

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

REPORT ON STATE LEGISLATION

REPORT NO. 7
January 2019

COLORADO

7 CCR 1101-2

ADOPTED: March 19, 2018
EFFECTIVE: June 3, 2018

Nonmonetary Eligibility

Modifies the language outlining the work search requirements and provides examples acceptable work search activities.

Limits a waiver of active work search requirements to four weeks for individuals who relocate to a new place of residence because of the death of a spouse in combat, provided that the individual is available for suitable work and that the individual's spouse at the time of death was a member of the United States Armed Forces on active duty. The waiver period may be extended if the individual demonstrates compelling reasons for an extension.

IOWA

IAC 871-24.2

ADOPTED: January 24, 2018
EFFECTIVE: March 21, 2018

Administration

Provides that unemployment benefits will be paid via debit card specified by the Department of Workforce Development.

IOWA

IAC 871-24; -25

ADOPTED: April 25, 2018
EFFECTIVE: June 27, 2018

Administration

Requires an individual to provide work history for all employers within their base period and the social security number and date of birth of any dependents being claimed when filing an initial claim for unemployment benefits.

Requires an individual to contact the agency prior to a scheduled appointment or service to advise the department of the justifiable cause to prevent being for ineligible for benefits until the individual participates in the required appointment or service.

Establishes eligibility assessment procedures to determine continued eligibility for individuals identified as likely to exhaust benefits. Individuals must report in person to an Iowa Workforce Development Center for the eligibility assessment. Assessments must analyze all details of the claim to detect potentially disqualifying issues, assess the needs of the individual, advise the individual of what constitutes an acceptable effort to obtain reemployment, and convey to the individual the requirements that must be met to maintain eligibility.

Requires the Department of Workforce Development to verify eligibility by conducting cross-matches against the National Directory of New Hires, information on incarcerated individuals from the Iowa Department of Corrections, and fraud detection tools identified by the Department.

MAINE

HB 1327
(Public Law 475)

ENACTED: September 12, 2018
EFFECTIVE: September 12, 2018

Nonmonetary Eligibility

Prohibits holding individuals ineligible for unemployment benefits when participating in an approved federal training programs under the Workforce Innovation and Opportunity Act (WIOA).

Allows individuals to participate in WIOA training programs when part of an approved short-time compensation plan.

NEW JERSEY

AB 3861
(Chapter 83)

ENACTED: August 10, 2018
EFFECTIVE: August 10, 2018

Nonmonetary Eligibility

Effective for periods of unemployment commencing on or after July 1, 2018, no disqualification for unemployment benefits shall apply during a labor dispute caused by the failure or refusal of the employer to comply with an agreement or contract between the employer and the individual.

Effective for periods of unemployment commencing on or after July 1, 2018, caused by a labor dispute, strike, or other concerted activities of employees at the individual's workplace, individuals are not eligible for benefits for the first 30 days following the commencement of the period of unemployment, unless the employer hires a permanent replacement worker for the individual's position. If the employer does not allow the employee to return to their position, the individual shall be entitled to any benefits lost due to the 30-day waiting period before receiving benefits, and a penalty of up to \$750 per employee per week of benefits lost may be imposed on the employer.

Administration

Requires employers and third party administrators to respond to requests for additional information electronically.

Monetary Entitlement

Increases the dependents' allowance amount for each unemancipated child to \$25 from \$15, reduces the maximum number of dependent allowances that may be claimed to two from four, not to exceed 50 percent of the individual's weekly benefit amount.

Nonmonetary Eligibility

Requires as part of the continued claims filing process, the claimant provide information stating they have registered for reemployment services.

Extends to no later than 45 (previously 20) calendar days from the original determination date or 45 days from the date of the first payment, whichever is latest, the amount of time to issue a redetermination.

Provides the following are not considered wages and will not be deducted from benefits payable:

- severance;
- supplement unemployment payments whose premiums are paid by the individual;
- any vacation or leave, bereavement pay, continuation pay, or paid time off payouts without a letter of intent to return to work; and
- residuals.

Requires that an individual respond to a request for information regarding work search within ten days from the date of the request. Eliminates the formal warning to an individual when a work search contact is deemed inadequate, resulting in a denial of benefits. The individual must provide proof of active work search to overturn the denial.

Overpayments

Requires a penalty be assessed, not to exceed an amount equal to 10 weeks of benefits, when a benefit overpayment occurs due to of an untimely response to a request for information and the employer demonstrates a pattern of failing to respond. Defines a pattern of failing to respond as a failure to respond timely or adequately to five claims within a calendar year. Defines an inadequate response as a failure to provide relevant information or documentation that was reasonably available at the time of the request. The employer may appeal the determination within 15 days of the assessment of the penalty.

Imposes a 25 percent penalty on an individual who receives benefits as a result of knowingly making a false statement or representation or knowingly failing to disclose a material fact. The penalty proceeds shall be applied as follows: 1) an amount equal to 15 percent of the benefits overpaid shall be deposited in the unemployment trust fund; and 2) the remainder of the penalty shall be deposited in the state's Employment Security Department Fund. Overpayments recovered must be applied to the principal amount of the benefits overpaid before applying towards the penalty assessed.

Imposes a civil penalty on any employer found to have knowingly made a false statement or representation or to have knowingly failed to disclose a material fact to prevent or reduce the payment of unemployment benefits as follows:

- no more than \$500 for the initial violation;
- no less than \$500 and no more than \$1,000 for a second violation within a period of three years;
- no less than \$1,000 and no more than \$2,000 for a third violation within a period of three years; or
- no less than \$2,000 and no more than \$10,000 for a fourth or subsequent violation within a period of three years.

Requires an appeal of an overpayment decision must be made no later than 15 days from the date of the determination for any disputes related to overpayments paid under the Trade Acts, Trade Adjustment Assistance, Trade Readjustment Assistance or the Emergency Unemployment Compensation program.

NORTH CAROLINA 04 NCAC 24A to 24F nonseq ADOPTED: June 14, 2018
EFFECTIVE: July 1, 2018

Administration

Makes technical corrections and updates to agency contact information and provides new procedures for makes various requests of the agency including but not limited to: scheduling or rescheduling oral arguments before the Board of Review; electing to be a reimbursable employer; making contribution payments; and individuals making payments to the agency.

Removes the option for an employer to file an initial claim for unemployment benefits on behalf of individuals subject to a mass lay-off.

Requires an individual to provide certain additional information when submitting an initial claim for unemployment benefits.

Requires the Division of Employment Security (DES) to provide written notice to a debtor within 10 days of receiving the debtor's intercepted refund and provides provisions to appeal the offset.

Modifies the procedures to follow when the DES intends to refer an individual's debt or an employer's debt to the treasury offset program for collection and provides provisions to appeal the offset.

Modifies the procedure and required information related to when an employing unit files its employer status report with the DES.

Appeals

Provides procedures for holding combination in-person and telephone appeals hearings, withdrawal of an appeal, filing subsequent requests for appeal of a decision that was previously withdrawn, admitting out-of-state attorneys to appeal before an appeals referee, and requesting and serving a subpoena related to an appeal.

Monetary Eligibility

Requires any individual who has reported earnings that exceed their weekly benefit amount plus dependents' allowance for 3 consecutive weeks to be ineligible to claim a fourth week without first contacting the DES.

OKLAHOMA

OAC 240:1-3-9

ADOPTED: June 18, 2018

EFFECTIVE: September 14, 2018

Administration

Adds "any county Public Defender's office" and the "Oklahoma Indigent Defense System" to the list of agencies that are authorized to obtain confidential unemployment compensation information after entering into an agreement with the Oklahoma Employment Security Commission.

RHODE ISLAND

260-RICR-40-05-01

ADOPTED: July 18, 2018

EFFECTIVE: August 7, 2018

Nonmonetary Eligibility

Establishes work search requirements for individuals claiming Extended Benefits who are union workers and members of a union hiring hall.

Requires individuals to provide, if available, the confirmation number or response from an employer if applying on-line as part of their work search record.

Provides that an individual who fails to report as notified by the Department of Labor and Training shall be denied benefits beginning with the week in which such failure occurs and until

the individual complies, unless the reason for such failure to comply with the Department's requirements is based upon good cause as determined by the Director.

An individual who fails to provide documentation upon request of the Department or who fails to comply with an instruction given by the Director or his/her designee shall be denied benefits for the week(s) in which such failure occurs and until the individual complies unless the reason for such failure to comply with the Department's requirements is based upon good cause as determined by the Director.

WASHINGTON

WAC 192-210

ADOPTED: September 7, 2018

EFFECTIVE: October 8, 2018

Coverage

Defines the following terms for use in making decisions regarding the existence of reasonable assurance related to an offer of employment in an educational institution or educational service district in the subsequent academic year or term.

- “Considerably less” means the economic conditions of an offer of employment are considerably less if the individual will not earn at least ninety percent of the total wages earned in the prior academic year or term.
- “Educational institution” means any public or private preschool, elementary school, secondary school, technical or vocational school, community or technical college, college, and university.
- “Educational service district” means an educational service district established pursuant to chapter 28A.310 RCW (established to provide services related to schools).
- “Highly probable” means very likely.
- “Nonprofessional capacity” means all other services not performed in a professional capacity, regardless of the legal or educational requirements to perform such services.
- “Professional capacity” means services performed in an instructional, research, or principal administrative capacity.
- “Same capacity” means both the current work and the future work must both be in a professional capacity or both be in a nonprofessional capacity, even if the job titles or duties are different. In addition, both the current work and the future work must both be for an educational institution or both be for an educational services district, even if the employers or districts are different.
- “Totality of circumstances” means analyzing the totality of the circumstances considering factors such as funding (including appropriations), enrollment, the nature of the course (required or optional, taught regularly or only sporadically), the individual's seniority, budgeting and assignment practices of the school, the number of offers made in relation to the number of potential teaching assignments, the period of student registration, and any other contingencies.

Individuals who perform services in a professional or nonprofessional capacity, are eligible to have wages and hours count toward their base year and benefit year unless the educational institution or education service district can show it is highly probable that the:

- individual has a written, verbal, or implied offer of employment by an individual in authority to offer employment;
- individual will perform services in the same capacity in the subsequent year or term as in the first year or term; and
- economic conditions of the offer of employment will not be considerably less in the subsequent year or term than those earned in the first year or term.

For professional staff, the individual must have either a contract or reasonable assurance of future work. A contract exists if there is an agreement that is enforceable by both employer and employee; it is noncontingent; and it provides compensation for an entire academic year or on an annual basis.

For both professional and nonprofessional staff, reasonable assurance exists if there are no contingencies within the employer's control or if the individual is tenured or will have opportunity to be reviewed for tenure. If there are any contingencies in the offer, there must be a high probability the contingencies will be met given the totality of circumstances.

Contingencies within the employer's control include, but are not limited to, course programming, funding allocation decisions, final course offerings and facility availability. Contingencies not in the employer's control include, but are not limited to, enrollment and the availability of an outside source of funding.

If an individual works for more than one employer, hours or wages received from the educational institution or educational service district that offers a contract or reasonable assurance will not count toward the individual's base year and benefit year. Hours or wages from all other employers may count unless another provision excluding them applies.

WISCONSIN

SB 886
Act No. 370

ENACTED: December 14, 2018
EFFECTIVE: December 16, 2018

Nonmonetary Eligibility

Provides that an individual is ineligible for unemployment benefits if the individual failed to comply with the work search requirements or failed to provide verification of the work search unless the Department of Workforce Development (Department) has waived the requirements. Requires the Department to waive work search requirements under specified conditions.