3 days later; in 2 other weeks, she made 2 telephone contacts. She never made more than 3 contacts in any week, and, in that instance, all 3 were made on the same date.

HELD: A seasonal worker is not per se ineligible for benefits during the off-season of her regular employment. Still, she must meet the same eligibility requirements as all other claimants.

In general, whether one is available for work depends to a great extent upon the individual's mental attitude as evidenced by the effort put forth in the search for work.

In this case, the claimant's search constituted a perfunctory effort to secure employment. It indicated that she had made a career choice to remain in a field which involved a summer layoff and to remain detached from the labor market.

Benefits were denied.

ISSUE/DIGEST CODE **Able and Available/AA 450.5**
DOCKET/DATE **83-BRD-13734/11-23-83**
AUTHORITY **l./S-500C**
TITLE **Time, Shift**
SUBTITLE **No Search After Recall**
CROSS-REFERENCE **None**

The claimant worked as a press packer on the employer's second shift and was laid off due to lack of work. She named numerous employers she contacted during the four weeks under review, seeking factory or key punch work. She sought second or third shift hours so that her husband could care for their two children at the end of his work day. Also, these hours permitted her the use of the family automobile. In the last week under review, the claimant received a telegram from her former employer requesting that she return to work one week later. She stated that she stopped seeking work after receiving the telegram, and she returned to her former job when requested.

HELD: The claimant conducted an active search for work. The claimant's search for second or third shift work did not unduly restrict her availability for work because work which she is qualified to perform customarily exists on these shifts. Additionally, the claimant had previously worked second shift hours and was not required to expand her work search outside her usual hours of work during the initial weeks of her claim for benefits. During the last week under review, the claimant had knowledge that she would be returning to work one week later and was, therefore, on a short term layoff of a definite duration. It would be unrealistic to require the claimant to search for other work during this week; and, since she was otherwise available for work, she is eligible to receive benefits.

ISSUE/DIGEST CODE	**Able and Available/AA 450.55**
DOCKET/DATE	***Estella Galarza v. IDOL*, No. 2-87-0186 (1987)**
AUTHORITY	**Section 500C of the Act**
TITLE	**Time**
SUBTITLE	**Temporary**
CROSS-REFERENCE	**AA 160.05, Efforts; AA 450.45, Time Seasonal**

The claimant was a Migrant Farm Worker who was laid off every spring for approximately 6 weeks between crops. When she was laid off in March, 1982, she sought vegetable packing and other types of field work only for the duration of that interim period because she knew she would be recalled to work at her regular job.

The Referee found that, despite the claimant's 17 job contacts during the 6-week period, she was ineligible for benefits because she failed to show that "the work search conducted was reasonably designed for a return to the permanent full-time labor force."

Upon further appeal, the claimant argued that she was not required to look for or accept permanent full-time employment which would jeopardize her chances of returning to her regular job.

HELD: Section 500C of the Unemployment Insurance Act requires that an individual be able to, available for, and actively seeking suitable work. This is a flexible standard: what constitutes "suitable" work or an "active search" for work varies with the circumstances. Courts have held that:

> a ruling that a claimant must be available for full-time work per se was inconsistent with the flexible standard above;
>
> alternate work is not necessarily "suitable" where a reasonable possibility exists of the claimant being recalled to his previous job;
>
> if an applicant presents sufficient evidence to establish as a fact that there are prospects of returning to work in his own trade within a reasonable time, then work in some other trade for which he should otherwise be available and which would otherwise be deemed suitable becomes unsuitable.

In this case, the court stated:

> While we do not necessarily agree...that a claimant who has been temporarily laid off need not conduct any work search, the principles noted above are relevant in determining the scope of the search (the claimant) in the instant case was required to make...
>
> It seems clear that the Referee...applied the wrong legal standard...
>
> The Hearing Referee applied an improper standard in determining that (the claimant) was required to seek permanent employment. The claimant was allowed benefits under Section 500C.

ISSUED/DIGEST CODE **Able and Available/AA 475.05**
DOCKET/DATE **ABR-87-5445/3-23-88**
AUTHORITY **Section 500C of the Act**
TITLE **Union Relations**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant, a theatrical wardrobe worker, worked for 9 months until a layoff that would last 1 month. During this period of unemployment, she sought theatrical wardrobe work paying, at a minimum, her previous wage, $13.25 per hour. Her sole method of seeking work was to contact, and remain on 24-hour call, with her union's business manager.

The claimant was a member in good standing of the Theatrical Wardrobe Attendants Union, Local 769. Members of the union obtained most if not all of their work through the union's hiring facilities. The union had been certified under Department Rule 2865.55.

HELD: Section 500C provides that an individual must demonstrate an active work search by listing, on a form provided by the Department, the places at which she has sought work. Ordinarily, an individual demonstrates an active work search by listing a variety of job contacts that she has made directly and independently.

Section 500C also provides that the Director may approve alternate methods of demonstrating an active work search, based upon regular reporting to a trade union office. Department Rule 2865.50 further provides that a claimant meets the active work search requirement if, belonging to a job classification of workers represented by a certified union, she reports to that union's placement service.

In this case, the claimant established that she belonged to a classification of workers represented by a certified union and that she reported to that union's placement service. This demonstrated an active search for work.

ISSUE/DIGEST CODE **Able and Available/AA 500**
DOCKET/DATE **83-BRD-13747/11-23-83**
AUTHORITY **1./S-500C**
TITLE **Wages**
SUBTITLE **Preference Or Restriction**
CROSS-REFERENCE **None**

The claimant last worked as a bank teller at a final wage of $5.75 per hour. After four months of unemployment, the claimant stated that she could accept work that paid a minimum of $8.00 per hour during the period under review. Two weeks later, the claimant stated that she would accept work that paid a wage of $5.75 per hour.

HELD: In view of her previous wages, the claimant unduly restricted the wage she was willing to accept during these weeks. She did not lower the minimum wage she was willing to accept until <u>after</u> the two week p claimant meets ew. She is held to be unavailable for work within the meaning of the Act during the period under review because of the restriction and is ineligible to receive benefits.

ISSUE/DIGEST CODE **Able and Available/AA 500**
DOCKET/DATE **ABR-85-4128/10-28-85**
AUTHORITY **Section 500C of the Act**
TITLE **Wages**
SUBTITLE **Imposing a Condition Not Related to the Work**
CROSS-REFERENCE **AA 155.15, Domestic Circumstances**

The claimant's work experience consisted of 2 years of various assignments, obtained through a temporary employment placement agency, for which she was paid $5.25 per hour. The claimant stated that, during the period under review, she would accept similar work only if it paid $7 or $8 per hour, so that she could afford a baby sitter for her 3 young children.

HELD: When a worker imposes wage demands which materially reduce her possibilities of obtaining suitable work, such demands constitute an undue restriction, and render her unavailable for work. Generally, a worker's personal financial problems bear no relationship to the suitability of work.

In the instant case, the claimant placed an undue restriction upon her employability by stipulating a minimum acceptable wage, which bore no relationship to her training or experience and which she could not reasonably expect to receive. She was unavailable for work within the meaning of Section 500C.

ISSUE/DIGEST CODE **Able And Available/AA 500.05**
DOCKET/DATE ***Eddings (and Lee) v. IDOL*, 146 Ill. App. 3d 62**
AUTHORITY **Section 500C of the Act**
TITLE **Wages**
SUBTITLE **Reduction**
CROSS-REFERENCE **AA 160.25, Effort to Secure Employment, Refusal of Work**

The claimant was laid off from her job as a High School Teacher with the Chicago Board of Education. During the ensuing weeks, she directly contacted private and public educational institutions, as well as the Chicago Board of Education's personnel department, in the hope of obtaining suitable work as a Teacher.

She did not contact the Chicago Board of Education's Substitute Teaching Center. A representative of the Chicago Board of Education testified that, from a list of 5,000 substitute teachers, an average of 2,000 were called for work each day. Day-to-day substitute teachers were paid at an approximately 40% reduction in salary.

A Referee denied benefits, concluding that, although the claimant had otherwise conducted a good work search, she had failed to contact the Sub Center where work was available.

HELD: Whenever an individual fails to apply for work as directed by an employer, a determination must be made with respect to her availability, giving consideration to the suitability of the job opportunity. Work in the individual's usual occupation or work for which she is reasonably qualified by prior training or experience is suitable work, provided the conditions of the work are not substantially less favorable than those prevailing on her last job or for similar work in the locality.

Here, the claimant should not have been denied benefits, because the school system would have committed her to the uncertain status of a day-to-day substitute at an approximately 40% reduction in salary. That employment was substantially less favorable than the claimant's previous employment as a higher-salaried full-time teacher. Because the claimant otherwise actively sought work, she met the eligibility requirements of Section 500C.

MISCELLANEOUS

ISSUE/DIGEST CODE	**Miscellaneous/MS 5**
DOCKET/DATE	**ABR-86-9198/5-21-87**
AUTHORITY	**Section 240 of the Act**
TITLE	**Miscellaneous**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was disqualified for benefits under Section 601A, Voluntary Leaving. In support of his appeal to the Board of Review, he stated:

> I can't understand why I am not going to receive my unemployment compensation. I paid into it, but can't get it when I need it.

HELD: In response to the point often raised by claimants, that benefits should be allowed because they, as workers, paid into the unemployment insurance fund, it must be pointed out that deductions made from workers' wages in Illinois are made pursuant to the Old Age and Survivors Insurance program of the Federal Social Security Act, and for Federal and State Income Tax purposes, and have no connection with Illinois' Unemployment Insurance program.

The Unemployment Insurance program is paid for by employers' "contributions." Contributions are the money payments required from employers for the purpose of paying benefits. Benefits are then paid to individuals who meet all the statutory requirements.

ISSUE/DIGEST CODE	**Miscellaneous/MS-60.05**
DOCKET/DATE	**ABR-07-4472**
AUTHORITY	**Section 900 of the Act; Trade Act of 1974-Trade Readjustment Assistance (TRA)**
TITLE	**Construction of Statutes**
SUBTITLE	**Benefit Computation Factors/General**
CROSS-REFERENCE	**MS-95.15: Construction with Reference to Other Statutes; MS-340.2: Misrepresentation/Overpayments or Restitution**

The claimant was laid off from work on July 14, 2005, filed a claim for unemployment benefits the next day, and was awarded weekly benefits of $208.00, including a dependents= allowance. After returning to work, the claimant was again laid off on April 7, 2006, filed for benefits on April 12, 2006, and was granted weekly unemployment benefits of $449.00, including dependents= allowance. The claimant collected her regular unemployment benefits until she exhausted them during the week ending October 14, 2006. Pursuant to the Trade Act of 1974, the claimant began collecting Trade Readjustment Assistance (TRA) benefits of $449.00 weekly, including dependents= allowance, on October 15, 2006 and continued receiving them through December 23, 2006. The claimant=s employer was first certified as an Aaffected employer@ under the Trade Act of 1974 on March 22, 2005.

HELD: Under the Trade Act of 1974, an individual=s weekly TRA benefit payment is based on the individual=s Afirst qualifying separation@ from work after the impact date cited in the petition certification covering the adversely affected worker. Here, the claimant=s Afirst qualifying separation@ from employment with the impacted employer occurred on July 14, 2005, which was after the impact date cited in the certification dated March 22, 2005. When she applied for benefits after that first separation from work, she received a weekly benefit amount of $208.00, including dependents= allowance. This is the amount she should have received when she began receiving TRA benefits, rather than $449.00 per week which she, in fact, received. Therefore, the claimant was overpaid

ISSUE/DIGEST CODE **Miscellaneous/MS 60.05**
DOCKET/DATE ***The Western and Southern Life Insurance Company v. Edmonson, et. al,* 397 Ill.App.3d 146, 337 Ill.Dec. 556, 922 N.E.2d 1133 (1st Dist., 2009); Leave to Appeal Denied at 236 Ill.2d 547, 341 Ill.Dec. 206, 930 N.E.2d 416 (Table) (3/24/10)**
AUTHORITY **Section 228 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimants were discharged from their positions as insurance sales agents by the employer and subsequently applied for, and received, unemployment benefits. In its appeal to the Referee, the employer argued that the claimants were not eligible for benefits because they could not be considered employees pursuant to Section 228 of the Illinois Unemployment Insurance Act (the "Act"), which states that "[T]he term 'employment' shall not include services performed by an individual as an insurance agent or insurance solicitor, if all such services performed by such individual are performed for remuneration solely by way of commission." The Referee, finding that the claimants received remuneration in the form of guaranteed minimum payments, paid holiday, vacation and sick days, health and retirement benefits, and bonuses and prizes, were not remunerated "solely by way of commission" and, thus, were not prohibited by Section 228 from receiving benefits. The employer appealed this decision to the Board of Review and the circuit court, both of which affirmed the Referee. The employer then appealed the matter to the appellate court.

HELD: The appellate court found that: (1) the guaranteed minimum payments to the claimants were remuneration other than commission, which removed the their services from the Section 228 exemption, even though the payments were made prior to the claimants' applicable base periods; (2) the paid holidays, vacation and sick days constituted remuneration other than commission, regardless of whether the payments they received during their time off was from a commission pool and not from the employer, itself; (3) the health and retirement benefits constituted remuneration other than commission, even if these payments did not qualify as "wages" under the Act; and, (4) the bonuses and prizes constituted remuneration other than commission, irrespective of whether such gifts were made before the agents' respective base periods, or were obtained from their sales managers, instead of being directly obtained from the employer. Consequently, the appellate court held that the claimants were not exempt pursuant to Section 228 of the Act and were properly granted benefits.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.1**
DOCKET/DATE **ABR-88-2910/8-25-88**
AUTHORITY **Sections 500E and 614 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Base Period**
CROSS-REFERENCE **MS 70.05, Citizenship or Residence Requirements**

The claimant entered the United States illegally. On June 23, 1987, he applied for amnesty under the Immigration Reform and Control Act.

The claimant had worked throughout his base period: October 1, 1986 through September 30, 1987. His wages for the period June 23 through September 30 totaled more than $1600. His wages for the period June 23 through June 30 totaled less than $440.

HELD: Section 614 provides that an alien is ineligible for benefits based upon wages unless he was lawfully admitted for permanent residence or was permanently residing in the United States under color of law. In this case, the claimant was not residing in the United States under color of law until he applied for amnesty on June 23. Therefore, only his wages from that date forward could be used to establish benefit rights.

Section 500E provides that an individual is ineligible for benefits unless, during his base period, he was paid wages for insured work totaling at least $1600, with at least $440 being outside his highest paid quarter. In this case, the claimant's base period wages totaled more than $1600. But wages were paid in only 2 quarters. The higher quarter was July 1 through September 30. Outside that quarter, the claimant did not earn at least $440. Consequently, he was monetarily ineligible for benefits.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.1**
DOCKET/DATE ***Charles F. Hlinka v. IDES*, No. 87-1239 (1988)**
AUTHORITY **Sections 500E of the Act**
TITLE **Benefit Computation**
SUBTITLE **Base Period**
CROSS-REFERENCE **MS 95.1/.2, Construction of Statutes**

The claimant was the president and sole stockholder of a corporation. Though he worked throughout the calendar year, he did not determine what his salary would be or draw any salary until the 4th quarter. In the 4th quarter of 1984, he drew a salary of $10,000. During the 4th quarter of 1985, the corporation was dissolved, after which the claimant filed for unemployment benefits.

The claimant's base period consisted of the last 2 quarters of 1984 and the first 2 quarters of 1985.

HELD: Section 500E of the Act provides that an individual shall be eligible for benefits only if:

(1) during his base period, he was paid wages totaling at least $l,600, and

(2) outside the quarter of his base period in which wages paid were highest, he was paid wages totaling at least $440.

The plain unambiguous language of Section 500E requires that wages be paid at a certain level during at least 2 quarters of a claimant's base period. Section 500E does not permit wages to be prorated over an entire base period. Section 500E does not permit engrafting any exception which would allow a claimant to avoid the two-fold requirement. A court is not warranted in reading into the statute an exception which the legislature did not see fit to make.

In this case, the claimant was paid $10,000 during his base period; this was more than the $l,600 required during the base period. However, the $10,000 was paid entirely during 1 quarter. The claimant was not paid wages outside that highest quarter. Therefore, he did not meet the Section 500E eligibility requirements and was not entitled to unemployment benefits.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.1**
DOCKET/DATE ***Castillo v. Jackson*, 594 N.E.2d 323 (1992)**
AUTHORITY **Section 500E and 614 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Base Period**
CROSS-REFERENCE **MS 70.05, Citizenship or Residence Requirements**

The claimants sought judicial review of a decision of the Board of Review. The Board found that the claimants were not monetarily eligible for benefits under Section 500E of the Act due to the operation of Section 614. Section 614 provides that an alien is ineligible for benefits based upon wages earned in a period unless he was lawfully admitted for permanent residence or was permanently residing in the United States under color of law during that period. The Board found that the claimants were not residing in the United States under color of law until they formally applied for amnesty under the Immigration and Reform and Control Act (IRCA). The circuit court affirmed. The appellate court reversed, holding that aliens who applied for and established prima facie cases of entitlement to amnesty pursuant to IRCA were permanently residing in the United States under color of law as of November 6, 1986, the effective date of IRCA. The Illinois Supreme court affirmed.

HELD: The court stated that the amendment to Section 614 disqualifying aliens living in Illinois was enacted to conform with federal requirements. It adopted the interpretation of "permanently residing in the United States under color of law" (PRUCOL) given by leading federal appellate court decisions in interpreting Section 614. It rejected the interpretation of PRUCOL given by the United States Department of Labor and to the Department's adherence to the Department of Labor's interpretation. The court accordingly included wages earned by the claimants for periods after November 6, 1986, the effective date of IRCA. If these wages were included, the claimants were monetarily eligible under Section 500E. The Department of Employment Security had excluded all wages earned during the period before the claimants had formally applied for amnesty under IRCA on the grounds that they did not satisfy the PRUCOL criteria.

ISSUE/DIGEST CODE **Miscellaneous/MS-60.1**
DOCKET/DATE **AR 78-L-159**
AUTHORITY **Section 237 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Base Period**
CROSS-REFERENCE **None**

On January 24, 1978, shortly before closing time, the claimant visited a Local Office of the Department of Employment Security and asked the claims taker when the Abase period@ would change. The claims taker responded that she did not know and that it is not known when they change. When he asked to speak with someone who might give him more information, he was advised that the Claims Adjudicators had left for the day and there was nobody with whom he could speak. He proceeded to file a claim at that time and was assigned a base period running from July 1, 1976 through June 30, 1977 and granted a weekly benefit amount of $37 plus a $13 dependents= allowance. Early in February, 1978, he spoke with a Claims Adjudicator who told him that base periods change the first day of February, May, August and November of each year. The claimant appealed the base period and weekly benefit amount of his claim filed on January 24, 1978 when he learned that a different base period and a higher weekly benefit amount would have been assigned to him, if he had filed his claim on February 1, 1978. In his appeal, the claimant asserted that the Local Office personnel had an obligation to advise him that he would receive a higher weekly benefit amount if had file his claim on February 1, 1978.

HELD: The Board of Review found that neither the UI Act, nor the rules issued thereunder, impose an obligation on the agency to advise a claimant as to the most monetarily advantageous claim-filing date. The only obligation the agency has is to correctly determine the benefit year, the base period and the weekly benefit amount, in accordance with Sections 237, 242 and 500(E) of the Act, based on the date a claimant files a valid claim for benefits. This was done in the instant case.There is no provision in the Act which would authorize the agency to ignore the date the claimant validly filed a claim for benefits and substitute another date merely to allow a claimant to be eligible for higher weekly benefit amount. The claimant is bound by the date, January 24, 1978, and to the Abenefit year@, Abase period@ and consequent weekly benefit amount specified by the UI Act as applicable to that filing date.

ISSUE/DIGEST CODE **Miscellaneous/MS-60.1**
DOCKET/DATE **AR 78-L-216**
AUTHORITY **Section 237 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Base Period**
CROSS-REFERENCE **None**

The claimant was released from his job on May 15, 1977. Under the union contract, grievances had to be resolved within 90 days, but the employer delayed the procedure until January 16, 1978, when an arbitrator decided in the claimant=s favor and he was reinstated in his job without back pay. The claimant contends that this delay, which was not his fault, resulted in him receiving a smaller weekly benefit amount because it prevented him from being reinstated sooner and earning wages in the third and fourth quarters of his base period. On appeal, he contends that he is entitled to the higher weekly benefit amount he would have gotten had he been reinstated sooner and, if necessary for that purpose, his base year should be moved back to a period when he was working full time. The claimant filed his claim for benefits on September 11, 1978.

HELD: A claimant=s benefit year and base period are determined in accordance, respectively, with Sections 242 and 237 of the UI Act. The date a claimant files a valid claim for benefits sets in motion these two provisions. Here, the claimant filed his claim on September 11, 1978. Based on this date, the evidence in the record shows that the agency properly determined the claimant=s benefit year and base period and correctly calculated the claimant=s weekly benefit amount. The agency had no authority to use a different filing date other than the date on which the claimant filed his valid claim for benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS-60.1**
DOCKET/DATE	**AR 81-L-213**
AUTHORITY	**Section 237 of the Act**
TITLE	**Benefit Computation Factors**
SUBTITLE	**Base Period**
CROSS-REFERENCE	**None**

The claimant was laid off from her job on Friday, September 5, 1980. Over the weekend, she started a part time job with a hospital on an Aon-call@ basis. On Monday, September 8, 1980, she went to the Local Office to inquire as to what benefits she might draw if she were to be called for only one or two days per week. The claimant testified at the hearing that she informed the claims taker that she did not wish to file a claim for benefits but only wished to inquire as to possible benefits. Nonetheless, the claimant signed a claim application form which established a benefit year beginning September 7, 1980. The claimant subsequently quit her part time hospital job in January, 1981, to accompany her husband to South Dakota, where he was starting a new job. The claimant filed a claim for benefits and was told that she had been assigned a benefit year and attendant base period as of September 7, 1980. In her appeal, the claimant asserted that her benefit year should have begun in January, 1981, with an attendant base period from July 1, 1979 to June 30, 1980.

HELD: The Board of Review rejected the claimant=s assertion. According to the Board, the claimant commenced a claim by filling out and signing a claim for benefits on September 8, 1980, notwithstanding her statement to the claims taker that she did not wish to file a claim. Her claim was valid because, within the base period assigned to her under Section 237 of the UI Act, the claimant had sufficient wages to make her monetarily eligible for benefits pursuant to Section 500(E) of that UI Act. The claim, benefit year and base period were properly established in accordance with the Act and rules promulgated thereunder.

ISSUE/DIGEST CODE	**Miscellaneous/ MS-60.1**
DOCKET/DATE	**Martin v. Department of Employment Security, 376 Ill.App.3d 853, 315 Ill.Dec. 790, 877 N.E.2d 1119 (5th Dist., 2007)**
AUTHORITY	**Section 611 of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Benefit Computation Factors/Base Period**
CROSS-REFERENCE	**MS-375.25: Old-Age and Survivors Insurance**

The claimant began receiving social security retirement income in 1999. From September 19, 2004 until August 17, 2005, the plaintiff was employed by Wal-Mart. Following her discharge, she applied for unemployment insurance benefits. Pursuant to Section 611(A)(2) of the Act, the claims adjudicator found the claimant ineligible for benefits because the plaintiff was receiving 50% disqualifying income in the form of social security retirement benefits. The claims adjudicator=s determination was affirmed by the Referee and the Board of Review. The Board=s decision was affirmed by the circuit court and the claimant appealed, asserting that her social security retirement payments should not be considered disqualifying income because Wal-Mart was not her Abase-period employer@ since (1) the social security benefits she received were based upon her employment with other employers prior to her retirement in 1999, and (2) her social security benefits did not change as a result of her employment with Wal-Mart in 2004.

HELD: The court held that the claimant=s argument was based on the mistaken premises that (1) the term Abase period@ encompasses only the years during which an employee worked prior to beginning to receive social security retirement benefits and (2) that a Abase-period employer@ can only be an employer that contributed to an employee=s future social security retirement benefits prior to that employee becoming eligible for those benefits. The court noted that the term Abase period@ is defined in Section 237(A) of the Act as the period of time examined to determine whether the claimant earned sufficient wages to qualify for unemployment benefits and, if so, the amount of those benefits. It was undisputed that Wal-Mart was the employer who paid the claimant wages during the claimant=s Abase period@ and, thus, was the plaintiff=s Abase-period employer@. Since the claimant received wages from Wal-Mart during her base period and Wal-Mart paid Social Security taxes on these wages, Section 611(A)(2) mandated that half of the claimant=s social security retirement benefits be deemed disqualifying income, which thereby rendered the claimant ineligible for unemployment benefits.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.4**
DOCKET/DATE **84-BRD-295/1-10-84**
AUTHORITY **Section 607B of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Work Requirements For Second Benefit Year**
CROSS-REFERENCE **None**

The claimant exhausted his benefits and filed for a second benefit year, indicating that during the prior benefit year he had been paid cash, with no deductions for FICA or income taxes, for repairing his friends' automobiles. The payments totaled more than 3 times his current weekly benefit amount.

HELD: Section 607B provides, in pertinent part, that an individual shall be ineligible for benefits unless he earns 3 times his current weekly benefit amount from bona fide work. The term "bona fide work" does not necessarily require an employer-employee relationship or that services constitute "employment" under the Act, but it does mean work performed in good faith, not merely to requalify for unemployment benefits. Here, the claimant performed work on a casual basis for friends and it is reasonable to conclude it was solely for the purpose of requalifying for benefits. Therefore, it was not bona fide work and he did not requalify for benefits.

$241.00 per week while receiving TRA benefits and this overpayment was subject to recoupment and/or recovery.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.10**
DOCKET/DATE ***Campbell v. Board of Review*, 570 N.E. 2d 812 (1991)**
AUTHORITY **Section 612 of the Act**
TITLE **Benefit Computation**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **MS 410.05, Seasonal Employment; PR 380.25, Review**

The claimant worked as a part-time teacher at Prairie State College in fall, 1984; at Chicago State University in fall, 1984, and in spring, 1985; and at Columbia College in spring, 1983 through 1985, and in fall, 1984.

He filed a claim for unemployment benefits during the summer, 1985. In order to show that he could not be held ineligible under Section 612, he submitted a post-dated letter from Columbia College, which indicated that, generally, there was no guaranteed work for part-time teachers; *e.g.,* there would be no work if there was no full enrollment in a course; if a full-timer did not have full enrollment, he could bump a part-timer who did; etc.

HELD: Section 612 of the Act provides, in pertinent part, that an individual will be ineligible between terms if there is a reasonable assurance that he will perform work for any educational institution in the upcoming term.

Section 612 makes no distinction between full-time and part-time teachers. Section 612 refers to "any" educational institution and is not limited to consideration of work at one particular institution. Further, whether there is a reasonable assurance depends upon facts as well as representations.

The claimant, even though he was a part-time teacher, was subject to Section 612. The facts showed that, despite the lack of guaranteed work, he had always been able to obtain work during fall terms, at one educational institution or another. Therefore, he had a reasonable assurance of working the next fall.

The claimant was ineligible for benefits during the summer between terms.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.10**
DOCKET/DATE ***Christine Doran v. IDOL*, 452 N.E. 2d 118 (1983)**
AUTHORITY **Section 612 of the Act**
TITLE **Benefit Computation**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **MS 95.2, Construction of Statutes; MS 410.05, Seasonal**

From 1970 through 1980, the claimant taught during her school's 39-week academic term then through its 8-week summer session. Then, on June 26, 1980, at the end of 39 weeks, she was told that, due to budgetary considerations, the school would not be offering the 8-week summer session and her services would not be needed until the following autumn. So the claimant filed for unemployment benefits for that 8-week period.

The Department held that, because the claimant filed for benefits for a period between academic terms, she was ineligible under Section 612. The claimant contended that this was not a period between terms, but a portion of what would have been her customary 47-week term.

HELD: Section 612 provides, in pertinent part, that an individual shall be ineligible for benefits between "regular academic terms." What constitutes a regular academic term is determined by the legislature, not by a claimant's particular circumstances.

The legislature has defined regular academic term - not in the Unemployment Insurance Act, but in the School Code. The School Code provides that each school board shall prepare a calendar for the school term (consisting of a required number of school days, or, at this time, 39 weeks). Pursuant to its delegated authority, the claimant's school board adopted a calendar that complied with the definition by providing for 39 weeks of school. The fact that the school board did or did not offer a summer session was immaterial; the 39-week period was the regular academic term intended by the legislature.

The claimant worked until the end of the regular academic term. She filed for benefits for a period between that term and her next regularly scheduled term. Therefore, she was ineligible under Section 612.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.10**
DOCKET/DATE ***Brent Davis v. Board of Review*, 477 N.E. 2d 842 (1985)**
AUTHORITY **Section 612 of the Act**
TITLE **Benefit Computation**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **MS 95.1, Construction of Statutes; MS 410.05, Seasonal**

The claimant was employed as a School Teacher during the 1981-1982 school year. In June, 1982, when the school term ended, he did not have a contract with the district to teach during the upcoming 1982-1983 school year. He applied for and began receiving unemployment benefits. Although, on July 18, 1982, he signed a contract to teach in the district during the 1982-1983 school year, he continued to receive unemployment benefits until he actually started teaching on August 23, 1982.

The issue presented was whether the claimant was entitled to the benefits he received after his contract had been approved.

HELD: section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, *for any week*...during a period between academic years...if the individual performed such service in the first of such academic years...and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity...in the second of such academic years...(court's emphasis.)

Section 612 is clear and unambiguous. A teacher's eligibility is determined on a weekly basis. During any week in which a teacher has a contract or reasonable assurance of employment during the upcoming school year, the teacher is not eligible to receive unemployment benefits.

Therefore, as soon as the claimant's contract for the 1982-1983 school year was approved, he was not entitled to receive unemployment compensation. Accordingly, the benefits he received thereafter were subject to recoupment.

ISSUE/DIGEST CODE **Miscellaneous/MS 60.12**
DOCKET/DATE **ABR-85-9661/6-3-86**
AUTHORITY **Section 614 of the Act**
TITLE **Benefit Computation**
SUBTITLE **Base Period, Alien wage Credits**
CROSS-REFERENCE **MS 70.05, Citizenship or Residence Requirements**

In a proceeding under the Immigration and Nationality Act, the claimant, who was not a United States citizen, was determined to be a deportable person. She applied for voluntary departure in lieu of deportation and was directed to depart the United states by October, 1979. The claimant was then granted extensions: first, until November, 1979, then until May, 1980, then until November, 1980, then until May, 1981, and, finally, until March, 1982.

The claimant filed a claim for benefits for the period September 1, 1985 through September 15, 1985.

HELD: Section 614 of the Act provides, in pertinent part, that:

An alien shall be ineligible for benefits...on the basis of wages for services performed...unless the alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law.

In the instant case, since the claimant filed a claim for benefits effective September 1, 1985, she would have had to have earned qualifying wages for services performed between July, 1984 and June, 1985 (the base period). However, during that base period, the claimant was in the United States illegally and was not authorized to work. Therefore, the claimant did not earn qualifying wages. She was ineligible for benefits under Section 614.

ISSUE/DIGEST CODE **Miscellaneous/MS-60.15**
DOCKET/DATE **ABR-84-9829**
AUTHORITY **Section 242 of the Act**
TITLE **Benefit Computation Factors**
SUBTITLE **Benefit Year**
CROSS-REFERENCE **None**

The claimant was laid off from his job and filed a claim for benefits on June 28, 1984. It was determined at that time that his benefit year commenced on July 1, 1984, with a corresponding base period extending from February, 1983 through January, 1984. Based on his wages during his base period, he was awarded a weekly benefit of $51.00. At the hearing before the Referee, the claimant testified that there were rumors that the employer would institute massive layoffs in October, 1984 and, had he known the manner his weekly benefit amount was derived, he would have waited to file his claim because it would have resulted in a higher weekly benefit amount. In his appeal, the claimant asked that his claim filed on June 28, 1984 be deleted and that he be allowed to refile a new claim which would commence a more advantageous benefit year for his unemployment insurance.

HELD: The Board of Review refused the claimant=s request to be allowed to refile his claim because his claim filed on June 28, 1984 was a valid claim since he met the monetary eligibility requirements established in the UI Act. Based on the date that he filed a valid claim, Section 242 of the Act required that his benefit year begin on July 1, 1984. Since the designation of the beginning of an individual=s benefit year is made by statute, there is no authority or discretion to fix any other date other than that specified in the Act. Local Office personnel are not required to advise individuals as to which date should be chosen for the filing of a claim.

ISSUE/DIGEST CODE **Miscellaneous/MS 70.05**
DOCKET/DATE **ABR-85-3327/9-20-85**
AUTHORITY **Section 614 of the Act**
TITLE **Citizenship or Residence Requirements**
SUBTITLE **Evidentiary Standard**
CROSS-REFERENCE **None**

The claimant entered the United States from Mexico in 1972, and became employed in the United States in 1973. The claimant worked as a Machine Operator for 11 years until her employer went out of business in 1984. The claimant then filed for unemployment benefits. Benefits were denied to the claimant, under Section 614 of the Act, because of the claimant's alien status: The claimant had been an alien during the base period of the benefit year for which her benefit claim had been filed.

At her appeal hearing, the claimant presented a *Silva* letter, dated September, 1977, which had granted her permission to remain in the United States and which had authorized her employment. The claimant testified that subsequent to the issuance of the *Silva* letter she never received any notification that the permission or authorization granted by the *Silva* letter had been revoked.

HELD: The Illinois Unemployment Insurance Act provides that an alien shall be ineligible for benefits on the basis of wages for services performed by such alien, unless the alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law. The Act further provides that no determination shall be made that such individual is ineligible for benefits pursuant to this Section because of the individual's alien status except upon a preponderance of the evidence.

In the instant case, although the evidence showed that the claimant was an alien during the base period of her benefit year, the claimant produced acceptable documentation which was apparently valid on its face and apparently authorized the claimant's employment. Therefore, it was not established by a preponderance of the evidence that the claimant was not permanently residing in the United States under color of law. Accordingly, the claimant was not subject to a disqualification.

ISSUE/DIGEST CODE	**Miscellaneous/MS 70.05**
DOCKET/DATE	**ABR-85-9661/6-3-86**
AUTHORITY	**Section 614 of the Act**
TITLE	**Citizenship or Residence Requirements**
SUBTITLE	**Qualifying Wages During Base Period**
CROSS-REFERENCE	**MS 60.12, Benefit Computation, Alien Wage Credits**

In a proceeding under the Immigration and Nationality Act, the claimant, who was not a United States citizen, was determined to be a deportable person. She applied for voluntary departure in lieu of deportation and was directed to depart the United States by October, 1979. The claimant was then granted extensions: first, until November, 1979, then until May, 1980, then until November, 1980, then until May, 1981, and, finally, until March, 1982.

The claimant filed a claim for benefits for the period September 1, 1985 through September 15, 1985.

HELD: Section 614 of the Act provides, in pertinent part, that:

> An alien shall be ineligible for benefits...on the basis of wages for services performed...unless the alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law.

In the instant case, since the claimant filed a claim for benefits effective September 1, 1985, she would have had to have earned qualifying wages for services performed between July, 1984 and June, 1985 (the base period). However, during that base period, the claimant was in the United States illegally and was not authorized to work. Therefore, the claimant did not earn qualifying wages. She was ineligible for benefits under Section 614.

ISSUE/DIGEST CODE	**Miscellaneous/MS 70.05**
DOCKET/DATE	**ABR-88-2910/8-25-88**
AUTHORITY	**Sections 500E and 614 of the Act**
TITLE	**Citizenship or Residence Requirements**
SUBTITLE	**General**
CROSS-REFERENCE	**MS 60.1, Benefit Computation Factors, Base Period**

The claimant entered the United States illegally. On June 23, 1987, he applied for amnesty under the Immigration Reform and Control Act.

The claimant had worked throughout his base period: October 1, 1986 through September 30, 1987. His wages for the period June 23 through September 30 totaled more than $1600. His wages for the period June 23 through June 30 totaled less than $440.

HELD: Section 614 provides that an alien is ineligible for benefits based upon wages unless he was lawfully admitted for permanent residence or was permanently residing in the United States under color of law. In this case, the claimant was not residing in the United States under color of law until he applied for amnesty on June 23. Therefore, only his wages from that date forward could be used to establish benefit rights.

Section 500E provides that an individual is ineligible for benefits unless, during his base period, he was paid wages for insured work totaling at least $1600, with at least $440 being outside his highest paid quarter. In this case, the claimant's base period wages totaled more than $1600. But wages were paid in only 2 quarters. The higher quarter was July 1 through September 30. Outside that quarter, the claimant did not earn at least $440. Consequently, the claimant was monetarily ineligible for benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.05**
DOCKET/DATE	***Williams v. Board of Review*, 395 Ill.App.3d 337, 335 Ill.Dec. 30, 917 N.E.2d 1094 (1st Dist., 2009); Rehearing Denied, 11/10/2009**
AUTHORITY	**Section 500(B) of the Act; Trade Act of 1974 [19 USC 2101] and 2002 Amendments; Code of Federal Regulations [20 CFR 617.10(b)]**
TITLE	**Claims and Registration**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

After her company closed down, the claimant applied for unemployment benefits on April 23, 2006 and began receiving benefits shortly thereafter. In October, 2006, she learned from of friend about the federal Trade Readjustment Allowance (TRA) authorized by the Trade Act of 1974, as amended in 2002. TRA is available to a qualified worker who is enrolled in an approved training program by "the last day of the 16th week after the worker's most recent total separation from adversely affected employment [or] the last day of the 8th week after the week in which the Secretary [*i.e.* of the U.S. Department of Labor (USDOL)] issues a certification covering the worker." [19 USC 2291(a)(5), (2002 Supp.)] USDOL issued the requisite certification regarding the claimant's former employer on June 21, 2006. In Illinois, the Illinois Department of Employment Security (IDES) administers the TRA program as the USDOL's agent and, as a consequence, has the duty to advise workers about TRA benefits and the application deadlines. IDES never informed the claimant of these benefits. On December 12, 2006, the claimant applied for the TRA benefits and job training but was denied because her application was filed beyond the 8-week and 16-week deadlines described above.

HELD: Pursuant to 20 CFR 617.10(b), the appellate court found that IDES's failure to notify the claimant of TRA benefits provided the claimant with "good cause" for missing the application deadlines and held that the claimant was entitled to TRA benefits. The court remanded the matter back to the claims adjudicator to determine the amount of the claimant's TRA benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.05**
DOCKET/DATE	**ABR-09-11293/10-7-09**
AUTHORITY	**Section 500(B) of the Act; 56 Ill. Adm. Code 2720.120(b)**
TITLE	**Claims and Registration**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claims adjudicator issued a determination rejecting the claimant's request to backdate his claim certification and the claimant appealed. 56 Ill. Adm. Code 2720.112 provides allows a claimant to certify for benefits using the Department's "Teleserve" phone system. In the instant case, the claimant testified that he could not certify for benefits over the telephone because each time he called "Teleserve" he got a "busy" signal. According to Question 4 on Page 3 of the "Adjudication Summary" completed on April 19, 2009, *e.g.*, "On what day did the circumstances no longer exist that prevented you calling in or certifying?", the claimant responded "March 9, 2009". The Referee found that the claimant failed to comply with 56 Ill. Adm. Code 2720.120(b) and affirmed the claims adjudicator. The claimant filed an appeal with the Board of Review.

HELD: 56 Ill. Adm. Code 2720.120(b) provides , in pertinent part, that "[I]f the Claim Certification is filed more than two weeks late but less than one year late, the Agency will process it if the claimant shows ...he filed his claim within 14 days after the reasons for the failure to file no longer existed." Here, the claimant learned on March 9, 2009 that the reasons for failure to certify no longer existed but did not file his Claim Certification until April 19, 2009, which was more than 14 days beyond the time period allowed by the Rule. Consequently, the Board of Review affirmed the Referee's decision not allowing the claimant to backdate his claim certification.

ISSUE/DIGEST CODE **Miscellaneous/MS 75.1**
DOCKET/DATE **ABR-87-4404/8-31-87**
AUTHORITY **Section 500B of the Act**
TITLE **Claims and Registration**
SUBTITLE **Backdating**
CROSS-REFERENCE **None**

The claimant, after being laid-off, did not file a claim for unemployment insurance benefits for 6 months. He was denied backdating of his claim covering that 6 month period.

At an appeal hearing, the claimant stated that he had been receiving severance pay during that 6 month period, and assumed he was thereby precluded from filing a claim for benefits. He testified that he had not contacted his Local Office to inquire about benefit entitlement. He testified that his former employer had not represented to him that he could not file a claim for unemployment benefits.

He did testify, however, that, at the time of his separation from work, he had requested that the employer's personnel director set forth his entitlement in writing, and that no mention was made of any entitlement to unemployment insurance benefits, further, he testified that when he asked the personnel director for his opinion as to whether the claimant would be eligible for unemployment benefits, the personnel director responded, "No."

HELD: Under Section 500B of the Unemployment Insurance Act, and Benefit Rule 2720.105, backdating of a claim will be allowed if the claimant's failure to file in a timely fashion was due to "Any act of any employing unit in coercing, warning, or instructing the individual not to pursue his benefit rights...."

The distinction must be made between an individual being advised not to file a claim for benefits, and that individual's knowledge or lack of same as to whether he could qualify for benefits. In this case, it was not shown that the employer conditioned the claimant's receipt of severance pay upon his promise not to file a claim for unemployment benefits. The personnel manager's statement that the claimant was not eligible for benefits was an opinion, offered in response to a question concerning qualifying for benefits, and did not amount to coercion, a warning, or an instruction to the claimant not to pursue his benefit rights. As the claimant testified, the employer had not represented to him that he could not file a claim for benefits.

Because the employer had not coerced, warned, or instructed the claimant not to pursue his benefit rights, the circumstances of the claimant's untimely benefit claim did not fall within the purview of conditions enumerated in Benefit Rule 2720.105 and did not allow for further consideration of his benefit claim during the period. Backdating was denied.

ISSUE/DIGEST CODE **Miscellaneous/MS 75.1**
DOCKET/DATE ***Quinones v. Board of Review*, 432 N.E. 2d 894 (1982)**
AUTHORITY **Section 500B of the Act**
TITLE **Claims and Registration**
SUBTITLE **Backdating**
CROSS-REFERENCE **PR 430.15, Taking and Perfecting Proceedings for Review**

As a result of a class-action suit settlement, the claimant was to receive notice that she could file for extended unemployment insurance benefits. A letter dated June 30, instructing the claimant to report to her Local Office on July 12, was properly addressed but misdelivered, so that the claimant did not actually receive the letter until late July or August, after the report date had passed. Moreover, upon receiving the letter, the claimant did not understand it; she was Spanish-speaking and could not read English. It was not until October, after the substance of the letter had been explained to her by Legal Assistance Foundation, that the claimant reported to her Local Office, where she requested backdating of her claim so that she might file for extended benefits.

Regulation 17F (later promulgated as Benefit Rules 2720.105 and 2720.120) provided that backdating would be allowed, subject to enumerated conditions, if the claimant filed her claim within 14 days after the reason for failing to file no longer existed. The question then arose: Did the 14-day period begin to run from the claimant's receipt of the letter in late July or early August, in which case the claimant could not be allowed backdating; or did the 14-day period begin to run only from the time of the claimant's actual comprehension or interpretation of the letter, in October, in which case backdating would be allowed?

HELD: The narrow legal question before the appellate court was whether an inability to understand English excused late filing.

In *Hernandez v. IDOL*, 416 N.E. 2d 263 (1981) (*Digest of Adjudication Precedents*, PR 405.15), the Illinois Supreme Court ruled that an inability to understand English did not excuse an individual's failure to file an appeal in a timely fashion. Similarly, the appellate court held, the inability to understand English did not excuse late filing or permit backdating.

Moreover, an effective unemployment compensation system requires a measure of certainty in the application of its rules. Regulation 17F, itself a good-cause exception to the requirement that a claimant file on time, could not reasonably be expanded to include a further exception.

The receipt of the letter, notwithstanding the language problem, constituted effective notice. The claimant failed to file within the mandatory 14-day period, from the date of such effective notice. Backdating was denied.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	**ABR-85-3897/10-17-85**
AUTHORITY	**Section 500B of the Act and 56 Ill. Adm. Code 2720.120**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**None**

The claimant became separated from work in January. By reason of that work separation, he was disqualified for benefits. He appealed his disqualification. While his appeal was pending, he received a Claim Certification form (for the weeks ending February 9 and February 16), containing the instruction:

> (C)ontinue to mail in certifications if you filed an appeal, even though you will not receive benefits until the appeal is decided --

and bearing a "Date to Mail" of February 17.

The claimant did not submit his Claim Certification form to the Agency until March 11, at which time he also completed forms for the period from February 17 to March 9. He stated that he had been unaware that he had been required to submit such certification forms during a period of disqualification.

HELD: Section 500B of the Unemployment Insurance Act requires, as a condition of eligibility, that a claimant make "a claim for benefits with respect to such week in accordance with such regulations as the Director may prescribe." Agency Rule 2720.120 provides, in pertinent part:

b) If the Claim Certification is filed more than two weeks late but less than one year late, the Agency will process it if the claimant shows:

1) The individual's unawareness of his rights under the Act; or,

2) Failure of either the employing unit or the Agency to discharge its responsibilities or obligations under the Act or the rules; or,

3) Any act of any employing unit in coercing, warning or instructing the individual not to pursue his benefit rights; or,

4) Other circumstances beyond the individual's control;

and the claimant shows he filed his claim within 14 days after the reasons for the failure to file no longer existed.

In the instant case, for the period February 3 through February 23, the claimant submitted his certification forms more than two weeks late. Because the date to mail and instructions had been issued to the claimant, he either knew -- or should have known -- how to pursue his benefit rights. Therefore, his failure to file a timely benefit claim was not due to "unawareness" as contemplated by the Rule, but due to his failure to proceed as a reasonably prudent person would under the same or similar circumstances. As such, the circumstances of the claimant's untimely benefit claim did not fall within the purview of conditions enumerated in Rule 2720.120(b) which would allow for further processing of the claimant's benefit claim during the period.

However, with respect to the period from February 24, through March 9, the claimant submitted his certification form within two weeks of the due date and, as such, the Agency was empowered to process his benefit claim for that period.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	**ABR-87-2114/2-24-88**
AUTHORITY	**Section 500B of the Act**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**None**

As part of the terms of his layoff, the claimant was entitled to receive 13-1/2 weeks of severance pay. The claimant testified that the employer's personnel manager told him not to file for unemployment insurance benefits until such time as the 13-1/2 weeks had expired and he had exhausted his severance pay. Consequently, the claimant did not file a claim for benefits immediately after his layoff, but waited 13-1/2 weeks. Later, he learned that he could have filed for benefits immediately upon his separation from work and requested backdating of his claim.

HELD: Under Section 500B of the Unemployment Insurance Act, and Benefit Rule 2720.105, backdating of a claim will be allowed if the claimant's failure to file in a timely fashion was due to "Any act of any employing unit in coercing, warning, or instructing the individual not to pursue his benefit rights..."

In this case, the claimant's failure to file a timely benefit claim was due to reliance upon remarks made by his employer's personnel manager. The personnel manager's remarks were more than a mere opinion as to whether the claimant might or might not be eligible for benefits and were an instruction not to file what otherwise would have been a timely claim. (Compare: ABR-87-4404, this *Digest*, MS 75.1.)

The claimant's reason for failing to file a timely claim fell within the conditions set forth in Benefit Rule 2720.105. Accordingly, backdating was allowed.

ISSUE/DIGEST CODE	**Miscellaneous/MS 75.1**
DOCKET/DATE	**ABR-87-6431/1-5-88**
AUTHORITY	**Section 500B of the Act**
TITLE	**Claims and Registration**
SUBTITLE	**Backdating**
CROSS-REFERENCE	**None**

During his claim series, the claimant worked and was paid more than his weekly benefit amount. He became unemployed again. Instead of reporting to his local office immediately, he waited nearly 3 weeks before filing a claim for that period. This was despite instructions on his claim certification forms:

> If you worked during the two weeks shown on the certification and earned...more than your weekly benefit amount...and then became unemployed...you must report to your local office immediately. The claimant stated that he did not understand the instructions because he did not read very well. He contended that this should have excused his failure to report and file on time.

HELD: Section 500B requires that individuals file claims in accordance with the Director's rules. The Director's rules permit backdating only when an individual's failure to file is beyond his control. In this case, it was not beyond the claimant's control to seek assistance or take other reasonable measures to compensate for reading problems. Backdating was denied.

ISSUE/DIGEST CODE **Miscellaneous/MS 75.1**
DOCKET/DATE ***Bellan v. IDES*, 520 N.E. 2d 653 (1987)**
AUTHORITY **Section 500B of the Act and 56 Ill. Adm. Code 2720.120**
TITLE **Claims and Registration**
SUBTITLE **Backdating**
CROSS-REFERENCE **None**

In June, the claimant filed for unemployment benefits and was held ineligible. He appealed. While his appeal was pending, the Department did not mail him any claim certification forms, so he did not certify for benefits.

In September, the determination denying him benefits was reversed. He then went into his Local Office and requested backdating for the period from June through September.
HELD: Department Rule 2720.120 permits backdating in cases where the Department fails to discharge its responsibilities under the Act or the rules.

Department Rule 2720.115 provides that the Department will mail a claim certification form every 2 weeks.

In this case, the Department did not mail certification forms, as required. Because the Department did not discharge its responsibilities under the rules, backdating was allowed.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.05**
DOCKET/DATE **ABR-87-6554/11-3-87**
AUTHORITY **Sections 602A, 702 and 801 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant acknowledged that he was warned repeatedly and then discharged for tardiness. The Claims Adjudicator determined that he was ineligible for benefits, under Section 602A, Discharge for Misconduct. After a hearing, a Referee affirmed that determination.

In his appeal to the Board of Review, the claimant pointed out that the employer did not file a protest to his claim and did not appear at the hearing. The claimant contended that, because the employer did not contest benefits, he was eligible.

HELD: The applicable provisions of the Unemployment Insurance Act, and not whether an employer contests benefits, determine whether benefits will be allowed or denied.

Some sections of the Act require that an employer file a protest before a claimant can be held ineligible (e.g., Section 602B, Felony or Theft, or Section 610B, Vacation Pay). But most sections of the Act, including Section 602A, do not require that an employer file a protest.

Under Section 801, the failure of a party, other than the party that brings the appeal, to appear at a hearing will not preclude a decision in its favor, if it is supported by the record.

In this case, the issue was Discharge for Misconduct, under Section 602A. The employer was not required to submit a protest. The employer did not bring the appeal so it was not required to appear at the hearing. The record contained the claimant's acknowledgment that he was repeatedly tardy. The record was sufficient to support a decision denying benefits.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.05**
DOCKET/DATE **ABR-87-9148/3-21-88**
AUTHORITY **Section 612 of the Act**
TITLE **Statutory Construction**
SUBTITLE **Academic Personnel**
CROSS-REFERENCE **MS 410.05, Seasonal Employment**

The claimant, a teacher, was dismissed at the end of the academic term (end of May) because his school district wished to decrease the number of teachers and services. He filed a claim for benefits for the period May 31 through June 13.

On July 29, at his appeal hearing, he established that, through the period he claimed benefits, he had no contract or reasonable assurance that he would be working the next term. However, he testified that, the week of the hearing, he accepted a contract from a different school to teach the next term. The Referee disqualified him for the period May 31 through June 13.

HELD: Section 612 provides that an individual is ineligible between successive academic terms if he performed service in the first term and there is a contract or reasonable assurance that he will perform service in the second term.

The contract or reasonable assurance must exist prior to or during the period for which the individual is claiming benefits. A later contract or assurance will not operate retroactively.

In this case, as of June 13, the claimant had no contract or reasonable assurance. He could not be denied benefits through that date based upon a contract or assurance that did not yet exist. (However, he could be denied benefits for weeks later than the date of acceptance of the contract.)

ISSUE/DIGEST CODE **Miscellaneous/MS 95.05**
DOCKET/DATE ***Minifee v. Doherty*, 333 Ill. App. 3d 1086 (1st Dist. 2002)**
AUTHORITY **Section 611 of the act**
TITLE **Construction of Statutes**
SUBTITLE **Section 611**
CROSS-REFERENCE **MS 375.3, Receipt of Other Payments, Pension**

The claimant was employed by the employer for 27 years. She accepted an early retirement package, choosing a lump-sum payment of $153,297.08 rather than payments of $864.07 per month for the rest of her life. The claimant took another job, then after a few months left the job and filed for unemployment insurance benefits. After several appeals to the circuit court followed by remands to the Board, the circuit court reversed the Board's decision calculating disqualifying income based on the claimant's lump-sum retirement payment per Department rule 2920.75(d). The circuit court ruled that Department rule 2920.75(d) was invalid because it was inconsistent with Section 611B of the Act, and again remanded the case to the Board directing it to calculate the disqualifying income under Department rule 2920.75(c) based on the claimant's life expectancy.

HELD: Reversed. Section 611 of the Act is silent with respect to lump-sum retirement payments. Department rule 2920.75(d) was promulgated to provide a method of calculating disqualifying income when a claimant receives a lump-sum retirement payment. When the legislature expressly or implicitly delegates to an agency the authority to clarify and define a statute, administrative interpretations of the statute should be given substantial weight unless they are arbitrary, capricious, or manifestly contrary to the statute. The statutory language contained in Section 611B of the Act is irrelevant to this case because that language encompasses periodic payments, not lump-sum payments. By its very nature, a lump-sum does not involve any "period," and the claimant's lifetime cannot serve as a "period" because it is unknown. Department rule 2920.75(d) is a reasonable construction of Section 611 of the Act and is not arbitrary, capricious, or contrary to the statute. The Board's order applying Department rule 2920.75(d) to determine the claimant's disqualifying income is reinstated and affirmed.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.1**
DOCKET/DATE ***Quincy School District #172*, 471 N.E. 2d 1056 (1984)**
AUTHORITY **Section 500C-2 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Section 500C-2**
CROSS-REFERENCE **AA 350.05, Period of Ineligibility**

The employer School District went into recess at the close of the school day on December 18, 1981, and reopened on January 4, 1982. During that period, the claimant, a School District Bus Driver, did not work and was not paid wages. She applied for unemployment benefits for the period December 27, 1981 through January 2, 1982.

The School District contended that the claimant had been unavailable for work, pursuant to Section 500C-2 of the Act:

> An individual shall be considered to be unavailable for work on days listed as whole holidays...and on days which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday.

The Board of Review construed the "holidays" provision of Section 500C-2 to apply only to individual holidays, but not to any period of unemployment which preceded or followed such holidays. It was noted that the reference to "holidays within a trade or occupation" was intended to provide for single, non-legal holidays, such as April 1 for the United Mine Workers or May 1 as celebrated by the International Ladies' Garment Workers' Union.

The Board of Review stated:

> (I)t is evident that the claimant's failure to work during the period under review was a result of the (employer's) shutdown for a vacation period, and not because of the (Christmas) holiday, rendering Section 500C-2 inapplicable...(T)he claimant was subject to a short-term layoff of a definite duration during which she was available to accept suitable employment at any time...(T)he eligibility requirements of Section 500C-2 of the Act have thus been met.

HELD: The court concluded:

There is perhaps no more widely recognized holiday period than that of the Christmas recess period as observed in Illinois schools, although the precise dates of the recess may vary from year to year and between districts. We therefore conclude that this period falls within the meaning of Section 500C-2 of the Act, as holidays according to the custom of the trade or occupation...clearly distinguishable from a shutdown for inventory or vacation purposes...

The claimant was determined to be unavailable for work and ineligible for benefits during the period under review.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.1**
DOCKET/DATE **ABR-85-2592/10-4-85**
AUTHORITY **Sections 601, 602, 603 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Common Meaning (of "Work" Separation)**
CROSS-REFERENCE **VL 425.05, Suitability of Work; VL 500.5, Wages**

The claimant saw an advertisement in a newspaper for work as a Sales Representative. From the advertisement, the claimant concluded that, if he applied himself, he could earn $980 per month. After attending training sessions at his own expense, the claimant, on a regular basis, would drive to facilities where he would pick up merchandise and obtain sales leads. Then he would proceed to homes where he would give demonstrations of the vacuum cleaners he hoped to sell. After performing this work for 5 weeks, the claimant had made only 1 sale, which paid him $75 commission. Since this was substantially less than he had hoped to earn, he quit.

The employer protested the allowance of unemployment benefits to the claimant, on the basis that the claimant had never been its employee. The employer contended that the claimant had been an independent contractor, and, as such, was ineligible for any benefits under the Unemployment Insurance Act.

HELD: In connection with a work separation under Section 601A, it is to be noted that the statute reads, in pertinent part:

An individual shall be ineligible for benefits for the week in which he has left work...

The Act uses the term "work" in its popularly understood sense, and not as a word of art (such as "employment" or "insured work"). Thus, in determining whether an individual has become separated from work under disqualifying or non-disqualifying circumstances, it is immaterial whether the work was or was not work for which the employing unit may eventually be required to pay contributions or reimbursement. That issue might be adjudicated at a later date, if the claimant should file a claim for benefits at a time when the money (commission) paid to him would be in his base period.

Accordingly, in the instant proceeding, it was not germane to determine whether the services the claimant rendered as a Sales Representative constituted "employment" or "insured work" within the meaning of the Act.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	***Brent Davis v. Board of Review*, 477 N.E. 2d 842 (1985)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning**
CROSS-REFERENCE	**MS 60-10, Benefit computation; MS 410.05, Seasonal**

The claimant was employed as a School Teacher during the 1981-1982 school year. In June, 1982, when the school term ended, he did not have a contract with the district to teach during the upcoming 1982-1983 school year. He applied for and began receiving unemployment benefits. Although, on July 18, 1982, he signed a contract to teach in the district during the 1982-1983 school year, he continued to receive unemployment benefits until he actually started teaching on August 23, 1982.

The issue presented was whether the claimant was entitled to the benefits he received after his contract had been approved.

HELD: Section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, for any week...during a period between academic years...if the individual performed such service in the first of such academic years...and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity...in the second of such academic years...(Court's emphasis.)

Section 612 is clear and unambiguous. A teacher's eligibility is determined on a weekly basis. During any week in which a teacher has a contract or reasonable assurance of employment during the upcoming school year, the teacher is not eligible to receive unemployment benefits.

Therefore, as soon as the claimant's contract for the 1982-1983 school year was approved, he was not entitled to receive unemployment compensation. Accordingly, the benefits he received thereafter were subject to recoupment.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	**ABR-85-5351/12-19-85**
AUTHORITY	**Section 602B of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning**
CROSS-REFERENCE	**MC 85.05, Connection with Work; MC 602.05, Theft**

The claimant worked as Office Manager for a Dentist. In her statement to the Adjudicator, the claimant admitted that she had knowingly filed a false insurance claim -- for dental services allegedly performed upon her by her employer. The claim for those non-existent services was filed against the claimant's husband's insurance policy. The claimant had used, without authorization, her employer's signature stamp, in order to ensure that the claim would be processed without question. The claimant stated that she had filed the false claim because she needed the money.

The claimant received payment from her husband's insurance company. When her employer learned what had transpired, he discharged the claimant for "insurance fraud."

The issue presented was whether the claimant had committed a theft within the meaning of section 602B, since, technically, she had committed a theft against the insurance company and not her employer.

HELD: The disqualifying provisions of Section 602B of the Act do not require that the theft for which the claimant is discharged be committed against the employer, but only that the theft be connected with her work.

In the instant case, the claimant's unauthorized use of the employer's signature stamp implicated the employer in the fraud, even if only to the extent that it required the employer to take time away from his work to deal with the matter by accounting for his services. There was also the potential for damage to the employer's reputation and business.

The claimant's actions were sufficiently material to the employer's interests as to be connected with her work. The claimant was properly subject to the disqualifying provisions of Section 602B.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1**
DOCKET/DATE	***Echols v. Board of Review*, 676 N.E.2d 292 (1997)**
AUTHORITY	**Section 500C-2 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Section 500C-2**
CROSS REFERENCE	**AA 350.05, Period of Ineligibility**

The claimant drove a school bus pursuant to a contract between her employer, a private bus company, and a school district. On December 19, she filed a claim for unemployment benefits, which was contested by the employer, on the grounds that she was not available for work because the period for which she sought benefits was the school Christmas break.

HELD: Section 500C-2 provides that an individual shall be considered unavailable for work on days "which are holidays according to the custom of his trade or occupation, if his failure to work on such day is a result of the holiday." This case is indistinguishable from *Quincy School District No. 172 v. Board of Review*, 471 N.E.2d 1056 (1984). Although the employer in that case was a school district, and not a private employer, in both cases, the claimant was a school bus driver. The reason for the unemployment status in both situations was the same: the Christmas holidays are non-work periods in that line of work. The claimant was considered unavailable for work, and therefore ineligible for benefits, during the holiday recess period.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1/.2/.3**
DOCKET/DATE	***Woodliff v. Ill. Dept. of Labor*, 487 N.E. 2d 645 (1985)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning/Legis. Intent/Statute as a Whole**
CROSS-REFERENCE	**VL 365.05, Prospect of Other Work, Self-Employment**

The claimant, a Carpenter with 18 years experience – which included self-employment – worked for a company from January, 1981 until June, 1982, when he quit to again become self-employed. From that self-employment, the claimant earned $1,160 in June, $1,442 in July, $925 in August, and $704 in September. In October, he filed for unemployment benefits.

The sole issue in the instant case was whether the claimant's leaving the company to become a self-employed carpenter was a leaving to "accept other bona fide work" within the meaning of Section 601B-2.

HELD: Section 601B-2 of the Act provides an exception to the disqualifying provisions of Section 601A, where an individual voluntarily leaves work to "accept other bona fide work."

The court determined that "accept" and "work" should have their popularly understood meanings; neither requires that a strict employer-employee relationship exist; "acceptance of work" would include individual tasks undertaken by a self-employed person, for the people who hired that person (e.g., the carpentry jobs the claimant accepted and performed while self-employed).

The court stated that, if the legislature had intended to limit "accept other bona fide work" to situations involving an employer-employee relationship, it could have done so very easily, by requiring that the work be "for an employer other than the individual applying for benefits." Even more simply, the legislature could have used the word "employment" rather than work, since the statute (Section 206 of the Act) defines "employment" to require an employer-employee relationship. The legislature's failure to draft Section 601B-2 in such a fashion was a further indication that the statutory exception at issue included self-employment such as the claimant's.

More importantly, the "bona fide" requirement was to safeguard against individuals who might leave one job to accept another which was a sham. In the instant case, the court examined the claimant's self-employment to determine if it was genuine:

(1) The claimant had experience in the occupation; and
(2) He had a history of self-employment; and
(3) He had been relatively successful at his self-employment.

Because the claimant's self-employment was genuine it was concluded that he had accepted other bona fide work within the meaning of Section 601B-2 and was entitled to the exception.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1/.2**
DOCKET/DATE	***Charles F. Hlinka v. IDES*, No. 87-1239 (1988)**
AUTHORITY	**Section 500E of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning/Legislative Intent**
CROSS-REFERENCE	**MS 60.1, Benefit Computation**

The claimant was the president and sole stockholder of a corporation. Though he worked throughout the calendar year, he did not determine what his salary would be or draw any salary until the 4th quarter. In the 4th quarter of 1984, he drew a salary of $10,000. During the 4th quarter of 1985, the corporation was dissolved, after which the claimant filed for unemployment benefits.

The claimant's base period consisted of the last 2 quarters of 1984 and the first 2 quarters of 1985.

HELD: Section 500E of the Act provides that an individual shall be eligible for benefits only if:
(1) during his base period, he was paid wages totaling at least $1,600, and

(2) outside the quarter of his base period in which wages paid were highest, he was paid wages totaling at least $440.

The plain unambiguous language of Section 500E requires that wages be paid at a certain level during at least 2 quarters of a claimant's base period. Section 500E does not permit wages to be prorated over an entire base period. Section 500E does not permit engrafting any exception which would allow a claimant to avoid the two-fold requirement. A court is not warranted in reading into the statute an exception which the legislature did not see fit to make.

In this case, the claimant was paid $10,000 during his base period; this was more than the $1,600 required during the base period. However, the $10,000 was paid entirely during 1 quarter. The claimant was not paid wages outside that highest quarter. Therefore, he did not meet the Section 500E eligibility requirements and was not entitled to unemployment benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.1 & .3**
DOCKET/DATE	**ABR-86-5729/3-13-87**
AUTHORITY	**Section 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Common Meaning & Statute as a Whole as an Aid**
CROSS-REFERENCE	**None**

The claimant was employed by X and worked 30-40 hours per week. During the same period, she was also employed by Y and worked 35-40 hours per week. On May 22, 1986, the claimant quit her job with X, for personal reasons. On June 13, 1986, she was laid off from her job at Y.

The claimant contended that, although her separation from X might otherwise have been disqualifying (since she left that job without good cause attributable to the employer)/ only the work separation from Y, which was non-disqualifying (a layoff), should have been considered to determine benefits eligibility, since, only at that time did she become unemployed.

HELD: If a worker leaves 1 job and does not become unemployed, there is no separation issue to resolve. To hold otherwise would be inconsistent with the common meaning of "unemployment insurance;" with the rationale applied to benefits eligibility – determining whether an individual became or remained "unemployed d" due to the lack of suitable work or for some other reason; with accompanying requalification provisions, which require a period of reemployment. The Unemployment Insurance Act does not require that an individual work at 2 full-time jobs.

In this case, because the claimant was not an unemployed individual after she left her job at X, there was no issue to consider on the basis of that separation. Because her layoff from Y resulted in unemployment, that was the appropriate separation to consider. A layoff is not disqualifying. The claimant was not disqualified for benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.15**
DOCKET/DATE	**84-BRD-825/1-20-84**
AUTHORITY	**1./S-612B1 and S-500C**
TITLE	**Construction of Statutes**
SUBTITLE	**Construction With Reference To Other Statutes**
CROSS-REFERENCE	**None**

The claimant has experience as a commercial artist and worked as a substitute teacher during the 1982-1983 school year. Although she had a teaching certificate in another state, she lacked certain qualifications which were required for an Illinois certificate. She had been working with a provisional certificate but failed to qualify for a regular certificate in the required two year period. Therefore, she could not return to teaching in this state in the upcoming year.

HELD: The evidence established that the claimant did not qualify for an Illinois teaching certificate and could not continue to work as a substitute teacher. She, therefore, did not have reasonable assurance of returning to work as a teacher and was not subject to disqualification under the Act.

The claimant, who has other work experience, must, however, seek work in fields other than teaching to be available for work.

ISSUE/DIGEST CODE	**Miscellaneous/MS-95.15**
DOCKET/DATE	**ABR-07-4472**
AUTHORITY	**Section 900 of the Act; Trade Act of 1974-Trade Readjustment Assistance (TRA)**
TITLE	**Construction of Statutes**
SUBTITLE	**Construction with Reference to Other Statutes**
CROSS-REFERENCE	**MS-60.05: Benefit Computation Factors/General; MS-340.2: Misrepresentation/ Overpayments or Restitution**

The claimant was laid off from work on July 14, 2005, filed a claim for unemployment benefits the next day, and was awarded weekly benefits of $208.00, including a dependents= allowance. After returning to work, the claimant was again laid off on April 7, 2006, filed for benefits on April 12, 2006, and was granted weekly unemployment benefits of $449.00, including dependents= allowance. The claimant collected her regular unemployment benefits until she exhausted them during the week ending October 14, 2006. Pursuant to the Trade Act of 1974, the claimant began collecting Trade Readjustment Assistance (TRA) benefits of $449.00 weekly, including dependents= allowance, on October 15, 2006 and continued receiving them through December 23, 2006. The claimant=s employer was first certified as an Aaffected employer@ under the Trade Act of 1974 on March 22, 2005.

HELD: Under the Trade Act of 1974, an individual=s weekly TRA benefit payment is based on the individual=s Afirst qualifying separation@ from work after the impact date cited in the petition certification covering the adversely affected worker. Here, the claimant=s Afirst qualifying separation@ from employment with the impacted employer occurred on July 14, 2005, which was after the impact date cited in the certification dated March 22, 2005. When she applied for benefits after that first separation from work, she received a weekly benefit amount of $208.00, including dependents= allowance. This is the amount she should have received when she began receiving TRA benefits, rather than $449.00 per week which she, in fact, received. Therefore, the claimant was overpaid $241.00 per week while receiving TRA benefits and this overpayment was subject to recoupment and/or recovery.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.2**
DOCKET/DATE ***Highway Drivers v. Ward*, 559 N.E. 2d 158 (1990)**
AUTHORITY **Section 604 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Legislative Intent**
CROSS-REFERENCE **None**

Clerical workers of B.N. Transport went on strike. The clerical workers belonged to Local 710 of the International Brotherhood of Teamsters. Non-striking dock workers of Local 710 did not walk the picket line, but they honored it and refused to cross it. The dock workers received strike pay.

The issue was whether the dock workers "participated" in the strike and were ineligible for benefits under Section 604.

HELD: Section 604 provides that an individual shall be ineligible for benefits if his unemployment is due to a labor dispute, but Section 604 does not apply if he is not "participating" in the dispute.

The legislature intended the Unemployment Insurance Act to safeguard unfortunate individuals from economic insecurity due to involuntary unemployment. The participation provision in Section 604 was intended to alleviate what would be an unfair disqualification of innocent victims involuntarily unemployed due to labor disputes.

The legislature also intended that the refusal to cross a picket line would not mean that unemployment is voluntary. It is expressly stated in the statute and undisputed that an individual has a right not to cross a picket line. However, the statute provides that the failure to cross a picket line, by itself, does not constitute participation. Therefore, the right not to cross a picket line is only one factor to consider. Coupled with other factors, it may result in participation.

Here, the dock workers had the right not to cross the picket line and not be penalized for exercising that right. However, their refusal to cross did not require a conclusion of no participation.

The dock workers' refusal to cross the picket line - coupled with the receipt of strike pay - constituted participation. The strike pay would enable the striking members to prolong the work stoppage and delay settlement of the dispute. This would render their unemployment voluntary. Permitting them to collect benefits for voluntary unemployment would thwart the legislature's intent.

Further, to permit the dock workers to collect both strike benefits and unemployment insurance benefits would effectively place the employer (whose contributions to the unemployment insurance fund are compulsory) in the position of subsidizing the strike. Such a result would be unsound and contrary to the intent of the legislature.

The dock workers were ineligible for benefits.

(Note: The court stated that "participation" must be decided on a case-by-case basis. Therefore, the receipt of strike pay per se does not constitute participation. Had the dock workers presented evidence of reasons for receiving strike pay that were not indicia of participation, the result in this case might have been different.)

ISSUE/DIGEST CODE **Miscellaneous/MS 95.2**
DOCKET/DATE ***Sonja I. James v. IDOL*, 465 N.E. 2d 879 (1983)**
AUTHORITY **Section 500C-4 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Legislative Intent**
CROSS-REFERENCE **AA 40.05, Attendance at School**

The claimant worked as a psychological consultant. After 2 years at the job, she executed an employment agreement. The agreement provided that she would work only 16-20 hours per week. This would allow her to pursue a doctorate in psychology during off-hours. She needed the doctorate to become a registered psychologist and eventually obtain a better job.

The claimant enrolled in 3 courses that she attended 2 evenings per week. She also enrolled in a clinical training program in a Chicago hospital, from 9 a.m. to 4 p.m., 2 days per week. In addition to devoting 18-20 hours to attending classes and training, it was necessary for the claimant to study 6-8 hours each week.

The claimant became separated from employment, and, shortly thereafter, during a vacation between semesters, she filed for unemployment benefits. She told the Claims Adjudicator that any employer would have to be flexible in order to accommodate the requirements of her educational program.

HELD: The fact that a student also works does not mean she is automatically available for work and eligible for benefits. The issue is not simply availability under Section 500C.

The legislature has considered the common circumstance of a claimant who is employed on a part-time basis while attending school and has unambiguously declared, under Section 500C-4, that, if she is principally occupied as a student, she shall be "deemed" unavailable for work, irrespective of Section 500C.

In this case, the claimant contended that, because she could balance both work and continuing education, she was available for work under Section 500C. But, as stated, that was not the issue. The issue was whether her principal occupation was that of a student. The time requirements of her work were less than those necessary for her studies. The evidence showed that any employment would be geared around and subordinated to her educational program. Therefore, her principal occupation was that of a student. Because her principal occupation was that of a student, she was deemed unavailable for work, and was ineligible for benefits, under Section 500C-4.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.2**
DOCKET/DATE	***Christine Doran v. IDOL*, 452 N.E. 2d 118 (1983)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Legislative Intent**
CROSS-REFERENCE	**MS 60.10, Benefit Computation; MS 410.05, Seasonal**

From 1970 through 1980, the claimant taught during her school's 39-week academic term then through its 8-week summer session. Then, on June 26, 1980, at the end of 39 weeks, she was told that, due to budgetary considerations, the school would not be offering the 8-week summer session and her services would not be needed until the following autumn. So the claimant filed for unemployment benefits for that 8-week period.

The Department held that, because the claimant filed for benefits for a period between academic terms, she was ineligible under Section 612. The claimant contended that this was not a period between terms, but a portion of what would have been her customary 47-week term.

HELD: Section 612 provides, in pertinent part, that an individual shall be ineligible for benefits between "regular academic terms." What constitutes a regular academic term is determined by the legislature, not by a claimant's particular circumstances.

The legislature has defined regular academic term - not in the Unemployment Insurance Act, but in the School Code. The School Code provides that each school board shall prepare a calendar for the school term (consisting of a required number of school days, or, at this time, 39 weeks). Pursuant to its delegated authority, the claimant's school board adopted a calendar that complied with the definition by providing for 39 weeks of school. The fact that the school board did or did not offer a summer session was immaterial; the 39-week period was the regular academic term intended by the legislature.

The claimant worked until the end of the regular academic term. She filed for benefits for a period between that term and her next regularly scheduled term. Therefore, she was ineligible under Section 612.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.2**
DOCKET/DATE	***Frederick Siler v. IDES*, No. 1-89-0149 (1989)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Legislative Intent**
CROSS-REFERENCE	**MC 5.05, Misconduct, Definition**

The claimant was a maintenance worker for 7-1/2 years. During the last 1-1/2 years, his work performance deteriorated. Despite warnings, he continued to violate his employer's sanitation and safety rules, until he was fired.

Neither the Referee nor Board of Review made a finding that the violations were deliberate or willful. Still, both held that "not following correct procedures" and "disregarding the employer's requirements" constituted misconduct.

The claimant sought judicial review.

HELD: Effective January 1, 1988, a definition of misconduct was added to Section 602A of the Act. That definition provides, in pertinent part: "Misconduct" means the deliberate and willful violation of a reasonable rule or policy....

The definition includes the terms "deliberate" and "willful" and makes no reference to "carelessness or negligence" of any degree. This indicates that the legislature intended that persons discharged for incapacity, inadvertence, negligence or inability to perform assigned tasks should receive benefits.

Terms such as "not following correct procedures" or "disregarding the employer's requirements" do not suffice to comply with the statutory definition. It is necessary to show that a worker's non-compliance was deliberate and willful.

In this case, there being no finding of any "deliberate" or "willful" violation of rules, there could be no misconduct under Section 602A. Benefits were allowed without disqualification.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.3**
DOCKET/DATE	***Hart v. Jackson*, No. 1-90-0276 (1990)**
AUTHORITY	**Section 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Statute as a Whole as an Aid to Construction**
CROSS-REFERENCE	**VL 450.4, Time, Part-time or Full-time**

The claimant became separated from full-time work, upon which his claim for benefits could be based. He then quit his part-time job, located near the full-time job, because his travel expenses were now excessive in relation to his part-time wages (which were less than one-half what his weekly benefit amount would be). He was denied benefits, under Section 601A, for voluntarily leaving his last job.

The claimant argued that, even though he quit work for reasons not attributable to his part-time employer, he should not be denied benefits under Section 601A.

HELD: Section 601A applies whether a claimant leaves full-time or part-time work. (See *Minfield v. Bernardi*, this Digest, VL 450.4.)

However, the term "work" in Section 601A does not mean work upon which no claim is made and which has no effect upon entitlement to or the amount of benefits. Therefore, Section 601A does not apply where the following conditions exist:

1) the claimant becomes separated from primary full-time work upon which his claim is based;

2) the claimant's entitlement and benefit amount would be unaffected by whether or not he remained at the secondary part-time job; that is, if he remained at the part-time job, he would still be unemployed under Section 239 and would not have his benefits reduced under Section 402.

Here, the claimant left his part-time job under those circumstances. He was not ineligible under Section 601A.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.3**
DOCKET/DATE	***Dolores Weingart v. IDOL*, No. 64344 (1988)**
AUTHORITY	**Sections 703 and 900 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Statute as a Whole as an Aid to Construction**
CROSS-REFERENCE	**MS 375.2. Receipt of Other Payments**

The claimant was employed by Advo-Systems, Inc., until August 21, 1980, after which she filed for and received unemployment benefits: $116 per week from August, 1980 through June, 1981, totalling $4,408.

The Advo-Systems plant had closed shortly after the employees elected to have a union act as their collective-bargaining agent. The union representatives filed a complaint before the NLRB against Advo-Systems. A year-and-a-half after Advo-System's plant closing, the company entered into an out-of-court settlement to end the pending NLRB litigation. Pursuant to that settlement, the claimant received a payment of $8,140 in two installments, the first on January 20, 1982 and the second on February 16, 1982.

In September, 1982, a Department of Labor (Employment Security) Adjudicator issued to the claimant a reconsidered determination and recoupment decision, under Section 900(D) of the Act. The claimant was informed that she had been found retroactively ineligible to receive benefits due to the back pay award.

The claimant appealed, citing Section 703 of the Act, which permitted a Claims Adjudicator to "reconsider his determination at any time within one year..." The claimant argued that the Adjudicator's reconsidered determination and recoupment decision were void.
The Department argued that the intent of Section 900(D) of the Unemployment Insurance Act was to prevent a double recovery of both back pay and unemployment benefits for the same week(s). The Department also argued that the reconsidered determination of ineligibility based on a back pay award was of a different nature than reconsidered determinations based on other factors: the back pay award triggered an initial and original determination, predicated upon the nature of the award and not upon a renewed evaluation of the facts that led to an original determination.

HELD: Section 900(D) is not a special category of recoupment in and of itself, but must be read in conjunction with all of Section 900. Further, Section 900 incorporates Section 703. Section 900(D) provides, in relevant part:

> Whenever, by reason of a back pay award...an individual has received wages for weeks with respect to which he has received benefits, the amount of such benefits may be recouped...as herein provided.

Because Section 900(D) contains no procedures, the term "herein provided" must refer to other provisions of Section 900. Section 900(A) provides, in pertinent part, that recoupment be "pursuant to a...reconsidered determination." Section 703 provides that determinations may not be reconsidered after 1 year. In this case, the Claims Adjudicator's reconsidered determination and its accompanying recoupment decision, having been made more than 1 year after an original determination of eligibility, were void.

Also, the Department's interpretation of the intent of the legislature, with respect to double-recovery, was much too narrow. Section 900(A) contemplates waiver of recoupment even when a determination is reconsidered within 1 year. That being so, it could not be said that there were no equitable considerations which would have allowed the legislature to determine that any recoupment after 1 year would always be inequitable or unconscionable.

Recoupment was disallowed.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.3**
DOCKET/DATE	**ABR-85-5139/11-27-85**
AUTHORITY	**Section 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Statute as a Whole as an Aid to Construction**
CROSS-REFERENCE	**VL 350.5, Period of Disqualification**

The claimant had worked part-time, on a commission basis, as a Jewelry Salesperson. When she quit that job, she was disqualified for benefits under Section 601A.

Subsequently, an appeal hearing was held to consider the claimant's contention that she had requalified for benefits pursuant to the requalification provisions of Section 601A. At that hearing, the claimant stated that, since leaving her Jewelry Salesperson job, she had worked for more than the required 4 weeks, earning more than her weekly benefit amount in each week. She stated that she had been working 8 to 10 hours per week, as a Bartender, in a tavern owned by her husband.

The tavern did not list the claimant as an employee. The claimant testified that this was because she had been paid in cash, without any withholding for Federal or State taxes. At the time she had certified for benefits, she did not report any earnings from her work as a Bartender.

HELD: Section 601A of the Act requires, for requalification, that an individual become reemployed, and have earnings equal to or in excess of her weekly benefit amount in each of 4 calendar weeks. Such earnings -

> must be for services in employment, or have been or will be reported pursuant to the provisions of the Federal Insurance Contributions Act...

It would be inconsistent with the purpose of the Act if the phrase "services in employment" was to be interpreted to include work which was a sham. In the instant case, the claimant failed to establish that, upon leaving her work as a Jewelry Salesperson, she had performed bona fide work as a Bartender. Therefore, it could not be concluded that she had earned wages from services in employment.

Further, the claimant's earnings had not and would not be reported pursuant to the provisions of the Federal Insurance Contributions Act.

Because the claimant did not show that she had earned wages from services in employment or that her earnings had or would be reported pursuant to the provisions of the Federal Insurance Contributions Act, she did not requalify for benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Bandemer v. IDES*, 562 N.E. 2d 6 (1990)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS-REFERENCE	**MC 5.05, Misconduct, Definition**

The claimant was sales manager for a retail store. She had the keys and was responsible for opening the store at 9:30 a.m. The employer had a rule requiring the claimant to call in if she would be absent. One morning, the claimant felt ill. She failed to contact the employer and the store did not open for business when scheduled.

The claimant argued that her actions did not constitute misconduct, because, among other elements of misconduct, the employer did not prove that it suffered any harm.

HELD: Potential financial loss caused by the conduct of an employee is harmful to an employer. Here, because of the claimant's actions, the employer was unable to open the store as scheduled and potential customers were therefore unable to shop at the store resulting in financial loss.

The statutory element of harm was proven.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	**ABR-86-6422/5-27-87**
AUTHORITY	**Section 612 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS-REFERENCE	**None**

The claimant was employed as a child care worker and teacher's aide in a Head Start day care center. The claimant worked with children, ages 3-5, assisting in their social development, as well as in the teaching process. In May, 1986, she was laid-off from her job; there was some prospect that she would be recalled to work in September, when the day care center reopened; Head Start operated on the same 9-month schedule as the local school district.

The Head Start program was funded by the Federal government, the day care center was operated by a community and economic development association, and its purpose was to bring about a greater degree of social competence in children, particularly children of low-income families, to prepare them for entrance into the public school system.

The issue presented was whether the claimant's work for this Head Start project came within the purview of Section 612 of the Unemployment Insurance Act.

HELD: The "between terms" ineligibility provisions of Section 612 of the Unemployment Insurance Act apply to benefits which would be based upon wages for services in employment performed for an educational institution.

If an individual's services are not performed for an educational institution, then the "between terms" ineligibility provisions of Section 612 cannot apply.

The term "educational institution" refers to an educational institution of the State of Illinois, and not to social agencies. In this case, the Head Start program was a day care facility, a social agency, not under the supervision or control of any board of education or school authority, and not an educational institution within the meaning of the Unemployment Insurance Act.

Accordingly, the claimant was not ineligible for benefits on the basis of the wages she earned performing services for the Head Start program.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Flex v. Board of Review*, 466 N.E. 2d 1050 (1984)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction of Section 601B-1)**
CROSS-REFERENCE	**VL 155.35, Domestic Circumstances; VL 235.25**

The claimant was employed as a Stenographer until July, 1981, when she went on maternity leave, which was to expire in September, 1981. During that time, the claimant gave birth to a son whose spinal cord was damaged. The claimant was granted an extended leave of absence until January, 1982, because of the child's condition. No further extension was granted. On January 15, 1982, the claimant's supervisor informed her that if she did not return to work as scheduled, the employer would have to hire someone to replace her. The claimant explained that she needed more time off in order to provide care for her child. When the claimant did not report to work as scheduled, she was replaced.

The claimant then filed a claim for unemployment benefits. The Claims Adjudicator determined that the claimant was ineligible for benefits pursuant to Section 601A of the Act, because she had left work voluntarily without good cause attributable to her employer. A Referee affirmed the Claims Adjudicator's determination.

In support of her appeal to the Board of Review, the claimant presented a letter from her son's pediatrician. The letter stated that the claimant's son suffered from "a right Erb's palsy, spinal cord lesion and hypospadias" and that he needed "physical therapy and infant stimulation." In addition, the letter stated:

> It is important that his mother spend as much time with the child as possible. She is a very good mother and the child shows the results of her time.

The claimant contended that based upon the doctor's letter she was entitled to a medical exception to the disqualifying provisions of Section 601A, in that she had left work upon the advice of a licensed and practicing physician, who had determined that the claimant's assistance was necessary for the purpose of caring for her child who was in poor physical health, and such assistance would not have allowed the claimant to perform the usual and customary duties of her employment.

The Agency's position was that the doctor's letter did not specifically state that caring for her child made it impossible for the claimant to continue her employment: The statement "It is important that his mother spend as much time...as possible" was insufficient to show that she could not have continued working.

HELD: Section 601B-1 provides an exception to the disqualifying provisions of Section 601A, provided that an individual shows that she left work:

> ...upon the advice of a licensed and practicing physician that assistance is necessary for the purpose of caring for her child who is in poor physical health...

In the instant case, the doctor's letter clearly indicated that the claimant's child suffered severe and disabling injuries at birth. The doctor was an expert on the type of assistance necessary to care for an ill child. Accordingly, the first provision of Section 601B-1 was satisfied.

> ...and such assistance will not allow the claimant to perform the usual and customary duties of her employment...

Although a physician is an expert on the type of assistance necessary to care for an ill child, her opinion on how such assistance will affect the parent's job duties is wholly outside her area of expertise and should not be required as a predicate for the award of benefits. A physician cannot be expected to know the implications of her advice for the receipt of unemployment insurance. Therefore, it would be unreasonable to require that a physician employ the exact wording of Section 601B-1. In the instant case, independent of the doctor's express language, the advice "spend as much time as possible" could properly have been interpreted to have precluded the continuation of full-time employment. Accordingly, the second provision of section 601B-1 was satisfied. The claimant was entitled to an exception under Section 601B-1 of the Act.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Dubinin v. Ward*, et al., 484 N.E. 2d 870 (1985)**
AUTHORITY	**Section 601 of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction (of Section 601B-1)**
CROSS-REFERENCE	**VL 235-25, Health or Phys. Cond.; (Compare with *Flex*)**

In 1981, the claimant was hired as a Tool Grinder. Between 1981 and 1983, his job duties were increased to include the tasks of an Equipment Washer and Tool Room Attendant. His work load was further increased when his apprentice left the company in March, 1983. Two months later, the claimant quit, citing concerns for his health, among other reasons. The claimant was disqualified for benefits under Section 601A.

At an appeal hearing, the claimant explained that the employer's actions in increasing his job duties adversely affected his health. He presented a medical report from the Veterans Administration, indicating that he had very high blood pressure. When asked about his doctor's advice, the claimant stated:

> All doctor told me was that I was mainly, it was mainly up to me. That I am working there and that I should know if I should continue to work or should not work. If I can handle the pressure or not.

Upon further appeal, the claimant cited *Flex v. Board of Review* (See VL 155.35, VL 235.25, and MS 95.4). The claimant argued that his physician's statement should have been interpreted as an indication that he was physically unable to perform his work, thereby entitling the claimant to an exemption under Section 601B-1.

HELD: Section 601B-1 provides, in pertinent part, that the provisions of Section 601A shall not apply to an individual who has left work because "he is deemed physically unable to perform his work by a licensed and practicing physician..."

In *Flex v. Board of Review*, it was held that "since a physician cannot be expected to know the implications of his advice for the receipt of unemployment insurance, it is unreasonable to require that he employ the exact wording of the statute." Therefore, such advice is subject to interpretation in the context of whether a claimant is entitled to unemployment benefits. However, *Flex* does not stand for the proposition that any statement by a physician, no matter how ambiguous or equivocal, will satisfy the statutory requirement.

In the instant case, the doctor's statement was ambiguous and equivocal and was insufficient to establish that the claimant left work upon the advice of a physician. Accordingly, the claimant was not entitled to an exemption under Section 601B-1.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.4**
DOCKET/DATE ***Mattson v. Dept. of Labor*, 455 N.E. 2d 278 (1983)**
AUTHORITY **Section 602A of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Liberal Construction (Discharge/Suspension)**
CROSS-REFERENCE **MC 5.05-1, Misconduct**

The claimant was employed as a maintenance worker in a hospital. On August 29, 1981, he appeared on the employer's premises after hours and under the influence of alcohol. On September 3, he was warned that if there was another such incident he would be discharged. On September 30, the claimant was seen, after hours, departing the kitchen of the hospital's dietary department, where the freezer had been tampered with and meat had been left sitting outside a food locker. The claimant's hasty exit had been observed by a security guard. It was also reported that the claimant had been drinking that night. The following day, October 1, the claimant was arrested at work on a theft charge. He was also suspended from duty and advised that he would not be allowed to return to work, pending the outcome of court action.

While the court action was still pending, on October 18, the claimant filed an application for unemployment insurance benefits. The claimant had not yet returned to work when, on January 22, 1982, he was tried and acquitted by a jury on the theft charges. Still, he was told he could not return to work, pending the employer's internal investigation. On February 18, a Claims Adjudicator issued a determination which disqualified the claimant for benefits, not on the basis of theft, but for misconduct connected with his work, because the claimant had been in an unauthorized area outside of his usual working hours and under the influence of alcohol. On March 9, a Referee issued a decision which affirmed the Claims Adjudicator's determination, that the claimant had been discharged for misconduct connected with his work. On July 16, the Board of Review affirmed the Referee's decision.

The claimant appealed, pointing out that Section 602A of the Act imposed a disqualification only when an individual had been "discharged" for misconduct connected with his work, and that, during the period in question, he had been serving a suspension -- which was not tantamount to a discharge. The Agency's policy was that a suspension from work for 7 or more days, or of indefinite duration, was tantamount to a discharge.

HELD: Although Section 602A is not ambiguous on its face, its literal application could lead to an ambiguous result: If "discharge" is not read to include "suspension," then an employee could commit an act of work connected misconduct and be compensated for it.

Courts will give substantial weight and deference to an interpretation of an ambiguous statute by the agency charged with its administration and enforcement. In the instant matter, the Agency's policy was that a suspension from work of 7 or more days, or of indefinite duration, was a discharge, and, whether such suspension constituted a discharge for misconduct connected with work was decided by principles generally applicable to discharges. The Agency policy of including suspensions within the term "discharge" for the purpose of benefits disqualification did not extend the statute beyond its fair and reasonable meaning.

Because the record supported a finding of misconduct by the claimant, and because the claimant's indefinite suspension was tantamount to a discharge within the reasonable meaning of Section 602A, the Board of Review was correct in determining that the claimant had been discharged for misconduct connected with his work.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.4**
DOCKET/DATE **ABR-85-4487/2-6-86**
AUTHORITY **Section 601A of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Strict or Liberal Construction (of Section 601B-1)**
CROSS-REFERENCE **VL 155.35, Domestic Circumstances**

The claimant quit his job to move to California, where his brother, who suffered from a cardiac condition, resided. The claimant testified that, because of the cardiac condition, his brother could not live alone and needed someone with him in case of an emergency. The claimant testified that he had notified the employer that he was quitting work because of his brother's illness and because of the necessity of providing care for him.

HELD: Section 601B-1 of the Act provides an exception to the disqualifying provisions of Section 601A, provided that a licensed and practicing physician has determined that -

assistance is necessary for the purpose of caring for a spouse, child, or parent who is in poor physical health...

Because the statute has delineated certain classes of individuals concerning whom an exception might be made, and "brother" does not fall within any classification, the claimant's reason for leaving work did not fall within the purview of Section 601B-1. Accordingly. he was not entitled to an exemption.

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Carol Rodgers v. IDES*, 542 N.E. 2d 168 (1989)**
AUTHORITY	**Sections 239, 402, and 601A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS-REFERENCE	**VL 450.4, Time, Part-time or Full-time**

The claimant held 2 jobs, 1 full-time, 1 part-time. On December 31, she was laid off from her full-time job. She continued to work at her part-time job, 10 hours per week, at $4 per hour.

On January 6, she filed a claim for unemployment benefits.

Because she was working less than full-time and earning less than her weekly benefit amount ($142), she was "unemployed" within the meaning of Section 239 of the Act and eligible for benefits.
On January 11, she quit her part-time job, for reasons not attributable to the part-time employer.
The Referee and Board of Review held that, because the claimant left work for reasons not attributable to her employer, Section 601A required that she be held ineligible. The circuit court reversed and the Department appealed.

HELD: The appellate court made the following observations:

The Act is designed to provide some form of economic security to persons involuntarily unemployed. When the claimant was involuntarily laid off from full-time work, she became unemployed, under Section 239. No part of her part-time earnings of $40 per week exceeded 50% of her weekly benefit amount, so whether or not she continued working part-time, there would have been no reduction in her weekly benefit amount, under Section 402. The part-time employer would not have been charged as a result of the claimant receiving benefits. To deny benefits would work in favor of her former full-time employer, which would have been charged.

The court held that, in this case, the Department's "literal and rigid" interpretation of Section 601A did not serve the Act's purpose and was "unnecessarily harsh." Benefits were allowed.

(See *Minfield v. Bernardi*, this Digest, VL 450.4.)

ISSUE/DIGEST CODE	**Miscellaneous/MS 95.4**
DOCKET/DATE	***Winklmeier v. Board of Review*, 450 N.E. 2d 353 (1983)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Construction of Statutes**
SUBTITLE	**Strict or Liberal Construction**
CROSS-REFERENCE	**MC 5.05, Def. of Misconduct; MC 85.05, Connection with Work**

Over a two-year period, the claimant submitted 13 medical insurance claims to his employer. Each claim was for medical treatment for his wife. On each claim he knowingly and falsely stated that his wife was unemployed and had no insurance of her own. His practice of filing false claims could result in higher insurance costs to his employer.

HELD: Section 602A provides that misconduct must be connected with work. However, misconduct need not have a direct connection with work. This would be too narrow an interpretation of the statutory language. Instead, the connection with work is determined in light of the facts of each case.

Here, the claimant's behavior arose out of duties and obligations owed his employer, was directed at his employer's insurer, and could have resulted in a substantial financial loss to his employer.

This was misconduct connected with work.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.4**
DOCKET/DATE ***White v. IDES* (1994)**
AUTHORITY **56 Ill. Adm. Code 2720.5 and 2720.335**
TITLE **Construction of Statutes**
SUBTITLE **Strict or Liberal Construction**
CROSS-REFERENCE **PR 400.05, Representation**

The claimant retained counsel and notified IDES. Despite this, IDES mailed notices and decisions to the claimant and not to her attorney. The attorney's receipt of decisions denying the claimant benefits was delayed, and, consequently, when the attorney filed a complaint for administrative review, the complaint was untimely. IDES argued that the case should be dismissed because direct notice to the principal constituted adequate notice.

HELD: 56 Ill. Adm. Code 2720.5 provides that a person may designate an agent to receive notices and decisions. 56 Ill. Adm. Code 2720.335 provides that the Board of Review shall mail decisions to a party or the party's representative. To construe 56 Ill. Adm. Code 2720.335 narrowly to permit the Board to choose to mail notices to either a party or the party's representative leads to an absurd, illogical, and unfair result; *i.e.*, the Department would provide for agents, then could disregard their status, penalizing a claimant. Therefore, when a party properly designates an agent, notices and decisions must be sent to that agent.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.4**
DOCKET/DATE **ABR-94-11626/2-8-95**
AUTHORITY **Section 601 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Strict or Liberal Construction (of Section 601B-1)**
CROSS-REFERENCE **VL 235.25, Health or Physical Condition**

The claimant took a leave of absence, then resigned, saying it was at the recommendation of his therapist, a licensed clinical psychologist. The psychologist had said that the claimant needed time off to deal with anxiety and stress management issues.

HELD: Section 601B-1 of the Act provides an exception to the disqualifying provisions of Section 601A. However, the exception only applies if the leaving is predicated upon the statements of a "licensed and practicing physician." Psychologists may be licensed professionals, but they are not physicians. Accordingly, the claimant's leaving was not within the purview of Section 601B-1 and he was not entitled to an exception from disqualification under Section 601A.

ISSUE/DIGEST CODE **Miscellaneous/MS 95.4**
DOCKET/DATE ***Community and Economic Development Association of Cook County v. Board of Review*, 697N.E.2d 1180 (1998)**
AUTHORITY **Section 612 of the Act**
TITLE **Construction of Statutes**
SUBTITLE **Strict or Liberal Construction**
CROSS REFERENCE **None**

The claimants worked for a Head Start program from September through May, then filed claims for unemployment benefits. The Head Start program was licensed by the Illinois Department of Children and Family Services as a child care institution under the state Child Care Act. Employees were required to possess a child development associate credential, not a teacher=s certificate from the State Board of Education, nor was the Head Start program regulated or administered by the State Board of Education in any manner.

HELD: The “between terms” ineligibility provisions of Section 612 apply to benefits based upon wages for services performed for an educational institution. 56 Ill. Adm. Code 2915.1 defines an “educational institution” as having “for its primary function the presentation of formal instruction ...” While there is an educational component to the Head Start program, it is incidental to the primary function of the program, which is to provide social development services. The Head Start program did not for its primary function provide formal instruction, and, therefore, was not an educational institution. The claimants were not ineligible under Section 612.

ISSUE/DIGEST CODE **Miscellaneous/MS 120.05**
DOCKET/DATE **84-BRD-126/1-6-84**
AUTHORITY **1./S-401C**
TITLE **Dependency**
SUBTITLE **General**
CROSS-REFERENCE **None**

The claimant's wife filed a claim for benefits effective September 13, 1982. Her benefit year ran from September 12, 1982 through September 11, 1983. The claimant's wife claimed the couple's two children as dependents, and she received dependents' allowance for them.

On January 18, 1983 the claimant filed an initial claim for benefits, and he also claimed the couple's two children for dependents' allowance benefits. The claimant argued that, even though her benefit year had not expired, his wife had returned to work and was no longer receiving unemployment insurance benefits at the time he filed his claim.

HELD: Section 401C of the Illinois Unemployment Insurance Act states, in part;

> ...provided that no person who has been determined to be a child of an individual who has been allowed benefits with respect to a week in such individual's benefit year shall be deemed to be a child of the other parent and no other person shall be determined to be a child of such other parent, during the remainder of that benefit year.

The claimant's wife filed a proper claim for benefits effective September 13, 1982 and claimed the couple's two children as dependents at that time. Because she did so, those two children remained her dependents for the remainder of her benefit year which extended through September 11, 1983. The claimant is not entitled to dependents' allowance for either child until his wife's benefit year ends.

ISSUE/DIGEST CODE **Miscellaneous/MS 120.05**
DOCKET/DATE **85-BRD-04675/6-25-85**
AUTHORITY **Section 401C of the Act**
TITLE **Dependents' Allowance**
SUBTITLE **Support in a Medium Other Than Cash**
CROSS-REFERENCE **None**

The claimant, a divorcee, had an eight year old son who was residing with his remarried mother. In compliance with a court order, the claimant had been paying child support of $40 per week, which the court had determined to be one-half the cost of the child's support. In addition, the claimant regularly purchased clothing for his son.

HELD: An individual may be eligible for a dependent's allowance. This is determined by a number of factors, including whether the individual has furnished more than one-half the cost of his child's support. Support may be in a medium other than cash. In the instant case, the claimant established that one-half the cost of support for his child was $40 per week. The claimant established that he paid that amount, and more, in the form of clothing directly purchased for the child. Accordingly, the claimant was eligible for a dependent's allowance.

ISSUE/DIGEST CODE **Miscellaneous/MS 340.1**
DOCKET/DATE **84-BRD-206/1-9-84**
AUTHORITY **1./S-901 and S-402**
TITLE **Misrepresentation**
SUBTITLE **Fraudulent**
CROSS-REFERENCE **None**

The claimant worked part-time while drawing benefits for an extended period of time. He notified the local office of his employment when he filed for benefits but did not report it on his certification forms for a period of fifteen weeks. He concluded that, since he had been told that he could work part-time and still draw benefits, it was not necessary for him to report his earnings.

The claimant admitted that he had read the item on the certification which instructed "If you do any work during the calendar week listed, enter the information below" and which also provided space for entering the gross amount of wages by day or by week.

HELD: The claimant's contention that he was unaware of his responsibility to report such wages is not credible because the certification forms clearly state that he must report any work performed during the calendar weeks covered by the certification forms. The claimant knowingly failed to disclose a material fact under Section 901 and, as a result, obtained benefits for which he was not eligible for the period from December 7, 1980 through August 1, 1981.

ISSUE/DIGEST CODE	**Miscellaneous/ MS-340.2**
DOCKET/DATE	**ABR-07-4472**
AUTHORITY	**Section 900 of the Act; Trade Act of 1974-Trade Readjustment Assistance (TRA)**
TITLE	**Construction of Statutes**
SUBTITLE	**Misrepresentation/Overpayments or Restitution**
CROSS-REFERENCE	**MS-60.05: Benefit Computation Factors/General; MS-95.15 Construction with Reference to Other Statutes**

The claimant was laid off from work on July 14, 2005, filed a claim for unemployment benefits the next day, and was awarded weekly benefits of $208.00, including a dependents= allowance. After returning to work, the claimant was again laid off on April 7, 2006, filed for benefits on April 12, 2006, and was granted weekly unemployment benefits of $449.00, including dependents= allowance. The claimant collected her regular unemployment benefits until she exhausted them during the week ending October 14, 2006. Pursuant to the Trade Act of 1974, the claimant began collecting Trade Readjustment Assistance (TRA) benefits of $449.00 weekly, including dependents= allowance, on October 15, 2006 and continued receiving them through December 23, 2006. The claimant=s employer was first certified as an Aaffected employer@ under the Trade Act of 1974 on March 22, 2005.

HELD: Under the Trade Act of 1974, an individual=s weekly TRA benefit payment is based on the individual=s Afirst qualifying separation@ from work after the impact date cited in the petition certification covering the adversely affected worker. Here, the claimant=s Afirst qualifying separation@ from employment with the impacted employer occurred on July 14, 2005, which was after the impact date cited in the certification dated March 22, 2005. When she applied for benefits after that first separation from work, she received a weekly benefit amount of $208.00, including dependents= allowance. This is the amount she should have received when she began receiving TRA benefits, rather than $449.00 per week which she, in fact, received. Therefore, the claimant was overpaid $241.00 per week while receiving TRA benefits and this overpayment was subject to recoupment and/or recovery.

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.05**
DOCKET/DATE	***Hmelyar v. Phoenix Controls*, 339 Ill. App. 3d 700 (2nd Dist. 2003)**
AUTHORITY	**Section 239 of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Stock Options, Group Insurance, Severance Pay**
CROSS-REFERENCE	**None**

The claimant was terminated by the employer on November 9, 2000, and was given a severance package through July 12, 2001. The severance package included weekly severance payments equal to his weekly salary and continued health and dental insurance benefits. Six days after his termination the claimant signed an employment agreement with MyIndoorAir, Inc., a company owned by the employer's former owner which was once a unit of the employer. The agreement provided for compensation in three components: salary, two contingent bonuses, and incentive stock options with a "current purchase price" of $1.75/share. The agreement also provided that the claimant would be covered by MyIndoorAir's group life and disability insurance benefits. The agreement noted that the claimant's salary and health and dental insurance benefits would be paid for by the employer through July 9, 2001. The claimant filed a claim for unemployment insurance benefits for the week of December 3, 2000, which included a work search record. The claimant worked approximately 16 hours for MyIndoorAir during the week of December 3rd, and approximately 20 hours during the week of December 10th. The claimant received no "W-2 wages" from MyIndoorAir. The contingent bonuses were not paid because the contingencies were not met. In addition, the stock options did not vest until November 15, 2001, and would not have value until MyIndoorAir received venture capital funding.

The Board denied the claimant's claim for unemployment insurance benefits finding the claimant was not an "unemployed individual" under Section 239 of the Act. The Board reasoned the claimant received "wages" for purposes of Section 239 because (1) the stock options the claimant received from MyIndoorAir had a value of at least $1.75/share, and the fact the stock options had not vested was irrelevant since the claimant had been given the rights to the stock options; and (2) the claimant received group life and disability insurance benefits from MyIndoorAir. The Board concluded it did not matter that the claimant had not received a base salary from MyIndoorAir. The circuit court affirmed.

HELD: Reversed and remanded. Neither the group life and disability insurance nor the stock options are "wages" for purposes of Section 239. First, Section 235(B) specifically excludes life and disability insurance from the definition of "wages." Even so, under the claimant's agreement with MyIndoorAir the claimant's benefits were tied to his salary, and his salary was zero. Second, unvested and unexercised stock options do not constitute "wages." A stock option's value is speculative and unascertainable when it is granted. Since the value of remuneration is critical to determining whether a claimant is entitled to unemployment insurance benefits and, if so, their amount, when a remuneration's value is speculative and unascertainable the remuneration cannot constitute "wages" under the Act. In addition, the grant of stock options by MyIndoorAir to the claimant was contingent upon board of director approval, and there is no indication this contingency was met.

In addition, the Board contends on appeal that the claimant's claim should be denied because he failed to prove (1) he was not employed less than full-time; and (2) his severance payments were not really salary. However, it is undisputed the claimant worked no more than 20 hours during either week and he spent time searching for other work. In addition, a claimant may be unemployed even though he receives severance payments from a former employer because the payments are not payable "with respect to" the period after employment ceased. Whether severance payments are really salary depends on whether the payments are fixed with a view toward the employee's future conduct or needs. Here, the severance payments paid by the employer were not really payments of the claimant's salary with MyIndoorAir because the employer neither exercised any role in arranging or drafting the claimant's agreement with MyIndoorAir nor considered the severance payments to be salary from MyIndoorAir.

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.05**
DOCKET/DATE	***Murphy v. Board of Review of the Department of Employment Security*, 394 Ill.App.3d 834, 334 Ill.Dec. 733, 917 N.E.2d 559 (1st Dist., 2009)**
AUTHORITY	**Sections 220(D)(1)(a), 234 and 239 of the Act**
TITLE	**Receipt of Other Benefits**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was discharged from his job with a grocer in January, 2006. He applied for and was granted unemployment benefits of $350.00 per week from February 2, 2006 until June 24, 2006, at which time the Department learned that he had been receiving weekly compensation of $519.23 as an elected Township Supervisor during this period. The Department determined that he was not an "unemployed person" pursuant to Section 239 of the Act since his weekly wages as a Township Supervisor exceeded his weekly benefit amount and terminated his benefits.

HELD: The claimant argued, first, that he was entitled to benefits because his services as a Township Supervisor were not "in employment" because of Section 220(D)(1)(a) of the Act, which excludes from "employment" services performed for a governmental entity by an elected official in the exercise of his official duties. He also argued that, even if his services were not excluded from employment by Section 220(D)(1)(a), his services as a Township Supervisor were not "wages" as defined in Section 234 of the Act because he would have received compensation for holding that position, even if he did not perform any services.

The appellate court rejected both of the claimant's arguments, finding that the claimant's services were "wages" under Section 234, which provides, in part, that "'wages' means every form of remuneration for personal services", because the claimant had, in fact, personally performed services required by statute in his position as the Township Supervisor and received remuneration for doing so. The court also rejected the claimant's contention that his services were excluded from being "in employment" pursuant to Section 220(D)(1)(a), finding that this argument was irrelevant since it was not the issue decided by the Board of Review. The issue before the Board was whether or not the claimant was an "unemployed person" pursuant to Section 239. Since the wages received by the claimant as a Township Supervisor exceeded his weekly benefit amount, the Board of Review was correct in determining that the claimant was not an "unemployed person" and, thus, was not entitled to benefits under Section 239.

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.2**
DOCKET/DATE	***Dolores Weingart v. IDOL*, No. 64344 (1988)**
AUTHORITY	**Sections 703 and 900 of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Loss of Wages, Compensation for**
CROSS-REFERENCE	**MS 95.3, Construction of Statutes, Statute as a Whole**

The claimant was employed by Advo-Systems, Inc., until August 21, 1980, after which she filed for and received unemployment benefits: $116 per week from August, 1980 through June, 1981, totalling $4,408.

The Advo-Systems plant had closed shortly after the employees elected to have a union act as their collective-bargaining agent. The union representatives filed a complaint before the NLRB against Advo-Systems. A year-and-a-half after Advo-System's plant closing, the company entered into an out-of-court settlement to end the pending NLRB litigation. Pursuant to that settlement, the claimant received a payment of $8,140 in two installments, the first on January 20, 1982 and the second on February 16, 1982.

In September, 1982, a Department of Labor (Employment Security) Adjudicator issued to the claimant a reconsidered determination and recoupment decision, under Section 900(D) of the Act. The claimant was informed that she had been found retroactively ineligible to receive benefits due to the back pay award.

The claimant appealed, citing Section 703 of the Act, which permitted a Claims Adjudicator to "reconsider his determination at any time within one year ...." The claimant argued that the Adjudicator's reconsidered determination and recoupment decision were void.

The Department argued that the intent of Section 900(D) of the Unemployment Insurance Act was to prevent a double recovery of both back pay and unemployment benefits for the same week(s). The Department also argued that the reconsidered determination of ineligibility based on a back pay award was of a different nature than reconsidered determinations based on other factors: the back pay award triggered an initial and original determination, predicated upon the nature of the award and not upon a renewed evaluation of the facts that led to an original determination.

HELD: Section 900(D) is not a special category of recoupment in and of itself, but must be read in conjunction with all of Section 900. Further, Section 900 incorporates Section 703.

Section 900(D) provides, in relevant part:

> Whenever, by reason of a back pay award...an individual has received wages for weeks with respect to which he has received benefits, the amount of such benefits may be recouped...as herein provided.
>
> Because Section 900(D) contains no procedures, the term "herein provided" must refer to other provisions of Section 900. Section 900(A) provides, in pertinent part, that recoupment be "pursuant to a ... reconsidered determination." Section 703 provides that determinations may not be reconsidered after 1 year. In this case, the Claims Adjudicator's reconsidered determination and its accompanying recoupment decision, having been made more than 1 year after an original determination of eligibility, were void.

Also, the Department's interpretation of the intent of the legislature, with respect to double-recovery, was much too narrow. Section 900(A) contemplates waiver of recoupment even when a determination is reconsidered within 1 year. That being so, it could not be said that there were no equitable considerations which would have allowed the legislature to determine that any recoupment after 1 year would always be inequitable or unconscionable.

Recoupment was disallowed.

ISSUE/DIGEST CODE	**Miscellaneous/MS-375.25**
DOCKET/DATE	**Martin v. Department of Employment Security, 376 Ill.App.3d 853, 315 Ill.Dec. 790, 877 N.E.2d 1119 (5th Dist., 2007)**
AUTHORITY	**Section 611 of the Act**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Old-Age and Survivors Insurance**
CROSS-REFERENCE	**MS-60.1: Benefit Computation Factors/Base Period**

The claimant began receiving social security retirement income in 1999. From September 19, 2004 until August 17, 2005, the plaintiff was employed by Wal-Mart. Following her discharge, she applied for unemployment insurance benefits. Pursuant to Section 611(A)(2) of the Act, the claims adjudicator found the claimant ineligible for benefits because the plaintiff was receiving 50% disqualifying income in the form of social security retirement benefits. The claims adjudicator=s determination was affirmed by the Referee and the Board of Review. The Board=s decision was affirmed by the circuit court and the claimant appealed, asserting that her social security retirement payments should not be considered disqualifying income because Wal-Mart was not her Abase-period employer@ since (1) the social security benefits she received were based upon her employment with other employers prior to her retirement in 1999, and (2) her social security benefits did not change as a result of her employment with Wal-Mart in 2004.

HELD: The court held that the claimant=s argument was based on the mistaken premises that (1) the term Abase period@ encompasses only the years during which an employee worked prior to beginning to receive social security retirement benefits and (2) that a Abase-period employer@ can only be an employer that contributed to an employee=s future social security retirement benefits prior to that employee becoming eligible for those benefits. The court noted that the term Abase period@ is defined in Section 237(A) of the Act as the period of time examined to determine whether the claimant earned sufficient wages to qualify for unemployment benefits and, if so, the amount of those benefits. It was undisputed that Wal-Mart was the employer who paid the claimant wages during the claimant=s Abase period@ and, thus, was the plaintiff=s Abase-period employer@. Since the claimant received wages from Wal-Mart during her base period and Wal-Mart paid Social Security taxes on these wages, Section 611(A)(2) mandated that half of the claimant=s social security retirement benefits be deemed disqualifying income, which thereby rendered the claimant ineligible for unemployment benefits.

ISSUE/DIGEST CODE	**Miscellaneous/MS 375.3**
DOCKET/DATE	**ABR-89-2980**
AUTHORITY	**Section 611 and Interpretation by Employment and Training Administration**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Pensions**
CROSS-REFERENCE	**None**

The claimant worked for his last employer as a carpenter. The claimant was entitled to a retirement pension. Contributions to the pension fund were made directly by the various contractors for whom the claimant worked. No corresponding deduction or withholding for pension purposes was made from the claimant's paycheck, and the claimant did not otherwise make any direct payments to the fund. However, the claimant argued that he, in fact, made contributions to the pension fund because the contractors' payments to the fund were in lieu of salary increases that would otherwise have been negotiated through collective bargaining. The claimant further argued that the contractors were merely acting as agents for the remittance of his salary increases into the union's pension fund.

The issue presented by this appeal is whether the entire amount received by the claimant in the form of retirement payments constitutes "disqualifying income" deductible from benefits to which the claimant might otherwise be entitled.

The Board found that the evidence did not establish that the contractors' payments to the pension resulted in the claimant receiving less remuneration than that to which he was entitled or that deductions from his earned remuneration were made to pay the cost of the pension program. Therefore, the claimant did not make any contributions to the pension fund, and the retirement pay was 100-percent deductible from benefits to which the claimant might otherwise be entitled.

NOTE: The U.S. Department of Labor's Employment and Training Administration (ETA), in a letter dated April 9, 2002, reiterates that Section 3304(a)(15) of the Federal Unemployment Tax Act (FUTA) generally requires state law to provide that a claimant's weekly benefit amount be reduced by the amount of any retirement pension attributable to the week. While the federal statute does not require that the benefit be reduced by the full amount of the pension if the claimant contributed to the pension fund, the letter states the key consideration in determining whether the claimant contributed to the pension fund is whether he or she actually made any contributions - not whether the claimant's collective bargaining representative might have made certain wage concessions in exchange for part or all of the employer's contributions to the pension fund. The letter concludes that ETA does not regard a claimant as having contributed to the pension fund simply because the claimant's union agreed to forego previously negotiated wage increases in exchange for increased employer contributions to the fund.

ISSUE/DIGEST CODE	**Miscellaneous/MS-375.3**
DOCKET/DATE	**ABR-06-6539**
AUTHORITY	**Section 611**
TITLE	**Receipt of Other Payments**
SUBTITLE	**Pension**
CROSS-REFERENCE	**None**

The claimant retired from his job with the Federal Reserve Bank of San Francisco, also known as the 12th District, and began receiving monthly retirement payments of $2,608.00 beginning June 1, 2004 and continuing through the benefit period at issue, March 19, 2006 through April 1, 2006. From June 1, 2005 until December 17, 2005, the claimant was employed as a consultant with the Federal Reserve Bank of Chicago, also known as the 7th District. He did not accrue or receive any pension benefits from his employment with the 7th District. The claimant applied for unemployment benefits on March 22, 2006. He was granted weekly benefits of $393.46. However, pursuant to Section 611(A)(2) of the Illinois Unemployment Insurance Act (the Act), one-half of his monthly pension payment was considered disqualifying income, which reduced his weekly benefit payment to $43.46. The claimant contended that Section 611(A)(2) was inapplicable because the 7th District Bank, to which the benefits he received were charged, was a different corporation from the 12th District bank, the bank from which he received the pension payments.

HELD: The Board of Review rejected the claimant=s contention. The Board first noted that Section 611(A)(2) does not use more restrictive words like Aemploying unit@ or Aemployer@, which are defined in the Act, or the word Acorporation@, but rather the term Aorganization@ in describing the source of the pension payment. The Board found that all of the Federal Reserve Banks were created by the Federal Reserve Act as instrumentalities of the federal government intended to establish a centralized national banking system. All the banks are subject to the oversight of the Board of Governors which has enumerated powers to control the operations of the banks. Thus, although each of the Federal Reserve Banks is an independently managed corporation, they are all part of one Aorganization@ for the purposes of Section 611(A)(2). Consequently, the pension payments were disqualifying income which reduced the claimant=s weekly benefit amount.

ISSUE/DIGEST CODE	**Miscellaneous/MS 410.05**
DOCKET/DATE	***Brent Davis v. Board of Review*, 477 N.E. 2d 842 (1985)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 60.10, Benefit Computation; MS 95.1, Constr. Stat.**

The claimant was employed as a School Teacher during the 1981-1982 school year. In June, 1982, when the school term ended, he did not have a contract with the district to teach during the upcoming 1982-1983 school year. He applied for and began receiving unemployment benefits. Although, on July 18, 1982, he signed a contract to teach in the district during the 1982-1983 school year, he continued to receive unemployment benefits until he actually started teaching on August 23, 1982.

The issue presented was whether the claimant was entitled to the benefits he received after his contract had been approved.

HELD: Section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, *for any week*...during a period between academic years...if the individual performed such service in the first of such academic years...and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity...in the second of such academic years...(Court's emphasis.)

Section 612 is clear and unambiguous. A teacher's eligibility is determined on a weekly basis. During any week in which a teacher has a contract or reasonable assurance of employment during the upcoming school year, the teacher is not eligible to receive unemployment benefits.

Therefore, as soon as the claimant's contract for the 1982-1983 school year was approved, he was not entitled to receive unemployment compensation. Accordingly, the benefits he received thereafter were subject to recoupment.

ISSUE/DIGEST CODE	**Miscellaneous/MS 410.05**
DOCKET/DATE	**ABR-85-7060/7-14-86**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**None**

The claimant was employed as a High School Teacher for the school years 1983-1984 and 1984-1985. Toward the end of the 1984-1985 term, she received, instead of her usual contract, a letter entitled "Termination of Employment." In it, the District Superintendent stated:

> It will be my recommendation to the Board of Education that your employment will be terminated at the conclusion of the 1984-1985 school year, and that you will not be employed for the 1985-1986 school year.

At the end of the 1984-1985 school term and during succeeding weeks, the claimant filed for unemployment benefits. Records of the Department of Employment Security did not disclose that the claimant had any reasonable prospects of obtaining work as a Teacher for the ensuing school term.

HELD: Section 612 of the Act states, in pertinent part:

> An individual shall be ineligible for benefits, on the basis of wages for service in employment...for an educational institution, during a period between two...academic years...or terms...if the individual performed such service in the first of such academic years (or terms) and if there is a contract or a reasonable assurance that the individual will perform service in any such capacity for any educational institution in the second of such academic years (or terms).

Since, in this case, the record did not indicate that the claimant had a contract or any reasonable assurance that she would be employed by an educational institution the next term, the disqualifying provisions of Section 612 were inapplicable.

ISSUE/DIGEST CODE	**Miscellaneous/MS 410.05**
DOCKET/DATE	***Christine Doran v. IDOL*, 452 N.E. 2d 118 (1983)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 60.10, Benefit Computation; MS 95.2, Constr. Stat.**

From 1970 through 1980, the claimant taught during her school's 39-week academic term then through its 8-week summer session. Then, on June 26, 1980, at the end of 39 weeks, she was told that, due to budgetary considerations, the school would not be offering the 8-week summer session and her services would not be needed until the following autumn. So the claimant filed for unemployment benefits for that 8-week period.

The Department held that, because the claimant filed for benefits for a period between academic terms, she was ineligible under Section 612. The claimant contended that this was not a period between terms, but a portion of what would have been her customary 47-week term.

HELD: Section 612 provides, in pertinent part, that an individual shall be ineligible for benefits between "regular academic terms." What constitutes a regular academic term is determined by the legislature, not by a claimant's particular circumstances.

The legislature has defined regular academic term - not in the Unemployment Insurance Act, but in the School Code. The School Code provides that each school board shall prepare a calendar for the school term (consisting of a required number of school days, or, at this time, 39 weeks). Pursuant to its delegated authority, the claimant's school board adopted a calendar that complied with the definition by providing for 39 weeks of school. The fact that the school board did or did not offer a summer session was immaterial; the 39-week period was the regular academic term intended by the legislature.

The claimant worked until the end of the regular academic term. She filed for benefits for a period between that term and her next regularly scheduled term. Therefore, she was ineligible under Section 612.

ISSUE/DIGEST CODE	**Miscellaneous/MS 410.05**
DOCKET/DATE	**ABR-87-9148/3-21-88**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 95.05, Construction of Statutes**

The claimant, a teacher, was dismissed at the end of the academic term (end of May) because his school district wished to decrease the number of teachers and services. He filed a claim for benefits for the period May 31 through June 13.

On July 29, at his appeal hearing, he established that, through the period he claimed benefits, he had no contract or reasonable assurance that he would be working the next term. However, he testified that, the week of the hearing, he accepted a contract from a different school to teach the next term. The Referee disqualified him for the period May 31 through June 13.

HELD: Section 612 provides that an individual is ineligible between successive academic terms if he performed service in the first term and there is a contract or reasonable assurance that he will perform service in the second term.

The contract or reasonable assurance must exist prior to or during the period for which the individual is claiming benefits. A later contract or assurance will not operate retroactively.

In this case, as of June 13, the claimant had no contract or reasonable assurance. He could not be denied benefits through that date based upon a contract or assurance that did not yet exist. (However, he could be denied benefits for weeks later than the date of acceptance of the contract.)

ISSUE/DIGEST CODE	**Miscellaneous/MS 410.05**
DOCKET/DATE	***Campbell v. Board of Review*, 570 N.E. 2d 812 (1991)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Personnel**
CROSS-REFERENCE	**MS 60.10, Benefit Computation; PR 380.25, Review**

The claimant worked as a part-time teacher at Prairie State College in fall, 1984; at Chicago State University in fall, 1984, and in spring, 1985; and at Columbia College in spring, 1983 through 1985, and in fall, 1984.

He filed a claim for unemployment benefits during the summer, 1985. In order to show that he could not be held ineligible under Section 612, he submitted a post-dated letter from Columbia College, which indicated that, generally, there was no guaranteed work for part-time teachers; *e.g.,* there would be no work if there was no full enrollment in a course; if a full-timer did not have full enrollment, he could bump a part-timer who did; etc.

HELD: Section 612 of the Act provides, in pertinent part, that an individual will be ineligible between terms if there is a reasonable assurance that he will perform work for any educational institution in the upcoming term.

Section 612 makes no distinction between full-time and part-time teachers. Section 612 refers to "any" educational institution and is not limited to consideration of work at one particular institution. Further, whether there is a reasonable assurance depends upon facts as well as representations.

The claimant, even though he was a part-time teacher, was subject to Section 612. The facts showed that, despite the lack of guaranteed work, he had always been able to obtain work during fall terms, at one educational institution or another. Therefore, he had a reasonable assurance of working the next fall.

ISSUE/DIGEST CODE	**Miscellaneous/410.05**
DOCKET/DATE	***Marzano v. IDES*, 339 Ill. App. 3d 858 (1st Dist. 2003)**
AUTHORITY	**Section 612 of the Act**
TITLE	**Seasonal Employment**
SUBTITLE	**Academic Employment**
CROSS-REFERENCE	**None**

The claimant was employed as a substitute teacher with the employer school district. The claimant became a full-time teacher for the 1999-2000 school year. At the end of the school year the claimant received a letter informing him that he would not be re-hired as a full-time teacher for the 2000-01 school year, but in August, 2000, the claimant received a letter informing him the employer was interested in his services as a substitute teacher for that school year. The claimant then performed services as a day-to-day, as-needed substitute teacher for the 2000-01 school year, his last day of work being June 8, 2001. The claimant then filed a claim for unemployment insurance benefits. However, in August, 2001, the claimant again received a letter from the employer informing him it was interested in his services as a substitute teacher for the 2001-02 school year. The claimant responded that he wanted to work for the employer as a substitute teacher. The hearings referee denied the claimant's claim under Section 612 of the Act because the claimant had reasonable assurances of returning to work as a substitute teacher in the fall of 2001. This decision was affirmed by the Board of Review, and on administrative review by the circuit court.

HELD: Affirmed. Section 612 of the Act applies to day-to-day substitute teachers. The plain language of Section 612(B)(1) does not distinguish between full-time and substitute teachers, but refers to individuals employed in an instructional capacity, a category under which the claimant falls. Also, the claimant had reasonable assurances of future work as required by Section 612. The IDES regulations regarding "reasonable assurance," 56 Ill. Adm. Code Secs. 2915.1, 2915.20, as applied to the facts of this case, show that the claimant had a reasonable assurance of future work as a substitute teacher for the 2001-02 school year based on the previous conduct and practice between the claimant and the employer. In addition, the letter notifying the claimant that he no longer would be employed as a full-time teacher does not constitute a letter of dismissal for the purposes of Section 612. After the letter was issued, the claimant was employed by the employer as a substitute teacher, and the conduct and practice of the claimant and employer regarding the claimant's employment as a substitute teacher was established.

PROCEDURE

ISSUE/DIGEST CODE **Procedure/PR 25.05**
DOCKET/DATE **ABR-89-7030/2-7-90**
AUTHORITY **56 Ill. Adm. Code 2720.215**
TITLE **Appearance**
SUBTITLE **By Telephone**
CROSS-REFERENCE **None**

The hearing notice informed both parties that an in-person hearing was scheduled. The claimant appeared in person. The employer requested that a witness be allowed to appear by telephone. The hearing proceeded and a decision was rendered, but no reason was stated anywhere in the record as to why the employer's witness could not appear in person.

HELD: Rule 2720.215 permits telephone appearances under specified conditions. Rule 2720.215 also provides that, when a request is made for a change of hearing format (in-person to telephone), "the Referee shall state the reason(s) for the grant or denial of such format change on the record."

Here, the Referee did not state the reason(s) for permitting the format change.

The case was remanded.

ISSUE/DIGEST CODE **Procedure/PR 25.05**
DOCKET/DATE **ABR-89-5656/1-31-90**
AUTHORITY **Section 806 of the Act**
TITLE **Appearance**
SUBTITLE **By Telephone**
CROSS-REFERENCE **PR 190.05, Evidence; PR 400.05, Representation**

The claimant appealed a determination and filed a signed authorization for attorney representation. At his appeal hearing, the claimant's attorney and a witness for the employer appeared; the claimant did not appear. The claimant's attorney attempted to come forward with evidence by calling the employer's witness on the claimant's behalf. The Referee disallowed the attorney's attempt to elicit such evidence and dismissed the appeal due to the claimant's failure to appear.

HELD: Section 806 of the Unemployment Insurance Act provides, in pertinent part, that any individual or entity in any proceeding before the Referee may be represented by a duly authorized agent.

Here, under Section 806 (as well as general principles of Agency law), the appearance by duly authorized counsel was equivalent to the claimant himself having appeared. The case was remanded so that the claimant, or his attorney, might present evidence.

ISSUE/DIGEST CODE **Procedure/PR 25.05**
DOCKET/DATE **85-BRD-05338/7-16-85**
AUTHORITY **Section 601 & 602 of the Act**
TITLE **Appearance**
SUBTITLE **By Telephone**
CROSS-REFERENCE **PR 190.05, Evidence; PR 275.05, Jurisdiction and Powers of Tribunal**

On November 30, 1984, notice was mailed to the employer that the claimant had filed a claim for unemployment insurance benefits. The notice informed the employer that it could become a party to the proceedings if it filed a Notice of Possible Ineligibility or a letter in lieu thereof within ten days. The employer filed no Notice of Possible Ineligibility or letter in lieu thereof. Nonetheless, the claimant was disqualified for benefits, and filed an appeal. An appeal hearing was scheduled for January 17, 1985, to consider the issue of whether the claimant had left work voluntarily without good cause attributable to the employer. Prior to that hearing, a prospective witness for the employer telephoned the Referee's supervisor. The Referee's supervisor told the witness that the employer need not appear at the hearing, because it had no "say so" in the matter.

Subsequently, the Referee conducted a hearing at which only the claimant appeared. On the basis of the evidence presented, the Referee issued a decision allowing benefits to the claimant. The employer then filed an appeal to the Board of Review, expressing a desire to present evidence at a hearing.

HELD: Agency Rule 2720.205(c) reads, in pertinent part:

> In the event that a claimant appeals an Adjudicator's determination regarding a separation issue...and where the employer from which the separation occurred is not a party, such employer will receive notice of hearing which he may attend as a nonparty and present such facts and evidence as he may possess.

Therefore, even though the employer may have been a nonparty, the employer still should have been afforded an opportunity to appear at the hearing and present such facts and evidence as it possessed. The decision of the Referee was set aside, and the case was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 25.05**
DOCKET/DATE	**ABR-85-7321/2-28-86**
AUTHORITY	**56 Ill. Adm. Code 2720.5**
TITLE	**Appearance**
SUBTITLE	**By Telephone**
CROSS-REFERENCE	**PR 400.05, Representation, By an Agent**

On August 28, 1985, a hearing was conducted, by telephone, to consider a work separation issue. The claimant appeared and testified. The employer was represented at the hearing by a tax service which specialized in unemployment insurance matters. Based upon the evidence presented by the claimant and the employer's representative, the Referee determined that the claimant was eligible for benefits without disqualification.

The employer (itself) appealed, stating:

> It is the employer's request that a rescheduled hearing be permitted so that the employer can give his testimony. The reason why the employer did not participate in the hearing was because the tax agency which represents the employer forgot to give the Referee the phone number for the telephone hearing ...

HELD: Agency Rule 2720.5, Service of Notices, Decisions, Orders, reads, in pertinent part, as follows:

> b) A person may designate an agent...In such cases, notice to the agent so designated is notice to the person...

In the instant case, the employer was represented at the hearing by its duly appointed agent, which had received notice of the hearing. Under Rule 2720.5 - and under general principles of Agency Law - this was equivalent to the employer itself having received notice, and having appeared at the hearing. Therefore, the employer's request for a rescheduled hearing, on the basis of its not having appeared at the originally scheduled hearing, was without merit. The request was denied.

ISSUE/DIGEST CODE	**Procedure/PR-25.05**
DOCKET/DATE	**White v. Department of Employment Security, 376 Ill.App.3d 668, 314 Ill.Dec. 867, 875 N.E.2d 1154 (1st Dist., 2007)**
AUTHORITY	**Section 601(A) of the Act**
TITLE	**Appearance**
SUBTITLE	**General**
CROSS-REFERENCE	**VL 135.05: Discharge or Leaving – General; PR-380.1/Rehearing or Review-Additional Proof**

The claimant worked for the employer=s roofing company as a foreman. The claimant believed working conditions were dangerous because of a recent blizzard. He testified that he contacted the manager who told him he could come to work if he wanted to. At some point thereafter, according to his testimony, he again called the manager who told him he was too busy to talk just then but would call him back. When the manager did not call back, the claimant left a voice message, which the manager also failed to return. The claimant testified that he never did hear from the manager. The manager testified that he had issued the claimant a warning on December 21, 2005 with regard to his rude treatment of a customer and told him that another such incident would result in his discharge. The following day the claimant came into work and stated that AI can=t deal with this; I quit@, but did not mention the warning. There was work available for the claimant on December 22, 2005. The Referee held that the claimant quit his job without good cause attributable to the employer and was disqualified from receiving benefits pursuant to Section 601(A) of the Act. The claimant appealed the Referee=s decision to the Board of Review, attaching to his appeal telephone records which he believed substantiated his testimony that he had called the manager several times. Declining to consider the claimant=s telephone records because he failed to show that he was not at fault for not submitting them at the hearing, the Board of Review affirmed the Referee=s decision.

HELD: Noting that Aa reviewing court may not judge the witnesses= credibility, resolve conflicts in testimony or re-weigh evidence@, the court found that there was sufficient evidence to support the Board of Review=s decision that the claimant voluntarily quit his job without good cause attributable to the employer where (1) two employer witnesses testified that there was continuing work available to the claimant when he decided to quit because he Acouldn=t take this@ and (2) the claims adjudicator=s report indicated that the claimant had told her that he had left his job for personal reasons without informing the employer.

In its opinion, the court rejected the claimant=s contention on appeal that the employer should not have been allowed to testify at the hearing before the Referee because it had not filed a timely protest in accordance with the agency=s benefit rules, noting that those rules provide that an employer filing a late protest is only prohibited from appealing an adverse decision by a Referee and not from testifying at the hearing.

The court also rejected the claimant=s contention on appeal that the Board of Review erred in not considering his telephone records. The court found that the claimant did not adhere to the agency=s rules regarding the filing of additional evidence where he did not submit such evidence within 20 days of filing his appeal and did not provide an explanation of why he was not at fault for not submitting such evidence at the time of the hearing.

ISSUE/DIGEST CODE	**Procedure/PR 100.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**14th Amend. U.S. Const.**
TITLE	**Continuances**
SUBTITLE	**When Additional is to be Submitted**
CROSS-REFERENCE	**PR 108.05, Cross-Examination; PR 190.05, Evidence; PR 195.05, Fair Hearing and Due Process**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

HELD: The proper purpose of a hearing is to provide the parties a full and fair opportunity to be heard. Toward that end, parties must be given an opportunity to confront and rebut evidence, and cross-examine testimony pertaining to such evidence.

The Referee's conduct in the instant matter - informing the parties that his decision would be suspended pending his receipt of evidence, without continuing the hearing process to allow attendance of the parties at the presentation of such evidence - effectively precluded any opportunity for the parties to confront and rebut evidence, or cross-examine testimony pertaining to it.

The Referee's conduct was in substantial conflict with the proper purpose of a hearing. Therefore, the decision of the Referee was set aside and the matter remanded.

ISSUE/DIGEST CODE	**Procedure/PR 100.05**
DOCKET/DATE	**85-BRD-05574/7-25-85**
AUTHORITY	**56 Ill. Adm. Code 2720.215(d)**
TITLE	**Continuances**
SUBTITLE	**Denied for Lack of Good Cause, Non-compliance with Agency Rules**
CROSS-REFERENCE	**None**

In its Notice of Possible Ineligibility, the employer alleged that the claimant, a Physical Therapy Aide, had been scheduled to work on November 5, 6, 7, and 8, as a result of a schedule change explained to her by her supervisor on October 18. After the claimant failed to report to work or call in on those days, she was discharged.

At the appeal hearing, conducted on December 19, the claimant testified that ordinarily she worked only two days per week, that she had been scheduled to work November 1 and 2, and then not again until November 9 and 10. She stated under oath that she had never been informed by her supervisor of any schedule change.

The employer's witness did not possess personal knowledge of any conversation between the claimant and her supervisor. On November 29, that witness had spoken with the Claims Adjudicator, who noted: "(The witness)...will not let me speak to the supervisor...and will only submit documentation at a hearing." At the appeal hearing, which was conducted by telephone, the employer's witness requested a continuance in order to submit the documentation in question. No reason was stated for the failure to submit such documentation prior to the hearing. The request was denied. It was also pointed out to the employer's witness that the effect of such documentation would be minimal - the supervisor's testimony being the evidence which might best serve to rebut the claimant's testimony. The employer's witness then requested a continuance, to a later date, in order that the supervisor's testimony might be obtained. No reason was stated for the supervisor's immediate unavailability to testify by telephone. The witness merely restated the employer's original preference to submit documents. The request for a continuance was denied.
The claimant was allowed benefits on the basis of her unrebutted testimony that she had never been informed of any schedule change.

HELD: Agency Rule 2720.215(d) reads, in pertinent part:

> A party to a telephone hearing must submit to the Referee any documents he intends to introduce at the hearing in time to ensure that the Referee receives the documents before the date of the scheduled hearing. Prior to the date of the scheduled hearing, such party must also provide copies of all documents sent to the Referee to any other party to the hearing.

In the instant case, the employer had sufficient notice of the telephone hearing, including the date and time, in order to make such arrangements thought necessary for the hearing. The employer did not state any reason for failing to submit the documentation prior to the hearing. Accordingly, the employer's request for a continuance was properly denied by the Referee.

Agency Rule 2720.240 reads, in pertinent part:

> The Referee...shall grant a continuance whether requested in person, by telephone or in writing for good cause shown.

Again, the employer had sufficient notice of the telephone hearing, including the date and time, in order to make such arrangements thought necessary for the hearing, including making available such witnesses as may have had firsthand knowledge of the facts pertinent to the case. The employer's preference to submit documentation did not establish that there was good cause for the supervisor not to testify. Accordingly, the employer's request for a continuance was properly denied by the Referee.

ISSUE/DIGEST CODE	**Procedure/PR 100.05**
DOCKET/DATE	**85-BRD-06129/8-26-85**
AUTHORITY	**56 Ill. Adm Code 2720.240**
TITLE	**Continuances**
SUBTITLE	**Good Cause (and Lack of), Reschedule to Mutually Agreeable Time and Date**
CROSS-REFERENCE	**None**

A hearing before the Referee was scheduled for December 17, 1984. On December 13, the claimant telephoned the Referee and requested that the hearing be rescheduled because of an unspecified conflict in the claimant's attorney's schedule. Accordingly, the Referee rescheduled the hearing for December 27. In the process, the Referee telephoned the employer's representative, a service company, in order to provide notice of the new hearing date. Then, on December 14, the claimant telephoned the Referee and requested that the hearing again be rescheduled, for December 17, the original hearing date. The claimant stated that she had decided not to retain the services of counsel, and, therefore, there was no need to push the hearing date back to December 27; her preference was that the hearing be conducted on December 17, the original hearing date. The Referee granted the claimant's request and again telephoned the employer's service company representative, and left a message in order to provide notice of the correct hearing date.

The employer did not appear at the hearing conducted on December 17. In its appeal to the Board of Review, the employer stated that between the time of the first and second rescheduling "the employer representative had made commitments that could not be changed." The employer requested that the case be remanded for a new hearing.

HELD: Agency Rule 2720.240 reads, in pertinent part:

> The Referee...shall grant a continuance whether requested in person, by telephone or in writing for good cause shown. In that event the hearing will be rescheduled to the earliest mutually agreeable time and date...

In the instant case, the claimant's first request for a continuance was for good cause shown: an attorney's scheduling conflict. However, the second rescheduling was no less subject to the "good cause" requirement than was the first rescheduling. The mere preference of a party for one date over another - notwithstanding that such preferred date was the date originally scheduled - did not constitute good cause. On that basis alone, the hearing should not have been rescheduled.

Moreover, nothing in the record indicated that the final rescheduled date had been "mutually agreeable." Although the claimant, as the moving party, may have agreed to the new date, the employer, at most, had been advised as to the new date. That was insufficient. No party should be deprived of an opportunity to testify where, as in the instant case, the only evidence of that party's assent to a rescheduled date would have been the absence of an objection on the record, especially where no opportunity to object, on the record, may have been provided. For that reason also, the case should not have been rescheduled.

ISSUE/DIGEST CODE	**Procedure/PR 108.05**
DOCKET/DATE	**ABR-84-12062/10-4-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Cross-Examination**
SUBTITLE	**Bifurcated Hearings**
CROSS-REFERENCE	**PR 195.05, Fair Hearing and Due Process**

The claimant and his former employer were scheduled to testify, by telephone at an appeal hearing, to consider a work separation issue. Initially, the employer appeared, but the claimant could not be reached. The Referee proceeded to elicit the employer's testimony. After excusing the employer, the Referee made another attempt to contact the claimant, and, having done so, in the employer's absence, proceeded to elicit testimony from the claimant. Subsequently, the Referee issued his decision, based upon the parties' testimony.

HELD: The proper purpose of a hearing is to provide the parties with a full and fair opportunity to be heard. Toward that end, parties must be given a reasonable opportunity to confront one another and rebut one another's evidence. In the instant case, the Referee conducted a bifurcated hearing, during which the parties could not confront one another or rebut one another's allegations. This did not constitute a full and fair opportunity to be heard. Accordingly, the decision of the Referee was set aside and the case was remanded for a new hearing.

ISSUE/DIGEST CODE	**Procedure/PR 108.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**14th Amend. U.S. Const.**
TITLE	**Cross-Examination**
SUBTITLE	**No Opportunity Provided**
CROSS-REFERENCE	**PR 100.05, Continuances; PR 195.05, Fair Hearing and Due Process**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

HELD: The proper purpose of a hearing is to provide the parties a full and fair opportunity to be heard. Toward that end, parties must be given an opportunity to confront and rebut evidence, and cross-examine testimony pertaining to such evidence.

The Referee's conduct in the instant matter - informing the parties that his decision would be suspended pending his receipt of evidence, without continuing the hearing process to allow attendance of the parties at the presentation of such evidence - effectively precluded any opportunity for the parties to confront and rebut evidence, or cross-examine testimony pertaining to it.

The Referee's conduct was in substantial conflict with the proper purpose of a hearing. Therefore, the decision of the Referee was set aside and the matter remanded.

ISSUE/DIGEST CODE	**Procedure/PR 145.05**
DOCKET/DATE	**85-BRD-05261/7-10-85**
AUTHORITY	**56 Ill. Adm. Code 2720.235**
TITLE	**Dismissal, Withdrawal or Abandonment**
SUBTITLE	**Withdrawal Must Be Voluntary**
CROSS-REFERENCE	**PR 190.05, Evidence; PR 195.05, Fair Hearing and Due Process**

The employer petitioned the Board of Review to set aside the Referee's decision and reinstate its appeal from the Claims Adjudicator's determination. The employer stated that it was induced to withdraw its appeal by the Referee, who had concluded prior to taking any evidence and without making a record - that the employer's appeal had been untimely. The employer further stated that in a conversation with the Referee subsequent to the issuance of his decision, the Referee admitted that he had miscalculated in determining the timeliness of the appeal, and that the appeal had been timely in fact.

HELD: Agency Rule 2720.235 reads, in pertinent part:

> The appellant may voluntarily withdraw his appeal...at any time before the Referee's decision is issued.

The Rule speaks to voluntary withdrawals. It is improper for a Referee to act as an advocate, advising a party to withdraw. In the instant matter, because the Referee had acted as an advocate, advising the employer to withdraw, the Board of Review was compelled to set aside that withdrawal decision and reinstate the employer's appeal.

ISSUE/DIGEST CODE **Procedure/PR 145.05**
DOCKET/DATE **85-BRD-05534/7-23-85**
AUTHORITY **56 Ill. Adm. Code 2720**
TITLE **Dismissal, Withdrawal or Abandonment**
SUBTITLE **Making a Record and Writing a Proper Decision**
CROSS-REFERENCE **PR 190.05, Evidence**

One of the issues to be decided upon appeal was whether the employer had filed a sufficient and timely Protest of Benefit Payment, in accordance with Agency Rule 2720.130.

The record forwarded to the Board of Review by the Referee contained only one document - a copy of the employer's appeal from the Claims Adjudicator's determination.

Following the hearing, the Referee issued a decision which dismissed the employer's appeal. Under the section of the decision reserved for "Findings of Fact," the Referee made no reference to facts specific to the case, but, instead, set forth a general conclusion that the employer failed to comply with Agency Rule 2720.130.

HELD: Agency Rule 2720.270 reads, in pertinent part:

> The Referee's decision will include findings of fact and conclusions of law, separately stated and based on the preponderance of the credible, legally competent evidence in the record.

In the instant matter, the Referee's decision was inadequate for two reasons. First, the Referee's decision was not based upon evidence in the record. Second, the decision did not separately state findings of fact and conclusions of law. From an inadequate record and inadequate decision, the Board of Review was unable to determine whether the employer filed a Protest at all, or, if it did, whether the Protest was insufficient, untimely, or both.

The case was remanded with instructions to the Referee to complete the record, then issue a new decision, incorporating findings of fact specific to the case. Those findings were to include the date of Notice to the Last Employer, the date by which the employer had to respond, and what the employer's response, if any, stated. The Referee was further instructed to set forth a conclusion, separately stated, showing that the employer's Protest was timely or untimely with respect to the due date, or was sufficient or insufficient with respect to content - including the reasons therefore.

ISSUE/DIGEST CODE **Procedure/PR 145.05**
DOCKET/DATE **ABR-10-1162**
AUTHORITY **Sections 801 and 804 of the UI Act; 56 Ill. Adm. Code 2712.1 and 2720.255**
TITLE **Dismissal, Withdrawal, or Abandonment**
SUBTITLE **General**
CROSS-REFERENCE **PR/380.05: Rehearing or Review-General**

The employer failed to appear at a hearing scheduled pursuant to notice before a Referee on December 24, 2009. The Referee called the employer’s witness at the proper time at the only telephone number appearing in the Department’s file, but received an outgoing message that the business was closed for the holidays. The Referee dismissed the employer’s appeal due to its failure to appear at the scheduled hearing.

In its appeal to the Board of Review, the employer stated that its failure to appear was due to the Referee’s failure to call the employer’s witnesses at the telephone number where those witnesses were waiting for the call. Attached to its appeal to the Board was a copy of the Notice of Hearing which contained the telephone numbers of two witnesses who would testify on the employer’s behalf. However, the employer provided no confirmation that this message was faxed to the Referee prior to the hearing.

HELD: In reaching its decision, the Board of Review relied on Section 2712.1 of the Department’s rules, which provides in pertinent part that

> ...any document which is a response to or protest of a statement or notice that has been issued by the Department

> or the Director to which there are protest or appeal rights may be filed by facsimile transmission sent to the designated Department address. The date imprinted on the document by the Department's telefax machine shall have the same effect as the U.S. Postal Service's postmark. The individual or entity filing a document by telefax transmission bears the risk that the transmission will not be successful. The date imprinted on the transmission confirmation document by the sender"s telefax machine may be presented as evidence of successful transmission and filing of the document. [56 Ill. Adm. Code 2712.1]

In the instant case, the document showing the witnesses' names and telephone numbers did not contain a telefax transmission confirmation to substantiate that the employer faxed this information to the Department on December 21, 2009, which was prior to the hearing. A telefax transmission did appear at the top of the page, but it indicated only that it was transmitted to the Board of Review on December 30, 2009 and not to the Referee before the December 24th hearing. The Board found that the evidence indicated that the employer did not successfully transmit the fax prior to the hearing and affirmed the Referee's decision dismissing the employer's appeal.

ISSUE/DIGEST CODE	**Procedure/PR 145.05**
DOCKET/DATE	***Carroll v. Department of Employment Security*, 389 Ill.App.3d 329 Ill.Dec. 697, 907 N.E.2d 16 (1st Dist., 2009)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Dismissal**
SUBTITLE	**Withdrawal or Abandonment**
CROSS-REFERENCE	**PR 430.2: Taking & Perfecting Proceedings for Review, Timeliness; PR 440: Judicial Review of Board of Review Decisions**

The claimant was denied benefits in a determination issued by the claims adjudicator. The determination was affirmed by the Referee which, in turn, was affirmed by the Board of Review in a decision issued on April 11, 2007. The claimant had 35 days in which to file a complaint for administrative review of the Board's decision in the circuit court, *e.g.*, until May 16, 2007. The claimant filed his complaint on May 18, 2007. The Board filed a motion before the circuit court to dismiss the complaint as being untimely filed. The circuit court granted the Board's motion and dismissed the claimant's complaint. The claimant timely filed an appeal to the appellate court.

HELD: In affirming the circuit court, the appellate court initially held that in computing the 35-day period in which to file a complaint seeking administrative review of a Board decision (1) calendar days are counted, not business days; (2) the day of mailing the decision is excluded from the computation; and (3) intervening weekend days and holidays are included, unless the last day of the 35-day period falls on a weekend day or holiday, in which case the last day to file would be the next working day. In the instant case, May 16, 2007 did not fall on a holiday or weekend day and, thus, it was the last day on which the claimant's complaint for administrative review had to be filed in order to be timely. Since the claimant did not file his complaint until May 18, 2007, his complaint was late and was properly dismissed by the circuit court for lack of jurisdiction.

The appellate court also held that (1) the Board did not violate the claimant's due process rights by not calculating the exact filing due date for the claimant and by not warning him to count calendar days, rather than business days, in computing the 35-day period; and (2) the Board met its burden of proving that it mailed its decision on April 11, 2007 by providing evidence of its office custom regarding the mailing of its decisions and evidence to corroborate that it followed that custom.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.2d 1082 (Table) (11/25/09)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Evidence**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 195.05, Fair Hearing and Due Process; PR 400.05: Representation, By a Non-Attorney; MC 5.05, Definition of Misconduct**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.

The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court first noted that hearsay is admissible in an unemployment compensation hearing. More importantly, this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-84-12201/3-21-85**
AUTHORITY	**56 Ill. Adm. Code 2720.225**
TITLE	**Evidence**
SUBTITLE	**Subpoenaed Documents Not Produced; Effect**
CROSS-REFERENCE	**PR 195.05, Fair Hearing and Due Process**

The claimant worked as a balance clerk from 1981 until his discharge in January, 1984. The employer's Notice of Possible Ineligibility indicated that, in general, the claimant had had an "uncooperative attitude." The claimant often had been abusive to superiors, refusing to perform work as assigned. When he did perform work, which he understood well, he would do it sloppily, on purpose. He would not work according to schedule; on one occasion he absented himself from work in order to play golf and counted it as a sick day; on another occasion, though denied permission to leave work early, he did so anyway in order to watch a television show. The employer also stated that the claimant had been intoxicated on the job, on more than one occasion. The employer's witnesses testified to the above at an appeal hearing, after which the claimant was disqualified for benefits for misconduct connected with his work.

Prior to a remanded hearing, the claimant made an application for subpoenas, including subpoenas duces tecum for the employer's "error accounts" - which the claimant contended would establish that he had worked to the best of his ability ("over 100%"); for the employer's attendance records; and for the employer's time cards - in particular, the time cards of the claimant and his supervisor, whom the claimant alleged had come to work late and left work early more often than the claimant. The Referee agreed to issue all the subpoenas sought by the claimant.

In response to the subpoenas duces tecum, the employer was prepared to produce its error account book and its attendance records, but not the time cards requested by the claimant, due to the time and expense involved in locating and shipping them from storage facilities in another state. However, the employer was willing to stipulate that the claimant may have worked longer hours than his supervisor. The proposed stipulation was presented to the claimant several days before the hearing was to commence; he never indicated that the proposed stipulation was unacceptable to him.

On October 18, 1984, the claimant and the employer appeared for the appeal hearing. The claimant informed the Referee that he would not proceed without the time cards. The claimant then walked out of the hearing room. The Referee considered the evidence before him, including that previously submitted, and issued a decision which disqualified the claimant for benefits.

Upon further appeal, the claimant contended that he had been denied a fair hearing because the employer had not been compelled to produce the subpoenaed time cards.

HELD: A Referee shall allow a request for a subpoena unless he finds that the evidence sought is immaterial, irrelevant, or cumulative. The request having been allowed, if a party fails to obey a subpoena of the Referee, the Referee shall treat the evidence required by the subpoena, but not produced, as establishing the truth of the position of the party who subpoenaed the documents.

In the instant case, the subpoena for the time cards should not have been issued in the first place. The claimant had never shown that his supervisor's hours were material or relevant to his claim. The claimant's hours, not to mention allegations of his intoxication and insubordination, were in question. Even so, the claimant had no basis for complaining about the employer's failure to produce the time cards, since, either by the employer's failure to produce the time cards or by the employer's offer to enter into a stipulation, the truth of the claimant's position would have been established: that the claimant worked longer hours than his supervisor - which, again, was neither material nor relevant.

It is not the purpose of the Act to require the production of records unnecessary for a full, fair, and impartial hearing. In the instant case, the failure of the employer to produce unnecessary time cards did not deny the claimant a fair hearing.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-04670/6-25-85**
AUTHORITY	**56 Ill. Adm. Code 2720.315(b)(2)**
TITLE	**Evidence**
SUBTITLE	**Additional**
CROSS-REFERENCE	**MC 190.15, Evidence, Weight and Sufficiency; MC 190.1, Burden of Proof and Presumptions**

At an appeals hearing before a Referee, on August 23, 1984, the claimant and witnesses for the employer appeared and testified to consider the issue of whether the claimant had been discharged for misconduct connected with her work. Based upon his findings, the Referee issued a decision which allowed benefits to the claimant. The employer appealed to the Board of Review, and in connection with that appeal, the employer submitted an affidavit, by the claimant's supervisor, which purported to refute the testimony furnished by the claimant at the August 23 hearing - which the supervisor had not attended. The affidavit was not accompanied by any statement providing a reason for the supervisor's failure to attend the August 23 hearing. The record did not show that the employer had requested a continuance of the hearing in order to present the supervisor's testimony.

HELD: Agency Rule 2720.315(b)(2) reads, in pertinent part:

> If the party who filed a request to submit additional evidence, or his witness, failed to appear at a scheduled hearing, the party must show either that he did not receive timely notice of the hearing, that his failure to appear

> at the hearing was due to circumstances beyond his control or that he requested a continuance before the conclusion of the hearing, which was denied.

In the instant case, because no reason was provided for the supervisor's failure to appear at the original hearing, and because no continuance had been requested, the Board of Review refused to consider the substance of the supervisor's affidavit. The claimant's testimony, in person, under oath and subject to cross-examination, was entitled to the greater weight. Accordingly, it could not be concluded that the claimant had been discharged for misconduct connected with her work.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05261/7-10-85**
AUTHORITY	**56 Ill. Adm. Code 2720.235**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 145.05, Withdrawal; PR 195.05, Fair Hearing and Due Process**

The employer petitioned the Board of Review to set aside the Referee's decision and reinstate its appeal from the Claims Adjudicator's determination. The employer stated that it was induced to withdraw its appeal by the Referee, who had concluded - prior to taking any evidence and without making a record - that the employer's appeal had been untimely. The record forwarded to the Board of Review did not contain a written, signed statement or an oral statement by the employer on the record to the effect that the employer wished to withdraw.

HELD: Agency Rule 2720.235 reads, in pertinent part:

The appellant may voluntarily withdraw his appeal by signed written statement filed with the Referee or by oral statement on the record at any time before the Referee's decision is issued.

In the instant matter, the withdrawal decision of the Referee was not accompanied by either a written statement or the taking of an oral statement on the record. It could not be said that the Referee's decision was supported by the law. The Referee's decision was set aside, and the employer's appeal was reinstated.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05338/7-16-85**
AUTHORITY	**56 Ill. Adm. Code 2720.205(c)**
TITLE	**Evidence**
SUBTITLE	**NonParty Employer**
CROSS-REFERENCE	**PR 25.05, Appearance; PR 275.05, Jurisdiction and Powers of Tribunal**

On November 30, 1984, notice was mailed to the employer that the claimant had filed a claim for unemployment insurance benefits. The notice informed the employer that it could become a party to the proceedings if it filed a Notice of Possible Ineligibility or a letter in lieu thereof within ten days. The employer filed no Notice of Possible Ineligibility or letter in lieu thereof. Nonetheless, the claimant was disqualified for benefits, and filed an appeal. An appeal hearing was scheduled for January 17, 1985, to consider the issue of whether the claimant had left work voluntarily without good cause attributable to the employer. Prior to that hearing, a prospective witness for the employer telephoned the Referee's supervisor. The Referee's supervisor told the witness that the employer need not appear at the hearing, because it had no "say so" in the matter.

Subsequently, the Referee conducted a hearing at which only the claimant appeared. On the basis of the evidence presented, the Referee issued a decision allowing benefits to the claimant. The employer then filed an appeal to the Board of Review, expressing a desire to present evidence at a hearing.

HELD: Agency Rule 2720.205(c) reads, in pertinent part:

> In the event that a claimant appeals an Adjudicator's determination regarding a separation issue...and where the employer from which the separation occurred is not a party, such employer will receive notice of hearing which he may attend as a nonparty and present such facts and evidence as he may possess.

Therefore, even though the employer may have been a nonparty, the employer still should have been afforded an opportunity to appear at the hearing and present such facts and evidence as it possessed. The decision of the Referee was set aside, and the case was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**56 Ill. Adm. Code 2720.265**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 100, Continuances; PR 108.05, Cross-Examination; PR 195.05, Fair Hearing**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

The record of the hearing forwarded to the Board of Review did not contain any documentation concerning the claimant's attendance, nor was it disclosed whether the employer had in fact furnished the documentation as it had stated it would. Nor did the Referee cite in his decision whether he had relied upon any such documentation in rendering his decision.

HELD: When material information has not been made a part of the record, and no reason for its omission has been provided, the record may be rendered inadequate. From an inadequate record, it cannot be determined whether the Referee made a correct finding of fact or whether his decision was supported by the law. Those being the circumstances in the instant case, the decision of the Referee was set aside and the matter remanded.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05534/7-23-85**
AUTHORITY	**56 Ill. Adm. Code 2720**
TITLE	**Evidence**
SUBTITLE	**Making a Record and Writing a Proper Decision**
CROSS-REFERENCE	**PR 145.05, Dismissal**

One of the issues to be decided upon appeal was whether the employer had filed a sufficient and timely Protest of Benefit Payment, in accordance with Agency Rule 2720.130.

The record forwarded to the Board of Review by the Referee contained only one document -- a copy of the employer's appeal from the Claims Adjudicator's determination.

Following the hearing, the Referee issued a decision which dismissed the employer's appeal. Under the section of the decision reserved for "Findings of Fact," the Referee made no reference to facts specific to the case, but, instead, set forth a general conclusion that the employer failed to comply with Agency Rule 2720.130.

HELD: Agency Rule 2720.270 reads, in pertinent part:

> The Referee's decision will include findings of fact and conclusions of law, separately stated and based on the preponderance of the credible, legally competent evidence in the record.

In the instant matter, the Referee's decision was inadequate for two reasons. First, the Referee's decision was not based upon evidence in the record. Second, the decision did not separately state findings of fact and conclusions of law. From an inadequate

record and inadequate decision, the Board of Review was unable to determine whether the employer filed a Protest at all, or, if it did, whether the Protest was insufficient, untimely, or both.

The case was remanded with instructions to the Referee to complete the record, then issue a new decision, incorporating findings of fact specific to the case. Those findings were to include the date of Notice to the Last Employer, the date by which the employer had to respond, and what the employer's response, if any, stated. The Referee was further instructed to set forth a conclusion, separately stated, showing that the employer's Protest was timely or untimely with respect to the due date, or was sufficient or insufficient with respect to content - including the reasons therefore.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**85-BRD-05853/8-9-85**
AUTHORITY	**56 Ill. Adm. Code 2720.265**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**None**

During an appeal hearing conducted in March, 1985, the claimant testified that he quit work due to an ailment, which he purportedly wished to corroborate by presenting a document supposedly signed by his treating physician.

The Referee marked the document "Exhibit Number 1," but did not otherwise identify it, or read its contents into the record, or prepare copies of it, before, apparently, returning it to the claimant.

Subsequently, the Referee issued a decision which disqualified the claimant for benefits for Voluntary Leaving, under Section 601A of the Act.

HELD: When material information has not properly been made a part of the record, the record may be rendered inadequate. From an inadequate record, it cannot be determined whether a Referee made a correct finding of fact or whether his decision was supported by the law. In the instant matter, in the absence of a copy of "Exhibit Number 1," the Board of Review was unable to determine whether or not the claimant left work under circumstances which precluded the disqualifying provisions of Section 601A from applying by reason of the exemption provisions of Section 601B-1, based in large part upon the requirement that a licensed, practicing physician has deemed the claimant unable to work. Therefore, it could not be concluded that the Referee made a correct finding of fact or that his decision was supported by the law. The decision of the Referee was set aside, and the case was remanded with instructions to procure the document in question.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-85-9292/6-30-86**
AUTHORITY	**Section 500C of the Act and 56 Ill. Adm. Code 2720.245**
TITLE	**Evidence**
SUBTITLE	**Burden of Coming Forward**
CROSS-REFERENCE	**PR 380.2, Rehearing or Review; AA 190.1, Evidence**

In his decision, the Referee wrote:

> The employer appealed the determination allowing benefits under Section 500C. Therefore, the employer had the burden of going forward with the evidence. The testimony of the employer added nothing to the evidence submitted to the Claims Adjudicator... (Therefore) the employer did not go forward with the evidence (and) the claimant is eligible for benefits...

HELD: At an appeal hearing, the appellant has the burden of coming forward with evidence to show that the Adjudicator's determination is incorrect. This does not preclude the appellant from coming forward with some evidence previously presented, or with evidence in all respects identical to the evidence presented earlier. The burden of coming forward should not be confused with the weight of the evidence or a burden of proof.

Further, a finding of fact by a Referee identical to that of the Claims Adjudicator does not require that the Referee come to the same conclusion of law as the Adjudicator. A legal conclusion is one which must follow, as a matter of law, from a given set of facts. It is the Referee's responsibility - as the appellate tribunal - to render a legal conclusion. He is not absolved from this responsibility just because a Claims Adjudicator has made similar findings of fact, irrespective of the Adjudicator's conclusion.

As it happened, in this case, the Board of Review found that the Claims Adjudicator's conclusion - and, therefore, the Referee's - was incorrect.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	**ABR-89-5656/1-31-90**
AUTHORITY	**56 Ill. Adm. Code 2720.245 and 2720.250**
TITLE	**Evidence**
SUBTITLE	**Burden of Coming Forward**
CROSS-REFERENCE	**PR 25.05, Appearance; PR 400.05, Representation**

The claimant appealed a determination and filed a signed authorization for attorney representation. At his appeal hearing, the claimant's attorney and a witness for the employer appeared; the claimant did not appear. The claimant's attorney attempted to come forward with evidence by calling the employer's witness on the claimant's behalf. The Referee disallowed the attorney's attempt to elicit such evidence and dismissed the appeal.

HELD: Rule 2720.245 provides that, in every case, the appellant has the burden of coming forward and will first produce testimony or other evidence to establish that a determination is incorrect. However, there is no prescribed method for producing testimony or other evidence. And Rule 2720.250 provides As it happened, ules of evidence do not apply before Referees.

The case was remanded so that the claimant, or his attorney, might present evidence.

ISSUE/DIGEST CODE	**Procedure/PR 190.05**
DOCKET/DATE	***Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985)**
AUTHORITY	**Sections 500C and 801 of the Act**
TITLE	**Evidence**
SUBTITLE	**Making a Record**
CROSS-REFERENCE	**PR 380.2, Review; AA 190.05, Evidence**

The claimant filed a claim for unemployment insurance benefits, for the period February 22, 1981 through July 5, 1981. The Claims Adjudicator determined that the claimant was ineligible, pursuant to the provisions of Section 500C of the Act, in that he had not met his burden of demonstrating that he had been available for and actively seeking work during the period under review.

The claimant appealed, requesting that certification forms which he had filed with the Local Office be considered at the appeal hearing. The forms listed the claimant's job contacts and had been filed by the claimant every 2 weeks, as required by the Department's rules. Those certification forms were never forwarded by the Local Office and were not made a part of the record at the appeal hearing, during which the claimant testified about his job contacts and his availability for work. After the hearing, the Referee issued a decision affirming the Adjudicator's determination that the claimant had not been available for or actively seeking work. The Board of Review also affirmed the denial of benefits.

The claimant filed an action for administrative review. His complaint alleged that the decision denying benefits violated Section 801 of the Unemployment Insurance Act, which stated, in pertinent part:

> At any hearing (bearing upon the issue) the...claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work...shall be a part of the record...

HELD: Under Section 801 of the Act, the Agency is required to submit certification forms which it has in its possession. If those forms are not submitted and made a part of the record, as a matter of law a decision denying benefits under Section 500C cannot stand. In the instant case, because the claimant's certification forms were not made a part of the record, the claimant could not be denied benefits. The decision of the Board of Review was reversed.

ISSUE/DIGEST CODE **Procedure/PR 190.05**
DOCKET/DATE **ABR-92-13791 & ABR-93-8425/5-14-94**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Evidence**
SUBTITLE **Burden of Proof *vs* Going Forward with Evidence**
CROSS-REFERENCE **None**

At the start of a hearing (ABR-92-13791), a Referee remarked: "This is the claimant's appeal; therefore, the claimant has the burden of proof and will go first." After a hearing (ABR-93-8425), a Referee ruled that the appellant did not meet its burden of proof because he "failed to establish a basis which would justify reversing the Local Office determination."

HELD: The burden of proof has nothing to do with whether a party is an appellant or the order in which evidence is presented. The burden of proof is the same at every stage of adjudication and does not necessarily lie with the party bringing an appeal, but lies with the party in a better position to know the underlying circumstances of a work separation: the claimant in a voluntary leaving case, the employer in a discharge case. Another way of stating this is that if the evidence on both sides is equal or if neither side appears to have prevailed by a preponderance of the evidence, the party with the burden of proof (the claimant in a voluntary leaving case, the employer in a discharge case) loses.

ISSUE/DIGEST CODE **Procedure/PR 190.05**
DOCKET/DATE **ABR-94-8110/10-12-94**
AUTHORITY **Section 804 of the Act**
TITLE **Evidence**
SUBTITLE **Hearing Record**
CROSS-REFERENCE **None**

The claimant (the appellee at a hearing) refused to permit his testimony to be recorded. The Referee proceeded anyway, taking the employer's testimony, upon which he based a decision denying benefits to the claimant. The claimant then requested another hearing.

HELD: Section 804 of the Act provides, in pertinent part:

> A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded ...

The purpose of recording testimony is to preserve a record for review. In this case, the Referee did what the Act required him to do: he recorded testimony, preserving a record for review. Upon review, the Board of Review stated: "When a party refuses to participate, we find no reason for granting the party another hearing and we will proceed based upon the available record." Based upon the available record, the Board of Review affirmed the denial of benefits.

ISSUE/DIGEST CODE **Procedure/PR 190.05**
DOCKET/DATE ***Village Discount Outlet v. Department of Employment Security*, 384 Ill.App.3d 522, 323 Ill.Dec. 469, 893 N.E.2d 943 (1st Dist., 2008)**
AUTHORITY **56 Ill. Adm. Code 2720.250 and 2720.270**
TITLE **Evidence**
SUBTITLE **General**
CROSS-REFERENCE **PR 195.05, Fair Hearing & Due Process; MC 190.15 Evidence, Weight & Sufficiency**

The employer operated drop-off facilities and thrift stores for various charities. It discharged the claimant for allegedly setting aside donations intended for the employer and taking them for himself or his relatives. At the hearing before the Referee, the employer's Regional Manager testified that he had seen a videotape showing the claimant setting aside a television and directing attendants to load it into a relative's car. The claimant denied taking any items. On appeal by the claimant, the Board of Review reversed the Referee's finding of misconduct on the basis that the Regional Manager's testimony was hearsay and there was not sufficient firsthand evidence to show that the claimant had actually committed the actions that had caused his discharge.

HELD: The appellate court held that the Regional Manager's testimony about his observations of the videotape was not hearsay. The court found, however, that the Board of Review was correct in not ruling that the alleged hearsay was inadmissible and properly gave such evidence its natural probative effect, which was minimal due to fact that the evidence was rife with evidentiary flaws, such as the employer's failure to lay a proper foundation for the videotape. Also affecting the weight of the evidence was that the videotape itself was never introduced into evidence and, thus, the witness's description of what he saw on the tape ran afoul of the "best evidence rule", which expresses a preference for the original of documentary evidence when the contents of the documentary evidence are sought to be proved.

The court also held that the employer's due process right to a fair hearing was not violated. The court noted that the Referee took an active role in developing the evidence and fleshing out the positions of the parties. Due process does not require the Referee to take such an active role at a hearing that all evidentiary deficiencies are remedied, even where a party is not represented by legal counsel. The employer was given prior notice of the requirements for admitting the videotape into evidence and elected, instead, to present only the testimony of a supervisor who had been shown the tape. According to the court, the employer "must now live with the consequences of that decision." Since the employer received a fair hearing, there was no necessity to remand the matter to allow the employer another opportunity to correct any evidentiary deficiencies in its case.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**ABR-84-12201/3-21-85**
AUTHORITY	**56 Ill. Adm. Code 2720.225**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Subpoenaed Documents Not Produced; Effect**
CROSS-REFERENCE	**PR 190.05, Evidence**

The claimant worked as a balance clerk from 1981 until his discharge in January, 1984. The employer's Notice of Possible Ineligibility indicated that, in general, the claimant had had an "uncooperative attitude." The claimant often had been abusive to superiors, refusing to perform work as assigned. When he did perform work, which he understood well, he would do it sloppily, on purpose. He would not work according to schedule; on one occasion he absented himself from work in order to play golf and counted it as a sick day; on another occasion, though denied permission to leave work early, he did so anyway in order to watch a television show. The employer also stated that the claimant had been intoxicated on the job, on more than one occasion. The employer's witnesses testified to the above at an appeal hearing, after which the claimant was disqualified for benefits for misconduct connected with his work.

Prior to a remanded hearing, the claimant made an application for subpoenas, including subpoenas duces tecum for the employer's "error accounts" - which the claimant contended would establish that he had worked to the best of his ability ("over 100%"); for the employer's attendance records; and for the employer's time cards - in particular, the time cards of the claimant and his supervisor, whom the claimant alleged had come to work late and left work early more often than the claimant. The Referee agreed to issue all the subpoenas sought by the claimant.

In response to the subpoenas duces tecum, the employer was prepared to produce its error account book and its attendance records, but not the time cards requested by the claimant, due to the time and expense involved in locating and shipping them from storage facilities in another state. However, the employer was willing to stipulate that the claimant may have worked longer hours than his supervisor. The proposed stipulation was presented to the claimant several days before the hearing was to commence; he never indicated that the proposed stipulation was unacceptable to him.

On October 18, 1984, the claimant and the employer appeared for the appeal hearing. The claimant informed the Referee that he would not proceed without the time cards. The claimant then walked out of the hearing room. The Referee considered the evidence before him, including that previously submitted, and issued a decision which disqualified the claimant for benefits.

Upon further appeal, the claimant contended that he had been denied a fair hearing because the employer had not been compelled to produce the subpoenaed time cards.

HELD: A Referee shall allow a request for a subpoena unless he finds that the evidence sought is immaterial, irrelevant, or cumulative. The request having been allowed, if a party fails to obey a subpoena of the Referee, the Referee shall treat the

evidence required by the subpoena, but not produced, as establishing the truth of the position of the party who subpoenaed the documents.
In the instant case, the subpoena for the time cards should not have been issued in the first place. The claimant had never shown that his supervisor's hours were material or relevant to his claim. The claimant's hours, not to mention allegations of his intoxication and insubordination, were in question. Even so, the claimant had no basis for complaining about the employer's failure to produce the time cards, since, either by the employer's failure to produce the time cards or by the employer's offer to enter into a stipulation, the truth of the claimant's position would have been established: that the claimant worked longer hours than his supervisor - which, again was neither material nor relevant.

It is not the purpose of the Act to require the production of records unnecessary for a full, fair, and impartial hearing. In the instant case, the failure of the employer to produce unnecessary time cards did not deny the claimant a fair hearing.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-04920/7-2-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Ex Parte Communications**
CROSS-REFERENCE	**None**

The claimant complained that the employer's witness and the Referee continued a conversation in the hearing room for "approximately ten minutes after I left the hearing room."

HELD: Ex parte communications of the type alleged by the claimant violate the concepts of Fair Hearing and Due Process, which require that a Referee base his decision upon competent evidence presented to him in the record forwarded by the claims adjudicator and from the hearing in which the claimant was a participant. To do otherwise would taint not only the immediate proceeding, but damage, in general, the interest in presenting an atmosphere free from suspicion of bias or improper influence. (In the instant case, however, the evidence did not support the claimant's allegation that the Referee engaged in improper ex parte communications or that the Referee based his decision upon information furnished through communications off the record.)

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05261/7-10-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Notice of Issue, Full and Fair Hearing on that Issue**
CROSS-REFERENCE	**PR 145.05, Withdrawal; PR 190.05, Evidence**

The employer petitioned the Board of Review to set aside the Referee's decision and reinstate its appeal from the Claims Adjudicator's determination. The employer stated that it was induced to withdraw its appeal by the Referee, who had concluded prior to taking evidence and without making a record - that the employer's appeal had been untimely. The employer further stated that the Referee later admitted that he had miscalculated in determining the timeliness of the appeal. In addition, the issue of timeliness had not been listed on the hearing notice sent to the parties.

HELD: Due Process requires adequate notice of the issues to be considered, and a full and fair opportunity to be heard with respect to those issues. The resulting decision should be based upon the evidence of record with respect to those issues. In the instant matter, the Referee considered an issue despite the parties' lack of notice, did not elicit evidence with respect to that issue, acted as an advocate in advising a party to withdraw on account of that issue, and rendered a withdrawal decision based upon that (non-existent) issue. The affected party was, in the process, denied Due Process. The decision of the Referee was set aside, and the employer's appeal was reinstated.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05334/7-16-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Right to Produce Witnesses**
CROSS-REFERENCE	**None**

The claimant, a Retail Salesperson, was discharged after the employer determined that she had stolen money from the employer by issuing a false cash credit to a customer. Subsequently, in the course of an interview with the Claims Adjudicator, the claimant stated that she had issued a proper cash credit to the customer; and, the claimant furnished the name, address, and telephone number of that customer. Still, the claimant was disqualified for benefits, under Section 602B, for theft. She appealed, and a hearing was conducted on December 28, 1984. In the course of that hearing, the claimant told the Referee that the customer in question was willing to testify on the claimant's behalf. The Referee did not attempt to contact the customer by telephone, nor did the Referee continue the hearing to give the claimant an opportunity to produce the witness in person. Based upon the evidence presented at the hearing, the Referee affirmed the disqualification imposed by the Claims Adjudicator.

In her appeal to the Board of Review, the claimant contended that the testimony of the customer in question should have been heard.
HELD: Due Process requires that parties be given a full and fair opportunity to be heard, which would include the right to produce witnesses who might present or rebut evidence which would be material to a fair disposition of the case. In the instant matter, the claimant was prepared to introduce a witness who was willing to testify concerning the central issue in the case, but was precluded from doing so. The claimant was denied a full and fair hearing.

The case was remanded, and the Referee was instructed to take the testimony of the claimant's witness, either in person or by telephone.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05523/7-23-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Parties' Rights to Confront, Cross-Examine, and Rebut Evidence**
CROSS-REFERENCE	**PR 100, Continuances; PR 108.05, Cross-Examination; PR 190.05, Evidence**

At a hearing conducted on January 18, 1985, the employer alleged that the claimant had been discharged for attendance infractions. Then the employer requested additional time in order to submit documentation to that effect. At the conclusion of the hearing, the Referee informed the parties that his decision would remain pending, until January 31, in order to permit the employer to submit documentation concerning the claimant's attendance.

There were no further appearances by the parties. On January 31, the Referee issued a decision which disqualified the claimant for benefits, on the basis of attendance infractions. The claimant appealed that decision to the Board of Review.

HELD: The proper purpose of a hearing is to provide the parties a full and fair opportunity to be heard. Toward that end, parties must be given an opportunity to confront and rebut evidence, and cross-examine testimony pertaining to such evidence.

The Referee's conduct in the instant matter - informing the parties that his decision would be suspended pending his receipt of evidence, without continuing the hearing process to allow attendance of the parties at the presentation of such evidence - effectively precluded any opportunity for the parties to confront and rebut evidence, or cross-examine testimony pertaining to it.

The Referee's conduct was in substantial conflict with the proper purpose of a hearing. Therefore, the decision of the Referee was set aside and the matter was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05832/8-8-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Notice of Issue to be Considered, Waiver of Notice**
CROSS-REFERENCE	**None**

On February 21, 1985, the claimant appeared and testified at an appeal hearing. The hearing notice had informed the claimant that the issue to be considered was Misconduct, under Section 602A of the Act. That had been the Section of the Act under which the Claims Adjudicator had disqualified the claimant for benefits.

On February 26, 1985, the Referee issued a decision disqualifying the claimant for benefits, due to Voluntary Leaving, under Section 601A of the Act. The Referee had not explained to the claimant during the course of the hearing that Voluntary Leaving was an issue or that Section 601A was applicable; and, accordingly, the claimant had had no opportunity to waive notice with regard to Section 601A of the Act.

HELD: Due Process requires that an individual be given reasonable notice of the issues to be considered at a hearing. Where circumstances preclude an opportunity for such notice, an individual may voluntarily and knowingly waive such notice. In the instant case, the claimant was not given notice of the issue upon which the Referee based her decision. Nor was the claimant in a position to knowingly waive notice. In order to ensure that the claimant would be accorded Due Process, the Board of Review set aside the Referee's decision and remanded the case, with instructions to provide the claimant with adequate notice of the Section(s) of the Act being addressed.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-05894/8-14-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Leading Questions on Direct Examination (Posed by Referee)**
CROSS-REFERENCE	**MC 385.05, Relation of Offense to Discharge**

The claimant worked in Sales for 2 1/2 years. On November 29, 1984, immediately after being questioned about "register shortages," the claimant was discharged. He was told that he was being discharged due to having falsified his application for employment.

At the appeal hearing, the claimant admitted that 2 1/2 years prior to his discharge he had omitted to mention on his application the name of a previous employer. The Referee then cursorily questioned the employer's witness. The Referee asked for the date when the employer first acquired knowledge of the application falsification.

Referee: "Just before the claimant was discharged?"

Employer: "Right."

Relying upon the claimant's admission and the employer's witness's response to the question posed, the Referee failed to elicit any testimony concerning any relationship between the "register shortages" and the claimant's discharge, and, subsequently, the Referee issued a decision which disqualified the claimant for benefits, on the basis of the claimant having falsified his application for employment.

HELD: On direct examination, leading questions designed to elicit responses regarding material facts are improper. The Referee's question, cited above, was clearly a leading question, one which patently encouraged the witness to respond affirmatively. Therefore, the employer's witness's response to that improper question could not be accorded any weight.

It is axiomatic that for an act to constitute misconduct connected with the work within the meaning of the statute the claimant must have been discharged for that act. Based upon the evidence of record, not including the employer's witness's response to the improper question, it was unclear whether the employer discharged the claimant immediately upon discovering that he had falsified his application, or only after passage of substantial time, thereby condoning such falsification and discharging him for reasons other than falsification of his employment application.

Accordingly, the Referee's decision was contrary to the manifest weight of the evidence and was set aside and the matter was remanded.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**85-BRD-06296/8-29-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Ex Parte Communications**
CROSS-REFERENCE	**None**

In connection with her appeal to the Board of Review, the claimant wrote:

> ...I would also like to know why (employer's) representative stayed in with Hearing Referee after hearing because he (the Referee) is a lawyer and very prejudiced and I was not there to defend myself.

HELD: The interests of justice require that parties be given every reasonable opportunity to perceive proceedings before the Referee as affording a fair and impartial hearing, conducive to a disposition of their appeal on its merits and on the basis of all credible and tangible evidence, on the record. Toward this end, impartiality must be maintained throughout the hearing process. Proceedings must be characterized by the absence of influence or conduct suggesting bias, prejudice, or prejudgment of issues. Ex parte communications are to be strongly condemned and discouraged.

In the instant case, the Referee's alleged ex parte communications with the employer's witness created an impression that any review and consideration of the claimant's case would be tainted by prejudice. Under such circumstances, the Board of Review was compelled to set aside the Referee's decision and remand the case to a different Referee for a new hearing.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	**ABR-84-12062/10-4-85**
AUTHORITY	**14th Amend, U.S. Const.**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Bifurcated Hearings**
CROSS-REFERENCE	**PR 108.05 Cross-Examination**

The claimant and his former employer were scheduled to testify, by telephone at an appeal hearing, to consider a work separation issue. Initially, the employer appeared, but the claimant could not be reached. The Referee proceeded to elicit the employer's testimony. After excusing the employer, the Referee made another attempt to contact the claimant, and, having done so, in the employer's absence, proceeded to elicit testimony from the claimant. Subsequently, the Referee issued his decision, based upon the parties' testimony.

HELD: The proper purpose of a hearing is to provide the parties with a full and fair opportunity to be heard. Toward that end, parties must be given a reasonable opportunity to confront one another and rebut one another's evidence. In the instant case, the Referee conducted a bifurcated hearing, during which the parties could not confront one another or rebut one another's allegations. This did not constitute a full and fair opportunity to be heard. Accordingly, the decision of the Referee was set aside and the case was remanded for a new hearing.

ISSUE/DIGEST CODE **Procedure/PR 195.05**
DOCKET/DATE ***Booker v. IDES*, 576 N.E. 2d 1028 (1991)**
AUTHORITY **14th Amend, U.S. Const.**
TITLE **Fair Hearing and Due Process**
SUBTITLE **Inaudible Hearing Transcript**
CROSS-REFERENCE **None**

The claimant contended that he was denied due process because the transcript of his hearing referred to portions that were "inaudible." He contended that the Board of Review should not have relied upon this incomplete account in reviewing the Referee's decision.

HELD: The mere fact that portions of a record are inaudible does not by itself establish a denial of due process if the record also demonstrates that an individual receives a fair hearing with a full opportunity to present evidence.

Here, the claimant did not show how he was prejudiced by the inaudible portions. Although parts of the tape may have been inaudible, the transcript showed that the claimant had a fair and full hearing. The Referee's and Board's decision were supported by the record.

ISSUE/DIGEST CODE **Procedure/PR 195.05**
DOCKET/DATE ***Arroyo v. IDES*, 695 N.E. 2d 1350 (1998)**
AUTHORITY **Sections 601 and 602 of the Act**
TITLE **Fair Hearing and Due Process**
SUBTITLE **Notice**
CROSS REFERENCE **VL 135.05 and MC 135.05, Discharge or Leaving**

The employer protested that the claimant, who was absent from work for more than a month due to medical problems, had “terminated voluntarily”; however, the claims adjudicator found the separation to be a discharge and issued a determination that the claimant was discharged for reasons other than misconduct. The employer appealed. The hearing notice mentioned both Section 601 (Voluntary Leaving) and 602 (Discharge); still, the Referee affirmed the claims adjudicator=s determination that this was a discharge. When the employer appealed to the Board of Review, the Board reversed the Referee and denied benefits, finding the claimant voluntarily left work. The claimant then appealed, arguing she was deprived of due process: an opportunity to be heard on the Voluntary Leaving issue.

HELD: The claimant should have expected to address Voluntary Leaving: first, the employer raised the issue in its protest; second, the hearing notice mentioned both Section 601 and Section 602. The due process contention failed.

ISSUE/DIGEST CODE **Procedure/PR 195.05**
DOCKET/DATE ***Figueroa v. Doherty*, 707 N.E. 2d 654 (1999)**
AUTHORITY **14th Amend. U.S. Constitution**
TITLE **Fair Hearing and Due Process**
SUBTITLE **Right to be heard**
CROSS-REFERENCE **None**

The claimant appealed a decision of the Board of Review which denied benefits due to discharge for misconduct. The claimant spoke Spanish but knew some English. Although an interpreter was provided, the Referee directed the interpreter at the hearing to summarize rather than translate his testimony and his questions to the opposing party. The claimant contended that he had not been given a fair hearing. The circuit court affirmed the Board of Review’s denial of benefits. The appellate court reversed and remanded the case for another hearing.

HELD: The appellate court held that the claimant did not receive a fair hearing. His testimony was not accurately translated and the Referee did not develop the record to insure that the relevant questions were asked and answered. The court remanded the case back to conduct a fair hearing.

ISSUE/DIGEST CODE	**Procedure/PR 195.05**
DOCKET/DATE	***Meneweather v. Board of Review*, 621 N.E. 2d 22 (1992)**
AUTHORITY	**14th Amend. U.S. Constitution**
TITLE	**Fair Hearing and Due Process**
SUBTITLE	**Referee's duty to develop the record**
CROSS-REFERENCE	**PR 190.05, Evidence**

The claimant was denied benefits due to her discharge for misconduct. The claimant alleged that her alcoholism prevented her from acting "willfully and deliberately" as required by the misconduct disqualification. The claimant also contended that she was denied a fair hearing because the referee did not develop the record to determine her condition. The circuit court affirmed the Board of Review's denial of benefits. The appellate court reversed and remanded the case for another hearing.

HELD: The appellate court held that the claimant did not receive a full and fair hearing on her allegation that her alcoholism caused her behavior. Her testimony concerning her condition should have prompted the Referee to have more fully investigated the truth of her allegations. The court remanded the case back to conduct a fair hearing.

HELD: Section 803 permits the Board of Review to take jurisdiction upon its own motion. Here, the Board took jurisdiction despite being unable to determine with certainty that the employer protested or appealed. The reason was that the purpose of the Act is better served by investigating a case on the merits than by awarding benefits on a technicality from a deficient record.

ISSUE/DIGEST CODE	**PR 195.05**
DOCKET/DATE	***Village Discount Outlet v. Department of Employment Security*, 384 Ill.App.3d 522, 323 Ill.Dec. 469, 893 N.E.2d 943 (1st Dist., 2008)**
AUTHORITY	**56 Ill. Adm. Code 2720.250 and 2720.270**
TITLE	**Fair Hearing & Due Process**
SUBTITLE	**General**
CROSS-REFERENCE	**Procedure/PR 190.05, Evidence, General; MC 190.15 Evidence, Weight & Sufficiency**

The employer operated drop-off facilities and thrift stores for various charities. It discharged the claimant for allegedly setting aside donations intended for the employer and taking them for himself or his relatives. At the hearing before the Referee, the employer's Regional Manager testified that he had seen a videotape showing the claimant setting aside a television and directing attendants to load it into a relative's car. The claimant denied taking any items. On appeal by the claimant, the Board of Review reversed the Referee's finding of misconduct on the basis that the Regional Manager's testimony was hearsay and there was not sufficient firsthand evidence to show that the claimant had actually committed the actions that had caused his discharge.

HELD: The appellate court held that the Regional Manager's testimony about his observations of the videotape was not hearsay. The court found, however, that the Board of Review was correct in not ruling that the alleged hearsay was inadmissible and properly gave such evidence its natural probative effect, which was minimal due to fact that the evidence was rife with evidentiary flaws, such as the employer's failure to lay a proper foundation for the videotape. Also affecting the weight of the evidence was that the videotape itself was never introduced into evidence and, thus, the witness's description of what he saw on the tape ran afoul of the "best evidence rule", which expresses a preference for the original of documentary evidence when the contents of the documentary evidence are sought to be proved.

The court also held that the employer's due process right to a fair hearing was not violated. The court noted that the Referee took an active role in developing the evidence and fleshing out the positions of the parties. Due process does not require the Referee to take such an active role at a hearing that all evidentiary deficiencies are remedied, even where a party is not represented by legal counsel. The employer was given prior notice of the requirements for admitting the videotape into evidence and elected, instead, to present only the testimony of a supervisor who had been shown the tape. According to the court, the employer "must now live with the consequences of that decision." Since the employer received a fair hearing, there was no necessity to remand the matter to allow the employer another opportunity to correct any evidentiary deficiencies in its case.

ISSUE/DIGEST CODE **Procedure/PR 195.05**
DOCKET/DATE ***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.2d 1082 (Table) (11/25/09)**
AUTHORITY **Section 602A of the Act**
TITLE **Fair Hearing and Due Process**
SUBTITLE **General**
CROSS-REFERENCE **PR 190.05, Evidence, general; PR 400.05: Representation, By a Non-Attorney; MC 5.05, Definition of Misconduct**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.

The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court first noted that hearsay is admissible in an unemployment compensation hearing. More importantly, this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

ISSUE/DIGEST CODE **Procedure/PR 275.05**
DOCKET/DATE **ABR-89-6022/8-9-90**
AUTHORITY **Sections 702, 800, and 803 of the Act**
TITLE **Jurisdiction and Powers of Tribunal**
SUBTITLE **When the Record is Incomplete**
CROSS-REFERENCE **PR 405.2, Right of Review**

The record presented to the Board contained no protest; however, there was an adjudicator's note that a 134.1 determination was mailed to the employer. (A 134.1 determination means that the adjudicator found that the employer submitted a timely protest.) Further, the record contained no letter of appeal to the determination; however, the determination did not contain the employer's address (and may not have been mailed correctly).

HELD: Section 803 permits the Board of Review to take jurisdiction upon its own motion. Here the Board took jurisdiction despite being able to determine with certainty that the employer protested or appealed. The reason was that the purpose of the Act is better served by investigating a case on the merits than by awarding benefits on a technicality from a deficient record.

ISSUE/DIGEST CODE **Procedure/PR 275.05**
DOCKET/DATE **ABR-90-9555/12-10-90**
AUTHORITY **Section 702 of the Act; 56 Ill. Adm. Code 2720.130**
TITLE **Jurisdiction and Powers of Tribunal**
SUBTITLE **Sufficiency of Protest**
CROSS-REFERENCE **None**

The employer's protest set forth these facts:

> Employee said he was unable to perform his tasks. He is also suing under the Workers' Compensation thru our insurance carrier and may have some funds distributed to him. This has not been determined yet to our knowledge. We needed to hire someone to do his tasks.

The claims adjudicator deemed the employer's protest sufficient and subsequently issued a determination that the claimant was eligible for benefits.

The employer appealed. The Referee dismissed the employer's appeal. The Referee held that the employer had submitted an insufficient protest, which did not entitle it to appeal rights.

HELD: Benefit Rule 2720.130 provides that, if an employer submits an insufficient protest, the Department shall return it, affording the employer an opportunity to correct the insufficiency. Here, if the Referee believed that the protest was insufficient, he was only empowered to remand the case to the Adjudicator for further action, not dismiss it altogether.

ISSUE/DIGEST CODE **Procedure/PR 275.05**
DOCKET/DATE **85-BRD-05338/7-16-85**
AUTHORITY **Section 803 of the Act**
TITLE **Jurisdiction and Powers of Tribunal**
SUBTITLE **Nonparty Appeal to Board of Review**
CROSS-REFERENCE **PR 25.05, Appearance; PR 190.05, Evidence**

On November 30, 1984, notice was mailed to the employer that the claimant had filed a claim for unemployment insurance benefits. The notice informed the employer that it could become a party to the proceedings if it filed a Notice of Possible Ineligibility or a letter in lieu thereof within ten days. The employer filed no Notice of Possible Ineligibility or letter in lieu thereof. Nonetheless, the claimant was disqualified for benefits, and filed an appeal. An appeal hearing was scheduled for January 17, 1985, to consider the issue of whether the claimant had left work voluntarily without good cause attributable to the employer. Prior to that hearing, a prospective witness for the employer telephoned the Referee's supervisor. The Referee's supervisor told the witness that the employer need not appear at the hearing, because it had no "say so" in the matter.

Subsequently, the Referee conducted a hearing at which only the claimant appeared. On the basis of the evidence presented, the Referee issued a decision allowing benefits to the claimant. The employer then filed an appeal to the Board of Review, expressing a desire to present evidence at a hearing.

HELD: Although the employer, because it had not filed a Notice of Possible Ineligibility or letter in lieu thereof, was not technically a party entitled to take an appeal to the Board of Review, the Board of Review took jurisdiction over the matter, citing Section 803 of The Illinois Unemployment Insurance Act:

The Board of Review may, on its own motion...affirm, modify, or set aside any decision of a Referee.

The case was subsequently remanded for a new hearing, from which the employer would not be excluded. (See PR 25.05, Appearance; PR 190.05, Evidence.)

ISSUE/DIGEST CODE **Procedure/PR 275.05**
DOCKET/DATE **ABR-86-4328/8-6-87**
AUTHORITY **Section 803 of the Act**
TITLE **Jurisdiction and Powers of Tribunal**
SUBTITLE **Board of Review over Matters Pending Before a Referee**
CROSS-REFERENCE **None**

The claimant appeared without witnesses and requested a continuance. The Referee denied a continuance and ruled that the claimant was disqualified for benefits.

The claimant appealed to the Board of Review, requesting that he be given the opportunity to produce his witnesses. The Board remanded the case for that purpose.

At his new hearing, the claimant, again, appeared without witnesses and, again, requested a continuance. This time, the Referee granted a continuance.

After the Referee granted the continuance, but before the hearing was held, the employer wrote a letter to the Board, objecting to this third opportunity for the claimant as "a gross abuse of the process" that "would constitute substantial harassment of the employer."

HELD: Section 803 provides that the Board of Review may, on appeal or its own motion, affirm, modify, or set aside a Referee's decision. Section 803 does not permit the Board to rule on matters pending before a Referee. There is one exception. The Director may remove matters from a Referee to the Board of Review. But the Board itself is not empowered to remove matters from a Referee.

The granting of a continuance was a matter pending before a Referee. The Director had not removed this matter from the Referee to the Board. The Board of Review was without jurisdiction to take any action on the employer's request.

ISSUE/DIGEST CODE **Procedure/PR 275.05**
DOCKET/DATE ***Stone v. Board of Review*, 572 N.E. 2d 412 (1991)**
AUTHORITY **Section 803 of the Act**
TITLE **Jurisdiction and Powers of Tribunal**
SUBTITLE **Time Limit for Board of Review to Render Decision**
CROSS-REFERENCE **None**

An appeal was taken from a Referee's decision to the Board of Review. Thirteen months passed, during which time neither party applied for a Notice of Right to Sue. Then the Board of Review rendered its decision.

The claimant, who was denied benefits, argued that Section 803 of the Act requires the Board to render its decision within 120 days of the date of appeal or lose jurisdiction; because the Board issued its decision nine months late, it lost jurisdiction, and, therefore, its decision was null and void.

HELD: Section 803 of the Act provides, in pertinent part:

> The Board of Review shall make a final determination on the appeal within 120 days of the date of the filing of the appeal...
>
> At any time after the...120-day period...the party claiming to be aggrieved by the decision of the Referee may apply for a Notice of Right to Sue (to bypass the Board and proceed directly to court).
>
> If no party files a Notice of Right to Sue, the decision of the Board of Review, issued at any time, shall be the final decision on the appeal.

Courts will not construe a statute in such a way as to render its provisions meaningless. Here, the 120-day time-limit is not mandatory. If it were, then the provision for seeking a Notice of Right to Sue would be meaningless, as would be the provision concerning the validity of a Board of Review decision issued at any time in the absence of a Notice of Right to Sue.

In short, 120 days was the time after which the claimant could apply for a Notice of Right to Sue, not a time limit within which the Board of Review was required to issue its decision.

ISSUE/DIGEST CODE	**Procedure/ PR/380.05**
DOCKET/DATE	**ABR-10-1162**
AUTHORITY	**Sections 801 and 804 of the UI Act; 56 Ill. Adm. Code 2712.1 and 2720.255**
TITLE	**Rehearing or Review**
SUBTITLE	**General**
CROSS-REFERENCE	**PR 145.05, Dismissal, Withdrawal, or Abandonment-General**

The employer failed to appear at a hearing scheduled pursuant to notice before a Referee on December 24, 2009. The Referee called the employer's witness at the proper time at the only telephone number appearing in the Department's file, but received an outgoing message that the business was closed for the holidays. The Referee dismissed the employer's appeal due to its failure to appear at the scheduled hearing.

In its appeal to the Board of Review, the employer stated that its failure to appear was due to the Referee's failure to call the employer's witnesses at the telephone number where those witnesses were waiting for the call. Attached to its appeal to the Board was a copy of the Notice of Hearing which contained the telephone numbers of two witnesses who would testify on the employer's behalf. However, the employer provided no confirmation that this message was faxed to the Referee prior to the hearing.

HELD: In reaching its decision, the Board of Review relied on Section 2712.1 of the Department's rules, which provides in pertinent part that

> ...any document which is a response to or protest of a statement or notice that has been issued by the Department or the Director to which there are protest or appeal rights may be filed by facsimile transmission sent to the designated Department address. The date imprinted on the document by the Department's telefax machine shall have the same effect as the U.S. Postal Service's postmark. The individual or entity filing a document by telefax transmission bears the risk that the transmission will not be successful. The date imprinted on the transmission confirmation document by the sender"s telefax machine may be presented as evidence of successful transmission and filing of the document. [56 Ill. Adm. Code 2712.1]

In the instant case, the document showing the witnesses' names and telephone numbers did not contain a telefax transmission confirmation to substantiate that the employer faxed this information to the Department on December 21, 2009, which was prior to the hearing. A telefax transmission did appear at the top of the page, but it indicated only that it was transmitted to the Board of Review on December 30, 2009 and not to the Referee before the December 24th hearing. The Board found that the evidence indicated that the employer did not successfully transmit the fax prior to the hearing and affirmed the Referee's decision dismissing the employer's appeal.

ISSUE/DIGEST CODE **Procedure/PR 380.1**
DOCKET/DATE **85-BRD-05033/7-8-85**
AUTHORITY **56 Ill. Adm. Code 2720.310**
TITLE **Rehearing or Review**
SUBTITLE **Additional, Standard for Granting Oral Argument**
CROSS-REFERENCE **PR 430.15, Taking and Perfecting Proceedings for Review**

The claimant, her attorney, and a witness for the employer appeared at an appeal hearing on October 4, 1984, to consider the issue of whether the claimant left work voluntarily without good cause attributable to her employer. During the course of the hearing, the claimant offered direct testimony, listened to the testimony of the employer's witness, cross-examined the employer's witness, offered rebuttal testimony, and cited case law to support her position. The Referee concluded that the claimant had left work voluntarily without good cause attributable to her employer. The claimant appealed the Referee's decision. In connection with her appeal to the Board of Review, the claimant requested that the Board hear additional oral argument.

HELD: Agency Rule 2720.310 reads, in pertinent part:

> The Board of Review shall decide a case on the record...without oral argument or shall grant oral argument where it is necessary or appropriate for a full and fair disposition of the appeal...

In the instant case, the Board of Review denied the claimant's request because the claimant, accompanied by her attorney, was given a reasonable opportunity for a full and fair hearing before the Referee, and further oral argument was not necessary for a fair disposition of the appeal.

ISSUE/DIGEST CODE **Procedure/PR 380.1**
DOCKET/DATE ***Gregory v. Bernardi*, 465 N.E. 2d 1052 (1984)**
AUTHORITY **Section 803 of the Act**
TITLE **Rehearing or Review**
SUBTITLE **Additional Proof**
CROSS-REFERENCE **PR 380.25, Rehearing or Review, Scope and Extent**

The employer's letter of appeal to the Board of Review contained a "Summary of Events" that was not part of the record before the Referee or ever properly submitted as evidence. In its decision, disqualifying the claimant, the Board made reference to two "facts" contained in the Summary of Events.

The claimant contended that the Board's decision should be set aside because it denied him due process: it was based upon evidence he had no opportunity to examine.

HELD: Findings upon which a decision is based must be drawn from the record. The record may include evidence not previously submitted, but only if all parties are given notice and an opportunity to rebut that evidence.

In this case, the Board considered evidence improperly. (However, this was deemed "harmless error," because the decision was based upon other facts. The decision was not set aside.)

ISSUE/DIGEST CODE	**Procedure/ PR-380.1**
DOCKET/DATE	**White v. Department of Employment Security, 376 Ill.App.3d 668, 314 Ill.Dec. 867, 875 N.E.2d 1154 (1st Dist., 2007)**
AUTHORITY	**Section 601(A) of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Additional Proof**
CROSS-REFERENCE	**VL 135.05, Discharge or Leaving – General** **PR-25.05, Appearance-General;**

The claimant worked for the employer=s roofing company as a foreman. The claimant believed working conditions were dangerous because of a recent blizzard. He testified that he contacted the manager who told him he could come to work if he wanted to. At some point thereafter, according to his testimony, he again called the manager who told him he was too busy to talk just then but would call him back. When the manager did not call back, the claimant left a voice message, which the manager also failed to return. The claimant testified that he never did hear from the manager. The manager testified that he had issued the claimant a warning on December 21, 2005 with regard to his rude treatment of a customer and told him that another such incident would result in his discharge. The following day the claimant came into work and stated that AI can=t deal with this; I quit@, but did not mention the warning. There was work available for the claimant on December 22, 2005. The Referee held that the claimant quit his job without good cause attributable to the employer and was disqualified from receiving benefits pursuant to Section 601(A) of the Act. The claimant appealed the Referee=s decision to the Board of Review, attaching to his appeal telephone records which he believed substantiated his testimony that he had called the manager several times. Declining to consider the claimant=s telephone records because he failed to show that he was not at fault for not submitting them at the hearing, the Board of Review affirmed the Referee=s decision.

HELD: Noting that Aa reviewing court may not judge the witnesses= credibility, resolve conflicts in testimony or re-weigh evidence@, the court found that there was sufficient evidence to support the Board of Review=s decision that the claimant voluntarily quit his job without good cause attributable to the employer where (1) two employer witnesses testified that there was continuing work available to the claimant when he decided to quit because he Acouldn=t take this@ and (2) the claims adjudicator=s report indicated that the claimant had told her that he had left his job for personal reasons without informing the employer.

In its opinion, the court rejected the claimant=s contention on appeal that the employer should not have been allowed to testify at the hearing before the Referee because it had not filed a timely protest in accordance with the agency=s benefit rules, noting that those rules provide that an employer filing a late protest is only prohibited from appealing an adverse decision by a Referee and not from testifying at the hearing.

The court also rejected the claimant=s contention on appeal that the Board of Review erred in not considering his telephone records. The court found that the claimant did not adhere to the agency=s rules regarding the filing of additional evidence where he did not submit such evidence within 20 days of filing his appeal and did not provide an explanation of why he was not at fault for not submitting such evidence at the time of the hearing.

ISSUE/DIGEST CODE **Procedure/PR 380.1**
DOCKET/DATE **ABR-09-18309/2-10-10**
AUTHORITY **56 Ill. Adm. Code 2720.245(a)**
TITLE **Rehearing or Review**
SUBTITLE **Additional Proof**
CROSS-REFERENCE **None**

The claimant downloaded a first-run movie onto the employer's computer while at work. The motion picture company that owned the film informed the employer by e-mail to stop this activity which it considered a form of theft. The employer feared prosecution from the movie company for theft or a curtailing of their internet privileges. The claimant was subsequently discharged. After his discharge, but prior to the hearing before the Referee, the claimant asked the employer for a copy of this e-mail which formed the basis of his discharge. However, the employer did not provide the claimant a copy until after the hearing. Furthermore, this e-mail had not been provided to the claims adjudicator or to the Referee. At the hearing, the claimant did not deny that he, on occasion, downloaded movies from the employer's computer while at work. He characterized this activity as an accepted practice by the employer and commonplace at the workplace. It was not clear, from the evidence presented at the hearing, whether the claimant, in stating that he did, indeed, download movies at work, was confessing to having downloaded the movie in question illegally. In his appeal to the Board of Review, the claimant requested another hearing for the purpose of submitting this e-mail into evidence.

HELD: 56 Ill. Adm. Code 2720.245(a) provides that "[T]he Referee will control the hearing which will be confined to the factual and/or legal issues on appeal and ensure that the parties have a full opportunity to present all evidence and testimony regarding such issues." In the instant case, the Board of Review determined that the claimant had not been given full opportunity to present his case at the hearing because the e-mail in question had not been provided to him prior to the hearing. The Board found that the claimant had engaged in due diligence in attempting to obtain a copy of the e-mail which formed the basis for his discharge and remanded the matter back to the Referee for a further hearing at which the e-mail shall be entered into evidence. At the subsequent hearing, the parties may examine and cross-examine with regard to this document as to its authenticity and relevance. Either party may present testimony or other evidence pertaining to the issue of whether the claimant illegally downloaded a movie onto the employer's computer and whether his activity was thereby "misconduct" as that term is defined in Section 602(A) of the Act. Evidence from the prior hearing in this matter is to be incorporated into and made a part of the record before the Referee, who is to issue a decision based upon all the evidence of record.

ISSUE/DIGEST CODE **Procedure/PR 380.15**
DOCKET/DATE **85-BRD-05454/7-19-85**
AUTHORITY **56 Ill. Adm. Code 2720.250**
TITLE **Rehearing or Review**
SUBTITLE **Credibility of Witness**
CROSS-REFERENCE **MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a Nurse's Aide, until her discharge for reportedly remarking to a patient: "Shut up, you old crab."

At the appeal hearing, the claimant, under oath, denied making any such remark to a patient. An eyewitness of the employer, also under oath, testified to having heard the claimant make the remark to a patient.

The Referee concluded that the claimant had made the remark to a patient and as a result the claimant was disqualified under Section 602A.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee -- who has had an opportunity to observe the demeanor and mein of the witnesses -- shall determine which testimony is more credible and what weight to accord it. In the instant case, the Board of Review determined that the record was adequate and that the Referee had made appropriate findings as to credibility. Therefore, the Referee's decision was properly based upon the preponderance of credible evidence.

ISSUE/DIGEST CODE **Procedure/PR 380.15**
DOCKET/DATE **85-BRD-06072/8-22-85**
AUTHORITY **56 Ill. Adm. Code 2720.250**
TITLE **Rehearing or Review**
SUBTITLE **Credibility of Witness**
CROSS-REFERENCE **MC 190.15, Evidence, Weight and Sufficiency**

The claimant was employed as a Housekeeper in a hospital, until his discharge for reportedly stealing food.

At the appeal hearing, the employer's first witness, a security officer, testified that in the course of her investigation of the causes of missing food, she hid in a Day Surgery dressing room, directly across from a nurses' station where the food in question was kept. She observed the claimant enter the nurses' station, stoop and crawl toward a refrigerator, and remove two cartons of juice. The security officer exclaimed, "I got you!" Whereupon the claimant replaced the cartons of juice and proceeded to walk away, ignoring a command that he stop. At that point, one of the claimant's co-workers approached the area, as did the claimant's supervisor.

The employer's second witness testified that the claimant did have the right to be in the Day Surgery section of the hospital. However, that witness testified that the claimant's co-worker had no business being there.

The claimant's supervisor filed a report concerning the incident. It reflected what the security officer had reported to the supervisor, and did not mention the claimant's co-worker.

The claimant testified that he never took anything from the refrigerator. Both the claimant and his witness, the co-worker, testified that they had a right to be in the Day Surgery section, since they were on a break and were not pre-occupied by other duties. They testified that they had entered the Day Surgery section together.

The Referee issued a decision in which it was concluded that the claimant had not attempted to steal food items.

HELD: Where the record is adequate, but the testimony of the parties is conflicting, the Referee - being in the best position to observe the demeanor of the witnesses and to assess their credibility - shall determine which testimony is more credible and what weight to accord it. In the instant case, neither the claimant's nor his co-worker's statements were any less consistent or on their face entitled to any less credence than the statements of the employer's witnesses. Therefore, it could not be concluded that the Referee's decision was contrary to the manifest weight of the evidence.

ISSUE/DIGEST CODE **Procedure/PR 380.15**
DOCKET/DATE **85-ABR-3858/9-30-85**
AUTHORITY **56 Ill. Adm. Code 2720.250**
TITLE **Rehearing or Review**
SUBTITLE **Credibility of Witness (Where Record Inadequate)**
CROSS-REFERENCE **MC 190.15, Evidence; MC 270.05, Intoxication**

The claimant, a Driver, left his employer's garage at 4 p.m. on Christmas Eve, to pick up and deliver mail, and was expected to return no later than 6 p.m. Instead, at 8:15 p.m., the employer located the claimant in the vestibule of a closed post office along his route. The employer testified that although he found no "booze" on the claimant's person or in his truck, the claimant was in an obviously drunken condition.

The claimant testified that his truck had twice stalled, leaving him stranded at a post office until his employer could arrive with a tow truck. He denied that he had consumed any intoxicants. He stated that he believed the employer discharged him in retaliation for the claimant's having exposed certain violations of law by the employer: The claimant said that he had been instrumental in forcing the employer to pay unemployment insurance contributions, and to buy state licenses for trucks which the employer had been operating with dealers' stickers.

The Referee asked the employer no questions concerning the alleged violations and alleged retaliation. Subsequently, the Referee issued a decision which disqualified the claimant for benefits. The Referee's conclusions rested solely upon the employer's testimony, which the Referee had found to be more credible than that of the claimant.

In its review of the record, the Board of Review noted that the claimant made reference to the fact that, for 49 years, his speech had been impaired and he walked with a limp. Those points were not developed in the record.

HELD: Where the record is adequate, and a Referee's findings as to credibility are supported by that record, the Referee's findings as to credibility will not be disturbed, since the Referee would have been in the best position to evaluate the demeanor and mien of the witnesses. However, from an inadequate record, a Referee's findings as to credibility, being unsupported, must be questioned.

In the instant case, the Referee's failure to ask relevant questions rendered the record, and therefore the Referee's resolution of the question of credibility, inadequate. The case was remanded, with instructions to pose the following relevant questions:

(1) Was the employer in violation of tax and licensing laws; and

(2) Did the claimant expose such violations to the authorities; and

(3) Was the claimant's act of exposing such violations a consideration in the employer's decision to discharge him; and

(4) Does the claimant suffer from physical disabilities which could cause him to speak and walk as if he were intoxicated?

The Referee was instructed to elicit testimony with respect to those questions, and, from that testimony and the evidence previously submitted, make findings and issue a decision based upon the more complete record.

ISSUE/DIGEST CODE	**Procedure/PR 380.2**
DOCKET/DATE	**ABR-85-9292/6-30-86**
AUTHORITY	**Section 500C of the Act and 56 Ill. Adm. Code 2720.245**
TITLE	**Rehearing or Review**
SUBTITLE	**Question of Fact or Law**
CROSS-REFERENCE	**PR 190-05, Evidence; AA 190.1, Evidence**

In his decision, the Referee wrote:

> The employer appealed the determination allowing benefits under Section 500C. Therefore, the employer had the burden of going forward with the evidence. The testimony of the employer added nothing to the evidence submitted to the Claims Adjudicator... (Therefore) the employer did not go forward with the evidence (and) the claimant is eligible for benefits...

HELD: At an appeal hearing, the appellant has the burden of coming forward with evidence to show that the Adjudicator's determination is incorrect. This does not preclude the appellant from coming forward with some evidence previously presented, or with evidence in all respects identical to the evidence presented earlier. The burden of coming forward should not be confused with the weight of the evidence or a burden of proof.

Further, a finding of fact by a Referee identical to that of the Claims Adjudicator does not require that the Referee come to the same conclusion of law as the Adjudicator. A legal conclusion is one which must follow, as a matter of law, from a given set of facts. It is the Referee's responsibility - as the appellate tribunal - to render a legal conclusion. He is not absolved from this responsibility just because a Claims Adjudicator has made similar findings of fact, irrespective of the Adjudicator's conclusion.

As it happened, in this case, the Board of Review found that the Claims Adjudicator's conclusion - and, therefore, the Referee's - was incorrect.

ISSUE/DIGEST CODE **Procedure/PR 380.2**
DOCKET/DATE ***Johnson v. Board of Review*, 479 N.E. 2d 1082 (1985)**
AUTHORITY **Sections 500C and 801 of the Act**
TITLE **Rehearing or Review**
SUBTITLE **Question of Fact or Law**
CROSS-REFERENCE **PR 190.05, Evidence; AA 190.05, Evidence**

The claimant filed a claim for unemployment insurance benefits, for the period February 22, 1981 through July 5, 1981. The Claims Adjudicator determined that the claimant was ineligible, pursuant to the provisions of Section 500C of the Act, in that he had not met his burden of demonstrating that he had been available for and actively seeking work during the period under review.

The claimant appealed, requesting that certification forms which he had filed with the Local Office be considered at the appeal hearing. The forms listed the claimant's job contacts and had been filed by the claimant every 2 weeks, as required by the Department's rules. Those certification forms were never forwarded by the Local Office and were not made a part of the record at the appeal hearing, during which the claimant testified about his job contacts and his availability for work. After the hearing, the Referee issued a decision affirming the Adjudicator's determination that the claimant had not been available for or actively seeking work. The Board of Review also affirmed the denial of benefits.

The claimant filed an action for administrative review. His complaint alleged that the decision denying benefits violated Section 801 of the Unemployment Insurance Act, which stated, in pertinent part:

> At any hearing (bearing upon the issue) the...claimant's certification that, during the week or weeks affected by the hearing, he was able to work, available for work, and actively seeking work...shall be a part of the record...

HELD: Under Section 801 of the Act, the Agency is required to submit certification forms which it has in its possession. If those forms are not submitted and made a part of the record, as a matter of law a decision denying benefits under Section 500C cannot stand. In the instant case, because the claimant's certification forms were not made a part of the record, the claimant could not be denied benefits. The decision of the Board of Review was reversed.

ISSUE/DIGEST CODE **Procedure/PR 380.25**
DOCKET/DATE **Richard Jackson v. IDES, No. 4-87-0559 (1988)**
AUTHORITY **Section 1100 of the Act**
TITLE **Rehearing or Review**
SUBTITLE **Scope and Extent**
CROSS-REFERENCE **None**

A Claims Adjudicator, Referee, and the Board of Review all held that the claimant was disqualified for benefits for misconduct connected with his work under Section 602A. Upon appeal to the Circuit Court, the claimant submitted an "Affidavit of Witness," a document disputing, and discrediting as hearsay, evidence submitted to the Agency during the course of the adjudication process. The Circuit Court admitted this affidavit for the sole purpose of showing that the material evidence relied upon by the Agency was hearsay. Then the Circuit Court reversed the decision of the Board of Review, finding that it was based upon hearsay evidence and against the manifest weight of the evidence.

HELD: Section 1100 of the Unemployment Insurance Act provides, in relevant part, that review by the courts of decisions of the Board of Review shall be in accordance with the provisions of Administrative Review Law. The scope of review of an administrative agency's decision is set forth in the Code of Civil Procedure. The Code of Civil Procedure limits review of new or additional evidence as follows:

> No new or additional evidence in support of or in opposition to any finding, order, determination or decision of the administrative agency shall be heard by the court.

Further, courts have held that, upon administrative review, the reviewing court is limited to considering only the evidence submitted in the administrative hearing and it may not hear further evidence or conduct a hearing de novo. Further, parties are not permitted to supplement the administrative record on appeal to provide new or additional evidence.

In this case, although the Circuit Court qualified its decision by stating that the affidavit was admitted for the sole purpose of showing that the material evidence relied upon by the Agency was hearsay, the admission of the document was still improper, and it was on the basis of this document, and not the record properly before the Circuit Court on review, that it reversed the Agency decision as being against the manifest weight of the evidence. The decision of the Board of Review was not against the manifest weight of the evidence. The decision of the Circuit Court was reversed.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Gregory v. Bernardi,* 465 N.E. 2d 1052 (1984)**
AUTHORITY	**Section 803 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**PR 380.1. Rehearing or Review. Additional Proof**

The Referee made findings of fact based upon the record and held that the claimant was discharged not for misconduct.

Upon appeal, the Board of Review made an independent assessment of the evidence in the record, rather than merely determining the supportability of the Referee's findings. On the basis of its findings of fact, the Board of Review determined that the claimant was discharged for misconduct.

The claimant contended that the Referee was the trier of fact and that the Board, as a reviewing body, should not have assessed evidence independently or disturbed the trier's findings unless they were against the manifest weight of the evidence (this being the standard that would apply to a reviewing court).

HELD: Where an administrative agency and not a hearing examiner is responsible for a decision, the agency must make its own decision based upon the evidence in the record.

Section 803 of the Act designates Board of Review decisions as Department decisions subject to direct judicial review. Referee decisions are not subject to direct judicial review. Further, section 803 contemplates that the Board will make findings. It empowers the Board to take additional evidence, or conduct its own hearings, thereby expanding the Referee's record. The Board, then, is the ultimate finder of fact. The Referee is not the finder of fact, but merely one such finder, along with the claims adjudicator.

Consequently, the Board of Review is not held to the standard of a reviewing court. While the Board is required to consider the findings of the Referee as part of the record, it is free to consider the whole record in order to reach its own independent findings.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Harry Clark v. IDOL*, 219 N.E. 2d 143 (1966)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**None**

A Claims Adjudicator issued a determination that the claimant was ineligible for benefits. The determination contained a notice that, if the claimant did not appeal in a timely fashion, the determination would become final.

The claimant filed an untimely appeal. He explained to the Referee that he did not file on time because his emotions were in turmoil: he had been evicted from his apartment for unpaid rent; his wife had left him, taking their children. The Referee concluded that the dates of filing were not in error, that the determination had become final, and that he was without jurisdiction to hear the case on the merits. He dismissed the appeal.

The claimant appealed to the Board of Review, which affirmed the Referee's decision dismissing the appeal.

The claimant sought judicial review. The Circuit Court heard additional evidence relating to the reasons for the delayed appeal. The court then remanded the case to the Board of Review for a hearing on the merits.

The Board of Review conducted a hearing, after which the claimant was denied benefits on the merits.

The claimant appealed to Circuit Court, which reversed the decision of the Board of Review.

HELD: The scope of judicial review is confined to questions of fact and law presented by the record. No new or additional evidence in support of or in opposition to any finding, order, determination, or decision of an administrative agency may be heard by a reviewing court.

In this case, the Circuit court should not have heard evidence relating to the circumstances of the claimant's late filing. This was so even if the claimant's additional evidence merely reiterated what he told the Referee. The court did not make the distinction between remanding for the purpose of taking additional testimony and remanding on the basis of having taken additional testimony, the latter being improper and grounds for reversal. The Circuit Court's decision was reversed.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Campbell v. Board of Review*, 570 N.E. 2d 812 (1991)**
AUTHORITY	**Section 900 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**MS 60.10, Benefit Computation: MS 410.05. Seasonal**

The claimant was held ineligible under Section 612. Despite this, he continued to receive unemployment checks, until the Department issued a recoupment decision. The claimant never requested that recoupment be waived. In the meantime, he appealed his 612 case to the Referee, the Board of Review, the Circuit Court, and, finally, the Appellate Court, and lost.

The claimant argued before the Appellate Court that he should not have to pay recoupment.

HELD: An individual must exhaust administrative remedies before seeking judicial review.

Under Section 900 of the Act, the conditions for waiver of recoupment are that an individual must request it, benefits must have been received without fault, and recoupment must be against equity and good conscience.

Here, the claimant never requested waiver. Consequently, he precluded the Department from making findings concerning fault, equity, and good conscience. Because the claimant did not exhaust his administrative remedies, the court could not waive recoupment.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	***Thomas v. Ward*, 570 N.E. 2d 477 (1990)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**MC 15.1, Absence; MC 190.15, Evidence**

The claimant had received numerous warnings for absenteeism. He was last absent because he was seeking admission to a hospital because of a reaction to heroin. The employer discharged him for being absent without notice.

The claimant testified that he tried to contact his employer by telephone. The employer testified that there was no message on its answering machine. The claimant testified that he tried to leave a message on the employer's answering machine, but it sometimes malfunctioned.

The Board of Review found that the claimant did not try to leave a message and denied benefits. The Circuit Court, examining the same facts, reversed. On review, the Department argued that the Circuit Court had no authority to disturb the Board's findings.

HELD: On review, the findings and conclusions of an administrative agency Shall be held to be prima facie true and correct. Only if the court finds that the decision was against the manifest weight of the evidence will the decision be overturned. A reviewing court may not reweigh the evidence and make factual findings. A reviewing court may not consider an agency's decision to be against the manifest weight of the evidence simply because the court would have decided the case differently, but only if no rational trier of fact could have agreed with the agency's decision.

Whether a worker gives proper notice of absenteeism is a question of fact. Factual matters may be decided based upon witness' credibility.

Whether the machine did or did not function was a factual question. That question could be resolved by assessing the parties' credibility. The Board of Review, the Department's ultimate trier of fact, was empowered to assess credibility and resolve the factual question. Its findings regarding that fact could not be disturbed.

Benefits were denied.

ISSUE/DIGEST CODE	**Procedure/PR 380.25**
DOCKET/DATE	**Nykaza v. Department of Employment Security, 364 Ill.App.3d 624, 301 Ill.Dec. 397, 846 N.E.2d 1000 (3rd Dist., 2006)**
AUTHORITY	**Section 803 of the Act**
TITLE	**Rehearing or Review**
SUBTITLE	**Scope and Extent**
CROSS-REFERENCE	**None**

The claimant worked for the employer as a tree trimmer. When he applied for benefits, he told the claims adjudicator (1) that increased transportation distances and associated costs caused him to quit his job and start his own business and (2) that he had been self-employed from March or April of 2003 until November 28, 2003. The claims adjudicator denied him benefits based on Section 601(A) of the Act, stating in the decision that the claimant quit his job to start his own business. In his appeal to the Referee, the claimant wrote that he was forced to quit Ato try my own tree business.@ At the hearing, he testified that transportation costs caused him to quit his job to try his own business. The Referee affirmed the claims adjudicator=s determination. In his appeal to the Board of Review, he reiterated that transportation costs caused him to quit his job and open his own business and, for the first time, raised the possibility that he might be eligible for benefits under Section 601(B)(2) of the Act, which provides that Section 601(A) will not apply to someone who leaves work voluntarily to accept other *bona fide* work. The Board affirmed the Referee=s decision finding the claimant ineligible under Section 601(A), without referencing the Section 601(B)(2) issue. The claimant filed a complaint for administrative review and argued that he was entitled to benefits under Section 601(B)(2). The circuit court denied his claim.

HELD: The appellate court held that the claimant did not waive his claim under Section 601(B)(2). According to the court, the criteria for determining whether an issue is adequately raised before an administrative agency is that the issue must be raised with sufficient specificity and clarity that the tribunal is aware that it must decide the issue, and in sufficient time that the agency can do so. Here, beginning with the claimant=s statement to the claims adjudicator, it was clear that the claimant had quit his job to start his own business. This fact was reiterated before the Referee and the Board of Review. Based on these facts, the court found that the plaintiff raised the issue with sufficient clarity and specificity that the Board was aware that it must decide the plaintiff=s Section 601(B)(2) claim and in sufficient time for the Board to decide it. The matter was remanded to the Board to decide this issue.

ISSUE/DIGEST CODE **Procedure/PR 400.05**
DOCKET/DATE **ABR-89-5656/1-31-90**
AUTHORITY **Section 806 of the Act**
TITLE **Representation**
SUBTITLE **By an Agent**
CROSS-REFERENCE **PR 25.05, Appearance; PR 190.05, Evidence**

The claimant appealed a determination and filed a signed authorization for attorney representation. At his appeal hearing, the claimant's attorney and a witness for the employer appeared; the claimant did not appear. The claimant's attorney attempted to come forward with evidence by calling the employer's witness on the claimant's behalf. The Referee disallowed the attorney's attempt to elicit such evidence and dismissed the appeal due to the claimant's failure to appear.

HELD: Section 806 of the Unemployment Insurance Act provides, in pertinent part, that any individual or entity in any proceeding before the Referee may be represented by a duly authorized agent.

Here, under Section 806 (as well as general principles of Agency law), the appearance by duly authorized counsel was equivalent to the claimant himself having appeared. The case was remanded so that the claimant, or his attorney, might present evidence.

ISSUE/DIGEST CODE **Procedure/PR 400.05**
DOCKET/DATE **ABR-85-7321/2-28-86**
AUTHORITY **56 Ill. Adm. Code 2720.5**
TITLE **Representation**
SUBTITLE **By an Agent**
CROSS-REFERENCE **PR 25.05, Appearance, By an Agent**

On August 28, 1985, a hearing was conducted, by telephone, to consider a work separation issue. The claimant appeared and testified. The employer was represented at the hearing by a tax service which specialized in unemployment insurance matters. Based upon the evidence presented by the claimant and the employer's representative, the Referee determined that the claimant was eligible for benefits without disqualification.

The employer (itself) appealed, stating:

> It is the employer's request that a rescheduled hearing be permitted so that the employer can give his testimony. The reason why the employer did not participate in the hearing was because the tax agency which represents the employer forgot to give the Referee the phone number for the telephone hearing...

HELD: Agency Rule 2720.5, Service of Notices, Decisions, Orders, reads, in pertinent part, as follows:

> b) A person may designate an agent...In such cases, notice to the agent so designated is notice to the person...

In the instant case, the employer was represented at the hearing by its duly appointed agent, which had received notice of the hearing. Under Rule 2720.5 - and under general principles of Agency Law - this was equivalent to the employer itself having received notice, and having appeared at the hearing. Therefore, the employer's request for a rescheduled hearing, on the basis of its not having appeared at the originally scheduled hearing, was without merit. The request was denied.

ISSUE/DIGEST CODE **Procedure/ PR 400.05**
DOCKET/DATE ***White v. IDES* (1994)**
AUTHORITY **56 Ill. Adm. Code 2720.5 and 2720.335**
TITLE **Representation**
SUBTITLE **Notice to Principal or Designated Agent**
CROSS-REFERENCE **MS 95.4, Construction of Statutes**

The claimant retained counsel and notified IDES. Despite this, IDES mailed notices and decisions to the claimant and not to her attorney. The attorney's receipt of decisions denying the claimant benefits was delayed, and, consequently, when the attorney filed a complaint for administrative review, the complaint was untimely. IDES argued that the case should be dismissed because direct notice to the principal constituted adequate notice.

HELD: 56 Ill. Adm. Code 2720.5 provides that a person may designate an agent to receive notices and decisions. 56 Ill. Adm. Code 2720.335 provides that the Board of Review shall mail decisions to a party or the party's representative. To construe 56 Ill. Adm. Code 2720.335 narrowly to permit the Board to choose to mail notices to either a party or the party's representative leads to an absurd, illogical, and unfair result; *i.e.*, the Department would provide for agents, then could disregard their status, penalizing a claimant. Therefore, when a party properly designates an agent, notices and decisions must be sent to that agent.

ISSUE/DIGEST CODE **Procedure/PR 400.05**
DOCKET/DATE ***Perto v. Board of Review* / 8-3-95**
AUTHORITY **Section 806 of the Act**
TITLE **Representation**
SUBTITLE **By a Non-Attorney**
CROSS-REFERENCE **None**

The employer used a service company, whose nonattorney protested on an IDES form that the claimant was discharged for neglect of duties, and, later, appealed by sending a letter disagreeing with a determination and requesting a hearing. The service company did not participate in the hearing. After he was denied benefits, the claimant argued that the service company's representation of the employer constituted the unauthorized practice of law.

HELD: There is no all-inclusive definition of the practice of law. Here, the service company's letter writing was a relatively uncomplicated function that did not require legal training or expertise, and, therefore, did not constitute the practice of law. However, this holding:

> ... is a narrow one confined to the facts of this case. We specifically do not reach the question of whether [the service company's] actions would have constituted the practice of law if [the service company] had participated in the hearing ... Nor do we speculate ... at what point, if any, in the Department's administrative proceedings the participation of nonattorneys constitutes the unauthorized practice of law.

ISSUE/DIGEST CODE **Procedure/PR 400.05**
DOCKET/DATE ***Hurst v. Department of Employment Security,* 393 Ill.App.3d 323, 332 Ill.Dec. 777, 913 N.E.2d 1067 (1st Dist., 2009)**
AUTHORITY **Section 602(A) of the Act**
TITLE **Representation**
SUBTITLE **General**
CROSS-REFERENCE **Misconduct/MC 485.65: Violation of Company Rule, Motor Vehicle**

The claimant's position as a customer service technician required that he have a valid driver's license. The claimant was arrested for drunk driving. The employer's rule required that a worker report any arrest upon returning to work, but the claimant did not report the arrest until several days after his return, telling his supervisor that he was unaware of the rule. The record showed that he had received and read the employee handbook containing the rule and had attended a meeting, held two weeks before his arrest, at which the rule had been discussed. The claimant was subsequently discharged for failing to report his arrest to the employer.

HELD: Initially, the appellate court held that the claimant had waived the issue that the rule did not govern his behavior in the performance of his work and, thus, could not form the basis for a finding of misconduct by not raising this issue in administrative proceedings before the Referee or the Board of Review. Despite its ruling of waiver, the court found that the rule related to the claimant's work since the failure to report his arrest occurred at the workplace and had a direct effect on his ability to perform his job duties which required possession of a valid driver's license.

The court found that (1) the claimant's failure to adhere to the rule was deliberate and wilful since he had received and read the employee handbook containing the rule and had attended a meeting where the rule was discussed two weeks before his arrest; and, (2) the claimant caused harm by impeding the employer's ability to ascertain whether he had a valid driver's license, exposing the employer to potential liability for injuries caused by the claimant while driving on an invalid license when performing his duties, and negatively impacting the employer's interest in maintaining an orderly workplace. The court concluded that the Board of Review's decision that the claimant was disqualified from receiving benefits because his behavior constituted misconduct was not against the manifest weight of the evidence.

Lastly, the court found that the claimant received a fair hearing because the Referee did not prevent him from fully presenting his case and was not unobjective in conducting the hearing, even though she took a strong negative position on the plaintiff's claim that he was allowed to keep his old driver's license when he renewed it.

ISSUE/DIGEST CODE	**Procedure/PR 400.05**
DOCKET/DATE	***Sudzus v. Department of Employment Security*, 393 Ill.App.3d 814, 333 Ill.Dec. 1, 914 N.E.2d 208 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 554, 336 Ill.Dec. 492, 920 N.E.E2d 1082 (Table) (11/25/09)**
AUTHORITY	**Section 602A of the Act**
TITLE	**Representation**
SUBTITLE	**By a Non-Attorney**
CROSS-REFERENCE	**PR/190.05, Evidence, general; PR 195.05, Fair Hearing and Due Process; MC 5.05, Definition of Misconduct**

The claimant was employed as an apprentice electrician. He was discharged for misconduct for removing air conditioning equipment without authorization. After filing a claim for benefits, the local office and the Referee found that the claimant was guilty of misconduct and held him ineligible for benefits under Section 602 of the Act. The claimant argued that the employer's non-attorney representative engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses. He also argued that he did not receive a fair hearing, that the evidence did not show that he was guilty of misconduct, and that the employer's testimony was inadmissible hearsay. The Board of Review affirmed the Referee's decision denying benefits and rejected all of the claimant's arguments against it.

HELD: The court discussed four issues. The first concerns the unauthorized practice of law. The court held that the practice of law turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation.

The second issue is whether the claimant received a fair hearing as required by due process of law. The court held that the claimant had received a fair hearing in that he was given an opportunity to be heard and to question the employer's witnesses. The fact that he chose not to take advantage of the opportunity to question the adverse employer's witnesses does not invalidate the proceeding on grounds of due process.

The third issue was whether the employer proved all the elements of misconduct under Section 602. The court held that all the elements of misconduct were met. In particular, the court noted that a rule or policy need not be written down in order to bind the employee. The claimant's violation of an oral directive not to be present in certain areas of the workplace also constitutes a violation of an employer rule or policy.

The fourth issue was the claimant's objection that testimony concerning the cost of the air conditioning units was inadmissible hearsay. The court first noted that hearsay is admissible in an unemployment compensation hearing. More importantly, this testimony was introduced not for its factual accuracy but simply to show that the loss of the air conditioning units caused financial harm to the employer. Thus, strictly speaking, the testimony concerning the approximate cost of the air conditioning units was not hearsay at all.

ISSUE/DIGEST CODE	**Procedure/PR 400.05**
DOCKET/DATE	***Grafner v. Department of Employment Security*, 393 Ill.App.3d 791, 333 Ill.Dec. 101, 914 N.E.2d 520 (1st Dist., 2009); Leave to Appeal Denied at 234 Ill.2d 520, 336 Ill.Dec. 482, 920 N.E.2d 1072 (Table) (11/25/09)**
AUTHORITY	**Section 806 of the Act**
TITLE	**Representation**
SUBTITLE	**By a Non-Attorney**
CROSS-REFERENCE	**None**

The employer was a church which employed the claimant as a part-time musician. After filing a claim for benefits, the local office and the Referee found that the claimant had voluntarily quit her job and was found ineligible for benefits under Section 601A of the Act. The claimant argued that both the non-attorney representative and the employer witness engaged in the unauthorized practice of law during the hearing by examining and cross-examining witnesses and making closing remarks. The Board of Review affirmed the Referee's decision denying benefits holding that the representative's actions at the hearing did not constitute the practice of law.

HELD: The court held that while the practice of law is a flexible concept, it turns on the rendering of legal advice, not upon the simple questioning of witnesses in an informal hearing where the strict rules of evidence do not apply. Citing *Perto v. Board of Review*, 654 N.E. 2d 232, (1995), the court looked to the character of the actions performed, not the place where they were done, in determining the legal significance of the actions performed. In this case, the questioning performed by the employer's representative was brief and clarifying. These questions did not require legal expertise or argumentation. In reaching its conclusion, the court also relied on the language of Section 806 of the Act which expressly states that an entity "may be represented by a union or any duly authorized agent." The court reasoned that if the legislature intended that only attorneys could represent parties in an unemployment compensation hearing, such broad language would not have been used.

ISSUE/DIGEST CODE	**Procedure/PR 405.15**
DOCKET/DATE	***Hernandez v. DOL*, 83 Ill. 2d. 512 (1981)**
AUTHORITY	**1./S-800**
TITLE	**Right of Review**
SUBTITLE	**Finality of Determination**
CROSS-REFERENCE	**None**

The claims adjudicator found the claimant ineligible for benefits due to work-related misconduct consisting of unauthorized absences and sent a determination written entirely in English to this effect to the claimant. The determination also purported to inform him of his right to appeal within nine days of the date it was mailed.

The claimant and members of his household speak only Spanish, so he took this determination to a friend for translation. The friend only informed him that the notice said he was discharged for unauthorized absences, something he already knew. The claimant personally visited the employment office after the notice was mailed, and after the appeal period expired, to investigate the delay in receiving benefits and, at that time, first learned of the ineligibility finding from an agency interpreter. The referee ruled on appeal that he lacked jurisdiction to review the adjudicator's determination because of the late appeal, and the Board of Review affirmed. The Circuit Court of Cook County dismissed the claimant's complaint, but the Appellate Court reversed and remanded for a determination on the merits. The Board of Review and the former employer appealed the remand to the Supreme Court.

HELD: The Supreme Court reversed the Appellate Court. The limitation in which to file an appeal contained in Section 800 is analogous to a statute of limitation provision for those parties "given notice thereof." It is a mandatory rather than a directory

provision because the consequence of noncompliance, that the claims adjudicator's determination be considered final, is clearly provided in the Act.
It is undisputed here that claimant was "given notice" by the agency, and he apparently received it in sufficient time to permit compliance with its terms. The argument advanced here, however, is that the claimant did not have "actual notice" of the contents of the notice because he spoke only Spanish, and his friend incorrectly translated the contents of the notice.

Notices written in English are sufficient to constitute effective notice. A decision otherwise might lead to a claim that a notice in English is insufficient as to illiterates and all non-English speaking persons.

The Act does not provide for late filings for excusable neglect or for good cause. The Supreme Court will not amend the statute by engrafting onto it a good-cause or excusable-neglect provision, which would allow the appeal period to be extended on grounds that a benefit applicant cannot understand the English language.

ISSUE/DIGEST CODE **Procedure/PR 405.2**
DOCKET/DATE **ABR-89-6022/8-9-90**
AUTHORITY **Sections 702, 800, and 803 of the Act**
TITLE **Right of Review**
SUBTITLE **Persons Entitled**
CROSS-REFERENCE **PR 275.05, Jurisdiction and Powers of Tribunal**

The record presented to the Board contained no protest; however, there was an adjudicator's note that a 134.1 determination was mailed to the employer. (A 134.1 determination means that the adjudicator found that the employer submitted a timely protest.) Further, the record contained no letter of appeal to the determination; however, the determination did not contain the employer's address (and may not have been mailed correctly).

HELD: Section 803 permits the Board of Review to take jurisdiction upon its own motion. Here, the Board took jurisdiction despite being unable to determine with certainty that the employer protested or appealed. The reason was that the purpose of the Act is better served by investigating a case on the merits than by awarding benefits on a technicality from a deficient record.

ISSUE/DIGEST CODE **Procedure/PR 405.2**
DOCKET/DATE **ABR-90-7764/11-8-90**
AUTHORITY **Section 702 of the Act: 56 Ill. Adm. Code 2720.130**
TITLE **Right of Review**
SUBTITLE **Persons Entitled**
CROSS-REFERENCE **None**

The claimant filed his claim for benefits and notice of the claim was mailed to the employer. That notice contained information advising the employer that it could become a party to the proceedings entitled to rights of appeal if it filed a protest to the claim. But the notice of claim mailed to the employer was incorrectly addressed, the employer never received it, and the employer did not file a protest to the claim.

After the claimant was allowed benefits, the employer appealed. The Referee dismissed the employer's appeal because it had not filed a protest.

HELD: Because the Department caused the employer not to file a protest, the Department was estopped from holding that the employer lacked party status and rights of appeal. The case was remanded to the Referee for a hearing on the merits.

ISSUE/DIGEST CODE **Procedure/PR 405.2**
DOCKET/DATE **84-BRD-100-EB/3-29-84**
AUTHORITY **1./S-702**
TITLE **Right of Review**
SUBTITLE **Persons Entitled**
CROSS-REFERENCE **None**

The employer filed a protest which alleged, in part:

> The claimant has been unemployed for an extended period of time in an area where job openings exist for persons with clerical experience. We feel her extended period of unemployment results from the fact that she is not making the systematic and sustained effort to find work required under Section 409K.

HELD: The protest of the employer did provide reasons other than general conclusions of law for the allegation that the claimant was unavailable for work. The employer was entitled to receive notice of the claims adjudicator's determination.

ISSUE/DIGEST CODE **Procedure/PR 405.2**
DOCKET/DATE **84-BRD-354-FSC/3-29-84**
AUTHORITY **2./S-702**
TITLE **Right of Review**
SUBTITLE **Persons Entitled**
CROSS-REFERENCE **None**

The employer filed a protest which alleged, in part:

> The claimant has been continuously and uninterruptedly unemployed for a period of six months, restricts himself to the second and third shifts only, and has no prospects of new employment. Based on the above and further considering his past training, skills, and experiences, we feel that he has not exerted sufficient effort to return to the full-time active labor force.

HELD: The protest of the employer did provide a reason other than a general conclusion of law for the allegation that the claimant was unavailable for work. The employer was entitled to receive notice of the claims adjudicator's determination.

ISSUE/DIGEST CODE **Procedure/PR 405.2**
DOCKET/DATE **ABR-85-7949/3-28-86**
AUTHORITY **Sections 500C and 702 of the Act**
TITLE **Right of Review**
SUBTITLE **Persons Entitled**
CROSS-REFERENCE **AA 5, General, Sufficiency of Employer's Protest**

The claimant filed a claim for benefits and the Claims Adjudicator mailed a notice of the claim to the employer. The employer filed a timely protest, in which it stated, in pertinent part:

> The Claimant was employed in a seasonal capacity with our company, working for the 1984 Christmas season only. The Claimant was aware of the temporary status of her position at the time of the acceptance. The Claimant has not shown an attachment to the full-time labor force through (such employment, and) in addition, the Claimant does have marketable skills for which there are positions available in the full-time labor market. This is evident by the fact that the Claimant did secure employment subsequent to working (for us). Based on this information, we question the Claimant's efforts to secure full-time permanent employment.

The issue presented was whether the employer was entitled to receive a determination with respect to the claimant's availability for work.

HELD: An employer is entitled to receive a determination when it has filed a timely and sufficient protest. In order to be sufficient, a protest must contain a reason which would tend to support its conclusion. In cases involving an individual's availability for work, the employer must provide a reason which would tend to support a conclusion that the individual was unavailable for work during the period under review. The mere (and self-evident) fact that an individual is unemployed does not mean that it is presumed that the person wishes to remain unemployed and is therefore unavailable for work.

In the instant case, the employer provided reasons why the claimant may have been available - not unavailable - for work. The employer established that the claimant had marketable skills and had applied them by accepting 2 jobs. Other than that, the employer merely restated the fact that the claimant was unemployed.

The employer's protest was insufficient and the employer was not entitled to receive notice of the Claims Adjudicator's determination.

ISSUE/DIGEST CODE	**Procedure/PR 405.2**
DOCKET/DATE	**ABR-88-5245/11-29-88**
AUTHORITY	**Section 702 of the Act; 56 Ill. Adm. Code 2720.130**
TITLE	**Right of Review**
SUBTITLE	**Persons Entitled**
CROSS-REFERENCE	**None**

On March 25, notice of the claimant's benefit claim was mailed to the employer. The same day, the claims adjudicator mailed to the employer a "General Employment Information" form, pertaining to the claimant's reported discharge from his job and containing questions such as: What was the act which caused the discharge?

> If he violated a company rule, how was he informed of the rule?
>
> Had he been previously warned about infraction of the rule? If so, explain.

By April 4, the last day for filing a timely protest, the employer had filed its "General Information" form, complete with factual answers, but no other documents.

Subsequently, the claims adjudicator issued a determination allowing benefits. The determination was not sent to the employer. The employer's appeal was dismissed. The reason for the lack of notice and dismissal of the appeal was that the employer was considered a non-party. It was held that, in order to have become a party, entitled to notice and appeal rights, it would have had to file a protest and not merely responses to questions on the Department's informational form.

HELD: Section 702 of the Unemployment Insurance Act provides that the claims adjudicator shall send notice of a determination to an employing unit that has filed a timely and sufficient allegation of ineligibility. Benefit Rule 2720.130 provides that an allegation of ineligibility is a "protest" and that a protest is a "notice of possible ineligibility" or a "letter in lieu thereof." It is timely when it is filed within 10 days of the date of notice to the employing unit, and, it is sufficient when it gives a reason for ineligibility that is related to the issue raised and is not a general conclusion of law.

In this case, the employer's completion of an informational form was a letter in lieu of a formal notice of possible ineligibility. It was filed within 10 days of notice to the employing unit. It set forth facts, not conclusions of law, in support of its allegation. The employer was a party.

The case was remanded for a hearing on the merits.

ISSUE/DIGEST CODE **Procedure/PR 405.2**
DOCKET/DATE ***Board of Education of Bremen High School District No. 228 v. Mitchell,* 387 Ill.App.3d 117, 326 Ill.Dec. 509, 899 N.E.2d 1160 (1st Dist., 2008)**
AUTHORITY **Section 1100 of the Act**
TITLE **Right of Review**
SUBTITLE **Persons Entitled**
CROSS-REFERENCE **None**

The plaintiff filed a complaint with the circuit court for administrative review of the Board of Review's decision affirming the Referee's decision that the claimant/defendant, the school's former superintendent, was not disqualified from receiving benefits under Section 602(A) of the Act. The circuit court dismissed the complaint for lack of standing on the ground that the school district, rather than the school board, was the party to the administrative proceeding. The plaintiff appealed the dismissal to the appellate court.

HELD: The appellate court reversed the circuit court and held that the school board, not the school district, was the claimant's employer for purposes of the Illinois Unemployment Insurance Act. The Illinois School Code specifically designates the school board as the governing body through which a school district operates, expressly authorizes the board to sue and be sued in court proceedings, and gives the board exclusive jurisdiction over all employment decisions pertaining to the superintendent, such as hiring, firing and supervision.

The appellate court also held that the plaintiff did not forfeit its argument that it was the proper party to the unemployment proceedings involving the claimant, even though it did not object to the school district being named as the party in the administrative proceedings, since the identity of the correct employer was never clearly expressed in the administrative proceedings, and all parties, including the claimant and the Department of Employment Security, referred to the board and the school district interchangeably. In such circumstances, the appellate court could not now permit the claimant/defendant to prevail on his challenge to the plaintiff's standing when he created and perpetuated the condition that he now objects to, however inadvertent it may have been. The appellate court remanded the matter back to the circuit court for further proceedings.

ISSUE/DIGEST CODE **Procedure/PR 430.15**
DOCKET/DATE ***Quinones v. Board of Review,* 432 N.E. 2d 894 (1982)**
AUTHORITY **Section 500B of the Act**
TITLE **Taking and Perfecting Proceedings for Review**
SUBTITLE **Notice**
CROSS-REFERENCE **MS 75.1, Claims and Registration, Backdating**

As a result of a class-action suit settlement, the claimant was to receive notice that she could file for extended unemployment insurance benefits. A letter dated June 30, instructing the claimant to report to her Local Office on July 12, was properly addressed but misdelivered, so that the claimant did not actually receive the letter until late July or August, after the report date had passed. Moreover, upon receiving the letter, the claimant did not understand it; she was Spanish-speaking and could not read English. It was not until October, after the substance of the letter had been explained to her by Legal Assistance Foundation, that the claimant reported to her Local Office, where she requested backdating of her claim so that she might file for extended benefits.

Regulation 17F (later promulgated as Benefit Rules 2720.105 and 2720.120) provided that backdating would be allowed, subject to enumerated conditions, if the claimant filed her claim within 14 days after the reason for failing to file no longer existed. The question then arose: Did the 14-day period begin to run from the claimant's receipt of the letter in late July or early August, in which case the claimant could not be allowed backdating; or did the 14-day period begin to run only from the time of the claimant's actual comprehension or interpretation of the letter, in October, in which case backdating would be allowed?

HELD: The narrow legal question before the appellate court was whether an inability to understand English excused late filing.

In *Hernandez v. IDOL*, 416 N.E. 2d 263 (1981) (*Digest of Adjudication Precedents*, PR 405.15), the Illinois Supreme Court ruled that an inability to understand English did not excuse an individual's failure to file an appeal in a timely fashion. Similarly, the appellate court held, the inability to understand English did not excuse late filing or permit backdating.

Moreover, an effective unemployment compensation system requires a measure of certainty in the application of its rules. Regulation 17F, itself a good-cause exception to the requirement that a claimant file on time, could not reasonably be expanded to include a further exception.

The receipt of the letter, notwithstanding the language problem, constituted effective notice. The claimant failed to file within the mandatory 14-day period, from the date of such effective notice. Backdating was denied.

ISSUE/DIGEST CODE	**Procedure/PR 430.15**
DOCKET/DATE	**85-BRD-05033/7-8-85**
AUTHORITY	**56 Ill. Adm. Code 2720.310(a)**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Notice**
CROSS-REFERENCE	**PR 380.1, Rehearing or Review**

The claimant filed an appeal of a Referee's decision to the Board of Review. In connection with her appeal, the claimant served upon the Board of Review a request to hear oral argument. There was no certification accompanying the claimant's appeal to indicate that the claimant had served upon the employer a copy of the request for oral argument.

HELD: Agency Rule 2720.310(a) reads, in pertinent part: "Upon filing an appeal to the Board of Review...a party may request in writing that the Board hear oral argument. The requesting party must certify in writing that he has served a copy of his request for oral argument to all other parties." In this case, because the claimant did not certify that she had served a copy of her request for oral argument upon the employer, her request for oral argument was denied.

ISSUE/DIGEST CODE	**Procedure/ PR 430.15**
DOCKET/DATE	**85-BRD-05033/7-8-85**
AUTHORITY	**56 Ill. Adm. Code 2720.315(a)(2)**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Notice**
CROSS-REFERENCE	**PR 380.15, Rehearing or Review**

The claimant filed an appeal of a Referee's decision to the Board of Review. In connection with her appeal, the claimant served upon the Board of Review a request to hear oral argument. The employer submitted a reply in response to the claimant's request, but submitted that reply to the Board of Review only, and not to the claimant.

HELD: Agency Rule 2720.315(a)(2) reads, in pertinent part: "The opposing party may file with the Board and serve on the requesting party any response (to the request for oral argument)..." In this case, because the employer's reply was not served upon the claimant in accordance with the Rule, the Board refused to consider that reply.

ISSUE/DIGEST CODE	**Procedure/PR 430.2**
DOCKET/DATE	**ABR-85-3826/11-26-85**
AUTHORITY	**56 Ill. Adm. Code 2720.130**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Timeliness (of Employer's Protest)**
CROSS-REFERENCE	**None**

On February 8, 1985, Notice to the Last Employing Unit was mailed to the claimant's last employer, informing that employer that the claimant had filed a claim for benefits and that the employer could become a party to the proceedings by filing a Notice of Possible Ineligibility, or its equivalent, within 10 days. The employer, however, did not file a Notice of Possible Ineligibility, or its equivalent, within 10 days.

Subsequently, a Claims Adjudicator concluded that the claimant had not been discharged for misconduct connected with his work and was not subject to a disqualification under Section 602A of the Act. The employer appealed that determination. A Referee dismissed that appeal, having concluded that the employer did not have appeal rights with respect to the claimant's separation from work under Section 602A of the Act.

HELD: Agency Rule 2720.130 states, in pertinent part:

> Failure to file a protest within 10 days from the date of notice will result in loss of party status and appeal rights.

In the instant case, there was no evidence that the employer had filed a Notice of Possible Ineligibility (or "Protest") in a timely fashion. Accordingly, since a timely protest was not filed, the employer was not a party and did not have appeal rights with respect to the claimant's separation from work under Section 602A of the Act. The employer's appeal was correctly dismissed.

ISSUE/DIGEST CODE	**Procedure/PR 430.2**
DOCKET/DATE	**ABR-87-7652/2-16-88**
AUTHORITY	**Section 702 of the Act; 56 Ill. Adm. Code 2720.130**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Timeliness (of Employer's Protest)**
CROSS-REFERENCE	**None**

The claimant filed her benefit claim on May 22. On May 23, notice of the claim was mailed to her employer.

On June 1, the employer filed a protest alleging that the claimant quit her job for reasons not attributable to the employer and contending that she should be disqualified under Section 601A (Voluntary Leaving).

On July 29, the employer submitted a protest alleging that the claimant was physically unfit to work and contending that she should be ruled ineligible under Section 500C (Ability and Availability for Work).

The claimant was allowed benefits under Section 500C, without disqualification under Section 601A, for the period May 31 through June 13.

The employer appealed the issue of Ability and Availability for Work under Section 500C.

HELD: Section 702 and Benefit Rule 2720.130 provide that an employer is a party, entitled to notice of determinations and rights of appeal, if it files a timely protest.

Generally, a protest is timely if it is filed within 10 days of mailing of the notice of claim. The employer's protest of Voluntary Leaving under Section 601A was timely.

However, the employer's protest of Ability and Availability for Work was untimely, both under the 10 day provision and under Benefit Rule 2720.130(b). Rule 2720.130(b) provides that:

> Any employing unit may, at any time, file a protest alleging that acts or circumstances which may have occurred during the claim series should result in the termination or suspension of benefits. A protest regarding possible ineligibility during a claim series is timely beginning with the week in which it is received.

The employer's protest was filed July 29. It would have been timely beginning with that week, but not for the period May 31 through June 13.

The employer had no right of appeal. Its purported appeal was dismissed.

ISSUE/DIGEST CODE	**Procedure/PR 430.2**
DOCKET/DATE	***Mario K. Thompson v. Department of Employment Security*, 399 Ill.App.3d 393, 340 Ill.Dec. 529, 928 N.E.2d 528 (1st Dist., 2010)**
AUTHORITY	**Section 801(A) of the Act**
TITLE	**Taking and Perfecting Proceedings for Review**
SUBTITLE	**Timeliness**
CROSS-REFERENCE	**None**

The claimant was discharged from his job after an altercation with a co-worker and applied for unemployment benefits. The claims adjudicator determined that he was ineligible for benefits due to misconduct connected with his work and mailed this determination to the claimant's last known address. The claimant received the determination and timely filed an appeal to the Referee. At the hearing before the Referee, the claimant confirmed his address as the one to which determination had been sent. The Referee affirmed the determination denying benefits and mailed his/her decision to the claimant on February 8, 2008, at the same address to which the claims adjudicator's determination had been sent. A letter accompanying the decision informed the claimant that he had 30 days from the date on which the decision was mailed, *i.e*., February 8, 2008, to file an appeal to the Board of Review, the last day being March 10, 2008. The claimant, however, did not file this appeal until April 24, 2008. The Board of Review dismissed the appeal for lack of jurisdiction under Section 801(A) of the Act on the basis that the appeal was filed untimely. The Board's decision was affirmed by the circuit court, which the claimant then appealed to the appellate court.

HELD: In his appeal to the appellate court, the claimant argued that he did not receive adequate notice of the Referee's decision because it was not mailed to him at his new address. The appellate court rejected the claimant's contention. According to the appellate court, service by mail is not invalid simply because a party denies receiving it and Section 801(A) of the Act does not confer additional authority on the Board to entertain appeals beyond the 30-day time limit for this reason. The appellate court found that the service by mail, under the facts of this case, satisfied the requirements of due process and that the Board properly ruled that it did not have jurisdiction to consider the claimant's untimely appeal.

ISSUE/DIGEST CODE	**Procedure/PR 430.2**
DOCKET/DATE	***Carroll v. Department of Employment Security*, 389 Ill.App.3d 329 Ill.Dec. 697, 907 N.E.2d 16 (1st Dist., 2009)**
AUTHORITY	**Section 1100 of the Act**
TITLE	**Taking & Perfecting Proceedings for Review**
SUBTITLE	**Timeliness**
CROSS-REFERENCE	**PR 145.05: Dismissal, Withdrawal, or Abandonment; PR 440: Judicial Review of Board of Review Decisions**

The claimant was denied benefits in a determination issued by the claims adjudicator. The determination was affirmed by the Referee which, in turn, was affirmed by the Board of Review in a decision issued on April 11, 2007. The claimant had 35 days in which to file a complaint for administrative review of the Board's decision in the circuit court, *e.g*., until May 16, 2007. The claimant filed his complaint on May 18, 2007. The Board filed a motion before the circuit court to dismiss the complaint as being untimely filed. The circuit court granted the Board's motion and dismissed the claimant's complaint. The claimant timely filed an appeal to the appellate court.

HELD: In affirming the circuit court, the appellate court initially held that in computing the 35-day period in which to file a complaint seeking administrative review of a Board decision (1) calendar days are counted, not business days; (2) the day of mailing the decision is excluded from the computation; and (3) intervening weekend days and holidays are included, unless the last day of the 35-day period falls on a weekend day or holiday, in which case the last day to file would be the next working day. In the instant case, May 16, 2007 did not fall on a holiday or weekend day and, thus, it was the last day on which the claimant's complaint for administrative review had to be filed in order to be timely. Since the claimant did not file his complaint until May 18, 2007, his complaint was late and was properly dismissed by the circuit court for lack of jurisdiction.

The appellate court also held that (1) the Board did not violate the claimant's due process rights by not calculating the exact filing due date for the claimant and by not warning him to count calendar days, rather than business days, in computing the 35-day period; and (2) the Board met its burden of proving that it mailed its decision on April 11, 2007 by providing evidence of its office custom regarding the mailing of its decisions and evidence to corroborate that it followed that custom.

ISSUE/DIGEST CODE **Procedure/PR 430.3**
DOCKET/DATE ***Automated Professional Tax Services, Inc. v. IDES*, 612 N.E. 2d 1009 (1992)**
AUTHORITY **Section 801**
TITLE **Right of Review**
SUBTITLE **Timely appeal**
CROSS-REFERENCE **None**

The employer appealed the Department's determination awarding benefits to the claimant. The Referee affirmed. Forty-six days later, the employer wrote a letter to the Department asking it to "reevaluate" the award. The Board of Review considered the employer's letter as an appeal. Because the employer's appeal was not filed within the required thirty day period under Section 801 of the Act, the Board dismissed the appeal on the grounds that it lacked jurisdiction. The employer filed an appeal in the circuit court. The circuit court issued an order reversing the Board's dismissal holding that the employer's letter requesting the Department to reevaluate its decision should have been treated as a request for reconsideration. The circuit court then denied benefits to the claimant and ordered the Department to recoup the claimant's overpaid benefits. The appellate court reversed.

HELD: The appellate court held that the Board of Review had no jurisdiction under Section 801 to review the employer's appeal. The appellate court stated that except for an appeal, no other avenues exist for an aggrieved party to reverse the award of benefits. The court rejected the employer's contention that its letter should have been treated as a request for reconsideration under Section 703 of the Act. The court pointed out that Section 703 prohibits any reconsideration of a determination after a party appeals the determination a Referee under Section 800. The court also observed that the circuit court had no jurisdictional authority to grant the employer substantive relief in any case. Even if the circuit court believed that the employer's letter was properly filed as a request for reconsideration, the most it could do was to remand the case back to the Department to make a decision on the substantive issues.

ISSUE/DIGEST CODE **PR 440**
DOCKET/DATE ***Carroll v. Department of Employment Security*, 389 Ill.App.3d 329 Ill.Dec. 697, 907 N.E.2d 16 (1st Dist., 2009)**
AUTHORITY **Section 1100 of the Act**
TITLE **Judicial Review of Board of Review Decisions**
SUBTITLE **None**
CROSS-REFERENCE **Procedure/PR 145.05 Dismissal: Withdrawal or Abandonment; PR 430.2: Taking & Perfecting Proceedings for Review, Timeliness**

The claimant was denied benefits in a determination issued by the claims adjudicator. The determination was affirmed by the Referee which, in turn, was affirmed by the Board of Review in a decision issued on April 11, 2007. The claimant had 35 days in which to file a complaint for administrative review of the Board's decision in the circuit court, *e.g.*, until May 16, 2007. The claimant filed his complaint on May 18, 2007. The Board filed a motion before the circuit court to dismiss the complaint as being untimely filed. The circuit court granted the Board's motion and dismissed the claimant's complaint. The claimant timely filed an appeal to the appellate court.

HELD: In affirming the circuit court, the appellate court initially held that in computing the 35-day period in which to file a complaint seeking administrative review of a Board decision (1) calendar days are counted, not business days; (2) the day of mailing the decision is excluded from the computation; and (3) intervening weekend days and holidays are included, unless the last day of the 35-day period falls on a weekend day or holiday, in which case the last day to file would be the next working day. In the instant case, May 16, 2007 did not fall on a holiday or weekend day and, thus, it was the last day on which the claimant's complaint for administrative review had to be filed in order to be timely. Since the claimant did not file his complaint until May 18, 2007, his complaint was late and was properly dismissed by the circuit court for lack of jurisdiction.

The appellate court also held that (1) the Board did not violate the claimant's due process rights by not calculating the exact filing due date for the claimant and by not warning him to count calendar days, rather than business days, in computing the 35-day period; and (2) the Board met its burden of proving that it mailed its decision on April 11, 2007 by providing evidence of its office custom regarding the mailing of its decisions and evidence to corroborate that it followed that custom.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Blumhorst v. IDES*, 783 N.E. 2d 654 (2002)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty five days, the summons concerning his complaint was not sent out within that period. The circuit court denied the defendant's motion to dismiss on the grounds that the claimant satisfied the good faith exception excusing noncompliance. The appellate court reversed.

HELD: The appellate court stated that the procedures for service under the Administrative Review Law are mandatory, not jurisdictional. The court held that the claimant did not introduce sufficient evidence that he instructed the clerk of the court to issue the summons upon the defendant within the required thirty five day period to satisfy the good faith exception for noncompliance.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Burns v. IDES*, 795 N.E. 2d 972 (2003)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that parties to judicial review of administrative action be served at the party's principal place of business. When the claimant went to the clerk of the circuit court to file her appeal, she was referred to the *pro se* help desk. The claimant brought the Board of Review decision she wanted to appeal with her. The employer had been represented by a service company before the Board of Review and its address was the only one on the decision. Section 804 of the Illinois Unemployment Insurance Act authorizes notice to a party's last known address in administrative proceedings before the Department. The claimant served the employer's service company within the thirty five day period set forth by the Administrative Review Law and the employer received actual notice of the summons. The circuit court dismissed the appeal on the grounds that the claimant had failed to serve the employer at its principal place of business as required by the Administrative Review Law. The circuit court also held that the claimant had failed to satisfy the good-faith exception for her failure to serve the employer. The appellate court reversed. The appellate court identified two primary issues. The first was whether the claimant properly served notice of appeal under the Administrative Review Law. The second was whether, if service was not proper, the claimant satisfied the good faith exception excusing noncompliance.

HELD: The appellate court held that the procedures for service under the Administrative Review Law should be read in conjunction with the service procedures set forth by the Unemployment Insurance Act. Nevertheless, because there was no affidavit from the claimant that she sent the summons to the employer's last known address as required by the Administrative Review Law, the court held the claimant failed to give proper notice. The court held that the claimant did satisfy the good faith excuse for noncompliance because the employer did receive actual notice and that the claimant acted in good faith by personally appearing at the clerk's office to serve proper notice upon the employer.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Fedorev v. Doherty*, 711 N.E. 2d 1223 (1999)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be named and a summons served upon them within thirty five days of the receipt of the administrative decision. action. Although the claimant filed a complaint for administrative review within thirty five days, the claimant did not name the Board of Review or its members which issued the decision sought to be reviewed. The claimant's complaint only named the Director of the Department of Employment Security and the employer in the case. The circuit court dismissed the claimant's suit for lack of jurisdiction. The appellate court affirmed.

HELD: The appellate court held that the claimant's failure to name and serve the Board of Review or any of its members which issued the administrative decision at issue did not comply with the Administrative Review Law. The Director of the Department of Employment Security performs administrative functions with respect to the Board of Review but the Director does not control or direct the Board's administrative decisions. Accordingly, the court has no subject matter jurisdiction over the complaint.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***New York Carpet World, Inc. v. IDES*, 769 N.E. 2d 1321 (1996)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The employer sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. Although the employer filed a complaint for administrative review within thirty five days, the complaint did not name the Board of Review as a party and no summons was served on the Board of Review within the thirty five period. The employer instead served the Department of Employment Security. The Board of Review did, however, receive a copy of the complaint and summons forwarded to it by the Department of Employment Security within the thirty five day period. The employer contended that the Board of Review was administered by the Department of Employment Security and that the Department was a misnomer for the Board of Review. The circuit court dismissed the claimant's suit for lack of jurisdiction. It also denied the employer's request to amend its complaint naming the Board of Review. The appellate court affirmed.

HELD: The appellate court stated that the Board of Review was the administrative agency required to be served under the Administrative Review Law as a condition for obtaining judicial review. The court held that there was no misnomer and that the employer could not amend its complaint naming the Board of Review as a party after the thirty five day period for review under the Administrative Review Law had expired.

ISSUE/DIGEST CODE **Procedure/PR 440.5**
DOCKET/DATE ***Village of Oak Park v. IDES*, 772 N.E.2d 951 (2002)**
AUTHORITY **Administrative law**
TITLE **Res judicata**
SUBTITLE **Collateral Estoppel (Issue Preclusion)**
CROSS-REFERENCE **None**

The employer sought judicial review of a decision of the Board of Review. The Board found that the claimant was not ineligible for benefits due to misconduct. The employer discharged the claimant for violating several statutes governing the conduct of employees of the police department. The discharge was upheld at an administrative hearing and later affirmed by a court. The claimant filed for benefits. Sometime during the administrative process before the Department of Employment Security and the Board of Review, the employer introduced the transcript of the administrative hearing and its finding against the employee. The employer contended that its administrative finding that the claimant was discharged for misconduct was binding upon the Board of Review. The Board found that the employer had not shown by a preponderance of the evidence that the claimant was discharged for misconduct under Section 602 of the Act. The circuit twice remanded the case to the Board for clarification and eventually affirmed the Board's decision. The appellate court reversed.

HELD: The appellate court held that a prior administrative adjudication that grants the parties the opportunity to be heard and the right to cross examine witnesses is *res judicata* in subsequent administrative proceeding where three conditions are met: (1) the material fact issue decided in the earlier adjudication is identical to the one in the current proceeding; (2) there is a final judgment on the merits in the earlier adjudication; (3) the party against who the estoppel is asserted was a party or in privity with a party in the earlier adjudication.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Schwartz v. IDES*, 647 N.E. 2d 146 (1996)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial review of Board of Review decision**
SUBTITLE **Notice requirement to secure judicial review**
CROSS-REFERENCE **None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. action. Although the claimant filed a complaint for administrative review within thirty five days, the summons concerning his complaint was not sent out to the claimant's employer. The employer corporation was a party to the administrative action. The claimant contended that the employer corporation was not a person required to be served under the Administrative Review Law. The circuit court dismissed the claimant's suit for lack of jurisdiction. The appellate court affirmed.

HELD: The appellate court stated that the employer corporation was a "person" required to be served under the Administrative Review Law as a condition for obtaining judicial review of administration decisions.

ISSUE/DIGEST CODE **Procedure/PR 440.10**
DOCKET/DATE ***Shaw v. IDES*, 612 N.E. 2d 919 (1993)**
AUTHORITY **Administrative Review Law**
TITLE **Judicial Review of Board of Review decision**
SUBTITLE **Notice requirement to obtain judicial review**
CROSS-REFERENCE **None**

The claimants sought judicial review of a decision of the Board of Review denying benefits under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty five days, the complaint did not name either the Director of the Department of Employment Security or the Board of Review as a party and did not serve them with a summons within the thirty five period. The claimants instead served the Department of Employment Security. The circuit court dismissed the claimant's suit for lack of jurisdiction. It also denied the employer's request to amend its complaint to name these parties. The appellate court dismissed the action due to lack of jurisdiction.

HELD: The appellate court held that the Board of Review was a necessary party to an action for judicial review under the Administrative Review Law and dismissed for lack of jurisdiction. It also stated that the Director of the Department of Employment Security was not a necessary party and did not need to be served. The court denied the claimant's request to amend its complaint after the thirty five period had expired on the grounds that the proper filing of a complaint was a jurisdictional requirement for review under the Administrative Review Law.

ISSUE/DIGEST CODE	**Procedure/PR 440.10**
DOCKET/DATE	***Stanley v. IDES*, 602 N.E. 2d 73 (1992)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial Review of Board of Review decision**
SUBTITLE	**Notice requirement to obtain judicial review**
CROSS-REFERENCE	**None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty five days, the complaint did not name or serve the Board of Review. The circuit court dismissed the suit for lack of jurisdiction. The appellate court affirmed.

HELD: The appellate court held that the provisions of the Administrative Review Law require that a complaint for judicial review name and serve those who were necessary parties to the administrative action. Because the Board of Review was the final decision maker, it was a necessary party to any judicial action. The court also held that the claimant had failed to satisfy the good faith exception given by the Administrative Review excusing noncompliance.

ISSUE/DIGEST CODE	**Procedure/PR 440.10**
DOCKET/DATE	***Strang v. IDOT*, 564 N.E.2d 261 (1990)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial Review of Board of Review decision**
SUBTITLE	**Notice requirement to obtain judicial review**
CROSS-REFERENCE	**None**

The claimant sought judicial review of a decision of the Board of Review under the Administrative Review Law. The Administrative Review Law requires that all parties to judicial review of administrative action be served within thirty five days of the receipt of the administrative decision. Although the claimant filed a complaint for administrative review within thirty five days, the complaint only named and was served on the Department of Employment Security. The complaint did not name nor was it served on the employer, the Board of Review, or the Director of the Department. The circuit court reversed the Board of Review's decision denying benefits. The appellate court reversed.

HELD: The appellate court held that the provisions of the Administrative Review Law require that a complaint for judicial review name those who were necessary parties to the administrative action. The court applied the decision of *Lockett v Chicago Police Board*, 549 N.E. 2d 1266 (1990), retroactively to hold that the Board of Review, the Director of the Department, and the employer are necessary parties to the complaint. The court accordingly dismissed the action for lack of jurisdiction. The court did not address the additional question whether the claimant's failure to serve the necessary parties within the thirty five day period would also require dismissal of the complaint.

ISSUE/DIGEST CODE	**Procedure/PR-440.10**
DOCKET/DATE	**McGaw Medical Center of Northwestern University v. Department of Employment Security, 369 Ill.App.3d 37, 307 Ill.Dec. 817, 860 N.E.2d 471 (1st Dist., 2006)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial Review of Board of Review Decisions**
SUBTITLE	**Notice requirement to obtain judicial review**
CROSS-REFERENCE	**None**

The plaintiff, McGaw Medical Center, timely filed an administrative review complaint pursuant to the Administrative Review Law and named as defendants the Illinois Department of Employment Security (IDES), Brenda A. Russell, in her capacity as the Director of IDES, and the claimant, but failed to name as a defendant the IDES Board of Review (Board) which had granted unemployment insurance benefits to the claimant. The defendants moved to dismiss the complaint on the grounds that plaintiff=s failure to name the Board as a defendant deprived the court of subject matter jurisdiction. The plaintiff moved to amend its complaint. The trial court, however, granted defendants= motion to dismiss, denied plaintiff=s motion for leave to amend and dismissed the complaint with prejudice. The plaintiff appealed.

HELD: The appellate court affirmed the trial court=s decision to dismiss the plaintiff=s complaint, rejecting the plaintiff=s contention that it should have been permitted to amend the complaint under either (1) Section 2-616(d) of the Code of Civil Procedure [735 ILCS 5/2-616(d)] or (2) Sections 3-103 and 3-107 of the Administrative Review Law [735 ILCS 5/3-107]. The appellate court reasoned (1) that Section 2-616(d) of the Code does not apply to causes of action brought under the Administrative Review Law and (2) that the claimant failed to meet the requirements of Sections 3-103 and 3-107 and, thus, the exceptions contained therein could not be applied. Consequently, the plaintiff=s failure to name the Board as a defendant necessitated the dismissal of its complaint with prejudice.

ISSUE/DIGEST CODE	**Procedure/PR-440.10**
DOCKET/DATE	**Van Milligen v. Department of Employment Security, 373 Ill.App.3d 532, 311 Ill.Dec. 422, 868 N.E.2d 1083 (2nd Dist., 2007)**
AUTHORITY	**Administrative Review Law**
TITLE	**Judicial Review of Board of Review Decisions**
SUBTITLE	**Notice requirement to obtain judicial review**
CROSS-REFERENCE	**None**

The plaintiff timely filed an administrative review complaint in the Circuit Court pursuant to the Administrative Review Law and named as defendants the Illinois Department of Employment Security (IDES), Brenda A. Russell, in her capacity as the Director of IDES, and the former employer from which he had been separated from work. He did not name as a defendant the Board of Review (Board) which had found him ineligible for unemployment insurance benefits. IDES moved to dismiss the complaint because the plaintiff failed to name the Board as a defendant as required by Administrative Review Law. The plaintiff moved to amend its complaint. The trial court, however, granted defendant=s motion to dismiss, denied plaintiff=s motion for leave to amend and dismissed the complaint for lack of jurisdiction. The plaintiff appealed.

HELD: On appeal, the plaintiff argued that he was entitled to amend his complaint pursuant to: (1) sections 3-103 and 3-107 of the Review Law; (2) the Agood faith@ exception to the Review Law=s requirements; (3) equitable tolling principles; (4) due process requirements; and (5) section 2-616(d) of the Code of Civil Procedure and Rule 15 of the Federal Rules of Civil Procedure. The court rejected all of the plaintiff=s arguments, finding that (1) sections 3-103 and 3-107 of the Review Law did not apply because the Director and the Board are distinct and separate entities so that joining the Director as a defendant did not result in joining the Board; (2) to conclude that the plaintiff exhibited Agood faith@, where the statute clearly requires the Board to be joined as a defendant, would impermissibly broaden the Agood faith@ exception; (3) the principles of equitable tolling apply to statutes of limitations, not to limitations periods that are inherent parts of the right of action created by a statute, as is the 35-day filing period created by the Review Law; (4) the plaintiff cannot complain of a due process violation where the dismissal of his complaint was due to his own failure to satisfy the reasonable requirements of the Review Law; and , (5) the Federal Rules of Civil Procedure do not apply to state court proceedings and the plaintiff=s argument with respect to section 2-616(d) of the Illinois Code of Civil Procedure has been repeatedly rejected by Illinois courts, citing, *inter alia*, *McGaw Medical Center of Northwestern University v. Illinois Department of Employment Security*, 369 Ill. App. 3d 37, 307 Ill Dec. 817, 860 N.E.2d 471 (1st Dist., 2006).

REFUSAL OF WORK

ISSUE/DIGEST CODE	**Refusal of Work/RW 5.05**
DOCKET/DATE	**ABR-85-5408/12-27-85**
AUTHORITY	**Sections 601 and 603 of the Act**
TITLE	**Refusal of Work**
SUBTITLE	**vs. Voluntary Leaving**
CROSS-REFERENCE	**VL 5.05, Voluntary Leaving; VL 315.05, New Work**

The claimant was working as a Secretary when her employer notified her that her job would be abolished, and that, at the same time, a job as a Riveter would be made available to her. The claimant feared that, if she took a job as a Riveter, her secretarial skills would decline, so she rejected the Riveter position, telling her employer she would rather quit.

The issue presented was whether the claimant's separation from work was a Voluntary Leaving cognizable under Section 601 or a Refusal of Work under Section 603.

HELD: Unless there is an interruption in the employment relationship, resulting in a worker becoming an unemployed individual prior to an offer of new work, a Refusal of Work issue under Section 603 cannot arise. In the instant case, the claimant was employed when her employer approached her about changing jobs. Therefore, Section 603 was inapplicable.

(See VL 315.05, New Work, for disposition of this case)

ISSUE/DIGEST CODE	**Refusal of Work/RW 5.05**
DOCKET/DATE	**ABR-88-338/3-25-88**
AUTHORITY	**Sections 601 and 603 of the Act**
TITLE	**Refusal of Work**
SUBTITLE	**vs. Voluntary Leaving**
CROSS-REFERENCE	**VL 5.05, Voluntary Leaving; RW 330.05, Offer of Work**

The claimant obtained work as a machinist through a temporary employment service (his employer) which would refer him to its clients. The employment service's policy was that workers, upon completion of assignments, should contact the service and apply for other assignments. Upon completion of an assignment which had run from February 13 through March 25, the claimant chose not to contact the employer's service.

The threshold issue was whether the claimant's actions were to be considered under Section 601A, Voluntary Leaving, or Section 603, Refusal of Work.

HELD: Whether a worker has quit a job or refused a job is determined by whether the worker was employed or unemployed at the time of a purported offer of new work. In this case, the claimant completed an assignment and was unemployed at the time new work was purportedly made available. Therefore, the issue was Refusal of Work, cognizable under Section 603 of the Act.

ISSUE/DIGEST CODE **Refusal of Work/RW 90.05**
DOCKET/DATE ***Frazee v. IDES*, 109 S.Ct. 1514 (1989)**
AUTHORITY **Section 603 of the Act**
TITLE **Conscientious Objection**
SUBTITLE **Religion and Morals**
CROSS-REFERENCE **RW 515.5, Working Conditions, Morals**

The claimant refused a job because it would have required him to work on Sunday. He stated that he refused because, as a Christian, although not a member of any particular sect, he felt it was wrong to work on Sunday.

He was denied unemployment benefits. He appealed, citing the First Amendment's Free Exercise Clause.
The appellate court held that, for a Free Exercise Clause claim to succeed, a claimant must sincerely believe in a tenet or dogma of, and belong to, an established religious sect. The court pointed out that assorted Christian denominations did not abstain from Sunday work and that the claimant did not belong to a particular sect that did abstain; therefore, he had been correctly denied benefits.

The claimant then appealed to the United States Supreme Court.

HELD: The denial of unemployment benefits, because an individual chooses fidelity to sincerely held religious beliefs over employment, violates the First Amendments' Free Exercise Clause.

The protection afforded by the Free Exercise Clause is not limited to responses to formal commands of particular religious organizations. Protection extends to an individual, even if he does not belong to such an organization, so long as his belief is both religious and sincere.

In this case, the claimant's refusal to work on Sunday was based upon his sincerely held religious belief.

He was entitled to First Amendment protection. The denial of unemployment benefits violated the Free Exercise Clause.

ISSUE/DIGEST CODE **Refusal of Work/RW 150.2**
DOCKET/DATE **ABR-85-5401/12-19-85**
AUTHORITY **Section 603 of the Act**
TITLE **Distance to Work**
SUBTITLE **Transportation and Travel**
CROSS-REFERENCE **None**

The claimant worked as an Executive Secretary until her lay off in December, 1984. In March, 1985, she refused an offer of work for a Personal Secretary. The claimant noted the differences between the jobs: Her previous work paid $14,400 per year and was a 20 minute drive from home; the new job would have paid between $13,000 and $14,000, while requiring at least a 30 minute drive in rush hour. The claimant wrote: "Salary too low (especially for distance to go to work)."

HELD: Excessive travel time, excessive travel expense, or undue transportation inconvenience renders work unsuitable. The terms "excessive" and "undue" must be interpreted in light of the length of the individual's unemployment and the prospects of obtaining local work, and, in general, by reasonableness.

An individual may, during the early period of her unemployment, limit herself to conditions of work similar to those of her most recent work, including working close to home. But, after she has had an opportunity to ascertain existing, unfavorable conditions, she must adjust to them, including expanding the scope of her search.

In the instant case, after being unemployed for 3 months, the claimant should have been willing to accept employment which was more readily obtainable than that which was closer to home as she stipulated. Further, aside from any consideration of the length of unemployment, the 30 minutes or so in rush hour would not have been excessive or unduly burdensome to a reasonable individual. In short, the new conditions were not dissimilar from the claimant's previous conditions and did not render the work unsuitable. The claimant refused the offer of work without good cause.

ISSUE/DIGEST CODE **Refusal of Work/RW 150.2**
DOCKET/DATE **ABR-88-3042/6-13-88**
AUTHORITY **Section 603 of the Act**
TITLE **Distance to Work**
SUBTITLE **Transportation and Travel**
CROSS-REFERENCE **RW 210.05, Good Cause**

The claimant worked second shift, 3 p.m. to 11 p.m., at a considerable distance from her home. She did not own a car, and, after 9 p.m., there was no public transportation that would take her home. So she rode to and from work with her sister, who owned a car and worked at the same place at the same hours.

The claimant was laid off. Her sister decided to move to Texas. Then the claimant was recalled to work, on the same terms. The claimant refused the offer to return to work, because she would now have no way to get home.

HELD: Section 603 provides that consideration must be given to the distance to work. This would include the availability of transportation.

In this case, the claimant had no transportation home from work. In this regard, the work was no longer suitable for her and she had good cause to refuse it.

ISSUE/DIGEST CODE **Refusal of Work/RW 170.1**
DOCKET/DATE **ABR-86-1569/7-14-86**
AUTHORITY **Section 603 of the Act**
TITLE **Employment Office or Other Agency Referral**
SUBTITLE **Direction to Apply for Work**
CROSS-REFERENCE **RW 330.25, Offer, Terms**

Through the State Job Service, the claimant's former employer, a Building Maintenance Service, requested that the claimant, a Janitor, contact its office, in order to obtain the location, hours, and rate of pay for "any job" that it had to offer. When asked by Job Service to provide it with that specific information - location of employment, number of hours of work, and rate of pay - the employer responded:

> Cannot be specific as to rate of pay, it depends on the work site. The questions you are asking have never been asked before and I don't see that they are necessary...Our business is the type that job offers and locations could change from day to day.

The employer stated that the claimant failed to contact its office to see what positions were available and contended that she should have been disqualified under the provisions of Section 603.

HELD: An offer of work must be definite. It must contain sufficient information to establish that a specific job is available, and that it is for certain hours and at a specified rate of pay. Accordingly, an individual who is asked to come to an employer's office to discuss possible - but not specific - job openings does not refuse a definite offer of work when she fails to respond.

Similarly, when an individual is directed, by Job Service or the Director, to apply for work, adequate information for the purpose of that referral includes sufficient details as to hours, wages, and duties, so that the individual might make a reasonably informed decision as to whether or not the proffered work would be suitable. Even where a claimant is referred to work with a former employer, in which case the information given to the claimant need not be as detailed as when referring to a new employer (since it may be assumed that the claimant is familiar with the conditions of work), from the referral the claimant must be able to identify a particular job and its essential terms.

In the instant case, the employer suggested that some job might be available, for unspecified hours at an unspecified wage. The employer did not provide information which was sufficient to constitute a definite offer, nor, if this were to be treated as a referral, did the employer provide information sufficient for the claimant to identify a particular job and its essential terms, even if she had previously worked for the employer. Therefore, there was no refusal of work within the intent and meaning of Section 603.

ISSUE/DIGEST CODE **Refusal of Work/RW 195.05**
DOCKET/DATE ***Perkins v. Board of Review*, 485 N.E. 2d 575 (1985)**
AUTHORITY **Section 603 of the Act**
TITLE **Experience or Training**
SUBTITLE **Whether Earlier Work is Still Suitable**
CROSS-REFERENCE **RW 210.05, Good Cause; RW 510.4, Nature of Work**

In 1979, the claimant began working as a speech therapist for the Waukegan school district. Her salary was $20,668. For the 1982-83 school year, she was appointed co-chair of the speech-language department, an annually appointed, administrative position that paid a $168 yearly stipend.

During that school year, the claimant divided her time between speech therapy and the administrative position. At the end of the school year, the school district notified the claimant that, for budgetary reasons, her speech therapist job was being eliminated for the 1983-84 year; further, there would be only one chair of the speech-language department; the claimant was not reappointed.

Then a speech therapist position became available. It was offered to the claimant. Her salary would be in excess of $22,000. She refused the job, explaining that she was now over-qualified for this work. Only higher level administrative work would be suitable. To accept anything less, where there was no prospect of advancement, would have a negative impact upon future job prospects.

HELD: If an individual acquires additional skills and experience over a period of time, a position held in earlier years may well cease to be suitable (e.g., if it would result in an erosion of skills, not pay the deserved wage, etc.)

However, merely working in another capacity and speculating about future job prospects does not automatically render previous work unsuitable. A preference, without more, does not establish good cause for refusing work.

In this case, the job offered fell squarely within the field of the claimant's professional training. She would be earning at maximum capacity. There would be no loss of skills.

Her appointment to an administrative position had been temporary. It expired at year's end anyway and there was no reasonable claim to even a second year of administrative work. It would have been her preference, nothing more.

The claimant refused suitable work without good cause.

ISSUE/DIGEST CODE **Refusal of Work/RW 195.05**
DOCKET/DATE **83-BRD-15260/12-16-83**
AUTHORITY **1./S-603**
TITLE **Experience or Training**
SUBTITLE **Use of Highest Skill**
CROSS-REFERENCE **None**

The claimant worked for the employer, a temporary employment agency, as a data processor for two years. She was laid off by one of the employer's clients due to lack of work. Her final wage was $5.50 per hour. Three days after the layoff, the employer offered the claimant a temporary assignment as a greeter of customers at a savings and loan institution. The assignment was for one month at a wage of $5.25 per hour. The claimant refused the employer's offer of work because she wanted to find a job in data processing.

HELD: The claimant refused an offer of work for good cause. The offered job was that of a receptionist and not related to the claimant's usual occupation. The offer was unsuitable work for the claimant. Therefore, the claimant is not subject to any disqualification.

ISSUE/DIGEST CODE **Refusal of Work/RW 210.05**
DOCKET/DATE **85-BRD-04831/6-27-85**
AUTHORITY **Section 603 of the Act**
TITLE **Good Cause**
SUBTITLE **Personal Circumstances**
CROSS-REFERENCE **None**

The claimant was made an offer of work which had to be accepted within two hours of the time of the offer. The claimant was unable to arrange for child care within the two hour notice period given, and, therefore, refused the offer of work.

HELD: An individual has good cause for refusing an offer of work if her action in refusing is that of a reasonable person interested in securing employment, but precluded from doing so. Good cause for refusing work is not confined to causes directly attributable to the employer, but may be determined from personal circumstances which existed at the time the offer was refused. In this case, the evidence established that the claimant was precluded from accepting employment due to personal circumstances, which, despite reasonable efforts to resolve, still existed at the expiration of the two hour notice period. The claimant refused an offer of work with good cause.

ISSUE/DIGEST CODE **Refusal of Work/RW 210.05**
DOCKET/DATE **ABR-88-3042/6-13-88**
AUTHORITY **Section 603 of the Act**
TITLE **Good Cause**
SUBTITLE **Good Cause Applies to Conditions at Time of Refusal**
CROSS-REFERENCE **RW 150.2, Distance to Work**

The claimant worked second shift, 3 p.m. to 11 p.m., at a considerable distance from her home. She did not own a car, and, after 9 p.m., there was no public transportation that would take her home. So she rode to and from work with her sister, who owned a car and worked at the same place at the same hours.

The claimant was laid off. Her sister decided to move to Texas. Then the claimant was recalled to work, on the same terms. The claimant refused the offer to return to work, because she would now have no way to get home.

HELD: In determining whether work is suitable or whether good cause exists for refusing work, consideration must be given to conditions as they exist at the time of refusal.

In this case, the claimant's work had been suitable; but, at the time of refusal, she did not have any transportation home from work. Therefore, she had good cause for refusing the offer.

ISSUE/DIGEST CODE **Refusal of Work/RW 210.05**
DOCKET/DATE **ABR91882/8-1-89**
AUTHORITY **Section 603 of the Act**
TITLE **Good Cause**
SUBTITLE **Environment (Cigarette Smoke and No Ventilation)**
CROSS-REFERENCE **RW 235.45, Health; RW 515.35, Working Conditions**

The claimant, an office clerk, had previously worked for the employer. The employer offered to rehire her, but the claimant refused, because co-workers smoked. The smoke would drift into her work area and there were no windows or any other type of ventilation. She did not want to be subjected to this second-hand smoke because of the possible danger to her health.

HELD: Where there is some medical evidence that working conditions pose a risk to a claimant's health, the claimant has good cause for refusing the offer of work.

There is some medical evidence that second-hand smoke in an enclosed environment poses a health risk.

Here, the claimant's refusal of work was with good cause.

ISSUE/DIGEST CODE **Refusal of Work/RW 210.05**
DOCKET/DATE ***Perkins v. Board of Review*, 485 N.E. 2d 575 (1985)**
AUTHORITY **Section 603 of the Act**
TITLE **Good Cause**
SUBTITLE **Whether Earlier Work is Still Suitable**
CROSS-REFERENCE **RW 195.05, Exper./Training; RW 510.4, Nature of Work**

In 1979, the claimant began working as a speech therapist for the Waukegan school district. Her salary was $20,668. For the 1982-83 school year, she was appointed co-chair of the speech-language department, an annually appointed, administrative position that paid a $168 yearly stipend.

During that school year, the claimant divided her time between speech therapy and the administrative position. At the end of the school year, the school district notified the claimant that, for budgetary reasons, her speech therapist job was being eliminated for the 1983-84 year; further, there would be only one chair of the speech-language department; the claimant was not reappointed.

Then a speech therapist position became available. It was offered to the claimant. Her salary would be in excess of $22,000. She refused the job, explaining that she was now over-qualified for this work. Only higher level administrative work would be suitable. To accept anything less, where there was no prospect of advancement, would have a negative impact upon future job prospects.

HELD: If an individual acquires additional skills and experience over a period of time, a position held in earlier years may well cease to be suitable (e.g., if it would result in an erosion of skills, not pay the deserved wage, etc.).

However, merely working in another capacity and speculating about future job prospects does not automatically render previous work unsuitable. A preference, without more, does not establish good cause for refusing work.

In this case, the job offered fell squarely within the field of the claimant's professional training. She would be earning at maximum capacity. There would be no loss of skills.

Her appointment to an administrative position had been temporary. It expired at year's end anyway and there was no reasonable claim to even a second year of administrative work. It would have been her preference, nothing more.

The claimant refused suitable work without good cause.

ISSUE/DIGEST CODE **Refusal of Work/RW 235.45**
DOCKET/DATE **ABR91882/8-1-89**
AUTHORITY **Section 603 of the Act**
TITLE **Health or Physical Condition**
SUBTITLE **Risk of Illness (Cigarette Smoke and No Ventilation)**
CROSS-REFERENCE **RW 210.05, Good Cause; RW 515.35, Working Conditions**

The claimant, an office clerk, had previously worked for the employer. The employer offered to rehire her, but the claimant refused, because co-workers smoked. The smoke would drift into her work area and there were no windows or any other type of ventilation. She did not want to be subjected to this second-hand smoke because of the possible danger to her health.

HELD: Where there is some medical evidence that working conditions pose a risk to a claimant's health, the claimant has good cause for refusing the offer of work.

There is some medical evidence that second-hand smoke in an enclosed environment poses a health risk.

Here, the claimant's refusal of work was with good cause.

ISSUE/DIGEST CODE **Refusal of Work/RW 235.45**
DOCKET/DATE **ABR-08-12952/2-11-09**
AUTHORITY **Section 603 of the Act; 56 Ill. Adm. Code 2720.315(b)**
TITLE **Health or Physical Condition**
SUBTITLE **Risk of Illness or Injury**
CROSS-REFERENCE **None**

The claimant worked for a school district as a teacher's aide and was then laid off. Sometime in 2008, she was offered a job by the same school district as a teacher's aide in the behavior intervention classroom at the same rate of pay and hours of work she had worked in her previous teacher's aide position. The claimant had worked in the offered position two years earlier, quit, and later asked to return to that position, but by then the job had been filled. If she had accepted the job in 2008, she would have received a refresher training course and would not be expected to physically restrain students, as she was required to do in her previous tenure in that position. She did not mention anxiety as a cause of her refusal either to the school district or to the claims adjudicator but first mentioned it during her testimony at the hearing before the Referee. In her appeal to the Board of Review, she presented a note from her doctor regarding her anxiety, but did not submit this additional evidence to the employer.

HELD: Under Section 603 of the Act, an individual will be deemed ineligible for benefits "if he has failed, without good cause...to accept suitable work...In determining whether or not any work is suitable for an individual, consideration shall be given to the degree of risk involved to his health, safety, morals, his physical fitness and prior training...", among other factors. In the instant case, the Board found that the claimant did not have good cause to refuse the job. The Board rejected as reasons for her refusal (1) that she lacked training for the job, since she would have received a training refresher course; (2) that back problems prohibited her from restraining students and caused her refusal, since restraining students was no longer part of the job; and, (3) that the job was unsuitable because she had tried it before and rejected it, noting that she had asked to be reinstated after she had quit.

The claimant also cited anxiety as a reason for her refusal. The Board found that the claimant's presentation of evidence regarding this health issue was untimely, noting that she never informed the employer or the claims adjudicator of this condition. She first raised the issue of anxiety at the hearing before the Referee, but presented no medical documentation to the Referee at that time. The claimant belatedly submitted a post-hearing note from her doctor, designed to excuse her from the taking the position. Under these circumstances, the Board found the note to be unconvincing. In any event, the Board found that it was prohibited from considering the note in reaching its decision since the claimant failed to comply with Section 2720.315(b) of the Department's Benefit Rules, which requires, among other things, that the party wishing to submit additional evidence into the record must certify that it has served a copy of its request upon the opposing party.

ISSUE/DIGEST CODE **Refusal of Work/RW 265.3**
DOCKET/DATE **84-BRD-883/1-23-84**
AUTHORITY **1./S-603**
TITLE **Interview And Acceptance**
SUBTITLE **Failure To Report For Interview Or Work**
CROSS-REFERENCE **None**

The claimant received from the local office a notice designated as an "offer of work." The notice directed her to report to her former employer on a certain day but did not mention a specific reporting time. The claimant made other contacts during the early part of the day and reported to the former employer at 3:00 p.m. After a lengthy interview, the employer offered the claimant her former position at a lower wage. The claimant insisted upon her prior wage. The employer further told the claimant that he had expected her to report at 8:30 a.m.

At the subsequent hearing, the employer admitted that he had filled the position by hiring another person at 2:00 p.m. on the day of the interview with the claimant.

HELD: The employer did not make an actual offer of work. Although the notice was labeled "offer of employment," no specific reporting time was mentioned. The claimant assumed that she was merely expected to report for an interview, and she did contact the employer for this purpose. Another candidate was actually hired for the job prior to the claimant's interview with the employer. The claimant is not disqualified for benefits.

ISSUE/DIGEST CODE	**Refusal of Work/RW 295.05**
DOCKET/DATE	**84-BRD-1494/1-31-84**
AUTHORITY	**1./S-603**
TITLE	**Length of Unemployment**
SUBTITLE	**General**
CROSS-REFERENCE	**RW 450.154, Nights under Time**

After approximately two months of unemployment, the claimant was offered a job in her prior work until and at the same wages. The claimant would have been required to work evenings until 9:00 p.m. on a rotating basis and Saturdays. The claimant refused the offer with the statement that she had never worked evenings during the five years she was employed with her employer. The claimant had no personal obligations which would require her presence at home in the evenings.

HELD: Refusal of work because the hours of proffered work would cause inconvenience or are not the hours preferred is without good cause. Although an unemployed individual may, during the early period of her unemployment, limit herself to conditions of work similar to those which she had previously enjoyed, the claimant had remained unemployed for approximately two months, and no good cause existed for refusing the work. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.05**
DOCKET/DATE	**ABR-88-338/3-25-88**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**An Offer Must Be Definite**
CROSS-REFERENCE	**VL 5.05, Voluntary Leaving; RW 5.05, Refusal of Work**

The claimant obtained work as a machinist through a temporary employment service (his employer) which would refer him to its clients. The employment service's policy was that workers, upon completion of assignments, should contact the service to see if other assignments were available and apply. Upon completion of an assignment which had run from February 13 through March 25, the claimant chose not to contact the employer's service.

The issue was whether the claimant refused an offer of available suitable work.

HELD: An offer of work must be definite. A direction to apply for work is not a definite offer of work. An employer's policy requiring workers to report is not an offer of work. In this case there was no offer of work. The claimant could not be disqualified under Section 603.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.05**
DOCKET/DATE	**ABR-85-2578/9-20-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**An Offer Must Be Definite and Genuine**
CROSS-REFERENCE	**None**

For 3-1/2 years, the claimant had been employed as a Secretary on the county States Attorney's staff. The States Attorney was an elected official, and when he was not re-elected, the claimant was informed by her office manager that her last day of work would coincide with the last day of the States Attorney's term in office. The claimant later testified that, traditionally, at the end of an incumbent's term, employees would be discharged - the new States Attorney bringing with him his own staff, including clerical personnel. On the last day of the States Attorney's term in office, the claimant left work.

Representatives of the newly elected States Attorney appeared and testified. They stated that, prior to the claimant leaving work, they had announced to the newspapers that employees of the former States Attorney would be welcome to apply for jobs with the newly elected States Attorney. The representatives argued that the claimant, by leaving work and not responding to the announcement regarding jobs, refused an offer of work without good cause.

HELD: For the disqualifying provisions of Section 603, Refusal of Work, to be applicable, it is necessary that, among other considerations, the alleged "offer of work" be definite and genuine. A general opportunity to apply for work is not a definite offer of work. A general announcement in the newspaper that work is available is not a definite offer of work. In the instant case, there was only a general statement in the press that former employees would be considered for re-hire; there was no specific offer of work for a specific job made to the claimant by any representative of the new States Attorney. There was no definite offer of work, and, given the traditional, customary turnover in personnel, there was no genuine offer of work. Therefore, the claimant was not subject to a disqualification under the provisions of Section 603.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.05**
DOCKET/DATE	**84-BRD-1012/1-24-84**
AUTHORITY	**1./S-603**
TITLE	**Offer of Work**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant's job as a physical plant specialist was eliminated and ended in February. Before termination, he had been asked if he would be interested in a custodial position that would begin in April. Wages were not discussed. He told the employer that he would not be interested.

HELD: The language of Section 603 is clear and unambiguous, and its provisions may be applied to a claimant only if he was actually offered available suitable employment which he refused. In this instance, the employer's inquiry did not amount to a definite offer of work. Furthermore, the period under review is in the month of February, and the purported job offer was to begin in April. The claimant is not disqualified for benefits.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.15**
DOCKET/DATE	**83-BRD-1007-EB/11-10-83**
AUTHORITY	**1./S-603**
TITLE	**Offer of Work**
SUBTITLE	**Means of Communication**
CROSS-REFERENCE	**None**

The employer stated that, subsequent to the layoff, a letter of recall was sent to the claimant's last known address, and no response was received. The claimant had relocated to his mother's home out of state, and he notified his employer of the address change. He received two vacation paychecks, but he did not receive the offer of work. The claimant stated that he would have accepted the offer had he received it.

HELD: The claimant did not receive the employer's offer of work because it was not mailed to his current address. Therefore, no offer of work was ever communicated to the claimant, and he could neither accept it nor reject it. The claimant did not refuse an offer of work and was not subject to any disqualification.

ISSUE/DIGEST CODE **Refusal of Work/RW 330.2**
DOCKET/DATE **ABR-85-7324/3-24-86**
AUTHORITY **Section 603 of the Act**
TITLE **Offer of Work**
SUBTITLE **Hypothetical-Offer/Contingency**
CROSS-REFERENCE **None**

The claimant, a Quality Control Manager, was laid off from his $35,000 per year job. About a week later, the owner of the company called him and asked if he would be interested in getting back to work. The owner stated that, although business was still slow, he wanted to know if he could count on the claimant in the event that business picked up. The owner added, however, that he would not be able to afford to pay the claimant his previous $35,000 salary and asked if he would be willing to take a $10,000 pay cut. The claimant expressed his displeasure at that. The conversation ended with the claimant telling the owner to give him another call if and when business picked up.

HELD: The disqualifying provisions of Section 603 do not apply unless an offer of work is definite. For an offer of work to be definite, it must be shown that the employer would place the worker in employment. A hypothetical question, such as "Would you consider a job with us when we have a vacancy?", is not an offer of work which is definite. An offer which is dependent upon a contingency, such as "If we get the contract..." is not an offer of work which is definite.

In the instant case, the employer's "offer" was for work which might be available if/when business picked up. It was not an offer of work which was definite. Therefore, the disqualifying provisions of Section 603 were inapplicable (and the issue of the offered wages being low in comparison with the claimant's previous wages was moot).

ISSUE/DIGEST CODE **Refusal of Work/RW 330.2**
DOCKET/DATE **ABR-85-8610/6-10-86**
AUTHORITY **Section 603 of the Act**
TITLE **Offer of Work**
SUBTITLE **Contingency**
CROSS-REFERENCE **None**

The claimant was interviewed for a job selling stock. He was informed that if he would pay a $100 fee to enroll in - and then successfully completed - a 2 week training course, he could anticipate being hired.

HELD: It is necessary that an alleged "offer of work" be definite and without extraneous conditions; an "offer" which is dependent upon a contingency is not an offer. In instances where no definite offer of work is made, but an individual has an opportunity to apply for work, in the absence of a directive by the State Job Service or the Director to apply, the disqualifying provisions of 603 are inapplicable.

In the instant case, the "offer of work" was contingent upon enrollment in and successful completion of a training course; therefore, there was no offer. This was not a case where the claimant had been directed to apply for work by Job Service or by the Director. Therefore, the disqualifying provisions of Section 603 were inapplicable.

ISSUE/DIGEST CODE **Refusal of Work/RW 330.25**
DOCKET/DATE **ABR-86-1569/7-14-86**
AUTHORITY **Section 603 of the Act**
TITLE **Offer of Work**
SUBTITLE **Terms**
CROSS-REFERENCE **RW 170.1, Employment Office or Other Agency Referral**

Through the State Job Service, the claimant's former employer, a Building Maintenance Service, requested that the claimant, a Janitor, contact its office, in order to obtain the location, hours, and rate of pay for "any job" that it had to offer. When asked by Job Service to provide it with that specific information - location of employment, number of hours of work, and rate of pay - the employer responded:

> Cannot be specific as to rate of pay, it depends on the work site. The questions you are asking have never been asked before and I don't see that they are necessary...Our business is the type that job offers and locations could change from day to day.

The employer stated that the claimant failed to contact its office to see what positions were available and contended that she should have been disqualified under the provisions of Section 603.

HELD: An offer of work must be definite. It must contain sufficient information to establish that a specific job is available, and that it is for certain hours and at a specified rate of pay. Accordingly, an individual who is asked to come to an employer's office to discuss possible – but not specific – job openings does not refuse a definite offer of work when she fails to respond.

Similarly, when an individual is directed, by Job Service or the Director, to apply for work, adequate information for the purpose of that referral includes sufficient details as to hours, wages, and duties, so that the individual might make a reasonably informed decision as to whether or not the proffered work would be suitable. Even where a claimant is referred to work with a former employer, in which case the information given to the claimant need not be as detailed as when referring to a new employer (since it may be assumed that the claimant is familiar with the conditions of work), from the referral the claimant must be able to identify a particular job and its essential terms.

In the instant case, the employer suggested that some job might be available, for unspecified hours at an unspecified wage. The employer did not provide information which was sufficient to constitute a definite offer, nor, if this were to be treated as a referral, did the employer provide information sufficient for the claimant to identify a particular job and its essential terms, even if she had previously worked for the employer. Therefore, there was no refusal of work within the intent and meaning of section 603.

ISSUE/DIGEST CODE	**Refusal of Work/RW 330.25**
DOCKET/DATE	***Glen Behling v. IDOL*, 525 N.E. 2d 1021 (1988)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Offer of Work**
SUBTITLE	**Terms**
CROSS-REFERENCE	**None**

The claimant worked as a security guard for 3 years until his layoff. The same employer then mentioned that there were other employment positions available, at another site, part-time and on holidays. Specific terms were not mentioned. The claimant did not accept any other job and, subsequently, he was held ineligible, under Section 603, for refusing work.

At no time during the appeal hearing did the employer testify as to the type of work or job duties that the claimant would be required to perform, or what his rate of pay would be. The claimant testified that he was unsuccessful in ascertaining the specifics of the work offered.

HELD: If an offer of work does not identify a particular job and its essential terms, then it cannot be determined whether the work is suitable. If it cannot be determined whether work is suitable, there can be no disqualification under Section 603.

In this case, the information and details of work were so sketchy (almost nonexistent) that the claimant could not have been expected to accept the work as suitable. The decision holding him ineligible was set aside.

ISSUE/DIGEST CODE	**Refusal of Work/RW 365.05**
DOCKET/DATE	**ABR-86-1245**
AUTHORITY	**Sect. 603 of the Act**
TITLE	**Prospect of Other Work**
SUBTITLE	**Definite or Reasonable Prospects**
CROSS-REFERENCE	**None**

The claimant was referred to a prospective job opportunity by the State Job Service. She attended an interview for the position and was offered the job.

In the meantime, she had been seeking work independently, and was scheduled with a different employer for an interview, following which she was offered full-time work, to begin immediately, which would pay $2000 per year more than the work previously offered. The claimant then refused the earlier, lower paying offer.

HELD: In general, it may be said that a refusal of work is with good cause if the individual has definite prospects of immediate work or has reasonable prospects of securing more skilled or more remunerative work.

In the instant case, the claimant's refusal of the first offer was prompted by a definite prospect of immediate work paying greater remuneration. This constituted good cause for her refusal.

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.05**
DOCKET/DATE	**83-BRD-13915/11-28-83**
AUTHORITY	**1./S-603**
TITLE	**Time**
SUBTITLE	**General**
CROSS-REFERENCE	**None**

The claimant was offered work during the opera season as a musician. He had been under contract for and had performed such work during the prior three seasons for the same employer. He refused the offer because of the seasonal nature of the work.

HELD: The claimant had a history of seasonal work with the employer, and the fact that the work was seasonal did not render the work unsuitable. He refused an offer of suitable work without good cause, and he is disqualified for benefits.

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.153**
DOCKET/DATE	**85-BRD-05039/7-8-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Time**
SUBTITLE	**Hours, Long or Short**
CROSS-REFERENCE	**None**

The claimant had been employed as a Home Health Care Worker, whose employer would assign her to work, as needed, with elderly clients who required transportation, cooking, cleaning, or general care. After refusing two full-time assignments, the claimant explained to her employer that she wished to work less than full-time, and limit her earnings to $39 per week, in order that she would remain eligible for unemployment benefits.

HELD: An individual has good cause for refusing an offer of work if her action in refusing is that of a reasonable person interested in securing employment, but precluded from doing so. If a claimant insists upon working shorter hours than those usually offered in the occupation, it is necessary to establish compelling reasons for this restriction. In this case, the claimant exhibited a disinclination to accept work which paid in excess of $39, so that she would not have to forego receipt of unemployment insurance benefits. Such a reason for refusing work was not compelling in nature and did not constitute good cause for refusing an offer of otherwise suitable work for the claimant.

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.154**
DOCKET/DATE	**84-BRD-1494/1-31-84**
AUTHORITY	**1./S-603**
TITLE	**Time**
SUBTITLE	**Nights**
CROSS-REFERENCE	**General under Length of Unemployment**

After approximately two months of unemployment, the claimant was offered a job in her prior work unit and at the same wages. The claimant would have been required to work evenings until 9:00 p.m. on a rotating basis and Saturdays. The claimant refused the offer with the statement that she had never worked evenings during the five years she was employed with her employer. The claimant had no personal obligations which would require her presence at home in the evenings.

HELD: Refusal of work because the hours of proffered work would cause inconvenience or are not the hours preferred is without good cause. Although an unemployed individual may, during the early period of her unemployment, limit herself to conditions of work similar to those which she had previously enjoyed, the claimant had remained unemployed for approximately two months, and no good cause existed for refusing the work. The claimant is disqualified for benefits.

ISSUE/DIGEST CODE	**Refusal of Work/RW 450.4**
DOCKET/DATE	**ABR-84-4-EB/9-6-85**
AUTHORITY	**Section 603 of the Act**
TITLE	**Time**
SUBTITLE	**Part-Time or Full-Time (Contractual Obligation)**
CROSS-REFERENCE	**None**

The claimant, who had been a full-time worker, was seeking full-time work in computer programming or sales, when he was offered a part-time teaching position. The hours were to be 1 p.m. to 3:30 p.m., two days per week, and the work was to pay him $30 per week. The claimant refused the offer of work. He later testified that if he had accepted the offer of work he would have been contractually obligated to work 16 weeks, and this would have prevented him from accepting full-time work.

HELD: Where the acceptance of part-time work would prevent a full-time worker from seeking or obtaining full-time work, that individual will have good cause for refusing the offer of part-time work. In the instant case, the claimant's acceptance of part-time work would have precluded him from obtaining full-time work. Under those circumstances, he refused the offer of work with good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 500.5**
DOCKET/DATE	**ABR-87-925/1-29-88**
AUTHORITY	**Section 603 of the Act**
TITLE	**Wages**
SUBTITLE	**Low**
CROSS-REFERENCE	**None**

The claimant worked until February, 1986, as a data processor, at a final wage of $7 per hour. Following his separation from that job, he worked for a temporary agency until the end of March, for $5.25 per hour. But he rejected similar work for that wage in April. Because he rejected work he was disqualified under Section 603.

The claimant testified that he had not been unemployed very long and he wished to see if he might obtain work similar in remuneration to that he earned prior to accepting the temporary March assignment. He also presented evidence to show that the median wage paid data processors was above the wage offered to him by the temporary agency. In May, he obtained a job as a computer operator, at a wage of $6 per hour.

HELD: During the early period of unemployment, an individual may limit himself to conditions of work similar to those he enjoyed in the recent past.

In this case, in view of the claimant's relatively brief period of unemployment, the higher wage he recently obtained, and the predominantly higher wage paid for similar work in the community, the work offered was unsuitable.

The claimant was allowed benefits without disqualification.

ISSUE/DIGEST CODE **Refusal of Work/RW 510.2**
DOCKET/DATE **ABR-85-8146/5-12-86**
AUTHORITY **Section 603 of the Act**
TITLE **Work, Nature of**
SUBTITLE **Former Employer**
CROSS-REFERENCE **None**

While previously working 7 hours per day for this employer, as a Cleaning Service Supervisor earning $5 per hour, the claimant had been involved in an ongoing wage dispute. The employer had owed him 3 months of back pay and continually misrepresented that payment would be made promptly. Payment was eventually made. Then the claimant was laid off when the employer lost a contract.

One month later, the employer offered the claimant non-supervisory work, paying $4.50 per hour. The employer told the claimant that he would be scheduled to work 5 hours per day. Before accepting the job, the claimant inspected the job site, which was 20 miles further away, and spoke with the foreman there. He learned from the foreman that the job involved only 4 hours' work per day, not 5 as the employer had stated.

The claimant refused the offer of work, stating that the distance to work (travel expense) was too great when coupled with the reduced wage and reduced hours for non-supervisory work. Also, the claimant was apprehensive about the employer's representations concerning the work, since the employer had previously misled him about back pay and was currently misrepresenting the hours.

HELD: Good cause for refusal of work offered by a former employer is determined by the same principles and policies which govern any other refusal of work, except that a strained relationship between a former employer and its former employee is an important element to consider. Where that relationship is shown to be unduly strained, the refusal of work is with good cause.

In the instant case, it may or may not have been that the job itself - non-supervisory work, at reduced wages and hours, at greater travel expense - was unsuitable. But those factors, in conjunction with the claimant's reasonable, substantial apprehension about his former employer's representations, showed that the relationship between the parties was unduly strained and established good cause for the claimant's refusal.

ISSUE/DIGEST CODE **Refusal of Work/RW 510.2**
DOCKET/DATE ***Lester v. IDES*,**
AUTHORITY **Section 603 of the Act**
TITLE **Nature of Work**
SUBTITLE **Former Employer or Employment**
CROSS-REFERENCE **RW 150.05, Distance to Work**

The claimant was employed as a diverting coordinator for the employer. The claimant’s work location was 1.3 miles from her home, and she worked 35 hours per week at an annual salary of $70,200 plus benefits. The claimant was laid off for lack of work on May 23, 2001. On July 18, 2001, the employer offered the claimant a position as a lead coordinator at an annual salary of $70,200 plus benefits and two guaranteed quarterly bonuses of $4,000 each. The lead coordinator position was at a work location 30 miles from the claimant’s home, and required 40 hours of work per week. The claimant refused the position, and filed a claim for unemployment insurance benefits.

The claimant argued at hearing that the offered salary was insufficient because the lead coordinator position required her to work at least 40 hours per week and to manage at least one person, and that the salary should have been adjusted because of her experience, the increased management responsibilities, and the increased distance from her home. The employer testified it valued the claimant’s work and needed someone strong in the lead coordinator position, that one person would have worked under the claimant, that the only difference in duties between a diverting coordinator and a lead coordinator was that a lead coordinator served as the primary liaison between the employer’s diverting supervisor and the partnership account, and that the salary offered to the claimant was generous since a typical lead coordinator earned a maximum salary of only $54,000.

The Board held that the claimant was ineligible for benefits under Section 603 of the Act because she had refused suitable work without good cause. Specifically, the claimant was offered a comparable salary and benefits, the distance of travel was not excessive, the area where the claimant would have worked was local and accessible by local highways, the travel time would have been less than one hour, and the added responsibility of liaison would not have been unduly burdensome as the claimant had experience in the field and was competent. The circuit court affirmed the Board.

HELD: Affirmed. The claimant was offered an annual salary of $70,200, benefits and guaranteed bonuses, which was more than a typical lead coordinator would receive. The additional travel time, working 40 instead of 35 hours per week, and the added liaison responsibility did not make the offered position unsuitable. The offered position did not require the claimant to perform tasks beyond her experience, skill and competency, and her rate of pay actually increased as she was offered the same salary and benefits as she had before plus two guaranteed quarterly bonuses. The Board's decision is not against the manifest weight of the evidence.

ISSUE/DIGEST CODE	**Refusal of Work/RW 510.4**
DOCKET/DATE	***Perkins v. Board of Review*, 485 N.E. 2d 575 (1985)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Nature of Work**
SUBTITLE	**Preferred Employment**
CROSS-REFERENCE	**RW 195.05, Experience/Training; RW 210.05, Good Cause**

In 1979, the claimant began working as a speech therapist for the Waukegan school district. Her salary was $20,668. For the 1982-83 school year, she was appointed co-chair of the speech-language department, an annually appointed, administrative position that paid a $168 yearly stipend.

During that school year, the claimant divided her time between speech therapy and the administrative position. At the end of the school year, the school district notified the claimant that, for budgetary reasons, her speech therapist job was being eliminated for the 1983-84 year; further, there would be only one chair of the speech-language department; the claimant was not reappointed.

Then a speech therapist position became available. It was offered to the claimant. Her salary would be in excess of $22,000. She refused the job, explaining that she was now over-qualified for this work. Only higher level administrative work would be suitable. To accept anything less, where there was no prospect of advancement, would have a negative impact upon future job prospects.

HELD: If an individual acquires additional skills and experience over a period of time, a position held in earlier years may well cease to be suitable (e.g., if it would result in an erosion of skills, not pay the deserved wage, etc.).

However, merely working in another capacity and speculating about future job prospects does not automatically render previous work unsuitable. A preference, without more, does not establish good cause for refusing work.

In this case, the job offered fell squarely within the field of the claimant's professional training. She would be earning at maximum capacity. There would be no loss of skills.

Her appointment to an administrative position had been temporary. It expired at year's end anyway and there was no reasonable claim to even a second year of administrative work. It would have been her preference, nothing more.

The claimant refused suitable work without good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 515.35**
DOCKET/DATE	**ABR91882/8-1-89**
AUTHORITY	**Section 603 of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Environment (Cigarette Smoke and No Ventilation)**
CROSS-REFERENCE	**RW 210.05, Good Cause; RW 235.45, Health**

The claimant, an office clerk, had previously worked for the employer. The employer offered to rehire her, but the claimant refused, because co-workers smoked. The smoke would drift into her work area and there were no windows or any other type of ventilation. She did not want to be subjected to this second-hand smoke because of the possible danger to her health.

HELD: Where there is some medical evidence that working conditions pose a risk to a claimant's health, the claimant has good cause for refusing the offer of work.

There is some medical evidence that second-hand smoke in an enclosed environment poses a health risk.

Here, the claimant's refusal of work was with good cause.

ISSUE/DIGEST CODE	**Refusal of Work/RW 515.5**
DOCKET/DATE	***Frazee v. IDES*, 109 S. Ct. 1514 (1989)**
AUTHORITY	**Section 603 of the Act**
TITLE	**Working Conditions**
SUBTITLE	**Morals**
CROSS-REFERENCE	**RW 90.05, Conscientious Objection, Religion**

The claimant refused a job because it would have required him to work on Sunday. He stated that he refused because, as a Christian, although not a member of any particular sect, he felt it was wrong to work on Sunday.

He was denied unemployment benefits. He appealed, citing the First Amendment's Free Exercise Clause.

The appellate court held that, for a Free Exercise Clause claim to succeed, a claimant must sincerely believe in a tenet or dogma of, and belong to, an established religious sect. The court pointed out that assorted Christian denominations did not abstain from Sunday work and that the claimant did not belong to a particular sect that did abstain; therefore, he had been correctly denied benefits.

The claimant then appealed to the United States Supreme Court.

HELD: The denial of unemployment benefits, because an individual chooses fidelity to sincerely held religious beliefs over employment, violates the First Amendment's Free Exercise Clause. The protection afforded by the Free Exercise Clause is not limited to responses to formal commands of particular religious organizations. Protection extends to an individual, even if he does not belong to such an organization, so long as his belief is both religious and sincere.

In this case, the claimant's refusal to work on Sunday was based upon his sincerely held religious belief.

He was entitled to First Amendment protection. The denial of unemployment benefits violated the Free Exercise Clause.

TOTAL AND PARTIAL UNEMPLOYMENT

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 455.1**
DOCKET/DATE	**ABR-94-11982/2-24-95**
AUTHORITY	**Section 239 of the Act**
TITLE	**Full-Time or Part-Time**
SUBTITLE	**Section 239 Distinguished from Exemptions**
CROSS-REFERENCE	**None**

During the period under review, the claimant worked full-time as an insurance agent. He filed a claim for unemployment benefits because his earnings were low. He argued that he was entitled to benefits because he was unemployed; that is, he was unemployed because his services were exempt from the definition of "employment" under Section 228, which provides that the term "employment" shall not include services performed by an individual as an insurance agent ...

HELD: Section 228 is not in any way applicable in ascertaining whether or not an individual is unemployed. An exemption from "employment" is applicable only in ascertaining whether a claimant has base period wages for insured work to establish monetary eligibility. The term "unemployed" is defined in Section 239, which provides that an individual is unemployed only if no wages are payable to him and he performs no services, or, if he works less than full time and earns less than his weekly benefit amount. The claimant did not meet these criteria. He was not unemployed. He was ineligible for benefits.

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.35**
DOCKET/DATE	***Kroger Co. v. Blumenthal*, 148 N.E. 2d 734 (1958)**
AUTHORITY	**Sections 239 and 402 of the Act**
TITLE	**Type of Compensation**
SUBTITLE	**Dismissal or Separation Pay**
CROSS-REFERENCE	**TPU 460.6, Past or Future Services**

After the claimant separated from employment, his employer paid him separation pay equal to what his wages would have been for 36 weeks.

The separation pay was fixed, without respect to the probable or actual duration of his unemployment. It would not have been diminished if he found a job the next day. There was no condition upon which the amount of pay would have been "earned" or increased. In short, there were no conditions attached.

The question presented was whether the separation pay constituted wages affecting the claimant's eligibility for benefits or the amount of benefits to be paid.

HELD: Only "unemployed" individuals are eligible for benefits. Section 239 of the Act provides, in pertinent part, that an individual is unemployed in any week with respect to which no "wages" are payable to him or in which wages are less than his weekly benefit amount. Section 402 provides that wages are to be deducted from an individual's weekly benefit amount.

If separation pay constitutes wages with respect to a week, an individual is not unemployed and is ineligible for benefits for that week, or, if he is still unemployed (because the wages are less than his weekly benefit amount), the wages shall be deducted from his weekly benefit amount.

In many instances, separation pay is an accommodation for a worker's past services. It is made without conditions and irrespective of future conduct. Because such separation pay is made only with respect to weeks prior to the worker's separation from employment - weeks for which wages were already payable and not with respect to weeks for which he is filing for benefits, it cannot constitute wages.

In the instant case, because the amount the claimant was to receive was fixed without conditions and irrespective of his actions during the weeks he would claim benefits, it did not constitute wages. The claimant was "unemployed" within the meaning of Section 239 of the Act and there was nothing to deduct under Section 402.

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.55**
DOCKET/DATE	**83-BRD-13610/11-22-83**
AUTHORITY	**1./S-611(A)(1)**
TITLE	**Type of Compensation**
SUBTITLE	**Pension Or Retirement Pay**
CROSS-REFERENCE	**None**

The claimant was laid off after thirty-one years of employment, and she subsequently elected to take a pension funded solely by employer contributions.

HELD: The entire amount of retirement pay received by the claimant constitutes disqualifying income deductible from benefits to which the claimant might otherwise be entitled, because the pension was entirely employer funded.

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.6**
DOCKET/DATE	**84-BRD-1/1-5-84**
AUTHORITY	**1./S-500C and S-239**
TITLE	**Type of Compensation**
SUBTITLE	**Remuneration For Past Or Future Services**
CROSS-REFERENCE	**None**

When the claimant's job was eliminated, he resigned pursuant to an agreement whereby for a period of six months he was to receive weekly payments in the same amount as his prior wages. The claimant was under no obligation to render further services to the employer following the submission of his resignation. Two days after his resignation, the claimant filed an initial claim for benefits alleging that he was an unemployed individual.

HELD: Section 500C of the Act requires, as a condition of eligibility, that the claimant be an "unemployed individual" during the weeks for which he filed his claim for benefits. Section 239 in conjunction with Section 500C governs eligibility and provides that an individual shall be deemed to be unemployed in any week with respect to which no wages are payable to him and during which he performed no services, or in any week of less than full-time work if the wages payable to him with respect to such week are less than his weekly benefit amount. In determining whether payments received by a worker after his separation constitute wages, it is necessary to determine whether such payments can be properly allocated to services rendered the employer after the claimant's separation from work.

In this case, the claimant did not perform any services for his employer after his separation from work, nor was he obligated to do so. The payments received by the claimant were based totally on his past performance of services for the employer.

The payments received by the claimant after his separation from work did not constitute wages within the meaning of the Act such as to preclude the claimant from being determined an unemployed individual. At such, the payments are not deductible from benefits the claimant may be otherwise eligible to receive.

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.6**
DOCKET/DATE	***Kroger Co. v. Blumenthal*, 148 N.E. 2d 734 (1958)**
AUTHORITY	**Sections 239 and 402 of the Act**
TITLE	**Type Of Compensation**
SUBTITLE	**Past or Future Services**
CROSS-REFERENCE	**TPU 460.35, Dismissal or Separation Pay**

After the claimant separated from employment, his employer paid him separation pay equal to what his wages would have been for 36 weeks.

The separation pay was fixed, without respect to the probable or actual duration of his unemployment. It would not have been diminished if he found a job the next day. There was no condition upon which the amount of pay would have been "earned" or increased. In short, there were no conditions attached.

The question presented was whether the separation pay constituted wages affecting the claimant's eligibility for benefits or the amount of benefits to be paid.

HELD: Only "unemployed" individuals are eligible for benefits. Section 239 of the Act provides, in pertinent part, that an individual is unemployed in any week with respect to which no "wages" are payable to him or in which wages are less than his weekly benefit amount. Section 402 provides that wages are to be deducted from an individual's weekly benefit amount.

If separation pay constitutes wages with respect to a week, an individual is not unemployed and is ineligible for benefits for that week, or, if he is still unemployed (because the wages are less than his weekly benefit amount), the wages shall be deducted from his weekly benefit amount.

In many instances, separation pay is an accommodation for a worker's past services. It is made without conditions and irrespective of future conduct. Because such separation pay is made only with respect to weeks prior to the worker's separation from employment - weeks for which wages were already payable and not with respect to weeks for which he is filing for benefits, it cannot constitute wages.

In the instant case, because the amount the claimant was to receive was fixed without conditions and irrespective of his actions during the weeks he would claim benefits, it did not constitute wages. The claimant was "unemployed" within the meaning of Section 239 of the Act and there was nothing to deduct under Section 402.

ISSUE/DIGEST CODE	**Total and Partial Unemployment/TPU 460.6**
DOCKET/DATE	***Lee v. IDES* (4-97-0132 -- Unpublished)**
AUTHORITY	**Section 239 of the Act**
TITLE	**Type of Compensation**
SUBTITLE	**Past or Future Services**
CROSS REFERENCE	**None**

The employer-s plant closed. Because of the claimant-s length of service, he was eligible to receive pay for one year after the plant closed, provided he report daily to a career transition center, through which he might perform community service. The claimant reported to the center and was paid for doing so, although he performed no community service. In the meantime, he filed a claim for unemployment benefits.

HELD: In some instances, separation pay is simply an accommodation for a worker-s past services, made without conditions and irrespective of future conduct, and is not payable with respect to weeks for which the claimant is filing for benefits; in those instances, the separation pay does not constitute wages and the receipt of unemployment benefits is unaffected. (*See, Kroger v. Blumenthal*, 148 N.E. 2d 734 (1958); in this Digest, at TPU 460.6). However, in the present case, although threshold eligibility for salary continuation depended upon past factors, the pay offered during the weeks being claimed was conditioned upon conduct during those weeks (whether the conduct proved productive or not). The payments were payable to those weeks and constituted wages. The claimant was not unemployed under Section 239.

Illinois Unemployment Insurance Law Handbook

The *Digest of Adjudication Precedents* does not contain either a Board of Review or court decision interpreting the table of contents heading you selected. Some of the headings in this table do not yet have corresponding decisions and are intended for future use. It is recommended that you select another related item from the *Digest* table or from the *Guide to the Unemployment Act*, the U.I. Act, or IDES rules tables.

BACK

SELECTED FORMS

Most of the following forms can be filled out on your computer before printing. Using the “shrink to fit” option in the print dialog will prevent cropping on some printers.

- Report to Determine Liability Under the Unemployment Insurance Act (UI-1) (With Instructions)
- Report to Determine Succession (UI-1 S&P) (With Instructions)
- Power of Attorney for Representing Employer before the Director of Employment Security Under the Illinois Unemployment Insurance Act (LE-10) and Unemployment Insurance Special Mailing Form (UI-1 M)
- Authorization for Information under the Illinois Unemployment Insurance Act (LE-11)
- Attorney Appearance and Authorization for Representation (Board of Review)
- Authorization Form (Appeals)
- Attorney Appearance (Appeals) (AR-5A)
- Employer's Contribution and Wage Report (UI-3/40) (With Instructions)
- Employer's Report of Wages Paid to Each Worker - Continuation Sheet (UI-40A)
- Notice of Change (UI-50A)
- Social Security Number Correction and Name Change Notice (UI-40B)
- Employer's Correction Report (UI-40C)
- Employer’s Claim for Adjustment/Refund (UI-28)
- Employer's Correction of Wages Previously Reported (UI-28B)
- Low Earnings Report (Ben-25)
- Report of Workers Affected by Labor Dispute (Ben-24) (With Continuation Sheet)
- Labor Dispute Questionnaire - Employer (Ben-178A)
- Labor Dispute Questionnaire - Union (Ben-178A)
- Board of Review Notice of Appeal (BA-100)
- Benefit Overpayment Information (SI-60)
- New Hire Reporting
- Request for Letter of Clearance (UI-2600)
- Election to File Annually as a Household Employer (UI-51) (With Instructions)
- Combined Return for Household Employers (UI-WIT) (With Instructions)
- Application for Partial Transfer of Experience (ER-65)

SELECTED FORMS

- Application for Partial Transfer of Experience - Schedule A - Allocation of Quarterly Taxable Wage Totals (ER-66)
- Allocation of Worker's Quarterly Taxable Wages for Quarter Ending (ER-67)
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- Reimburse Benefits in Lieu of Paying Contributions (UI-5NP)
- Report to Determine Liability for Domestic Employment Under the Unemployment Insurance Act (UI-1 DOM)
- Voluntary Election of Coverage Under the Illinois Unemployment Insurance Act (UI-1B)

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Unemployment Insurance Act

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