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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 1-09

TO: STATE WORKFORCE AGENCIES

FROM: BRENT R. ORRELL /s/
Deputy Assistant Secretary

SUBJECT: Interstate Arrangement for Combining Employment and Wages; New Definition of Paying State for Combined-Wage Claims

1. Purpose. To provide guidance to states regarding the change in the definition of “paying state” for an unemployment compensation (UC) combined-wage claim (CWC) filed under the Interstate Arrangement for Combining Employment and Wages.
2. References. Section 3304(a)(9)(B) of the Federal Unemployment Tax Act (FUTA), 20 CFR Part 616; ET Handbook No. 399; ET Handbook No. 392; 20 CFR Part 616, as amended at 73 Federal Register (FR) 63068 (October 23, 2008).
3. Summary. The CWC program allows an unemployed individual with employment and wages in more than one state to combine his/her wages to establish a CWC under the law of a single state called the “paying state” to qualify for benefits or to receive additional benefits (i.e., a higher weekly benefit amount). On October 23, 2008, the U. S. Department of Labor published a final rule in the Federal Register changing the definition of “paying state.” Effective January 6, 2009, the definition of “paying state” at 20 CFR 616.6(e) is amended to mean a single state against which the claimant files a CWC, if (1) the claimant has employment and wages in that state’s base period, and (2) the claimant qualifies for UC in that state using the combined employment and wages. (73 FR 63068 (Oct. 23, 2008)).

All 50 states, plus the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands are required to participate in the Interstate Arrangement for Combining Employment and Wages and will be affected by this change. The attached set of questions and answers provide guidance to states about the new definition of paying state and the states’ responsibilities for providing CWC filing options.

4. Action. Administrators are requested to provide this information to appropriate staff.

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5. Inquiries. States should direct questions to the appropriate Regional Office.
6. Attachments.

Attachment #1: Combined-Wage Claims - Questions and Answers on the New Definition of Paying State

Attachment #2: States' Responsibilities for Providing Combined-Wage Claim (CWC) Filing Options Effective January 6, 2009

Attachment #3: Sample Scripts for Providing Combined-Wage Claim (CWC) Filing Options

**Combined-Wage Claims
Questions and Answers on the New Definition of Paying State**

A. New Definition of Paying State

1. Question: How does the new definition of paying state change the way an individual files a CWC?

Answer: Prior to the new amendment, which becomes effective on January 6, 2009, the paying state is the state in which the individual files the CWC (usually the state where the individual is physically located at the time of filing a CWC), if s/he qualifies for benefits under the UC law of that state on the basis of combined employment and wages. The current definition also identifies the paying state when the individual does not qualify for unemployment benefits under the UC law of the state in which s/he files the CWC or when the individual applies for a CWC from Canada.

Effective January 6, 2009, the new definition of paying state for a CWC is the state against which the individual elects to file a CWC, provided the individual has employment and wages in that state's base period(s), and the individual qualifies for UC under the law of that state using combined employment and wages. (See revised 20 CFR 616.6(e).)

2. Question: What is the earliest possible effective date of an initial CWC based on the new rule?

Answer: The earliest possible effective date of an initial CWC based on the new rule is Tuesday, January 6, 2009, in states where the effective date of an initial claim may begin on a Tuesday. In most states, where weeks of unemployment begin on Sunday, the earliest effective date of a CWC is Sunday, January 11, 2009. This means that individuals filing a CWC in these states during the week beginning Sunday, January 4, 2009, will be subject to the regulations prior to the amendment. Individuals filing a CWC during the week beginning Sunday, January 11, 2009, and thereafter, will be subject to the amended rule that is effective January 6, 2009.

B. States' Responsibilities Regarding the New Definition of Paying State

1. Question: When an individual contacts a state about filing a CWC, what are the state's responsibilities in advising the individual of his/her options?

Answer: The responsibility of the state varies depending on the circumstances of the individual.

If the individual has employment and wages in the state, the state must advise the individual of the state's qualifying requirements and his/her potential eligibility for benefits (if any) under its law. The individual must also be told that s/he has the option to file in any other state(s) where s/he has employment and wages. The state must advise the individual that there are differences in weekly benefit amounts and other qualifying requirements (i.e., state laws vary). If the individual wishes to explore options with any other state(s), the state must provide information about how to contact any such state(s).

If the individual has no employment and wages in the state, the state must provide general information about the CWC program and information about how to contact the state(s) where the individual has employment and wages. (See Attachment 2.)

2. Question: Does the new definition of paying state require states to follow any specific order in determining which state is the paying state for a CWC claim?

Answer: No. Individuals may establish a CWC in any state in which they have employment and wages in the base period(s) of the state and qualify based on combining their wages. This includes individuals residing in Canada who have performed work in the United States.

3. Question: How will individuals determine the appropriate state to file a CWC?

Answer: The individual is responsible for deciding the state against which to file a CWC. States receiving inquiries from individuals potentially eligible to apply for CWCs must assist such individuals by providing general information about the CWC program advising that states' programs/entitlements vary and contact information for the state(s) where the individual worked.

States may refer individuals to America's Service Locator, which is located at: <http://www.servicelocator.org/OWSLinks.asp> and/or to specific states' Web sites.

4. Question: How does the state inform the individual of other filing options when a state determines that an individual is monetarily ineligible for a CWC after all wage transfers are complete?

Answer: Under the new rule, a state's written determination of monetary ineligibility under a CWC must contain information indicating that the individual may file a CWC claim in another state where the individual has employment and wages during the state's base period(s). (See revised 20 CFR 617.7(f).) States will meet this requirement by including a statement such as the following:

You may be eligible for benefits on the basis of combining your employment and wages in another state where you have worked. To file a claim, you will need to contact the other state(s) where you worked.

5. Question: Prior to the new amendment, there were cases where the paying state did not know if wages from other states were available for transfer. Does the new definition affect the way states handle these cases?

Answer: The new amendment does not change current procedures in this regard. When a state is a potential paying state, it should assist the individual in filing a CWC when the individual wishes to pursue a claim. As in the past, there will be some instances where individuals' wages will not be available for use on a CWC because of administrative complications. States will need to address these cases on an individual basis. In some cases, a claim may need to be withdrawn and a backdated claim filed with another state. States should follow existing backdating policies and procedures.

6. Question: Does the new definition affect the way Federal (civilian and/or military) wages are assigned?

Answer: The rules about the assignment of Federal wages have not changed.

C. CWC Filing Options

1. Question: When an individual has employment and wages in more than one state, must the individual file a CWC?

Answer: No, filing a CWC remains voluntary on the part of the individual. (Refer to 20 CFR 616.7(a) and (c).)

2. Question: Under the new definition may an individual establish a CWC under the law of the state where s/he resides?

Answer: Yes, but only if the individual has sufficient base period wages to qualify for benefits in the state of residence. An individual's residence is not relevant in determining the paying state. (Refer to 20 CFR 616.6(e).)

3. Question: The individual is eligible in State A for a regular intrastate claim using regular base period wages. State A also has an alternative base period, but it is available only if the individual is monetarily ineligible under the state's regular base period. The individual could also establish eligibility in State B, where s/he has lag quarter wages, which permits the use of the alternative base period at the individual's option. What are this individual's filing options?

Answer: The individual has the option to establish: 1) a regular intrastate UC claim in State A, or 2) an interstate CWC against State B.

4. Question: Under the new definition, is an individual who has elected to withdraw a CWC filed in State A able to establish a CWC in State B in which s/he also has employment and wages?

Answer: Yes, provided the individual is otherwise eligible, does not have an active claim with available benefits in State A, and has covered employment and/or wages in State B. The fact that s/he has withdrawn a prior CWC from State A has no effect on whether s/he may establish a CWC in State B (or any other state in which s/he had employment and wages).

5. Question: What impact does the new rule have on the states' responsibilities for providing claim filing options to individuals potentially eligible to file CWCs?

Answer: A state will have different responsibilities with respect to an individual potentially eligible for a CWC depending on whether it is the CWC "paying state," "potential paying state," "agent state," or "inquiry state" as defined below:

- A "paying state" is a single state against which the individual files a CWC, if the individual has employment and wages in that state's base period(s) and the individual qualifies for UC under that state's law using combined employment and wages.
- A "potential paying state" is a state in which an individual might establish a CWC.

- An “agent state” is the state that takes the interstate CWC on behalf of the paying state because the paying state does not accept interstate claims, including any interstate CWC, by phone/Internet.
- An “inquiry state” is the state contacted by an individual who is potentially eligible for a CWC, but who has no employment and wages in that state.

There are generally three levels of responsibility states will have with respect to providing filing options; these include inquiry filing options, detailed filing options and other filing options. (*See Attachment 2.*)

States' Responsibilities for Providing Combined-Wage Claim (CWC) Filing Options
Effective January 6, 2009

Inquiry Filing Options:

- States without base period employment and wages (an inquiry state) for the individual must provide:
 - general information about the CWC program advising that states' programs/entitlements vary; and,
 - contact information for the state(s) where the individual worked during the base period(s) of such state(s).

- States with base period employment and wages (a potential paying state) for the individual must provide:
 - general information about the CWC program advising programs/entitlements vary between states;
 - information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:
 - A regular UI claim; and/or a CWC (based on available information);
 - if available, the maximum weekly benefit amount(s) of the other state(s) where the individual worked; and,
 - contact information for the other state(s) where the individual worked during the base period(s) of such state(s).

Detailed Filing Options:

- States with base period employment and wages and any state(s) against which the individual decides to file a claim must provide:
 - general information about the CWC program advising programs/entitlements vary between states;
 - a review of the individual's work history to determine which filing options are available; and,
 - information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:
 - A regular UI claim; and/or a CWC.

If a state is an agent state taking the claim on behalf of the paying state, the agent state will provide detailed filing options using available information at the time the interstate CWC is filed/taken.

Other Filing Options:

- If a CWC "paying state" issues a determination that the claimant is monetarily ineligible on a CWC after all wages are transferred, it must provide information to the claimant about his/her right to establish a claim in another state where s/he worked in its written determination of ineligibility. Language similar to the following will satisfy this requirement:
 - *You may be eligible for benefits on the basis of combining your employment and wages in another state where you have worked. To file a claim, you will need to contact the other state(s) where you worked.*

Sample Scripts for Providing Combined-Wage Claim (CWC) Filing Options

Inquiry Filing Options:

- States without base period employment and wages (an inquiry state) for the individual must provide:
 - General information about the CWC program advising that states' programs/entitlements vary; and
 - Contact information for the state(s) where the individual worked during the base period(s) of such state(s).

An example of information that must be provided to an individual in a state where the individual has no employment or wages: *“Mr. Jones, because you have worked in three states, you may be able to establish an unemployment claim with any of those states under the Combined-Wage Claim program. Your wages will be combined and the amount of your benefits will be determined under the law of the state where you file your combined-wage claim. This might increase your benefit amount. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. I will provide information to you about how you may contact each of the states where you have worked to obtain this type of state information and their filing procedures. Although you may be eligible to receive unemployment benefits in more than one of these states, you may only establish a combined-wage claim against one of these states.”*

- States with base period employment and wages (a potential paying state) must provide:
 - General information about the CWC program advising programs/entitlements vary between states;
 - Information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:
 - A regular UI claim; and/or a CWC (based on available information);
 - If available, the maximum weekly benefit amount(s) of the other state(s) where the individual worked; and,
 - Contact information for the other state(s) where the individual worked during the base period(s) of such state(s).

An example of information that must be provided to an individual in a state where the individual has employment and wages (a potential CWC paying state): *“Mr. Jones, because you have worked in three states including this one, you may be able to establish an unemployment claim with any one of these states under the Combined-Wage Claim program. Your wages will be combined and your monetary entitlement will be determined under the law of the one state where you file your combined-wage claim. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. Can you tell me where you have worked in this state? (Follow your state's procedures on verifying identity.) Thank you. In what other states did you work? Based on the wages reported by your employer(s), you would qualify for a weekly benefit amount of \$__ and a maximum benefit amount of \$__ if you establish a claim in this state using only your wages earned here. If you establish a combined-wage claim here using wages earned in the other state(s), you would potentially qualify for a weekly benefit*

amount of \$___ and a maximum benefit amount of \$___. This amount is only an estimate and will not become final until all out-of-state wages are received here. As I mentioned before, state unemployment laws and benefit amounts vary between the states. Because of this, you may want to contact the other states where you have worked to find out your potential eligibility there before making a decision on which state to file in. Since I have information available concerning the maximum weekly benefit amounts in the two other states in which you worked I can provide it to you; the weekly amounts are \$___ and \$___. I will provide information to you about how you may contact each of the states where you have worked to obtain information about your potential entitlement in these states and their filing procedures. Although you may be eligible to receive unemployment benefits in more than one of these states, you may only establish a combined-wage claim against one state. Do you have any questions for me?"

Detailed Filing Options:

- States with base period employment and wages and any state(s) against which the individual decides to file a claim must provide:
 - General information about the CWC program advising programs/entitlements vary between states;
 - A review of the individual's work history to determine which filing options are available; and,
 - Information about its eligibility requirements and the individual's potential eligibility (including weekly benefit amount, maximum benefit amount) under its law for:
 - A regular UI claim; and/or a CWC.

If a state is acting as an agent state taking the claim on behalf of the paying state, the agent state will provide detailed filing options using available information at the time the interstate CWC is filed/taken.

Scenario 1. An example of information that must be provided to a individual when a filing decision (i.e., the state where s/he will file the CWC) has been made by the individual: "Mr. Jones, because you have worked in three states including this one, you may be able to establish an unemployment claim with any of these states under the Combined-Wage Claim program. Your wages will be combined and the amount of your benefits will be determined under the law of the state where you establish your combined-wage claim. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. Can you tell me where you have worked in this state? (Follow your state's procedures on verifying identity.) Thank you. In what other states did you work? Based on the wages reported by your employer(s), you would qualify for a weekly benefit amount of \$___ and a maximum benefit amount of \$___ if you establish a claim using only your wages earned here. If you establish a combined-wage claim here using wages earned here and in the two other state(s), you would potentially qualify for a weekly benefit amount of \$___ and a maximum benefit amount of \$___. This amount is only an estimate and will not become final until all out of state wages are received here. As I mentioned before, state unemployment laws and benefit amounts vary between the states. Have you contacted the other states in which you worked to find out about your potential entitlement there? (Claimant answers yes.) Good. Would you like to establish a combined-wage claim with this state, using the wages you earned here and wages from the other two states in which you worked? (Claimant answers yes.) Great, I have a few more questions for you."

Scenario 2. An example of information that must be provided to an individual when there is no employment and wages in the state, the individual has chosen to file an agent interstate CWC claim, and the liable CWC state does not accept phone or Internet claims: *“Mr. Jones, because you have worked in three other states, you may be able to establish an unemployment claim with any of these states under the Combined-Wage Claim program. Your wages will be combined and the amount of your benefits will be determined under the law of the one state where you establish your combined-wage claim. You should know that state unemployment laws, weekly benefit amounts, and eligibility requirements vary between the states. Can you tell me where you have worked, the dates of such work and the states in which you worked? (Follow your state’s procedures on verifying identity.) Thank you. Based on what you have provided to me, you could establish a claim with any of these states. Have you contacted any of these states to obtain information about potential eligibility? (Individual answers yes.) And, do you know which state you wish to establish a claim with? (Claimant answers yes and indicates s/he wants to file a claim with State A, which does not accept interstate claims by phone or Internet.) I will be happy to take your claim against State A for you. Please keep in mind that I am acting as their agent in taking your claim. You will receive detailed information about the amount of benefits for which you qualify and continuing filing instructions from that state. The exact amount of your entitlement will not become final until your claim is established and your wages are transferred to the paying state. I have a few more questions so let’s get started.”*