

DEPARTMENT OF LABOR
DIVISION OF UNEMPLOYMENT INSURANCE

Statutory Authority: 19 Delaware Code, Section 3122 and 29 Delaware Code, Section 10115
(19 Del.C. §3122 & 29 Del.C. §10115)

PROPOSED

1202 Unemployment Insurance Regulations

PUBLIC NOTICE

The State of Delaware, Department of Labor's Division of Unemployment Insurance ("the Division") hereby gives notice of its intention to adopt amended regulations pursuant to the General Assembly's delegation of authority to do so found at 19 Del.C. §3122 and 29 Del.C. §10115. The proposed amended regulations will streamline unemployment insurance procedures, reduce the number of regulations confronting unemployment insurance claimants and employers, reduce paperwork, and contribute to the efficient operation of the government of the State of Delaware. The proposed regulations will be considered at a public hearing scheduled for Monday, July 22, 2013 from 10 a.m. to 12 noon in the third floor conference room of the offices of the Delaware Department of Justice located at 102 West Water Street, Dover, Delaware, 19904. Copies of the proposed amended regulations may be obtained from the Division of Unemployment Insurance (see address below).

The Division solicits, and will consider, timely filed written comments from persons with interest concerning these proposed amended regulations. The filing deadline for such written comments will be thirty (30) days after these proposed amended regulations are promulgated in the Delaware *Register of Regulations*, **or by July 31, 2013**. Any such submissions should be mailed or hand-delivered to W. Thomas MacPherson, Director, Division of Unemployment Insurance whose address is Delaware Department of Labor, Division of Unemployment, 4425 North Market Street, Wilmington, Delaware 19809.

1202 Unemployment Insurance Regulations

4.0 ~~[Reserved]~~

2.0 ~~[Amended] Definition Of Terms~~

"Payroll period" means that period of time for which an employer customarily makes a single payment or credit of remuneration to all or a group or groups of his/her employees.

A **"quarter"** or "calendar quarter" means one of the four periods of three consecutive calendar months which begin, respectively, on January 1, April 1, July 1, and October 1.

"Wages paid" means (a) wages actually paid by an employer to all or a group or groups of his/her employees, and (b) wages deemed to be paid on the day on which amounts definitely assignable to a payroll period are generally paid by the employer, even though the wages have not actually been reduced to possession by all or a group or groups of his/her employees,

"Wages paid in a quarter" means the total of all wages paid or credited in accordance with paragraph 2 of this regulation on any day falling within the calendar quarter.

3.0 ~~Reports and Payments of Contributions~~

- 3.1 Contributions due under Part III, Title 19, ~~Delaware Code~~ of 1953, shall be payable quarterly based on "Wages paid" in a quarter as set forth in Regulation 2.
- 3.2 Employers subject to Part III, Title 19, ~~Delaware Code~~ of 1953, shall report contributions due on forms prescribed or approved for this purpose by the Unemployment Compensation Commission and in accordance with instructions printed thereon (Form UC-8). Such reports shall be accompanied by payment of contributions.
- 3.3 Reports and payments of contributions shall become due on the last day of the month following the close of the quarter during which the wages are paid.
- 3.4 Reports and payments of contributions by an employer not previously subject to Part III, Title 19, ~~Delaware Code~~ of 1953, shall become due for the first time on the last day of the month following the close of that calendar quarter during which the 20th week of employment of one or more persons during the calendar year occurred. The employer shall at such time file separate reports with respect to each of the calendar quarters during the calendar year for which contributions are payable by him.

4.0 Identification of Workers Covered by Part III, Title 19, Delaware Code of 1953

- 4.1 Each employer shall ascertain the Federal social security account number of each worker employed by him in employment subject to Part III, Title 19, **Delaware Code** of 1953.
- 4.2 The employer shall report the worker's Federal social security account number in making any report required by the Delaware Unemployment Compensation Commission with respect to a worker.
- 4.3 If an employer has in his employ a worker engaged in employment who does not have an account number, such employer shall request the worker to show him a receipt issued by an officer of the Social Security Administration acknowledging that the worker has filed an application for an account number. The receipt shall be retained by the worker. In making any report required by the Delaware Unemployment Compensation Commission 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.
- 4.4 If a worker fails to report to the employer his correct Federal social security account number or fails to show the employer a 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 Regulation 106 of the Bureau of Internal Revenue, United States Treasury Department, under the Federal Insurance Contributions Act provides that:
 - 4.4.1 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.
 - 4.4.2 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, Bureau of Internal Revenue. 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. Copies of Form SS-5, "Application for a Social Security Account Number" can be secured at the field office of the Social Security Administration nearest the worker's place of employment or the local post office.
 - 4.4.3 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 the 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 on Form SS-5, completely filled in and signed by the worker. If a copy of Form SS-5 is not available, the worker shall furnish the employer a written statement, signed by the worker, of 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 color, and a statement as to whether the worker had previously filed an application on Form SS-5 and, if so, the date and place of such filing. 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 in paragraph b.
- 4.5 The employer shall inform the worker, in instances in which the information is pertinent, that in accordance with Regulation 106 of the Bureau of Internal Revenue, United States Treasury Department:
 - 4.5.1 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.
 - 4.5.2 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. 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. Copies of the Form OAA-N-7003, "Employee's Request for Change in Records," for making such reports may be obtained from any field office of the Social Security Administration or the central office of the Delaware Unemployment Compensation Commission or a local employment office.
 - 4.5.3 Any worker who has more than one social security account number shall report all numbers to the field office of the Social Security Administration nearest the worker's place of employment or to a local employment office:
- 4.6 If the worker fails to comply with the requirements enumerated under 4 above, the employer shall execute a Form SS-5, "Application for a Social Security Account Number," or 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 at birth, father's full name, mother's full name before marriage, the worker's sex and color, and a

statement as to whether an application for an account number has previously been filed by the worker and, if so, the date and place of such filing. This statement or the executed Form SS-5 signed by the employer shall be attached to any report required by the Delaware Unemployment Compensation Commission with respect to such a worker.

5.0 Interest

[Rescinded]

6.0 Records

- 6.1 Each employing unit shall preserve for the period of the last 4 consecutive years such existing records as are indicated in the data hereinafter set forth, and shall establish, maintain, and preserve, for a period of 4 years, records with respect to workers engaged in employment on and after the effective date of this regulation which shall show:
 - 6.2 For each pay period:
 - 6.2.1 ~~TM beginning and ending dates of such period.~~
 - 6.2.2 ~~The total amount of remuneration paid for personal services, including commissions.~~
 - 6.3 For each worker:
 - 6.3.1 ~~His name and Social Security Account Number.~~
 - 6.3.2 ~~His wages paid for each pay period, showing separately:~~
 - 6.3.2.1 ~~Remuneration including commissions, paid in cash, excluding special payments.~~
 - 6.3.2.2 ~~Reasonable cash value of remuneration payable by the employer in any medium other than cash, excluding special payments, (determined in accordance with Rule 1 prescribed by the Commission).~~
 - 6.3.2.3 ~~Estimated or actual amount of gratuities received from persons other than the employer (determined in accordance with Rule 2 prescribed by the Commission).~~
 - 6.3.2.4 ~~The amount of any special payments such as bonuses, gifts, etc., which have been paid or credited during the pay period but which relate to employment in a prior period. Payments are regarded as special payments if (A) the amount thereof was not determinable, or (B) 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. Show separately under the heading "Special Payments" the following:~~
 - 6.3.2.4.1 ~~Money payments as credits.~~
 - 6.3.2.4.2 ~~Reasonable cash value of other remuneration~~
 - 6.3.2.4.3 ~~The nature of such payments.~~
 - 6.3.2.4.4 ~~The period during which the services were performed for which special payments were payable.~~
 - 6.3.3 ~~The date on which he was hired, rehired, or returned to work after temporary lay-off, and the date he was separated from employment.~~
 - 6.3.4 ~~If he is on a salary basis, his wage rate and the period covered by such rate.~~
 - 6.3.5 ~~If he is paid on a fixed hourly basis, his hourly rate and the customary scheduled hours per week prevailing in the establishment for his occupation.~~
 - 6.3.6 ~~If he is paid on a fixed daily basis, his daily rate and the customary scheduled days per week prevailing in the establishment for his occupation.~~
 - 6.3.7 ~~The method by which his wages are computed (if he is on a piece rate or other variable pay basis).~~
 - 6.3.8 ~~The beginning and ending dates of each pay period week for each worker engaged in employment.~~
 - 6.3.9 ~~The customary scheduled full time hours for each such period prevailing in the establishment for the occupation of each worker.~~
 - 6.3.10 ~~Each pay period week in which the hour worked by each such worker were less than full-time.~~
 - 6.3.11 ~~Each pay period week in which the wages payable for employment to any worker were less than his full-time weekly wage and amount of wages paid for such week.~~
 - 6.4 The calendar weeks in which there were one or more individuals in employment for some portion of a day.

7.0 Reports

§3121, Title 19, Delaware Code of 1953, Provides That:

~~"The Commission shall administer this part; and it may require such reports . . . and take such action as it deems necessary or suitable to that end."~~

Accordingly:

~~Each employing unit shall make such reports as are prescribed on forms issued and required to be returned by the Commission. Instructions accompanying any such report form shall have the force and effect of regulations issued pursuant to §3121, Title 19, **Delaware Code** of 1953.~~

8.0 Posting of Placards

~~Every employer subject to the provisions of Part III, Title 19, **Delaware Code** of 1953, shall post and maintain printed notices to his employees informing them that he is covered by Part III, Title 19, **Delaware Code** of 1953, and has been so registered by the Unemployment Compensation Commission. Such notices shall be in the form prescribed by the Commission (Form UC-6), of such design and in such numbers as prescribed by the Commission, and shall be posted in a conspicuous place in the plant, shop, office, room, or place where employees are employed and where they may be readily seen by them. No such notice shall be posted by any person, employing unit, or employer who has not complied with the provisions of Part III, Title 19, **Delaware Code** of 1953, and to whom an unemployment compensation registration number has not been assigned by the Unemployment Compensation Commission of Delaware, or who, in accordance with the provisions of the Code, has ceased to be an employer as defined in the Code.~~

9.0 Claims and Registrations

REFERENCE: Section 3314, Title 19, **Delaware Code** Eligibility for Benefits

- 9.1 ~~Except as otherwise provided in this regulation, any individual claiming benefits or waiting period credits for total or part total unemployment shall report in person at the public employment office most accessible to him and shall there~~
 - 9.1.1 ~~register for work, and~~
 - 9.1.2 ~~file a claim for benefits, which claim shall be effective as of the Sunday immediately preceding the date of filing.~~
- 9.2 ~~Except as otherwise provided in this regulation, in order to establish eligibility for benefits or for waiting period credits for weeks of total or part total unemployment, the claimant shall~~
 - 9.2.1 ~~continue to report in person at intervals of once every other week, or at intervals of less than every other week when directed to do so by a representative of the State agency, at the public employment office at which he registered for work and filed his claim for benefits,~~
 - 9.2.2 ~~file at such office as continued claim(s) for benefits,~~
 - 9.2.3 ~~and establish the fact that he is able to work, available to work and is actively seeking work.~~
- 9.3 ~~The Department, for reasons found to constitute good cause for any individual not to report to the public employment office at which he filed his claim for benefits and registered for work, may permit such individual to report to any other public employment office, or to report by mail if the public interest would be served thereby.~~
- 9.4 ~~The Department, for reasons found to constitute good cause for an individual not to file a claim and register as otherwise required in this regulation shall accept such claim and registration effective as of the first day of the week of such individual's total or part total unemployment with respect to which such claim is filed provided:~~
 - 9.4.1 ~~the individual files his claim and registers at an employment office:~~
 - 9.4.1.1 ~~within seven (7) days after the first day of such week, or~~
 - 9.4.1.2 ~~if the individual is located within an area served by the itinerant Service of State employment security agency, on the second available opportunity or the second specified reporting date after the commencement of such week, or~~
 - 9.4.2 ~~The individual files his claim by mail if the Department directs the individual to file his claims by mail after finding;~~
 - 9.4.2.1 ~~he is attached to a regular job, or~~
 - 9.4.2.2 ~~compliance with the requirement that claimant personally register and continue to report at an employment office would be oppressive or inconsistent with the purposes of Chapter, 33 of Title 19, **Delaware Code**.~~

9.5 A claimant will be disqualified from the receipt of benefits for any week in which he is not able to work, available for work and actively seeking work, except that he will not be disqualified for such week if the Department finds that:

- 9.5.1 ~~the individual is attached to a job for which the date of return to employment is known and reasonably certain and is sufficiently near in time to make it futile to actively seek work; or~~
- 9.5.2 ~~to require claimant to be able to be available to work and actively seeking work would be otherwise oppressive or inconsistent with the purposes of Chapter 33 of Title 19, **Delaware Code**.~~

10.0 All Employers Required to Fulfill Requests for Separation Information Promptly

- 10.1 Whenever a worker files a claim for benefits, the Commission shall notify the last employer and all but period employers by means of Form UC-119.
- 10.2 All such employers are required to return such Form UC-119 completed, indicating the reason for separation, within 7 days of the date of such notice.
- 10.3 Any employer who fails to return such completed request within the period prescribed shall be barred from claiming subsequently that the worker to whom such notice applied shall be disqualified under any of the provisions of §3315, Title 19, **Delaware Code** of 1953, and shall be barred from relief from benefit wage charges under 3349-3356, Title 19, **Delaware Code** of 1953, unless the Commission for reasons found to constitute good cause, shall release such employer for the default.

11.0 Notice to Worker Required in all Separations

Each employer shall deliver to each worker separated from his employ (permanently or for an indefinite period or for an expected duration of 7 days or more) at the time of such separation, or, if delivery is impossible or impracticable, shall mail to such worker's last known address, within 24 hours, a copy of Form UC-100, which shall instruct such worker to report promptly to the public employment office most convenient to him.

12.0 Claims and Registrations for Individuals Located in Areas Served by Itinerant Offices

- 12.1 In order to claim benefits or waiting period credits for total or part-total unemployment, any individual located in an isolated area served only by the itinerant service of a public employment office shall report in person to such itinerant service at the first available opportunity therefore, and shall (a) register for work, and (b) file a claim for benefits with such service.
- 12.2 In order to establish eligibility for benefits or for waiting period credits for weeks of total or part-total unemployment during a continuous period of total or part-total unemployment, the claimant shall (a) continue to report on the dates specified for reporting to such service, and (b) file continued claims for benefits.

13.0 Forms Prescribed for Recording Claims for Benefits and Registrations for Work for Total or Part-total Unemployment

- 13.1 Claims for benefits for total or part-total unemployment shall be made on Form UC-101, setting forth (a) that the individual claims benefits, (b) that he registers for work, and (c) such other information as is required thereby. The claim for benefits for total or part-total unemployment shall constitute both the individual's registration for work and his claim for benefits, or waiting period credits.
- 13.2 Continued claims for benefits for total or part-total unemployment shall be made on a pay-order card, setting forth (a) that the individual continues his claim for benefits, (b) that he is totally or part-totally unemployed, (c) that he registers for work, (d) that since he last registered for work he has performed no services and earned no wages, except as indicated, (e) that he is able to work, available for work, and is actively seeking work, and (f) such other information as is required thereby. The continued claim for benefits for total or part-total unemployment shall constitute both the individual's registration for work and his claim for benefits or waiting period credits.
- 13.3 For the week which immediately precedes an individual's re-employment under conditions which no longer render him eligible for benefits or waiting period credits (total or part-total or partial) such individual may file, in person or by mail, a report of his total unemployment and any supplementary earnings received for such week, in the form of a signed statement, provided that such Individual at the beginning of the week for which the claim is made (a) registered for work and (b) filed a claim or continued claim for benefits or waiting period credits.
- 13.4 The claimant must at all times furnish the Commission with his current residence address.

14.0 Week of Total or Part-total Unemployment

- 14.1 An individual's week of total or part-total unemployment shall consist of the 7 consecutive-day period beginning with the day of total or part total unemployment on which he registers in person at a public employment office and establishes the fact that he is able to work, available for work, and is actively seeking work.
- 14.2 A week of total or part-total unemployment of an individual located in an area served only by the itinerant service of a public employment office shall consist of the 7 consecutive-day period beginning with the first day of such individual's total or part-total unemployment, provided that such individual registers in person with such itinerant service at the first available opportunity therefor, next following the commencement of his total or part-total unemployment.
- 14.3 A week of total or part-total unemployment of an individual who failed so to register on the first day of his total or part-total unemployment or at the first available opportunity therefor, as hereinabove provided for reasons found by the State agency to constitute good cause for such failure to register, shall consist of the 7 consecutive-day period beginning on the first day of such individual's total or part-total unemployment provided that such individual registers in person at a public employment office within a period of 7 days after such first day of total or part-total unemployment.

15.0

15.1 Definitions

15.1.1 **Partially Unemployed Individual.** A partially unemployed individual is one who, during a particular week, (I) earned less than his weekly benefit amount plus two dollars, (II) was employed by a regular employer, (III) worked less than his normal customary full-time hours for such regular employer because of lack of full-time work.

15.1.2 **Week of partial unemployment.** With respect to a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his pay period week; with respect to a partially unemployed individual whose wages are not paid on a weekly basis, a week of partial unemployment shall consist of a calendar week, provided that the Commission may, upon its own initiative or upon application, prescribe as to any individual or group of individuals such other seven consecutive day period as it may find appropriate under the circumstances.

15.2 Employer Responsibility in the Initiation of a First Claim for Partial Benefits in a Benefit Year.

15.2.1 After the termination of any week in which an employer has furnished any worker in his employ less than four full day's work, or the time or dollar earnings equivalent thereof, on the normal or customary payday of the pay period in which the week of partial employment is included, such employer shall file with the local employment office nearest the establishment in which such worker is employed Form UC-115, Notice of Partial Unemployment, or such other equivalent form as may be approved by the Delaware Unemployment Compensation Commission containing the name of each such worker, his social security account number, and such other information as required by such form;

or

Notify the local employment office nearest the establishment in which such worker is employed of the possible existence of partial unemployment in the establishment and requesting a visit by a representative of the Delaware Unemployment Compensation Commission for such action as may be appropriate.

15.2.2 Upon receipt of Form UC-115, or upon the filing of a first claim for partial benefits for a benefit year, the Delaware Unemployment Compensation Commission shall promptly notify each such worker named therein of his potential rights to partial benefits and shall notify his employer of such worker's partial earnings limit and benefit year ending date. Upon receipt thereof, each employer shall record such partial earnings limit and benefit year ending date upon his payroll records. No form or notice as hereinabove described shall be required with respect to any worker whose earnings for the week involved were \$27.00 or more, or with respect to any worker of whose partial earnings limit and current benefit year ending date the employer has received notice from the Delaware Unemployment Compensation Commission.

15.3 **Employer to Furnish Evidence of Partial Unemployment.** After an employer has been notified of the partial earnings limit and current benefit year ending date of any worker in his employ, such employer, unless otherwise notified, shall immediately after the termination of each week (as described in Paragraph 1 (b) hereof) which begins within such benefit year and for which such worker's earnings fall below such partial earnings limit because of lack of work in such week, furnish each such worker with a copy of Form UC-114, Low-earnings Report, setting forth the information required therein, including the worker's name and social security account number, the beginning date or ending date of such week, the wages earned therein, and a proper certification as to his having worked less than his normal customary full-time hours because of lack of work in such week.

or

Furnish the worker with written evidence concerning his unemployment by means of a pay envelope, pay check stub or copy thereof or other suitable medium, approved by the Delaware Unemployment Compensation Commission. The information contained on such medium shall be in ink or typewritten and shall show:

- 15.3.1 the name and registration number of the employer;
- 15.3.2 the name and social security account number of the worker;
- 15.3.3 the beginning or ending date of such week;
- 15.3.4 the amount of wages earned in such week;
- 15.3.5 the following certification (individual or rubber stamped),

"I certify that the above amount represents reduced earnings in a week of less than full-time work because of lack of work;

- 15.3.6 a signature (actual or facsimile) by the employer to the above certification, or other positive identification of the authority supplying the evidence.

15.4 ~~Registration and Filing of Claims for Partial Unemployment.~~ A claim for benefits filed by any individual in person at any local employment office in Delaware or with an authorized itinerant agent of the Delaware Unemployment Compensation Commission on Form UC-101, Initial Claim for Benefits, shall constitute such individual's notice of unemployment, registration for work and claim for benefits or waiting period credit, with respect to each such week of partial unemployment covered by the claim. Such claim shall not be valid if filed 28 or more days after the individual has been furnished by his employer with information as to his earnings in any such week as provided in Paragraph 3 of this regulation.

15.5 ~~Extended Period for Registration and Filing of Claims for Good Cause.~~ Notwithstanding the provisions of Paragraph 4, if the Commission finds that the failure of any individual to register and file a claim for partial unemployment benefits within the time set forth in Paragraph 4 was due to failure on the part of the employer to comply with any of the provisions of Paragraphs 2, 3, or 4, or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the Delaware Unemployment Compensation Commission to discharge its responsibilities promptly in connection with such partial unemployment, the Commission shall extend the period during which such claim may be filed to a date which shall be not less than one week after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment, provided, however, that no claim may be made for any week of partial unemployment later than thirteen weeks subsequent to the end of the benefit year during which the week of unemployment occurred.

15.6 ~~Employer Records in Connection with Partial Unemployment.~~ In addition to the requirements set forth in Regulation 6, each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each worker in his employ who may be eligible for partial benefits:

- 15.6.1 wages earned, by weeks, as described in paragraph 1;
- 15.6.2 whether any week was in fact a week of less than full-time work;
- 15.6.3 time lost, if any, by each such worker, due to his unavailability to work.

16.0 Disqualification of Appeal Tribunal

No member of an appeal tribunal shall participate in the hearing of an appeal in which he has an interest. Challenges to the interest of any member of an appeal tribunal other than the Chairman may be heard and decided by the Chairman, or, in his discretion, referred to the Commission. Challenges to the interest of the Chairman, or, if a single member tribunal is used, to a Referee, shall be heard and decided by the Commission.

17.0 Appeals Involving §3315(4), Title 19, Delaware Code of 1953, Relating to a Stoppage of Work Because of a Labor Dispute

Appeals from decisions of deputies which involve issues arising under §3315(4), Title 19, ~~Delaware Code~~ of 1953 may be heard and decided by an appeal tribunal consisting of three members appointed pursuant to the authority contained in §3319, Title 19, ~~Delaware Code~~ of 1953, one of whom shall be the Referee mentioned in subsection 18.1 of this regulation, who shall serve as Chairman, one of whom shall be a representative of employers, and the other of whom shall be a representative of employees; except that if either one of the representatives or his alternate is absent or disqualified, the appeal shall be heard and decided by the Chairman alone. In any case in which a three-member tribunal is not used, the Referee shall constitute a one member appeal tribunal.

~~18.0 Appeals to the Appeal Tribunal on all Matters Other Than Those Covered by Section 17.0, Appeals Involving §3315(4), Title 19, Delaware Code of 1953, Relating to a Stoppage of Work Because of a Labor Dispute~~

- ~~18.1 The Appeal Tribunal. The appeal tribunal which shall hear all appeals from decisions of the Deputies other than those discussed in Section 17.0 shall be a single examiner, known as the Referee.~~
- ~~18.2 Presentation of Appealed Claims and Notice of Hearing.~~
 - ~~18.2.1 A party appealing a decision or order of a Deputy shall file with the Commission at the local Employment Office where the claim was filed a Notice of Appeal on Form UC-300 setting forth the information required thereby. Copies of the Notice of Appeal shall be made by the Commission to the parties interested in the decision or order of the Deputy which is being appealed.~~
 - ~~18.2.2 Upon the scheduling of a hearing or an appeal, Notices of Hearing on Form UC-301, shall be mailed by the Referee to claimants and the parties interested in the decision or order of the Deputy which is being appealed, at least five days before the date of hearing, specifying the place and time of hearing~~
- ~~18.3 Hearing of the Appeal.~~
 - ~~18.3.1 All hearings shall be conducted informally and in such manner as to ascertain the substantial rights of the parties. All issues relevant to the appeal shall be considered and passed upon. The claimant and any other party to an appeal shall be permitted to introduce, and the Referee shall receive, all evidence which the claimant, or other party offers unless in the opinion of the Referee it is clearly immaterial to the issue. Where a party appears in person, the Referee shall examine such party and his witnesses, if any, and may cross-examine the witnesses or any of the parties.~~
 - ~~18.3.2 The Retiree, with or without notice to any of the parties, may take such additional evidence as he deems necessary, provided that where additional evidence is so taken the parties shall be given an opportunity of examining and refuting such evidence.~~
 - ~~18.3.5 The parties to an appeal, with the consent of the Referee, may stipulate the facts involved in writing. On the basis of such stipulation, the Referee may decide the appeal or may set the appeal down for hearing and take such further evidence as he deems necessary.~~
- ~~18.4 Adjournment of Hearings. The Referee shall use his best judgment as to when a continuance, postponement, adjournment or re-opening of a hearing shall be granted in order to secure to the necessary evidence and to be fair to all parties.~~
- ~~18.5 The Determination of Appeals. Following the conclusion of the hearing of an appeal, the Referee shall render his decision within seven days, unless the Referee be prevented from so doing by illness or other circumstances beyond his control. The decision shall be in writing and shall be signed by the Referee. It shall set forth the issues involved, the findings of fact with respect to those issues, and the reasons for the decision. Copies of all decisions shall be mailed by the Referee to the claimant, to all other parties to the appeal, and to the Deputy.~~

~~19.0 Appeals to the Commission~~

- ~~19.1 The Presentation of an Appeal.~~
 - ~~19.1.1 A party appealing from the decision of a Referee or of an Appeal Tribunal which was non unanimous, or a Deputy appealing from a decision of the Referee on an Appeal Tribunal which overruled or modified his decision shall file with the Commission at the office where the claim was filed a Notice of Appeal to the Commission on Form UC-300, setting forth the information required thereby. Copies of the Notice of Appeal shall be mailed by the Commission to the parties interested in the decision which is being appealed. Upon the scheduling of a hearing upon an appeal, notice of the hearing on Form UC-301 shall be mailed at least five days before the date of the hearing, specifying the time and place of hearing to the claimant and all other parties interested in the decision which is being appealed.~~
- ~~19.2 The Application for Leave to Appeal.~~

~~A party applying for leave to appeal from the unanimous decision of an Appeal Tribunal shall file with the Commission at the office where the claim was filed an application in writing. Such applications may be accompanied by references to or excerpts from the original minutes on the appeal before the Appeal Tribunal. Copies of the said minutes shall be mailed by the Commission to the parties interested in the decision of the Appeal Tribunal. The Commission may grant or deny any Application for Leave to Appeal without hearing, or may notify the parties to appear before it at a specified place and time for argument on the application. If leave to appeal is granted by hearing in the manner provided in subsection 19.1 of this regulation, it shall be heard in the manner prescribed for hearing of appeals before the Commission in subsection 19.3 of this regulation. Copies of the Commission's decision on any Application for Leave to Appeal and, if leave to appeal is granted,~~

of its decision granting such appeal, shall be mailed by the Commission to the claimant and to all other parties interested in the decision of the Appeal Tribunal which is being appealed.

19.3 Hearing of Appeals.

19.3.1 Except as provided in paragraph 5 of the regulation for the hearing of appeals removed to the Commission from an Appeal Tribunal, all appeals to the Commission may be heard upon the evidence in the record made before any Appeal Tribunal, or the Commission, to enable it to determine an appeal, may direct the taking of additional evidence before it.

19.3.2 In the hearing of an appeal on the record, the Commission may limit the parties to oral argument or the filing of written argument, or both. If, in the discretion of the Commission, additional evidence is necessary to enable it to determine the appeal, the parties shall be notified by the Commission, as provided in Section 18.0, of the time and place such evidence shall be taken. Any party to any proceeding in which testimony is taken may present such evidence as may be pertinent to the issue on which the Commission directed the taking of evidence.

19.3.3 The Commission, in its discretion, may remand any claim or any issue involved in a claim to an Appeal Tribunal for the taking of such additional evidence as the Commission may deem necessary. Such testimony shall be taken by the Appeal Tribunal in the manner prescribed for the conduct of hearings on appeals before Appeal Tribunals. Upon the completion of the taking of evidence by an Appeal Tribunal pursuant to a direction of the Commission, the claim or the issue involved in such claim shall be returned to the Commission for its decision thereon.

19.4 The Hearing of Appeals by the Commission on its own Motion.

19.4.1 Within 10 days following a decision by an Appeal Tribunal, and in the absence of the filing, by any of the parties to the decision of the Appeal Tribunal, of a notice of appeal or an application for leave to appeal to the Commission as provided for in subsections 19.1 and 19.2 of this regulation, the Commission, on its own motion, may order the parties to appear before it for a hearing on the claim or any issue involved therein.

19.4.2 Such hearing shall be held only after 7 days' prior notice to the parties to the decision of the Appeal Tribunal, and shall be heard in the manner prescribed in subsection 19.3 of this regulation, for the hearing of appeals by the Commission.

19.5 The Hearing of Appeals by the Commission on Cases Ordered Removed to it from any Appeal Tribunal. The proceeding on any claim before an Appeal Tribunal ordered by the Commission to be removed to it shall be presented, heard and decided by the Commission in the manner prescribed in Section 18.0 of this regulation for the hearing of claims before Appeal Tribunals.

19.6 The Determination of Appeals.

19.6.1 Following the conclusion of a hearing on an appeal, the Commission shall within 7 days announce its findings of fact and decision with respect to the appeal. The decision shall be in writing and shall be signed by the members of the Commission who heard the appeal. It shall set forth the findings of fact of the Commission with respect to the matters appealed, its decision, and the reasons therefore.

19.6.2 Appeals shall be decided by the Commission or a majority of its members. In the absence of a majority vote, the appeal will be dismissed.

19.6.3 Copies of all decisions and the reasons therefor shall be mailed by the Commission to the claimant and to the other parties to the appeal before the Commission.

20.0 General Regulations on Appeals to Appeal Tribunals or to the Commission

20.1 Issuance of Subpoenas.

20.1.1 A request by any party to the appeal for the issuance of a subpoena for witnesses shall be made to the Commission in writing. Issuances of subpoenas duces tecum to compel the production of documentary evidence, unless directed to be issued by a member of the Commission or the Referee upon his own motion, shall be issued by the Commission or any Appeal Tribunal only upon a showing of the necessity therefor by the party applying therefor. A request for the issuance of a subpoena duces tecum must be made to the Commission in writing and shall specify the documentary evidence which the party desires to have produced.

20.2 Attendance of Witnesses and Fees.

20.2.1 Witnesses subpoenaed for any hearing before any appeal tribunal or the Commission shall be paid witness fees and mileage by the Commission at the rate of Two Dollars (\$2.00) per day (which shall be construed to mean any part of a day) and mileage at the rate of three cents (3c) per mile, going and returning by the most direct route.

20.3 Orders for Supplying Information from the Records of the Commission.

20.3.1 Orders for supplying information from the records of the Commission to a claimant or to his representatives to the extent necessary for the proper presentation of a claim shall issue only upon application therefor in writing setting forth the information required thereby. All applications for information from the records of true Commission shall state as nearly as possible the nature of the information desired. In all cases where an application to supply a claimant or his representative with information from the records of the Commission granted, the other party shall be furnished with a copy of such information.

20.4 Representation Before the Referee and the Commission.

20.4.1 by any of its members or by a duly authorized representative. Any corporation or association may be represented by an officer or by a duly authorized representative. A claimant who is a member of a labor union may be represented by the business agent or any other official of the said union. Any party may be represented by an attorney-at-law who has been admitted to practice before the Superior Court of this State, but no fee or charge against the claimant by any attorney or other representative of a claimant amounting to more than ten percent of the claim, and not more than twenty-five dollars (\$25.00) in any one case in any event; will be approved by the Commission, unless a specific order is entered in connection therewith.

20.4.2 The Commission, in its discretion, may refuse to allow any person to represent others in any proceeding before it whom it finds intentionally and repeatedly fails to observe the provisions of Part III, Title 19, **Delaware Code** of 1953, or the regulations of the Commission.

20.5 Inspection of Decision of Appeal Tribunals and the Commission. Copies of all decisions of Appeal Tribunals and the Commission shall be kept on file at the administrative office of the Delaware Unemployment Compensation Commission and at the Law Library in the Public Building in Wilmington. Such decisions shall be open for inspection, but without in any manner revealing the names of any of the parties or witnesses involved.

21.0

21.1 The following regulation shall govern the Delaware Unemployment Compensation Commission in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

21.2 Definitions. As used in this regulation, unless the context clearly requires otherwise:

"Agent State" means any State in which an individual files a claim for benefits from another State.

"Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance of any State.

"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.

"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 unless the Delaware Unemployment Compensation Commission finds that this exclusion would create undue hardship on such claimants in specified areas.

"Liable State" means any State against which an individual files, through another State, a claim for benefits.

"State" includes Alaska, Hawaii, and the District of Columbia.

"Week of unemployment" includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed.

21.3 Registration for Work

21.3.1 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, and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.

21.3.2 Each agent State shall duly report to the liable State in question, whether each interstate claimant meets the registration requirements of the agent State.

21.4 Benefit Rights of Interstate Claimants

21.4.1 If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits in such State, then claims shall be filed only against such State as long as benefit credits are available in that State. Thereafter, the claimant may file against any other State in which there are available benefit credits. For the purposes of this regulation, 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.

- 21.4.2 The benefit rights of interstate claimants established by this regulation shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.

21.5 Claim for Benefits.

- 21.5.1 Claims (for benefits or waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be made by the liable State on the basis of consecutive claims filed.

- 21.5.2 Claims shall be filed in accordance with agent State regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

21.5.2.1 With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable State shall, under circumstances which it considers good cause, accept a continued claim filed up to 1 week, or one reporting period, late. If a claimant files more than one reporting period late, as initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

21.5.2.2 With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable State shall accept any claim which is filed within the time limit applicable to such claim under the law of the agent State.

21.6 Determinations of Claims.

- 21.6.1 The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State.

- 21.6.2 The agent State's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent State shall not refuse to take an Interstate claim.

21.7 Appellate Procedures

- 21.7.1 The agent State shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

- 21.7.2 With respect to the time limit imposed by the law of a liable State upon the filing of an appeal in connection with a disputed benefit claim, as appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of the agent State.

- 21.8 Extension of interstate benefit payments to include claims taken in and for Canada. This regulation shall apply in all its provisions to claims taken in and for Canada.

22.0 Administrative Hearings Upon Application for Review and Redetermination of Rates of Contribution

§3354, Title 19, ~~Delaware Code~~ of 1953, provides:

- 22.1 The Commission shall promptly notify each employer of his rate of contributions as determined for any calendar year pursuant to this subchapter.

- 22.2 Such determination shall become conclusive and binding upon the employer unless, within 19 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth his reasons therefor. If the Commission grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability, to his account of any benefits paid in accordance with a determination, redetermination or decision pursuant to sections 3317-3325 of this title except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for him and only is the event that he was not a party to such determination, redetermination or decision or to any other proceedings under this chapter in which the character of such services was determined.

- 22.3 The employer shall be promptly notified of the Commission's denial of his application, or of the Commission's redetermination, both of which shall become final unless within 15 days after the mailing of notice thereof to his last known address or in the absence of mailing, within 15 days after the delivery of such notice, a petition for judicial review is filed in the Superior Court of the county in which the employer's place of business is located. In any proceeding under this motion the findings of the Commission as to the facts, if supported by evidence

and in the absence of fraud, shall be conclusive and the jurisdiction of the Court shall be confined to questions of law. No additional evidence shall be received by the Court but the Court may order additional evidence to be taken before the Commission and the Commission may, after hearing such additional evidence, modify its determination, and file such modified determination, together with a transcript of the additional record, with the Court. Such proceedings shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under sections 3317-3325 of this title and the Workmen's Compensation Law, chapter 23 of this title.

22.4 An appeal may be taken from the decision of the Superior Court to the Supreme Court of this State in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases.

22.5 Accordingly:

22.5.1 Presentation of application for review and redetermination

22.5.1.1 An employer applying for review and redetermination of his rate of contribution shall file with the Commission, at the central office or at any local office thereof, an application setting forth:

22.5.1.1.1 name and address and official position of person filing the application;

22.5.1.1.2 name and address and identification number of employer

22.5.1.1.3 brief statement of questions involved and reasons for the application for review and redetermination of rate of contribution.

22.5.1.2 An employer who has applied for a review and redetermination of his rate of contribution may withdraw such application by filing with the Commission or its special deputy a written notice of withdrawal.

22.5.1.3 The Commission or its special deputy may either grant or deny any application for review and redetermination of an employer's rate of contribution. Copy of the decision of the Commission or its special deputy on any such application shall be mailed to such employer at his last known address within 7 days of the filing of that application.

22.5.1.4 If the application for review is granted, the Commission or its special deputy shall proceed to schedule a hearing and shall mail a notice to the employer at his last known address at least seven days before the hearing, specifying the time and place of the hearing. If the employer or his representative fails to appear at the hearing, the rate of contributions as originally reported will become final unless such employer within 10 days appears and shows good cause for his former non-appearance, in which latter event the Commission or its special deputy shall re-schedule the hearing.

22.5.1.5 Orders for supplying information from this agency to an employer or his representative, to the extent necessary for the proper presentation of his case, shall be issued only upon application therefor. All applications for information from the records of the Commission shall state, as nearly as possible, the nature of the information desired.

22.5.1.6 Subpoenas to compel the attendance of witnesses and the production of records for any hearing on rate of contribution, unless directed to issue by a member of the Commission or its special deputy, upon a showing of a necessity therefore by the employer or its representative.

22.5.2 Hearing in rate of contribution cases:

22.5.2.1 Hearings shall be held at the central office of the Delaware Unemployment Compensation Commission, unless in its discretion the Commission or its special deputy may determine upon another place within the State.

22.5.2.2 The Commission, or a special deputy designated in each case, shall preside over the hearing

22.5.2.3

22.5.2.3.1 Any individual may appear for himself in any proceeding before the Commission or its special deputy. Any partnership may be represented by any of its members.

22.5.2.3.2 Any individual may appear by an attorney-at-law admitted to practice before the highest court of this State, or the highest court of any State or Territory of the United States, or by any other person who is qualified to represent others.

22.5.2.3.3 The Commission, or its special deputy, in their discretion, may refuse to allow any person to represent others in any proceeding before it who they find is guilty of unethical conduct, or who intentionally and repeatedly fails to observe the provisions of the Part III, Title 19, **Delaware Code** of 1953, or the regulations and instructions of the State agency.

22.5.2.4 All hearings shall be conducted informally and in such manner as to bring out the facts relevant to the determination of the application. All testimony at the hearing shall be by oath or affirmation and shall be recorded but need not be transcribed unless a petition is filed for judicial review, except

that the Commission or its special deputy during the conduct of any hearing may indicate the portions of the evidence that he wishes transcribed to aid him in preparing his findings of fact and decision. The employer may make a written submission of the facts involved and shall be permitted a reasonable opportunity to present oral argument, supplemented by written briefs, upon the questions of law involved. The Commission or special deputy may decide the question on the basis of such stipulation and arguments, or may, in his discretion, set the question for hearing and take such further evidence as he deems necessary.

22.5.3 Adjournment of hearings. The Commission or its special deputy shall use his best judgment as to when adjournment of a hearing shall be granted in order to secure all the evidence that is necessary.

22.5.4 Determination on rate of contribution.

22.5.4.1 Within 10 days after the conclusion of the hearing the Commission or its special deputy shall announce his findings of fact and determination. The findings of fact and determination shall be in writing and shall be signed by the Commission or the special deputy who presided at the hearing.

22.5.4.2 A copy of the determination shall be mailed to the employer at his last known address.

23.0 Obligations of Contractors

23.1 Any employing unit in the building trades field, including employers not subject to Part III, Title 19, ~~Delaware Code~~ of 1953, who pays wages to persons employed in "employment" as defined in such law, but who claims to be is not liable for contributions on wages paid for work with respect to which he has agreed to contract with any other person or persons pursuant to an agreement under which he operates, shall submit a copy of such agreement and shall certify to the Delaware Unemployment Compensation Commission on forms furnished for this purpose by the Commission the name and address of each such person with whom he agreed to contract for such work and other information requested on such forms. Such copy and such certification shall be filed between the first and tenth of the month following the calendar quarter during which the person claiming not to be liable for contributions agreed for the first time to contract for such work under such agreement.

23.2 Between the first and tenth of the month following each calendar quarter, after a certification was filed in accordance with paragraph 1 of this regulation, each person who has complied with the provisions of paragraph 1 of the regulation, and provided it has been determined by the Commission that he is not liable for contributions on wages paid to employees for work performed pursuant to agreements submitted by him, shall inform the Commission of any changes which occurred during such calendar quarter with respect to the person with whom he agreed to contract for such work, giving their names and addresses.

23.3 Special reports on forms furnished for this purpose by the Commission and quarterly payroll reports as otherwise required from employers subject to the law shall be submitted by each such employing unit who has been held not to be liable for contributions on wages paid to employees. Such special reports and quarterly payroll reports shall be filed in compliance with instructions printed thereon on the dates prescribed for the filing of the reports.

23.4 The requirements of subsections 23.1 and 23.2 of this regulation shall be deemed satisfied if a central or representative agency of the industry in which the person required to submit a copy of the agreement is engaged, duly authorized by the parties to such agreement to do so, shall file with the Commission within the specified period such copy and certified lists, indicating with respect to each person who claims or who has been held not to be liable for contributions on wages paid for work performed pursuant to such agreement, the names and addresses of the person or persons with whom contracts pursuant to such agreement have been entered into and certified lists covering any changes in the identity of such persons.

24.0 (RESCINDED)

25.0 Transfers of Experience

Section 3353(d), Title 19, Delaware Code regarding Transfer of Experience from Predecessor to Successor Employer provides that "The Department shall by regulation prescribe the evidence required to prove that a successor employer may be entitled to the experience of a predecessor employer under this section."

Accordingly, the Department prescribes:

25.1 Subject to the provisions of section (25.3) of this regulation, a successor employer may request the Department to recognize a transfer of experience by filing a completed Form UC-411 with the Department.

25.2 A transfer of experience will not be recognized unless the successor employer has acquired the organization, trade or business, or substantially all the assets thereof of a predecessor employer which, at the time of such acquisition, was an employer liable under the provisions of Title 19, Delaware Code.

- 25.3 A transfer of experience will be recognized and applied automatically if all quarterly reports of the predecessor employer or employers have not been duly filed and approved and all assessments, interest and penalties due thereon have not been fully paid.
- 25.4 Except as provided in section (3) of this regulation, a transfer of experience will not be recognized unless the payroll records of the predecessor employer or employers remain available to the successor employer to the extent necessary for such successor employer to be able to comply with requests from the Department for information as to date of separation and reason for separation during the base period of a claimant filing for benefits.
- 25.5 Upon a transfer of experience, any predecessor employer will thereafter, for all purposes, lose the benefit of his experience.
- 25.6 From the date of such transfer, and for the remainder of the then current calendar year:
- 25.6.1 The successor employer, if previously subject to this Title, shall retain his own assessment rate upon acquiring the experience of one or more employers when the successor and predecessor(s) have identical assessment rates.
- 25.6.2 The successor employer, if not previously subject to this Title, upon acquiring the experience of one or more employers, shall assume the current assessment rate of the predecessor employer if the transfer is made from one employer or from more than one employer with identical assessment rates.
- 25.6.3 The successor employer, whether or not previously subject to this Title, upon acquiring the experience of one or more predecessor employers whose assessment rates are not identical to that of the successor employer shall have an employer benefit wage ratio established based upon the combination of the experience of the successor and predecessor employers for the three calendar years immediately preceding the date of transfer. This employer benefit wage ratio shall be used to determine the successor employer's new assessment rate. However, a reduced rate will be granted only if the requirements of section 3349(d) of this Title are met.
- 25.7 The successor employer's assessment rate for succeeding calendar years shall be determined by combining the experience of the predecessor and successor employers and calculating the employer benefit wage ratio based upon such combined experience. However, a reduced rate will be granted only if the requirements of section: 3349(d) of this Title are met.
- 25.8 The Department may rescind any transfer of experience upon its own motion or upon written application of a successor employer to the Director, Division of Unemployment Insurance. However, no transfer of experience shall be rescinded unless the party seeking the decision shows good cause for such decision to the satisfaction of the Director, Division of Unemployment Insurance. If a decision sought upon application of a successor employer is granted, such decision shall have prospective effect only.

26.0 Credit for Re-employment

- 26.1 General Eligibility.
- 26.1.1 Benefit wage credit for re-employment of a claimant, as provided in §3350(7), Title 19, Delaware Code of 1953, shall be allowed only if the employer making such claim is an employer for whom benefit wage charges were made as a consequence of such claimant's receipt of benefits.
- 26.1.2 The employer must file an application for rehiring credit in the manner and within the time specified in Section 3 hereof.
- 26.2 Restrictions of Claims for Rehiring Credit
- 26.2.1 No employer's claim relating to a worker's claim for benefits shall be allowed if, during a claimant's benefit year, there shall have been a period or periods of time aggregating 30 days or longer, during which the claimant was not: (I) receiving benefits, or (II) employed by such employer.
- 26.2.2 No employer's claim relating to a worker's claim for total benefits shall be allowed if, during a claimant's benefit year, such claimant shall have drawn benefits during each of more than two separate periods.
- 26.2.3 No employer's claim relating to a worker's claim for benefits shall be allowed if during a claimant's benefit year, such claimant shall have been paid wages from a source other than his regular employer aggregating more than twenty per cent (20%) of his best period wages from such employer.
- 26.2.4 An employer's claim shall be allowed, if it in all other ways meets the requirements of this regulation even though the claimant has left his employer after having been a partial benefit claimant, if such separation occurs more than 30 day's after he has been returned to full-time employment, and if he does not again become a benefit claimant during the benefit year.
- 26.2.5 Where a claimant is still employed by a part-time employer in employment that has been in addition to his regular base period employment the employer will be entitled to a 75% credit if it is demonstrated to the satisfaction of the Commission that the claimant is receiving from such part-time employer substantially the

same amount of employment as he received in his base period. However, if there has been any appreciable diminution of employment, no claim will be allowed.

26.3 Application for Re-employment Credit.

26.3.1 An application for re-employment credit shall be made by filing with the Commission Form UC-400B, with respect to each employee who is re-employed.

26.3.2 Such claim shall be filed after the ending date of the claimant's benefit year and within 30 days of that date.

26.4 Credit Allowable.

26.4.1 Credit for re-employment shall be determined in accordance with the following schedule:

26.4.1.1 75% credit if worker is rehired before drawing 25% of his benefits.

26.4.1.2 50% credit if worker is rehired before drawing 50% of his benefits.

26.4.1.3 25% credit if worker is rehired before drawing 75% of his benefits.

27.0 Registration and Claims of Certain Workers Who Become Totally Unemployed Because of a Mass Layoff Due to a Temporary Cessation of Work

The Employment Security Commission is authorized to defer registrations for work and to modify the requirement of in-person reporting to claim benefits for a week of unemployment for those individuals unemployed because of a temporary mass layoff as provided in this regulation.

27.1 A mass temporary layoff is defined as a temporary layoff by an employer because of lack of work of 100 or more of his workers at or about the same time for a period not exceeding 45 consecutive calendar days following the last day of work or 63 consecutive calendar days following the last day of work for 100 or more workers temporarily laid off for a model change or retooling.

27.2 As soon as possible but not later than seven (7) days prior to the last day of work of 100 or more workers, the employer shall notify the Commission of the last day of work, the reason for the layoff, the scheduled date of their return to work and when practical, the names and Social Security numbers of the workers included in the layoff. If the Commission determines that the layoff meets the requirements of a mass temporary layoff as defined in this regulation, the workers shall file claims for benefits as hereinafter provided.

27.3 The employer shall post instructions furnished by the Commission in conspicuous areas readily accessible to the workers concerning the proper procedure for filing claims during the layoff period.

27.3.1 The employer shall prepare and give each worker unemployed because of the mass temporary layoff on his last day of work, Form UC-101-T, "Notice of Temporary Total Unemployment" and a "Claimant's Address Card" to be furnished by the Commission. However, neither of these forms shall be issued for any individual off from work because of illness, disability, or scheduled vacation with pay on the day the temporary layoff begins. These individuals shall be issued the required forms by the employer upon the termination of the period of illness, disability, or scheduled paid vacation.

27.4 A claimant's week of unemployment for the purpose of this regulation shall be the seven-day consecutive calendar day period used by the employer as his payroll week.

27.5 Registration for work by an individual unemployed because of a mass temporary layoff shall be deferred.

27.6 An original or additional claim will be effective on the first day of the employer's payroll week in which the last day of work occurred if the employer issued Form UC-101-T, "Notice of Temporary Total Unemployment" on the last day of work and the form is filed by the claimant within seven days thereafter. If the employer does not issue the form on the last day of work but the claimant files within seven (7) days thereafter, his original or additional claim will be effective on the first day of employer's payroll week in which his last day of work occurred. Where a claimant is issued the form on his last day of work but fails to file within seven (7) days thereafter, his original or additional claim will be effective on the first day of the employer's payroll week in which he actually files the form. As used herein the word "file" or "filed" shall mean the date on which Form UC-101-T, "Notice of temporary Total Unemployment" and address card is delivered in person to the local office.

27.7 A booklet of continued mail claim forms will be given to all claimants when the initial claim is filed, or as soon thereafter as is possible. The continued mail claim forms shall be filed by the claimant not later than eight (8) days after the end of the week of unemployment for which benefits are claimed. All benefit checks for claims filed under this regulation during the mass layoff period shall be mailed from the local office.

27.8 An individual may not claim benefits under this regulation for more weeks than covered by the provisions of paragraph 1 or the expected date of recall, whichever comes first. If he wishes to claim benefits for any period subsequent to the calendar day limitations of this regulation during the same period of unemployment, he must within such week report in person at the local office nearest his home address during its regular scheduled hours, complete a work registration, and pursue his claim in accordance with the provisions of Regulation 9.

- 27.9 Any individual while claiming benefits under this regulation shall report in person to the local office to file his initial claim for benefits. Thereafter he shall report in person at such intervals not exceeding four (4) weeks as directed by the Commission. However, any individual who is requested by the Commission to appear in person at times other than those specified above, who fails to do so, without good cause, within ten (10) days from the date of such written notice, shall not be eligible for benefits for the week in which the matter requiring his presence arose, and until he actually appears in person in response to the notice.
- 27.10 Any worker who is entitled to receive Form UC-101-T, "Notice of Temporary Total Unemployment" as provided in paragraph 3, but who is not issued such form, may file a claim in person at a local office within 28 days from the date the form should have been issued to him. Such original or additional claim shall be effective as of the first day of the payroll week in which the claim would have been effective had the employer issued the notice as provided in response to the notice.

CERTIFICATION

I, James M. Rosbrow, Chairman-Executive Director of the Employment Security Commission, do hereby certify that the above and foregoing is a true and accurate copy of Regulation 27 of the Employment Security Commission and has been adopted in formal meeting of the Commission on June 16, 1970.

June 17, 1970, James M. Rosbrow

28.0 Claiming and Payment of Unemployment Insurance Benefits

- 28.1 For the purposes of the claiming and payment of unemployment insurance benefits, "week," means:
- 28.1.1 Calendar week (beginning 12:01 a.m. Sunday morning); or
 - 28.1.2 Any seven (7) 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 (2) calendar weeks in each of which he earns wages equal to or in excess of his weekly benefit amount plus his partial earning allowance. Claims filed under this provision may be filed within twenty eight (28) days following the close of the second of the calendar weeks in question; or
 - 28.1.3 The Department may authorize the employer's payroll week for the payment of partial claims and temporary mass layoff claims.
- 28.2 Calendar week shall be used for the filing of claims and the payment of benefits under 1 (a) above for all claims filed on or after July 1, 1972, except for those claims in current compensable status which will continue on a flexible week basis for the duration of their current spell of unemployment.
- 28.3 Except in cases where claims are filed under 1 (b) or (c) above, the claim series will begin with the first day of the calendar week in which an unemployed individual reports and registers and files his initial or reopened claim at a local employment office of the Department.
- 28.4 Whenever the benefit week overlaps two benefit years, such week shall, for the purpose of benefit payment with respect to such week, be deemed to be paid in the preceding benefit year; provided, that when the last day of the preceding benefit year falls within a benefit week with respect to which individual has met the eligibility requirements of the Act, the ending day of the benefit year may be extended for a period not to exceed six (6) days, provided, however, that such inclusion of the week within the preceding benefit year shall not change the claim week pattern as established during the current period of unemployment in the first of such two benefit years.
- 28.5
- 28.5.1 The effective date of claim for succeeding transitional claims shall be the Sunday date immediately following the benefit year ending date on the preceding benefit year; provided, the benefit week was extended under 4 above to include the Saturday date immediately prior to such Sunday date. However, if the benefit year was not extended, or if extended did not include the Saturday date prior to such Sunday date, the effective date of the succeeding benefit year will be the first day immediately following the date of the last benefit week in the prior benefit year.
 - 28.5.2 If the claimant is not eligible monetarily for a transitional claim, and if the last day of his benefit year falls within a benefit week with respect to which he has met the eligibility requirements of the Act, the ending date of his benefit year may be extended for a period not to exceed six (6) days for purpose of paying the last benefit week.
- 28.6 Wherein parts of this Regulation are in conflict with prior Regulations, the Regulation will hold.

29.0 Taxable Wage Base

29.1 Section 3345(d)(2), Title 19, Delaware Code Provides That:

~~"The amount of any increase (taxable wage base) shall be in an amount determined by the Secretary of Labor equivalent to the estimated savings affected by such federal relief (FUTA penalty)."~~

Accordingly:

- ~~29.2 For calendar year 1982, wages shall include that part of remuneration equal to \$6,600.00, which has been paid to an individual by an employer or his predecessor with employment during calendar year 1982.~~
- ~~29.3 For calendar year 1983, wages shall include that part of remuneration equal to \$7,200.00, which has been paid to an individual by an employer or his predecessor with respect to employment during calendar year 1983.~~

30.0 Waiver of Benefit Overpayments

30.1 §3325, Title 19, Delaware Code, provides that:

~~"Any person who, by reason of his fraud, has received any sum as benefits under this chapter to which he was not entitled shall, in the discretion of the Department, be liable to repay such sums to the Department for the Unemployment Compensation Fund or to have such sum deducted from any future benefits payable to him under this Chapter. Any person who, other than by reason of his fraud, has received any sum as benefits under this chapter to which he was not entitled shall be liable to repay such sum and shall, in the discretion of the Department, be liable to have such sum deducted from any future benefits payable to him."~~

- ~~30.2 In any case in which recoupment from future benefits is, permissible under this section, the Department, before resorting thereto, shall issue an order for recoupment stating the grounds thereof. Such order shall be subject to the provisions of §§ 3318-3324 of this title with respect to notice to claimant and appeal by him in the same manner and to the same extent as an original determination upon a claim for benefits.~~
- ~~30.3 In any case in which under this section a claimant is liable to repay to the Department any sum for the Unemployment Compensation Fund, such sum shall be collectible without interest in the name of the Department."~~
- ~~30.4 Accordingly: In the event such sums are neither repaid nor deemed within a period of 10 years following the last day of the benefit year within which they were paid, they may be waived by the Department, within its discretion, as uncollectible.~~

31.0 Procedures When Unemployment is Due to a Layoff Attributable to Lack of Work

31.1 When an individual files a claim for benefits due to a layoff attributable to lack of work, and is otherwise qualified and eligible for benefits pursuant to the provisions of Chapter 33 of Title 19 of the Delaware Code, the following procedures shall be implemented:

- ~~31.1.1 The Department shall forward Form UC-119, separation notice, to all base period employers and Form UC-1190, separation notice, to the last employer to obtain the individual claimant's reason for separation and last date of work.~~
- ~~31.1.2 Each employer receiving the Forms contained in paragraph 1 shall provide the requested information within seven (7) business days of the receipt of notice from the Department and shall return the completed form to the Department.~~
 - ~~31.1.2.1 Any employer who fails to return such completed request within the period prescribed, shall be barred from claiming subsequently that the worker to whom such notice applied shall be disqualified under any of the provisions of §3313, Title 19, Delaware Code, and shall be barred from relief from benefit wage charges under §§ 3349-3356, Title 19 Delaware Code, unless the Department for reasons found to constitute good cause, shall release such employer for the default.~~
- ~~31.1.3 Upon receipt of the completed form by the Department from the employer, if said employer does not dispute claimant's statement as to reason for unemployment, benefits shall be paid and the employer shall be subject to charges to his experience rated account.~~

- 31.1.4 If the employer by whom the claimant was employed most recently disputes an individual's claim for benefits stating that unemployment is due to reasons other than for layoff attributable to lack of work, the claim shall be referred to a claim: deputy who will examine the claim and on the basis of the facts found by him shall determine the individual's eligibility for benefits and issue a non-monetary determination. The deputy shall promptly notify the claimant and the employer by whom the claimant was employed most recently of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and the employer by whom the claimant was employed most recently of the denial of such application or of his amended decision and the reasons therefor, as the case may be. Notice of determination and right of appeal by either the claimant or the employer by whom the claimant was employed most recently shall be as provided according to the provisions of 19 Delaware Code §3318(b).
- 31.1.5 For purposes of this regulation, where the claimant and the employer agree that the reason for unemployment is due to lack of work attributable to a layoff, the Department shall not be required to make an examination or determination of a claim for benefits or to follow the procedures for said examination or determination of a claim for benefits as set forth in 19 Delaware Code §3318 except as provided in paragraph 4 of this regulation.

32.0 Election of Exemption of Corporate Officers From Delaware Unemployment Insurance Coverage

[¶ 5062]

- 32.1 § 3302(9)(A)(i)(III), Title 19, Delaware Code, Provides That The Following Shall Not Be Deemed Employment:

"When no more than four officers of a corporation request exemption from personal coverage under this Chapter (Chapter 33). Such request must so agreed to by the corporation and filed in such manner as the Department shall prescribe."

- 32.2 Accordingly: Effective June 30, 1983, as long as permitted by federal and State requirements, this elected exemption shall be for the duration of the individual's tenure as an officer of the corporation. Wages earned in such employment during this exemption shall not be used in determining eligibility for benefits in any claim following a separation from any future covered employment.
- 32.3 Exemption, and removal from exemption when an individual is no longer an officer of the corporation, shall be effective as of the next calendar quarter following receipt of the request on forms provided by the Department. (As adopted, effective June 30, 1983)

33.0 Offset of Unemployment Compensation Benefits by Pension Benefits

[¶ 5083]

- 33.1 For new claims filed to establish a benefit year commencing on or after January 1, 1985, the Department shall:
- 33.1.1 Make determinations of monetary entitlement and calculate the weekly benefit amount payable to an individual in accordance with the provisions of that section of the Code as amended June 5, 1984;
- 33.1.2 Reduce the weekly benefit amount payable to an individual by 50% of his prorated weekly social security benefits which are based on the previous work of such individual, in accordance with the provisions of that section of the Code as amended June 5, 1984. (As adopted, effective October 30, 1984.)

34.0 Proration of Deductible Lump Sum Payments for Determination of Weekly Benefit Amount Payable

- 34.1 When determining the benefit amount payable to an individual in any week, lump sum payments, deducted from an individual's weekly benefit amount by the Department pursuant to sections 3302(11), 3313(b), and 3313(f), Title 19, **Delaware Code**, shall be prorated and deducted from the individual's weekly benefit amount until said lump sum payment is exhausted.
- 34.2 For the purpose of this regulation, "prorated" shall mean the proportional distribution, as determined by the Department, of a lump sum payment on a weekly basis.

35.0 Disclosure of Information

- 35.1 Pursuant to Section 3125 (4), Title 19, **Delaware Code**, the disclosure of information contained in its records by the Department will be authorized, upon request, in the following cases for the following purposes:
- 35.1.1 To any properly identified claimant for benefits or payments under an unemployment compensation or readjustment allowance law of the Federal Government or of a State or to his duly authorized

~~representative, information which directly concerns the claimant and is reasonable necessary for the proper presentation of his claim.~~

- ~~35.1.2 To any officer or employee of any agency of the Federal Government or of a State government, lawfully charged with the administration of an unemployment compensation or readjustment allowance law, but only for purposes reasonably necessary for the proper administration of such law.~~
- ~~35.1.3 To any officer or employee of any agency of the Federal Government or of a State government, lawfully charged with the administration of a law providing for old-age assistance or other public assistance, work relief, pension, retirement or other benefit payments, but only for purposes reasonably necessary for the proper administration of such law.~~
- ~~35.1.4 To applicants, employers and the public, general information concerning employment opportunities, employment levels and trends, and labor supply and demand, provided such release or publication does not include information which discloses the identity of individual applicants, employers or employing establishments, except where such party agrees to said release.~~
- ~~35.1.5 To individuals, employers, Federal government agencies and State government agencies, information for purposes other than as specified in this Regulation if such disclosure will not impede the operation of, and is not inconsistent with the purpose of the Department, and is authorized in writing in individual cases by the Secretary of Labor.~~
- ~~35.1.6 Disclosure of information shall be made pursuant to 19 Del.C. §3125 (4). Officials and employees of those governmental agencies to whom such disclosure is to be made shall include, but is not limited to the following:~~
 - ~~35.1.6.1 Department of Labor~~
 - ~~35.1.6.2 Department of Health and Social Services~~
 - ~~35.1.6.3 Department of Finance~~
 - ~~35.1.6.4 Department of Justice~~
 - ~~35.1.6.5 Delaware Development Office~~
 - ~~35.1.6.6 Secretary of Labor of the United States~~
 - ~~35.1.6.7 Internal Revenue Service~~
 - ~~35.1.6.8 United States Postal Service~~
 - ~~35.1.6.9 United States Veterans' Administration~~
 - ~~35.1.6.10 United States Department of Justice~~
- ~~35.1.7 With respect to disclosure of information, all individuals or organizations to which information is disclosed under this regulation which discloses the identity of an individual or an employing unit shall be bound by the requirements of 19 Del.C. §3125 regarding confidentiality of the information disclosed and shall be subject to the sanctions set out in that section for improper disclosure. The use of such information shall be limited to the purposes for which it was disclosed to the recipient as permitted by this regulation and shall be limited to the purposes reasonably necessary for the law administered by such agency.~~
- ~~35.1.8 With respect to disclosure of information, unless the disclosure relates to the administration of unemployment law or a function of the Department imposed by state or federal law, no disclosure of information shall be made under these regulations unless arrangements have been made to reimburse the Department for the actual costs of providing the information to the recipient.~~

36.0 Reduction in Weekly Benefit Amount Due to Deductible/Income Receipt/Eligibility

- ~~36.1 For purposes of reducing an individual's weekly benefit amount (WBA) pursuant to Section 3313(f), Title 19, Delaware Code:~~
 - ~~36.1.1 A reduction in WBA shall be made immediately for any week claimed for which an individual is receiving or has received deductible income as defined in said section.~~
 - ~~36.1.2 A reduction in WBA for any week claimed for which an individual is eligible to receive, but has not yet received deductible income as defined in said section, will not be made until such income is received. Upon receipt of such deductible income, a reduction in the WBA will be made and any resultant overpayment determined retroactively to appropriate weeks claimed for which unemployment benefits were previously paid.~~

37.0 Employer Credit for Reemployment

- ~~37.1 Pursuant to Section 3350(7), Title 19, Delaware Code, regarding an employer for whom benefit wage charges were made as a consequence of a claimant's receipt of benefits:~~

37.1.1 Application for Rehire Credit

- 37.1.1.1 ~~An employer application for rehire credit shall be made by filing with the Department, Form UC-400 (Employer Application For Rehire Credit) with respect to each claimant who is rehired.~~
- 37.1.1.2 ~~Such application for rehire credit shall be filed by the employer after the ending date of a claimant's benefit year, but within thirty (30) days after such date.~~
- 37.1.1.3 ~~No rehire credit shall be allowed to any employer who fails to file a completed application for rehire credit within the period prescribed. An application will be considered to have been filed upon the date of receipt by the Department.~~

37.2 Restrictions on Receiving Rehire Credit

- 37.2.1 ~~No employer's application for rehire credit relating to a claimant's claim for unemployment benefits shall be allowed if, during a claimant's benefit year, such claimant shall have received unemployment benefits with respect to each of more than two separate periods of unemployment,~~
- 37.2.2 ~~No employer's application relating to a claimant's claim for partial unemployment benefits will be allowed.~~

37.3 Credit Allowable

37.3.1 Rehire credit shall be determined in accordance with the following schedule:

- 37.3.1.1 ~~75% credit if claimant is rehired before receiving not more than 25% of his/her maximum benefit amount (MBA).~~
- 37.3.1.2 ~~50% credit if claimant is rehired before receiving more than 25%, but not more than 50% of his/her maximum benefit amount (MBA).~~
- 37.3.1.3 ~~25% credit if claimant is rehired before receiving more than 50%, but not more than 75% of his/her maximum benefit amount (MBA).~~

38.0 Joint Accounts of Employers

- 38.1 ~~Section 3352, Title 19, Delaware Code regarding Joint Accounts of Employers, provides that the Department may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers subject to assessments under this Chapter.~~

38.2 Accordingly, the Department prescribes:

38.2.1 Establishment

- 38.2.1.1 ~~A joint account will be established upon application by two or more employers, and it is proven to the satisfaction of the Department that the employing units have substantially the same ownership involving common or majority control of equity, however evidenced.~~
- 38.2.1.2 ~~An application for a joint account must be made on Form UC-1 or by separate letter indicating the entities, officers, stockholders, and percentages of ownership interest.~~
- 38.2.1.3 ~~The establishment of a joint account will be effective for the calendar quarter in which such application is received. The Department may request all necessary information to make such determination; or~~
- 38.2.1.4 ~~A joint account will be established when the Department determines that a reorganization of previously subject employing units having substantially the same ownership has occurred, and such reorganization may adversely affect the solvency of the Unemployment Compensation Fund. Such joint account will be effective within the calendar quarter that reorganization occurs.~~

38.3 Maintenance

- 38.3.1 ~~Upon establishment of a joint account involving two (2) or more employers, regardless of whether such employing units were or were not previously subject to this Chapter, their individual accounts will be merged and maintained as if they constituted a single employer's account for experience rating purposes. However, each employing unit will continue to file reports and pay contributions under its individual account number.~~

38.4 Dissolution

- 38.4.1 ~~Once established, a joint account cannot be dissolved so long as the individual employing units remain under substantially the same ownership.~~
- 38.4.2 ~~Whenever any employing unit included in a joint account is purchased or otherwise acquired by outside interests, such employing unit will be given a new employer account number and assigned a contribution rate in accordance with Section 3348 of this Chapter.~~

39.0 New Employer Rate of Assessment

39.1 ~~Section 3348, Title 19, **Delaware Code**, regarding Average employer assessment rate; average industry assessment rate; average construction industry assessment rate; new employer rate; and standard rate of assessment, provides:~~

~~"For any employer, excluding those employers in SIC categories 15, 16, and 17, who first becomes subject to this Chapter on or after July 1, 1986, the new employer rate shall be the average employer assessment rate".~~

39.2 ~~"For any employer in SIC categories 15, 16, and 17 who first becomes subject to this Chapter on or after July 1, 1986, the new employer rate shall be the average industry assessment rate in that employer's particular SIC category (carried to 4 places) or the average construction industry assessment rate, whichever is the greater".~~

39.3 ~~With regard to Section 3348, an employing unit that alters its legal status in any way, such as changing from a sole proprietorship or a partnership to a corporation, or from one corporate entity, to another as a result of reincorporation, merger, or a transfer of employees between such entities or whenever an employing unit that otherwise changes its trade name or business identity while reining under substantially the same ownership will not be considered to have become first subject to Chapter 31, Delaware Unemployment Compensation Code upon such reorganization and shall not be entitled to a new employer rate of assessment. Such an employer will be considered to be a reorganized employer, not a new employer.~~

39.4 ~~A reorganized employer shall retain the contribution rate and be liable for all contributions, interest and penalties owed by the employing unit before the reorganization.~~

39.5 ~~However, if such reorganization shall involve the contribution rates of two (2) or more employing units, having substantially the same ownership, regardless of whether such employing units were or were not previously subject to this Chapter, the contribution rate for the reorganized employer shall be determined in accordance with Section 3351, Title 19, **Delaware Code**, and subsections 38.2.1.2 and 38.2.1.2.~~

39.6 ~~The Secretary of Labor may waive the provisions of this Regulation as they apply to a reorganized employer if said employer, prior to reorganization, is determined by the Department not to be delinquent with the regard to the payment of unemployment assessments and the application of such a regulation would be inconsistent with the economic development policies of the State of Delaware.~~

40.0 Involuntary Leaving of Work Due to Illness

40.1 ~~Section 3315(1), Title 19, **Delaware Code**, in part, provides that "if an individual has left his work involuntarily because of illness, no disqualification shall prevail after he becomes able to work and available for work and meets all other requirements under this title, but the Department shall require a doctor's certificate to establish such availability."~~

40.2 ~~With regard to Section 3315(1), an individual who elects a layoff in lieu of sickness and accident benefits provided under an employer benefit program or who elects a layoff in lieu of exercising the right to bump an employee with less seniority who is performing work that said individual can perform within his medical restrictions will not be considered to be an individual leaving work involuntarily because of illness, but shall be considered to have left his work voluntarily without good cause attributable to such work and shall be subject to the disqualification provision of this Section.~~

41.0 Eligibility for Benefits

41.1 ~~§3314(1), Title 19, **Delaware Code** provides that "the Department may, by regulation, waive or alter either or both of the requirements of this subdivision..."~~

41.2 ~~Accordingly, "has registered for work" as it appears in §3314(1), Title 19, **Delaware Code** shall mean any registration process as required by the Department's Division of Employment and Training which may include, but shall not be limited to, group intake and the General Aptitude Test Battery.~~

42.0 Disqualification for Benefits

42.1 ~~§3315(3), Title 19, **Delaware Code** provides that an individual shall be disqualified for benefits "if he has refused to accept an offer of work which he is reasonably fitted...."~~

42.2 ~~The determination of whether an individual is reasonably fitted shall be based on said individual's previous work history, education, training, the DOT (Dictionary of Occupational Titles) Code assigned by the Department's Division of Employment and Training, and the results of validity Generalization tests administered to said individual by the Division of Employment and Training.~~

43.0 Officers of Closely Held Corporations

- 43.1 Section 3302(9)(A)(i)(I)(II), Title 19, **Delaware Code**, provides the following shall not be deemed employment:
- "(I) When one-half or more of the ownership interest, however designated or evidenced, in the corporation is, or during such employment was, owned or controlled, directly or indirectly, by the individual's spouse or child, or by the individual's parent if the individual is under age 18, or by a combination of 2 or more of them; or
- (II) When one-fourth or more of the ownership interest, however designated or evidenced, in the corporation is, or during such employment was, owned or controlled, directly or indirectly, by the individual; or"
- 43.2 The intent of Section 3302(9)(A)(M-I)(II), Title 19, **Delaware Code** was to exclude the wages of officers of closely held corporations from unemployment insurance assessments since the work performed by such an officer was deemed not to be "covered employment" under Chapter 33, Title 19, **Delaware Code**. The intent of this Section was not to increase the unemployment insurance tax liability of closely held corporations.
- 43.3 Therefore, for the purpose of this regulation, the officer(s) of a closely held corporation may request personal coverage under Chapter 33, Title 19, **Delaware Code**, if the corporation agrees to such coverage and can show, to the satisfaction of the Department, that the mandatory exemption from personal coverage provided under Section 3302(9)(A)(i)(I)(II), Title 19, **Delaware Code**, would increase the total unemployment insurance program tax liability of the corporation.
- 43.4 In addition, the Department recognizes, as a result of the enactment of Section 3302(9)(A)(i)(I)(II), Title 19, **Delaware Code**, as amended in June 1983, that an increase in the total unemployment insurance program tax liability of a particular class of closely held corporations may have been further compounded where:
- 43.4.1 The officers of a closely held corporation first became subject to the provisions of Chapter 33, Title 19, **Delaware Code**, prior to the enactment of Section 3302(9)(A)(i)(I)(II), as amended in June 1983; and then,
- 43.4.2 Upon enactment of the aforementioned Section, the corporation was deemed to have no "covered employment".
- 43.5 Therefore, any closely held corporation which elects coverage of their officers and employer account reactivation under this regulation, and can show, to the satisfaction of the Department, that it is a member of the above mentioned class, will be permitted to apply those experience years during which the corporation had no "covered employment" to the time required to receive an earned assessment rate.
- 43.6 A request for coverage must be agreed to by the corporation and filed in such manner as the Department shall prescribe.
- 43.7 This elected coverage shall be for the duration of an individual's tenure as an officer of the corporation. Coverage shall be effective as of the next calendar quarter following the receipt of the request for coverage submitted by the corporation on forms provided by the Department.

44.0 Reduction of Employer's Rate Below the New Employer Rate

- 44.1 Section 3349(d), Title 19, **Delaware Code** provides that "After July 1, 1986, no employer's rate shall be reduced below the new employer rate for any calendar year unless and until he has had employment in each of the 2 consecutive experience years immediately preceding the computation date, ...".
- 44.2 For the purpose of this regulation, Section 3349(d), Title 19, **Delaware Code** shall apply only to those employers who first become subject to Chapter 33, Title 19, **Delaware Code** as provided by Section 3348(d)(e)(f), Title 19, **Delaware Code**, and such employers shall not have their employer rate reduced below the new employer rate prior to January 1, 1989.

45.0 Interest on Past due Assessments and Reimbursement Payments in Lieu of Assessments

- 45.1 Pursuant to Section 3357, Title 19, **Delaware Code** regarding "Interest on past due assessments and reimbursement payments in lieu of assessments":
- 45.2 Effective July 1, 1987, assessments and reimbursement payments in lieu of assessments which remain unpaid on the date they are due and payable, as prescribed by the Department, shall bear interest at the rate of 1.5% per month or fraction thereof from and after such date until payment plus accrued interest is received by the Department.

46.0 Employment Training Tax

- 46.1 Section 3401(a), Title 19, **Delaware Code** provides "In addition to all other payments to the State due under this Title, each employer liable for assessments under Chapter 33 of this Title shall also be liable for a special

assessment which shall be levied at the rate of one tenth of 1 percent on all taxable wages, as defined in Section 3302(17) of this Title, payable by each such employer".

46.2 For the purpose of this regulation, the special assessment, also referred to as the "Training Tax", shall be billed on a semi-annual basis to each employer by the Department, based on reported taxable wages or on assessed taxable wages as estimated and determined by the Department under the provisions of Section 3359 of this Title. The semiannual bill will cover the two calendar quarters, April 1 – September 30 or October 1 – March 31 respectively, whichever are the two most recently completed calendar quarters prior to each billing.

46.3 Each employer shall be billed by the Department for the special assessment amount due not later than July 31 and January 31 of each year and such amount shall be considered delinquent 30 days after the date such bill was mailed. Interest shall accrue and be collectible by this Department on all unpaid assessments as prescribed in Section 3357 of this Title and Section 45.0.

47.0 Registration for Work

47.1 Section 3314(1), Title 19, ~~Delaware Code~~ regarding "eligibility for benefits" provides that the Department may, by regulation, waive or alter the registration for work requirement.

47.2 Accordingly, the Department prescribes that the following unemployed individuals will not be required to register for work with the Department to be eligible for the receipt of benefits:

47.2.1 Any individual on a temporary layoff who has a definite "return-to-work" date which has been verified by the Department with the individual's separating employer.

47.2.2 My individual who is an active member of a trade union and who is actively seeking work through a union hiring hall as verified by the Department.

47.2.3 Any individual who is attached to a specific job as evidenced by a pattern of seasonal/periodic layoff and subsequent rehiring by the same employer over the most recent three (3) year period.

48.0 Seasonal Employment

48.1 Section 3316(b), Title 19, ~~Delaware Code~~ provides that "No occupation or industry shall be deemed to provide seasonal employment that is not part of the first processing of agricultural products and/or seafood products".

48.2 For the purposes of this regulation, the first processing of agricultural products and/or seafood products shall refer to those occupations and industries in the following Standard Industrial Classification (SIC) Codes (carried to four digits):

<u>SIC Code</u>	<u>Major Occupation/Industry Group</u>	
0111	Agricultural Production — Crops	
0112	Agricultural Production — Crops	
0115	Agricultural Production — Crops	
0116	Agricultural Production — Crops	
0119	Agricultural Production — Crops	
0131	Agricultural Production — Crops	
0132	Agricultural Production — Crops	
0133	Agricultural Production — Crops	
0134	Agricultural Production — Crops	
0139	Agricultural Production — Crops	
0161	Agricultural Production — Crops	
0171	Agricultural Production — Crops	
0172	Agricultural Production — Crops	
0173	Agricultural Production — Crops	
0174	Agricultural Production — Crops	
0175	Agricultural Production — Crops	

0179	Agricultural Production — Crops	
0182	Agricultural Production — Crops	
0194	Agricultural Production — Crops	
0722	Agricultural Services	
0723	Agricultural Services	
0724	Agricultural Services	
0729	Agricultural Services	
0764	Agricultural Services	
0762	Agricultural Services	
2032	Food and Kindred Spirits	
2033	Food and Kindred Spirits	
2034	Food and Kindred Spirits	
2035	Food and Kindred Spirits	
2037	Food and Kindred Spirits	
2094	Food and Kindred Spirits	
2092	Food and Kindred Spirits	

49.0 Collection of Benefit Overpayments

- 49.1 Section 3325, Title 19, ~~Delaware Code~~, as amended effective February 8, 1989, provides "No action shall be taken by the Department to collect in whole or in part an overpayment of benefits to any person after a period of 5 years from the date on which the overpayment was made by the Department".
- 49.2 With regard to the above cited provision of Section 3325, Title 19, ~~Delaware Code~~, "the date on which the overpayment was made by the Department" shall be defined as the date on which the overpayment is established. For the purpose of this regulation, an overpayment shall be considered to be established with respect to any particular claim for benefits as of the date the Department's notice of overpayment and order for recount has become final.

1.0 Records

- 1.1 Each employing unit shall preserve for the period of the last 4 consecutive years such existing records as are indicated in the data hereinafter set forth and shall establish, maintain, and preserve, for a period of 4 years, records with respect to workers engaged in employment on and after the effective date of this regulation which shall show:
- 1.1.1 For each pay period:
- 1.1.1.1 The beginning and ending dates of such period.
- 1.1.1.2 The total amount of remuneration paid for personal services, including commissions.
- 1.1.2 For each worker:
- 1.1.2.1 Their name and Social Security Number.
- 1.1.2.2 Their wages paid for each pay period, showing separately:
- 1.1.2.2.1 Remuneration including commissions paid in cash.
- 1.1.2.2.2 Reasonable cash value of remuneration payable by the employer in any medium other than cash.
- 1.1.2.2.3 Gratuities received from persons other than the employer.

2.0 Definition of Terms

"Payroll period" means that period of time for which an employer customarily makes a single payment or credit of remuneration to all or a group or groups of its employees.

A **"quarter"** or **"calendar quarter"** means one of the four periods of three consecutive calendar months which begin, respectively, on January 1, April 1, July 1, and October 1.

"Wages paid" means:

- (a) Wages actually paid, to the employee; or
- (b) Wages credited to the account of or set apart for the employee so that they may be drawn upon by the employee at any time although not then actually reduced to possession. To constitute payment in such a case the wages must be credited or set apart to the employee without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and must be made available to the employee so that they may be drawn at any time, and their receipt brought within the employee's control and disposition.

"Wages paid in a quarter" means the total of all wages paid or accredited in accordance with subsections (a) and (b) of this section on any day falling within the calendar quarter.

3.0 Reports and Payments of Contributions

- 3.1 Contributions due under Part III, Title 19, Delaware Code, shall be payable quarterly based on "wages paid in a quarter" as set forth in Section 2.0 of this regulation.
- 3.2 Employers subject to Part III, Title 19, **Delaware Code**, shall report contributions due on forms prescribed or approved for this purpose by the Delaware Division of Unemployment Insurance and in accordance with instructions printed thereon (Form UC-8). Such reports shall be accompanied by payment of contributions.
- 3.3 Reports and payments of contributions shall become due on the last day of the month following the close of the quarter during which the wages are paid.
- 3.4 Reports and payments of contributions by an employer not previously subject to Part III, Title 19, Delaware Code, shall become due for the first time on the last day of the month following the close of that calendar quarter during which the 20th week of employment of one or more persons during the calendar year occurred. The employer shall at such time file separate reports with respect to each of the calendar quarters during the calendar year for which contributions are payable.

4.0 Identification of Workers Covered by Part II, Title 19, Delaware Code

- 4.1 Each employer shall ascertain the Social Security Number of each worker employed by the employer in employment subject to Part III, Title 19, Delaware Code.
- 4.2 The employer shall report the worker's Social Security number in making any report required by the Delaware Division of Unemployment Insurance with respect to a worker.
- 4.3 If an employer has in its employ a worker engaged in employment who does not have a Social Security number, such employer shall request the worker to show a receipt issued by an officer of the Social Security Administration acknowledging that the worker has filed an application for a Social Security number. The receipt shall be retained by the worker. In making any report required by the Delaware Division of Unemployment Insurance 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.
- 4.4 If a worker fails to report to the employer his correct Social Security number or fails to show the employer a receipt issued by an office of the Social Security Administration acknowledging that he has filed an application for a Social Security number, the employer shall inform the worker of the requirement to do so under the Federal Insurance Contributions Act.

5.0 Posting of Placards

Every employer subject to the provisions of Part III Title 19, Delaware Code, shall post and maintain printed notices to his employees informing them that he is covered by Part III, Title 19, Delaware Code, and has been so registered by the Delaware Division of Unemployment Insurance. Such notices shall be in the form prescribed by the Delaware Division of Unemployment Insurance (Form UC-6), of such design and in such numbers as prescribed by the Delaware Division of Unemployment Insurance, and shall be posted in a conspicuous place in the plant, shop, office, room, or place where employees are employed and where they may readily be seen by them. No such notice shall be posted by any person, employing unit, or employer who has not complied with the provisions of Part III, Title 19, Delaware Code, and to whom an unemployment insurance account number has not been assigned by the Delaware Division of Unemployment Insurance, or who, in accordance with the provisions of the Delaware Code, has ceased to be an employer as defined in the Delaware Code.

6.0 Claims and Registrations

REFERENCE: Section 3315, Title 19, **Delaware Code** Eligibility for Benefits

6.1 Except as otherwise provided in this regulation, any individual claiming benefits shall:

6.1.1 File a claim for benefits, either in-person at a Delaware Division of Unemployment Insurance Local Office or via the Internet (such claim shall be effective as of the Sunday immediately preceding the date of filing) and

6.1.2 Register for work with the Delaware Division of Employment & Training.

6.2 Except as otherwise provided in this regulation, in order to establish eligibility for benefits, the claimant shall:

6.2.1 Report to a Delaware Division of Unemployment Insurance or Delaware Division of Employment & Training Local Office whenever instructed to do so by either Division; and

6.2.2 File a continued claim for benefits each week; and

6.2.3 the fact that they are able to work, available for work and actively seeking work each week.

6.3 A claimant will be ineligible for the receipt of unemployment insurance benefits for any week in which they are not able to work, available for work and actively seeking work, except that they will not be ineligible for such week if the Division of Unemployment Insurance finds that:

6.3.1 the claimant is attached to a job for which the date of return to employment is known and reasonably certain and is sufficiently near in time to make it futile to actively seek work; or

6.3.2 to require the claimant to be able to work, available for work and actively seeking work would be otherwise oppressive or inconsistent with the purposes of Chapter 33 of Title 19, Delaware Code.

7.0 Address Requirement

A claimant must provide a current address to the Delaware Division of Unemployment Insurance when a new, additional, or reopened claim is filed and provide any change in address thereafter to the Division during the entire length of time they are claiming entitlement to and receiving unemployment insurance benefits.

8.0 Payments to Interstate Claimants

8.1 The following section shall govern the Delaware Division of Unemployment Insurance in its administrative cooperation with other States adopting a similar regulation for the payment of benefits to interstate claimants.

8.2 Definitions.

As used in this section, unless the context clearly requires otherwise:

"Agent State" means any State in which an individual files a claim for benefits from another State.

"Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment insurance of any State.

"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.

"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 unless the Delaware Division of Unemployment Insurance finds that this exclusion would create undue hardship on such claimants in specified areas.

"Liable State" means any State against which an individual files a claim for benefits, through another State.

"State" Includes Alaska, Hawaii, the District of Columbia, the Virgin Islands and Puerto Rico.

"Week of unemployment" includes any week of unemployment as defined in the law of the liable State from which benefits with respect to such week are claimed.

8.3 Registration for Work

8.3.1 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, and procedures of the agent State. Such registration shall be accepted as meeting the registration requirements of the liable State.

8.3.2 Each agent State shall duly report, to the liable State in question, whether each Interstate claimant meets the registration requirements of the agent State.

8.4 Benefit Rights of Interstate Claimants.

8.4.1 If a claimant files a claim against any State, and it is determined by such State that the claimant has available benefit credits in such State, then claims shall be filed only against such State as long as benefit credits are available in that State. Thereafter, the claimant may file claims against any other State in which there are available benefit credits. For the purposes of this section, 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.

8.5 Claim for Benefits.

8.5.1 Claims for benefits or waiting-period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent State. Any adjustments required to fit the type of week used by the liable State shall be made by the liable State on the basis of consecutive claims filed.

8.5.2 Claims shall be filed in accordance with agent State regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail.

8.5.2.1 With respect to claims for weeks of unemployment in which an individual was not working for his regular employer, the liable State shall, under circumstances which it considers good cause, accept a continued claim filed up to 1 week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

8.5.2.2 With respect to weeks of unemployment during which an individual is attached to his regular employer, the liable State shall accept any claim which is filed within the time limit applicable to such claim under the law of the agent State.

8.6 Determinations of Claims.

8.6.1 The agent State shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable State in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent State.

8.6.2 The agent State's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent State shall not refuse to take an interstate claim.

8.7 Appellate Procedure.

8.7.1 The agent State shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

8.7.2 With respect to the time limits imposed by the law of a liable State upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable State on the date when it is received by any qualified officer of the agent State.

8.8 Extension of interstate benefit payments to include claims taken in and for Canada. This section shall apply in all its provisions to claims taken in and for Canada.

9.0 Registration and Claims of Certain Workers Who Become Totally Unemployed Because of a Mass Layoff Due to a Temporary Cessation of Work

The Delaware Division of Unemployment Insurance is authorized to defer registrations for work and to modify the requirements for claiming weekly unemployment insurance benefits for those individuals unemployed because of a temporary mass layoff as provided in this section.

9.1 A temporary mass layoff is defined as a temporary layoff by an employer because of lack of work of 100 or more employees at or about the same time for a period not exceeding 45 consecutive calendar days following the last day of work or 63 consecutive calendar days following the last day of work for 100 or more employees temporarily laid off for a model change or retooling.

9.2 As soon as possible but not later than seven (7) days prior to the last day of work of 100 or more employees, the employer shall notify the Delaware Division of Unemployment Insurance of the last day of work, the reason for the layoff, the schedule date of their return to work and when practical, the names and Social Security numbers of the employees included in the layoff. If the Delaware Division of Unemployment Insurance determines that the layoff meets the requirements of a temporary mass layoff as defined in this section, the employees shall be eligible to file claims for benefits as hereinafter provided.

9.3 The employer shall post instructions furnished by the Delaware Division of Unemployment Insurance in conspicuous areas readily accessible to the employees concerning the proper procedure for filing claims during the layoff period. The employer shall prepare and give each employee unemployed because of the temporary mass layoff on his last day of work, a UC-101-T, "Notice of Temporary Mass Layoff" form to be furnished by the Delaware Division of Unemployment Insurance. However, this form shall not be issued for any employee off from work because of illness, disability, or scheduled vacation with pay on the day the temporary

layoff begins. These employees shall be issued the required forms by the employer upon the termination of the period of illness, disability, or scheduled paid vacation.

- 9.4 A claimant's week of unemployment for the purpose of this section shall be the seven-day consecutive calendar day period used by the employer as his payroll week.
- 9.5 Registration for work by an individual unemployed because of a temporary mass layoff shall be deferred.
- 9.6 An original or additional claim will be effective on the first day of the employer's payroll week in which the last day of work occurred if the employer issued a UC-101-T, "Notice of Temporary Mass Layoff" form on the last day of work and the form is filed by the claimant within seven days thereafter. If the employer does not issue the form on the last day of work but the claimant files within seven (7) days thereafter, his original or additional claim will be effective on the first day of employer's payroll week in which his last day of work occurred. Where a claimant is issued the form on his last day of work but fails to file within seven (7) days thereafter, his original or additional claim will be effective on the first day of the employer's payroll week in which he actually files the form. As used herein the word "file" or "filed" shall mean the date on which a UC-101-T, "Notice of Temporary Mass Layoff" form is delivered to the appropriate unemployment insurance local office.
- 9.7 Weekly benefits shall be claimed using any one of the options provided by the Delaware Division of Unemployment Insurance.
- 9.8 An individual must report to their unemployment insurance local office when directed to do so by the Delaware Division of Unemployment Insurance.

10.0 Week Defined

- 10.1 For the purposes of the claiming and payment of unemployment insurance benefits, "week" means:
 - 10.1.1 Calendar week (beginning 12:01 a.m. Sunday morning); or
 - 10.1.2 Any seven (7) 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 (2) calendar weeks in each of which he earns wages equal to or in excess of his weekly benefit amount plus his partial earning allowance. Claims filed under this provision may be filed within twenty-eight (28) days following the close of the second of the calendar weeks in question; or
 - 10.1.3 The Delaware Division of Unemployment Insurance may authorize the employer's payroll week for the payment of partial claims and temporary mass layoff claims.
- 10.2 Calendar week shall be used for the filing of claims and the payment of benefits under 1(a) above for all claims filed on or after July 1, 1972, except for those claims in current compensable status which will continue on a flexible week basis for the duration of their current period of unemployment.
- 10.3 Except in cases where claims are filed under 1(b) or 1(c) above, the claim series will begin with the first day of the calendar week in which an unemployed individual reports and registers and files his initial or reopened claim at a local employment office of the Delaware Division of Unemployment Insurance.
- 10.4 Whenever the benefit week overlaps two benefit years, such week shall, for the purpose of benefit payment with respect to such week, be deemed to be paid in the preceding benefit year; provided, that when the last day of the preceding benefit year falls within a benefit week with respect to which an individual has met the eligibility requirements of the Act, the ending date of the benefit year may be extended for a period not to exceed six (6) days; provided, however, that such inclusion of the week within the preceding benefit year shall not change the claim week pattern as established during the current period of unemployment in the first of such two benefit years.
- 10.5 The effective date of claim for succeeding transitional claims shall be the Sunday date immediately following the benefit year ending date on the preceding benefit year; provided, the benefit week was extended under 4 above to include the Saturday date immediately prior to such Sunday date. However, if the benefit year was not extended, or if extended did not include the Saturday date prior to such Sunday date, the effective date of the succeeding benefit year will be the first day immediately following the date of the last benefit week in the prior benefit year.
- 10.6 If the claimant is not eligible monetarily for a transitional claim, and if the last day of his benefit year falls within a benefit week with respect to which he has met the eligibility requirements of the Act, the ending date of his benefit year may be extended for a period not to exceed six (6) days for the purpose of paying the last benefit week.

11.0 Proration of Deductible Lump Sum Payments for Determination of Weekly Benefit Amount Payable

When determining the benefit amount payable to an individual in any week, lump sum payments, deducted from an individual's weekly benefit amount by the Division of Unemployment Insurance pursuant to sections 3302(17), 3313(b), and 3313(f), Title 19, Delaware Code, shall be prorated and deducted from the individual's

weekly benefit amount until said lump sum payment is exhausted. For the purpose of this section, "prorated" shall mean the proportional distribution, as determined by the Division of Unemployment Insurance, of a lump sum payment on a weekly basis.

12.0 Disclosure of Information

Pursuant to Section 3125 (4), Title 19, **Delaware Code**, the disclosure of information contained in its records by the Delaware Division of Unemployment Insurance will be authorized, upon request, in the following cases for the following purposes:

- 12.1 To any properly identified claimant for benefits or payments under an unemployment compensation or readjustment allowance law of the Federal Government or of a State or to his duly authorized representative, information which directly concerns the claimant and is reasonably necessary for the proper presentation of his claim.
- 12.2 To any officer or employee of any agency of the Federal Government or of a State government, lawfully charged with the administration of an unemployment compensation or readjustment allowance law, but only for purposes reasonably necessary for the proper administration of such law.
- 12.3 To any officer or employee of any agency of the Federal Government or of a State government, lawfully charged with the administration of a law providing for old-age assistance or other public assistance, work relief, pension, retirement or other benefit payments, but only for purposes reasonably necessary for the proper administration of such law.
- 12.4 To applicants, employers and the public, general information concerning employment opportunities, employment levels and trends, and labor supply and demand, provided such release or publication does not include information which discloses the identity of individual applicants, employers or employing establishments, except where such party agrees to said release.
- 12.5 To individuals, employers, Federal government agencies and State government agencies, information for purposes other than as specified in this section if such disclosure will not impede the operation of, and is not inconsistent with the purpose of the Delaware Department of Labor and is not prohibited by applicable federal law regarding the confidentiality of unemployment insurance program data/information, and is authorized in writing in individual cases by the Delaware Secretary of Labor.
- 12.6 Disclosure of information shall be made pursuant to 19 **Delaware Code** §3125(4). Officials and employees of those governmental agencies to whom such disclosure is to be made shall include, but is not limited to the following:
 - 12.6.1 Delaware Department of Labor
 - 12.6.2 Delaware Department of Health and Social Services
 - 12.6.3 Delaware Department of Finance
 - 12.6.4 Delaware Department of Justice
 - 12.6.5 Delaware Economic Development Office
 - 12.6.7 Secretary of Labor of the United States
 - 12.6.8 Internal Revenue Service
 - 12.6.9 United States Postal Service
 - 12.6.10 United States Veterans' Administration
 - 12.6.11 United States Department of Justice
- 12.7 With respect to disclosure of information, all individuals or organizations to which information is disclosed under this section which discloses the identity of an individual or an employing unit shall be bound by the requirements of 19 **Delaware Code** §3125 regarding confidentiality of the information disclosed and shall be subject to the sanctions set out in that section for improper disclosure. The use of such information shall be limited to the purposes for which it was disclosed to the recipient as permitted by this regulation and shall be limited to the purposes reasonably necessary for the law administered by such agency.
- 12.8 With respect to disclosure of information, unless the disclosure relates to the administration of unemployment law or a function of the Division of Unemployment Insurance imposed by state or federal law, no disclosure of information shall be made under these regulations unless arrangements have been made to reimburse the Division of Unemployment Insurance for the actual costs of providing the information to the recipient.

13.0 Joint Accounts of Employers

Section 3352, Title 19, **Delaware Code** regarding Joint Accounts of Employers, provides that the Department may prescribe regulations for the establishment, maintenance and dissolution of joint accounts by two or more employers subject to assessments under this Chapter.

Accordingly, the Department adopts the following procedure:

13.1 Establishment

13.1.1 A joint account will be established upon application by two or more employers, if it is proven to the satisfaction of the Division of Unemployment Insurance that the employing units have substantially the same ownership involving common or majority control of equity, however evidenced. An application for a joint account must be made on Form UC-1 or by separate letter indicating the entities, officers, stockholders, and percentages of ownership interest. The establishment of a joint account will be effective for the calendar quarter in which such application is received. The Division of Unemployment Insurance may request all necessary information to make such determination; or

13.1.2 A joint account will be established when the Division of Unemployment Insurance determines that a reorganization of previously subject employing units having substantially the same ownership has occurred, and such reorganization may adversely affect the solvency of the Unemployment Compensation Fund. Such joint account will be effective within the calendar quarter that reorganization occurs.

13.2 Maintenance

13.2.1 Upon establishment of a joint account involving two (2) or more employers, regardless of whether such employing units were or were not previously subject to this Chapter, their individual accounts will be merged and maintained as if they constituted a single employer's account for experience rating purposes. However, each employing unit will continue to file reports and pay contributions under its individual account number.

13.3 Dissolution

13.3.1 Once established, a joint account cannot be dissolved so long as the individual employing units remain under substantially the same ownership.

13.3.2 Whenever any employing unit included in a joint account is purchased or otherwise acquired by outside interests, such employing unit will be given a new employer account number and assigned a contribution rate in accordance with Section 3348 of this Chapter.

14.0 New Employer Rate of Assessment

Section 3348, Title 19, **Delaware Code**, regarding Average employer assessment rate; average industry assessment rate; average construction industry assessment rate; new employer rate; and standard rate of assessment, provides:

14.1 For any employer, excluding those employers in NAICS categories 236, 237, and 238 who become subject to this Chapter, the new employer rate shall be the average employer assessment rate.

14.2 For any employer in NAICS categories 236, 237, and 238 who becomes subject to this Chapter, the new employer rate shall be the average industry assessment rate in that employer's particular NAICS category (carried to 4 places) or the average construction industry assessment rate, whichever is the greater. With regard to Section 3348, an employing unit that alters its legal status in any way, such as changing from a sole proprietorship or a partnership to a corporation, or from one corporate entity to another as a result of re-incorporation, merger, or a transfer of employees between such entities or whenever an employing unit that otherwise changes its trade name or business identity while remaining under substantially the same ownership will not be considered to have become first subject to Chapter 31, Delaware Unemployment Compensation Code upon such reorganization and shall not be entitled to a new employer rate of assessment. Such an employer will be considered to be a reorganized employer, not a new employer.

14.3 A reorganized employer shall retain the contribution rate and be liable for all contributions, interest and penalties owed by the employing unit before the reorganization. However, if such reorganization shall involve the contribution rates of two (2) or more employing units, having substantially the same ownership, regardless of whether such employing units were or were not previously subject to this Chapter, the contribution rate for the reorganized employer shall be determined in accordance with Section 3352, Title 19, **Delaware Code** and Section 13.

14.4 The Secretary of Delaware's Department of Labor may waive the provisions of this Section as they apply to a reorganized employer if said employer, prior to reorganization, is determined by the Division of Unemployment Insurance not to be delinquent with the regard to the payment of unemployment assessments and the application of such a regulation would be inconsistent with the economic development policies of the State of Delaware.

15.0 Involuntary Leaving Work Due To Illness

With regard to Section 3314(1), Title 19, Delaware Code, an individual who elects a layoff in lieu of sickness and accident benefits provided under an employer benefit program or who elects a layoff in lieu of exercising

the right to bump an employee with less seniority who is performing work that said individual can perform within his medical restrictions will not be considered to be an individual leaving work involuntarily because of illness, but shall be considered to have left his work voluntarily without good cause attributable to such work and shall be subject to the disqualification provision of this regulation.

16.0 Eligibility for Benefits

- 16.1 Section 3315(1) of Title 19, Delaware Code provides that "the Department may, by regulation, waive or alter either or both of the requirements of this section.
- 16.2 Accordingly, "has registered for work" as it appears in §3315(1) of Title 19, Delaware Code shall mean any registration process, including any reemployment services or reemployment assessments as required by the Delaware Division of Employment and Training or the Delaware Division of Unemployment Insurance.

17.0 Disqualification for Benefits

- 17.1 Section 3314(3) of Title 19, Delaware Code provides in part that an individual shall be disqualified for benefits "if he has refused to accept an offer of work which he is reasonably fitted....."
 - 17.1.1 The determination of whether an individual is reasonably fitted for an offer of work that has been refused shall be based on the individual's previous work history, education, training, the O*NET (Occupational Information Network) Code assigned by the Delaware Division of Employment and Training, and the results of any skills assessment of the individual made by the Delaware Division of Employment and Training.

18.0 Interest on Past Due Assessments and Reimbursement Payments in Lieu of Assessments

Pursuant to Section 3357, Title 19, Delaware Code regarding "Interest on past due assessments and reimbursement payments in lieu of assessments": Assessments and reimbursement payments in lieu of assessments which remain unpaid on the date they are due and payable, as prescribed by the Delaware Division of Unemployment Insurance, shall bear interest at the rate of 1.5% per month or fraction thereof from and after such date until payment plus accrued interest is received by the Delaware Division of Unemployment Insurance.

19.0 Employment Training Tax

- 19.1 Section 3401(a), Title 19, Delaware Code provides: "In addition to all other payments to the State due under this Title, each employer liable for assessments under Chapter 33 of this Title shall also be liable for a special assessment which shall be levied at the rate of .15% on all taxable wages, as defined in Section 3302(17) of this Title, payable by each such employer".
- 19.2 For the purpose of this regulation, the special assessment, also referred to as the "Training Tax", shall be billed on a semi-annual basis to each employer by the Delaware Division of Unemployment Insurance, based on reported taxable wages or on assessed taxable wages as estimated and determined by the Delaware Division of Unemployment Insurance under the provisions of Section 3359 of this Title. The semi-annual bill will cover the two calendar quarters, April 1- September 30 or October 1 - March 31 respectively, whichever are the two most recently completed calendar quarters prior to each billing.
- 19.3 Each employer shall be billed by the Delaware Division of Unemployment Insurance for the special assessment amount due not later than July 31 and January 31 of each year and such amount shall be considered delinquent 30 days after the date such bill was mailed. Interest shall accrue and be collectible by the Delaware Division of Unemployment Insurance on all unpaid assessments as prescribed in Section 3357 of this Title and Section 18.

20.0 Registration For Work

- 20.1 Section 3315(1) Title 19, Delaware Code regarding "eligibility for benefits" provides that the Department may, by regulation, waive or alter the registration for work requirement.
- 20.2 Accordingly, the Delaware Division of Unemployment Insurance prescribes that the following unemployed individuals will not be required to register for work with the Delaware Division of Employment and Training to be eligible for the receipt of benefits:
 - 20.2.1 Any individual on a temporary layoff who has a definite "return-to-work" date which has been verified by the Delaware Division of Unemployment Insurance with the individual's separating employer.
 - 20.2.2 Any individual who is an active member of a trade union and who is actively seeking work through a union hiring hall as verified by the Delaware Division of Unemployment Insurance.

20.2.3 Any individual who is attached to a specific job as evidenced by a pattern of seasonal/periodic layoff and subsequent rehiring by the same employer over the most recent three (3) year period.

21.0 Seasonal Employment

21.1 Section 3316(b), Title 19, **Delaware Code** provides that: "No occupation or industry shall be deemed to provide seasonal employment that is not part of the first processing of agricultural products and/or seafood products."

21.2 or the purposes of this regulation, the first processing of agricultural products and/or seafood products shall refer to those occupations and industries in the following NAICS (North American Industry Classification System) categories (carried to six digits):

NAICS Code Major Occupation/Industry Group

111140 Agricultural Production - Crops

111160 Agricultural Production - Crops

111150 Agricultural Production - Crops

11110 Agricultural Production - Crops

111120 Agricultural Production - Crops

111130 Agricultural Production - Crops

111150 Agricultural Production - Crops

111191 Agricultural Production - Crops

111199 Agricultural Production - Crops

111920 Agricultural Production - Crops

111910 Agricultural Production - Crops

111930 Agricultural Production - Crops

111991 Agricultural Production - Crops

111211 Agricultural Production - Crops

111199 Agricultural Production - Crops

111219 Agricultural Production - Crops

111940 Agricultural Production - Crops

111992 Agricultural Production - Crops

111998 Agricultural Production - Crops

111219 Agricultural Production - Crops

111333 Agricultural Production - Crops

111334 Agricultural Production - Crops

111332 Agricultural Production - Crops

111335 Agricultural Production - Crops

111310 Agricultural Production - Crops

111320 Agricultural Production - Crops

111331 Agricultural Production - Crops

111339 Agricultural Production - Crops

111336 Agricultural Production – Crops

111411 Agricultural Production - Crops

111419 Agricultural Production - Crops

111998 Agricultural Production - Crops

115113 Agricultural Services

115114 Agricultural Services

115119 Agricultural Services

115111 Agricultural Services

11515 Agricultural Services

115116 Agricultural Services

311422 Food and Kindred Products

311999 Food and Kindred Products

311421 Food and Kindred Products

311211 Food and Kindred Products
311423 Food and Kindred Products
311999 Food and Kindred Products
311421 Food and Kindred Products
311941 Food and Kindred Products
311411 Food and Kindred Products
311711 Food and Kindred Products
311712 Food and Kindred Products

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