# New Hampshire Unemployment Law & Rule Book

State of New Hampshire
Department of Employment Security

Employment
SECURITY

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| Keene: | 109 Key Rd | Salem: | 29 So. Broadway |
| Laconia: | 426 Union Ave. | Somersworth: | 243 Route 108 |
| Lebanon: | 85 Mechanic St. | Liable State: | 300 Hanover St., Manchester |

NH Employment Security

Visit our Website at www.nhes.state.nh.us for employment information (job listings and job seekers), current department information, unemployment compensation tax and claim information and economic labor market information.

State of New Hampshire

Department of Employment Security

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**The State of New Hampshire**

**DEPARTMENT OF EMPLOYMENT SECURITY**

**REVISED STATUTES ANNOTATED, CHAPTER 282-A, AS AMENDED**

## PREAMBLE

**I.** **WHEREAS,** economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state, and involuntary unemployment is therefore a subject of general interest and concern requiring appropriate action by the legislature to prevent its spread and to lighten the burden which now so often falls with crushing force upon the unemployed worker and his family; and (1977, 441:14, effective 9/3/77)

**II.** **WHEREAS,** the attempt to provide for such distress solely through poor relief not only is inadequate for the need but productive of serious social consequences upon many self-respecting persons, and if undertaken on an emergency basis, taxes to the utmost the administrative facilities and financial stability of the state; (1977, 441:14, effective 9/3/77)

**NOW THEREFORE,** the general court declares that the public good and the general welfare of the workers of this state require the enactment of unemployment compensation laws providing for the setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own, and for providing a systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment. (1977, 441:14, effective 9/3/77)

# Definitions

### 282-A:1 Applicability of Definitions

Any word or phrase defined in this subdivision shall have the same meaning throughout RSA 282-A unless the context clearly requires otherwise.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:2 Base Periods

I. "Base period" means the first 4 of the last 5 completed calendar quarters immediately preceding the individual's benefit year except as provided in RSA 282-A:2, II.

II. "Alternate base period" means for benefit years effective on or after April 1, 2001 for any individual who does not have sufficient wages in the base period as defined in paragraph I to qualify for benefits pursuant to RSA 282-A:25, the individual's base period shall be the last 4 completed calendar quarters immediately preceding the first day of the individual's benefit year if such period qualifies the individual for benefits under RSA 282-A:25. The commissioner shall establish rules for obtaining wage information if wage information for the most recent quarter of the alternate base period is not available to the department from regular quarterly reports of wage information that is systematically accessible.

(a) Wages that fall within the base period of claims established under this paragraph are not available for reuse in qualifying for any subsequent benefit years.

(b) In the case of a combined-wage claim pursuant to the arrangement approved by the United States Secretary of Labor, the base period is that base period applicable under the unemployment compensation law of the paying state.

**Last Source:** 1998, 87:1, eff. April 1, 2001.

### 282-A:3 Benefits

"Benefits" means the money payable to an individual as compensation for his wage losses due to unemployment as provided in this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:3-a Supplemental Unemployment Plan**

For the purposes of this chapter "supplemental unemployment plan" shall mean a plan, system, trust or contract by the terms of which an individual will receive from the employer, trustees of the plan or trust, union or other agency, payments supplemental to unemployment compensation or based on or to be paid in conjunction with unemployment compensation, which are available to the employees generally but not available in advance, in a lump sum or for loan, to be paid only during periods of unemployment except payments for vacations, bonuses, profit sharing plans and severance pay or separation pay.

**Last Source:** 1983, 457:5, eff. Aug. 25, 1983.

**282-A:4 Benefit Year**

"Benefit year" with respect to any individual means the one-year period beginning with the first day of the week in which an individual files an initial claim for benefits and meets the earnings requirements of RSA 282-A:25; except that the benefit year shall be 53 weeks if the filing of a new initial claim would result in the use of a quarter of wages in the new base period that had previously been included in a prior base period.

**Last Source:** 1998, 87:2, eff. April 1, 2001.

**282-A:5 Calendar Quarter**

"Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31, or the equivalent thereof as the commissioner of the department of employment security may prescribe in a rule.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:6 Contributions**

"Contributions" means the money payments due from an employer to the state required by this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:7 Employing Unit**

I. "Employing unit" means any individual or type of organization, including any partnership, association, joint venture, trust, estate, joint-stock company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, or this state or any political subdivision or any instrumentality thereof, which has, or subsequent to January 1, 1935, had, in its employ one or more individuals performing services for it within this state.

II. All individuals performing services within this state for any employing unit which maintains 2 or more separate establishments within this state shall be deemed to be employed by a single employing unit for all purposes of this chapter. Whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession or business, individuals in the employ of such contractors or subcontractors shall be considered to be in the employ of the employing unit unless it shall be proven to the satisfaction of the commissioner of the department of employment security that such contracting is not for the purpose of avoiding the application of this chapter. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the work.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:8 Employer** "Employer" means

I. Any employing unit which:

(a) For some portion of a day in each of 20 different calendar weeks in either the current or preceding calendar year, whether or not such weeks are or were consecutive, has or had in employment within a calendar year one or more individuals, irrespective of whether the same individual was in employment in each such day; or
(b) In any calendar quarter in either the current or preceding calendar year caused gross wages for services in employment to be paid or payable in the amount of $1,500 or more;

II. Any other employing unit subject for either the current or preceding calendar year to the tax levied by the Federal Unemployment Tax Act as amended;

III. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets of another employing unit which at the time of such acquisition was an employer subject to this chapter;

IV. Any employing unit (whether or not an employing unit at the time of acquisition) which acquired the organization, trade or business, or substantially all the assets of another employing unit (not an employer subject to this chapter) and which, if treated as a single employing unit with such acquired employing unit subsequent to such acquisition, would be an employer under paragraph I;

V. Any employing unit which, having become an employer under paragraph I, II, III, or IV, has not, under RSA 282-A:99-102, ceased to be an employer subject to this chapter;

VI. For the effective period of its election pursuant to RSA 282-A:102, any other employing unit which has elected to become fully subject to this chapter; or

VII. Any employing unit which fails for whatever reason to keep records which would support a claim with respect to any individual under RSA 282-A:9, III, or to keep the records of employment required by this chapter and by the rules of the commissioner shall be deemed to be an employer liable for the payment of contributions pursuant to the provisions of this chapter regardless of the number of individuals employed by such employing unit.

VIII. An Indian tribe as defined by 26 U.S.C. section 3306(u) of the Federal Unemployment Tax Act for which services in employment are performed within this state unless such services are otherwise excluded from employment under 26 U.S.C. section 3306 (c) of the Federal Unemployment Tax Act or under RSA 282-A:9. Indian tribes shall also include wholly owned subdivisions, subsidiaries, or business enterprises of Indian tribes.

**Last Source:** 2003, 116:1, eff. Aug. 8, 2003.

**282-A:9 Employment**

I. "Employment" means service, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, expressed or implied, together with service performed within the state which constitutes "employment" under the provisions of the Federal Unemployment Tax Act. Notwithstanding any other provision of this section, the term "employment" shall also include all service performed after January 1, 1947, by an officer or member of the crew of an American vessel on or in connection with such vessel, provided that there is located within this state the operating office from which the operations of such vessel operating on navigable waters within or within and without the United States is ordinarily and regularly supervised, managed, directed and controlled. The term "employment' shall include an individual's entire service, performed within or both within and without this state, if:

(a) The service is localized within the state (i.e., performed either entirely within the state or performed both within and without the state if the service performed without is incidental to that performed within); or

(b) If the service cannot be considered as localized in any state but some of the service is performed in the state and (i) the individual's base of operations, or if there is no base of operations, then the place from which such service is directed or controlled, is in the state; or (ii) the individual's base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

II. In no event shall services performed without this state be deemed to be employment subject to this chapter if contributions are required to be paid with respect thereto under an unemployment compensation law of any other state or of the federal government. The commissioner of the department of employment security may adopt rules by which an employing unit may elect that the services performed for it entirely without this state by a resident of this state shall be deemed to constitute employment subject to this chapter.

III. Services performed by an individual for wages shall be deemed to be employment subject to this chapter unless and until it is shown to the satisfaction of the commissioner of the department of employment security that:

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

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

(c) Such individual is customarily engaged in an independently established trade, occupation, profession, or business.

IV. The term "employment' shall not include:

(a) Agricultural labor, as defined in RSA 282-A:19, unless such services are covered under section 3306(c)(1) of the Federal Unemployment Tax Act;

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(c) Casual labor not in the course of the employer's trade or business;

(d) [Repealed.]

(e) Service as an officer or member of a crew of an American vessel performed on or in connection with such vessel if there is not located in this state the operating office from which the operations of the vessel operating on navigable waters within or

without the United States are ordinarily and regularly supervised, managed, directed and controlled;

(f) Service performed in the employ of the United States government or of an instrumentality of the United States which is (A) wholly owned by the United States, or (B) exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1954 by virtue of any other provision of law; provided that, if this state should not be certified by the secretary of the United States department of labor under section 3304 of the Internal Revenue Code of 1954 for any year, then the contributions required of any instrumentalities of the United States government under this chapter with respect to such year shall be deemed to have been erroneously collected within the meaning of RSA 282-A:149 and shall be refunded by the commissioner of employment security from the fund in accordance with the provisions of said RSA 282-A:149;

(g) (1) Service performed in the employ of a school, college, hospital or university, if such service is performed by a student, intern or resident who is enrolled and is regularly attending classes or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student, intern or resident, and such employment will not be covered by any program of unemployment compensation;

(2) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(h) Service performed in the employ of a hospital if such service is performed by a patient of such hospital;

(i) Service performed by an inmate of a custodial or penal institution for the state, its political subdivisions, or an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code;

(j) Service performed after June 30, 1939, for an employer as defined in the Railroad Unemployment Insurance Act, and service performed after June 30, 1939, as an employee representative;

(k) Service performed by an individual for an employing unit as an insurance agent or as an insurance solicitor if all such service performed by such individual for such employing

unit is performed for remuneration solely by way of commission;

(*l*) Service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution or service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by the individual at a fixed price, his or her compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged him or her, whether or not he or she is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(m) Service performed in any calendar quarter by an individual in the employ of a labor organization exempt from income tax under section 501 of the Internal Revenue Code of 1954 if the remuneration for such service during such calendar quarter does not exceed $50;

(n) Service performed on behalf of or for a corporation or association by an officer or director thereof, for which service no wages, as defined in RSA 282-A:15 or in the rules of the commissioner, are paid or payable to such officer or director or any person, organization or association;

(o) Service performed by an individual in the exercise of duties:

(1) As an elected official;

(2) As a member of a legislative body or as a member of the judiciary of the state or political subdivision;

(3) As a member of the state national guard or the air national guard;

(4) As an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(5) In a position which is designated by state law as a major non-tenured policymaking or advisory position or as a policymaking or advisory position whose duties ordinarily do not require more than 8 hours per week to perform;

(6) As described in subparagraphs (p)(3) and (4), for the state or any of its political subdivisions;

(7) As an election official or election worker if the amount of remuneration received by the individual during the calendar year for all such services is less

than $1,000.

(p) The following services performed in the employ of an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code:

(1) Service in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches or an elementary or secondary school operated primarily for religious purposes; or

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

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

(4) Service by an individual receiving work relief or work training as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof;

(q) Service performed by an individual for an employing unit as a licensed real estate broker or a licensed real estate salesman if performance of such service requires the holding of a license and all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(r) Service performed by a full-time student in the employ of an organized camp:

(1) If such camp:

(A) Did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year; or

(B) Had average gross receipts for any 6 months in the preceding calendar year which were not more than 33-1/2 percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(2) If such full-time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year;

(s) Services by a direct seller if:

(1) Such person:

(A) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the commissioner prescribes by rule, for resale by the buyer or any other person in the home or otherwise than in a permanent retail establishment; or

(B) Is engaged in the trade or business of selling, or soliciting the sale of, consumer products in the home or otherwise than in a permanent retail establishment; or

(C) Is engaged in the trade or business of the delivering or distribution of newspapers or shopping news, including any services directly related to such trade or business;

(2) Substantially all the remuneration, whether or not paid in cash, for the performance of the services described in subparagraph (s)(1) is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(3) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for federal or unemployment compensation tax purposes;

(t) Service performed by an individual for an employing unit as a real estate appraiser if all such service performed by such individual for such employing unit is performed for remuneration solely by way of a fee; provided, however, that such exemption shall not apply to such service performed for the state or any of its political subdivisions or for an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

(u) Service performed by an individual in the employ of such individual's son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of the child's father or mother;

(v) Service performed by an individual in, or as an officer or member of the crew of a vessel while it is engaged in, the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal

and vegetable life, including service performed by any such individual as an ordinary incident to any such activity, except:

(1) Service performed in connection with the catching or taking of salmon or halibut, for commercial purposes; and

(2) Service performed on or in connection with a vessel of more than 10 net tons, as determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States.

(w) Service performed by an individual who, on a temporary, part-time, contract basis, demonstrates products, offers samples of products or promotional materials to customers, conducts store audits or performs mystery shopping as part of an advertising or sales promotion for the products when such activities are conducted in the field or over the telephone on premises not used or controlled by the person for whom such contract services are being provided, however such exemptions shall not apply to such service performed for the state or any of its political subdivisions or for an organization described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

V. INCLUDED AND EXCLUDED SERVICE. If the services performed during 1/2 or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but, if the services performed during more than 1/2 of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this paragraph, the term "pay period' means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the employee by the person employing him. This paragraph shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such services is excepted by subparagraph IV(j).

VI. HOMEWORKERS. Service performed wholly or in part at an individual's own home or any other place, whether done for himself or others, for which remuneration or payment is made on the basis of pieces of work done, or quantity or lot of work done, or in proportion to the piece or part thereof completed, or by the hour, shall be employment; and the moneys so paid shall be wages within the meaning of this chapter. The employing unit which pays such wages shall be the employing unit of such individual for the purpose of this chapter.

VII. For the purposes of paragraph I, the exclusions under subparagraphs IV (o)(2), IV (o)(5), and IV (p)(4) shall apply to Indian tribes.

**Last Source:** 2003, 116:2-3, eff. Aug. 8, 2003.

**282-A:10 Employment Office**

"Employment office" means a free public employment office or branch thereof operated by the New Hampshire department of employment security.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:11 Fund**

"Fund" means the unemployment compensation fund established by this chapter, to which all contributions required and from which all benefits provided under this chapter shall be paid.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:12 Most Recent Employer**

"Most recent employer" means the last employer with whom an individual's work record exceeded 4 consecutive weeks of employment or exceeded 9 weeks of employment in the immediately preceding 13 week period while such individual received no benefits under RSA 282-A.

***(effective January 1, 2007, see 282-A:12 below.)***

**Last Source:** 1999, 206:1, eff. July 6, 1999.

**282-A:12 Most Recent Employer**

"Most recent employer" means the last employer prior to the effective date of the initial claim with whom an individual's work record exceeded 4 consecutive weeks of employment while such individual received no benefits under RSA 282-A.

***(prior to January 1, 2007, see 282-:12 above.)***

**Last Source**: 2006, 130:1 eff. Jan. 1, 2007

**282-A:13 State**

"State" means any state of the United States, the District of Columbia, the territory Puerto Rico, the territory the Virgin Islands, and the country Canada.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:14 Total and Partial Unemployment**

I. (a) An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services. An individual who is not entitled to vacation pay from his employer shall be deemed to be in "total unemployment" during the entire period of any general closing of his employer's place of business for vacation purposes, notwithstanding his prior assent, direct or indirect, to the establishment of such vacation period by his employer.

(b) An individual who meets the requirements of RSA 282-A:31, V and who is seeking only part-time work shall be deemed to be partially unemployed only in any week during which the individual was employed fewer than 20 hours.

II. An individual shall be deemed to be "partially unemployed" in any week of less than full-time work if the wages computed to the nearest dollar payable to him with respect to such week fail to equal his weekly benefit amount.

III. (a) For the purposes of paragraphs I and II, the term "wages" shall include compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States, payments in lieu of notice, a sickness or separation allowance, payment of accrued leave or sums of whatever type or nature, except those specifically excluded elsewhere in this subparagraph, payments upon discharge from military service from either the state or federal government, or both, and earnings from self-employment. "Wages" shall not mean and shall not include payments from a supplemental unemployment plan as defined in RSA 282-A:3-a or any portion of a lump sum payment for workers' compensation made pursuant to RSA 281-A:37. Wages or earnings or both shall be deemed to have been received for such week or weeks as the commissioner may find can be reasonably said to apply. An individual's maximum weekly benefit amount shall be reduced by all wages and earnings in excess of 30 percent, rounded to the nearest dollar, of the individual's weekly benefit amount. Wages shall not include any payment made to an individual by reason of the individual's permanent separation from employment, for reasons other than retirement, under a prior existing plan maintained by employer contributions vested in the individual before the date of separation.

(b) The employing unit shall be liable to make restitution to the unemployment compensation fund in full for any and all unemployment benefits paid to an employee for a period covered by or included in any arbitration or back pay award.

***(effective January 1, 2007, see 282-A:14 below.)***

**Last Source:** 2005, 239:10, eff. Jan. 1, 2006.

**282-A:14 Total and Partial Unemployment**

I. (a) An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to him and during which he performs no services. An individual who is not entitled to vacation pay from his employer shall be deemed to be in "total unemployment" during the entire period of any general closing of his employer's place of business for vacation purposes, notwithstanding his prior assent, direct or indirect, to the establishment of such vacation period by his employer.

(b) An individual who meets the requirements of RSA 282-A:31, V and who is seeking only part-time work shall be deemed to be partially unemployed only in any week during which the individual was employed fewer than 20 hours.

II. An individual shall be deemed to be "partially unemployed" in any week of less than full-time work if the wages computed to the nearest dollar payable to him with respect to such week fail to equal his weekly benefit amount.

III. (a) For the purposes of paragraphs I and II, the term "wages" shall include compensation for temporary partial disability under the workers' compensation law of any state or under a similar law of the United States, payments in lieu of notice, a sickness or separation allowance, payment of accrued leave or sums of whatever type or nature, except those specifically excluded elsewhere in this subparagraph, payments upon discharge from military service from either the state or federal government, or both, and earnings from self-employment. "Wages" shall not mean and shall not include payments from a supplemental unemployment plan as defined in RSA 282-A:3-a or any portion of a lump sum payment for workers' compensation made pursuant to RSA 281-A:37. Wages or earnings or both shall be deemed to have been received for such week or weeks as the commissioner may find can be reasonably said to apply. The application of longevity, stay, retention, attendance, and similar payments commencing with a period of one or more weeks of partial or total unemployment shall be presumed reasonable if such payment was received 90 or fewer days prior to the commencement of such period. An individual's maximum weekly benefit amount shall be reduced by all wages and earnings in excess of 30 percent, rounded to the nearest dollar, of the individual's weekly benefit amount. Wages shall not include any payment made to an individual by reason of the individual's permanent separation from employment, for reasons other than retirement, under a prior existing plan maintained by employer contributions vested in the individual before the date of separation.

(b) The employing unit shall be liable to make restitution to the unemployment compensation fund in full for any and all unemployment benefits paid to an employee for a period covered by or reasonably deemed to be included in any arbitration award, back pay award, settlement agreement, or jury verdict.

***(prior to January 1, 2007, see 282-A:14 above.)***

**Last Source**: 2006, 130:2 eff. Jan. 1, 2007.

**282-A:15 Wages**

I. "Wages" means every form of remuneration for personal services paid or payable to a person directly or indirectly by his employing unit, including salaries, commissions, bonuses, and the reasonable value of board, rent, housing, lodging, payment in kind and similar advantages estimated and determined in accordance with the rules of the commissioner of the department of employment security.

II. The term "wages' shall not mean and shall not include:

(a) The amount of any payment to an alien unless said alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(b) The amount of any payment made to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provisions for individuals in its employ generally or for a class or classes of individuals in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of any of the following:

(1) Retirement.

(2) Sickness or accident disability paid to an individual by any third party or any entity other than the individual's employer or employing unit.

(3) Medical and hospitalization expenses in connection with sickness or accident disability.

(4) Supplemental unemployment plan as defined in RSA 282-A:3-a.

(5) Death, provided the individual in its employ

(i) Has not the option to receive, instead of provision for such death benefit, any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by the employing unit, and

(ii) Has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive a cash consideration in lieu of such benefit either upon his

withdrawal from the plan or system or policy of insurance or of his employment with such employing unit.

(c) Any amounts paid by an employing unit under the provisions of section 3101 of the Internal Revenue Code of 1954 without having deducted the same from the remuneration of individuals in its employ.

(d) Any amounts received from the federal government by members of the national guard and organized reserve, as drill pay, including longevity pay and allowances.

(e) Any amounts paid under the Comprehensive Employment and Training Act (29 U.S.C. 801) for services in public service employment (29 U.S.C. 802) unless federal funds are furnished to pay the cost of any and all unemployment compensation paid as a result of such services. The prime sponsor under the federal act shall be liable for any sums due under this chapter.

**Last Source:** 1989, 267:2, eff. July 25, 1989.

**282-A:16 Annual Earnings**

"Annual earnings" shall be the wages, to the nearest dollar, earned during each base period from an employer by an individual in employment in New Hampshire and an amount equivalent to the average weekly wage, as determined under the New Hampshire workers' compensation statute, for each week that an individual has been found by either the labor commissioner or a court to be entitled to receive workers' compensation based on a claim involving such employer; no portion of any lump sum payment pursuant to RSA 281-A:37 shall constitute annual earnings. For any week which commences during the period between 2 successive sports seasons (or similar periods), no annual earnings shall be available for purposes of RSA 282-A:25 to any individual which are based on any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

**Last Source:** 1989, 267:3, eff. July 25, 1989.

**282-A:17 Week**

"Week" means such period of 7 consecutive calendar days as the commissioner of employment security may prescribe by rule.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:18 Weekly Benefit Amount**

"Weekly benefit amount" means the amount of benefits an individual would be entitled to receive for one week of total unemployment.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:19 Agricultural Labor**

"Agricultural labor" includes all services performed:

I. On a farm, in the employ of any employing unit, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

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

III. In connection with the production or harvesting of syrup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Federal Agricultural Marketing Act, as amended; or in connection with the raising or harvesting of mushrooms; or in connection with the hatching of poultry; or in connection with the operation or maintenance of ditches, canals, reservoirs or waterways used exclusively for supplying and storing water for farming purposes.

IV. In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this section, "farm" means stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:20 Employment**

The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States, except in Canada, after December 31, 1971, in the employ of an American employer, if:

I. The employer's principal place of business in the United States is located in this state;

II. The employer has no place of business in the United States, but

(a) The employer is an individual who is a resident of this state;

(b) The employer is a corporation which is organized under the laws of this state; or

(c) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any one other state.

III. None of the criteria of paragraphs I and II is met, but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

IV. An "American employer", for purposes of this section, means a person who is:

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

(b) A partnership if 2/3 or more of the partners are residents of the United States; or

(c) A trust, if all of the trustees are residents of the United States; or

(d) A corporation organized under the laws of the United States or of any state.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:21 Institution of Higher Education**

[Repealed 1983, 124:3, eff. June 7, 1983.]

**282-A:22 Not Wages**

The receipt of a gift or gratuity in an amount of $25 or less by any otherwise unemployed individual shall not be considered wages or remuneration for any purpose under this chapter

unless paid pursuant to any contract, agreement or stipulation related to past or future employment.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:23 De Novo

"De Novo" means anew; afresh; a new trial on all issues and a full hearing on the merits in no way restricted by what occurred before.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## Benefits

### 282-A:24 Payment of Benefits

On January 1, 1938, benefits shall become payable from the fund; provided that wages earned for service, defined in RSA 282-A:9, IV(j), irrespective of when performed, shall not be included for the purposes of determining eligibility for any benefit year commencing on or after July 1, 1939; nor shall any benefits with respect to unemployment occurring on or after July 1, 1939, be payable under any section on the basis of such wages. All benefits shall be paid through employment offices in accordance with such rules as the commissioner of the department of employment security may adopt.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981

### 282-A:25 Weekly Benefit Amount for Total Unemployment and Maximum Total Amount of Benefits Payable During any Benefit Year

I. The maximum weekly benefit amount and maximum benefits payable to an eligible individual, the first day of whose individual benefit year is on or after the effective date of this paragraph, shall be determined by the individual's annual earnings, of which in each of 2 calendar quarters the individual must have earned not less than $1,400, as follows:

| Annual Earnings of Not Less Than | Maximum Weekly Benefit Amount | Maximum Benefits |
|---|---|---|
| $ 2,800 | $ 32 | $ 832 |
| 3,100 | 35 | 910 |
| 3,400 | 39 | 1,014 |
| 3,900 | 45 | 1,170 |
| 4,200 | 48 | 1,248 |
| 4,500 | 52 | 1,352 |

| | | |
|---|---|---|
| 4,800 | 55 | 1,430 |
| 5,100 | 59 | 1,534 |
| 5,600 | 64 | 1,664 |
| 6,100 | 69 | 1,794 |
| 6,600 | 75 | 1,950 |
| 7,000 | 80 | 2,080 |
| 7,400 | 83 | 2,158 |
| 7,800 | 88 | 2,288 |
| 8,200 | 92 | 2,392 |
| 8,600 | 96 | 2,496 |
| 9,000 | 101 | 2,626 |
| 9,500 | 105 | 2,730 |
| 10,000 | 110 | 2,860 |
| 10,500 | 115 | 2,990 |
| 11,000 | 120 | 3,120 |
| 11,500 | 126 | 3,276 |
| 12,500 | 137 | 3,562 |
| 13,500 | 148 | 3,848 |
| 14,500 | 159 | 4,134 |
| 15,500 | 167 | 4,342 |
| 16,500 | 178 | 4,628 |
| 17,500 | 188 | 4,888 |
| 18,500 | 199 | 5,174 |
| 19,500 | 206 | 5,356 |
| 20,500 | 217 | 5,642 |
| 21,500 | 227 | 5,902 |
| 22,500 | 238 | 6,188 |
| 23,500 | 249 | 6,474 |
| 24,500 | 254 | 6,604 |
| 25,500 | 265 | 6,890 |
| 26,500 | 275 | 7,150 |
| 27,500 | 286 | 7,436 |
| 28,500 | 290 | 7,540 |
| 29,500 | 301 | 7,826 |
| 30,500 | 311 | 8,086 |
| 31,500 | 321 | 8,346 |
| 32,500 | 331 | 8,606 |
| 33,500 | 342 | 8,892 |
| 34,500 | 352 | 9,152 |
| 35,500 | 362 | 9,412 |
| 36,500 | 372 | 9,672 |

II, III. [Repealed.]

**(effective July 1, 2007, see 282-A:25 below.)**

**Last Source:** 2002, 77:1, eff. May 5, 2002, 77:2, eff. June 30, 2002

**282-A:25 Weekly Benefit Amount for Total Unemployment and Maximum Total Amount of Benefits Payable During any Benefit Year**

I. The maximum weekly benefit amount and maximum benefits payable to an eligible individual, the first day of whose individual benefit year is on or after the effective date of this paragraph, shall be determined by the individual's annual earnings, of which in each of 2 calendar quarters the individual must have earned not less than $1,400, as follows:

| Annual Earnings of Not Less Than | Maximum Weekly Benefit Amount | Maximum Benefits |
|---|---|---|
| $ 2,800 | $ 32 | $ 832 |
| 3,100 | 35 | 910 |
| 3,400 | 39 | 1,014 |
| 3,900 | 45 | 1,170 |
| 4,200 | 48 | 1,248 |
| 4,500 | 52 | 1,352 |
| 4,800 | 55 | 1,430 |
| 5,100 | 59 | 1,534 |
| 5,600 | 64 | 1,664 |
| 6,100 | 69 | 1,794 |
| 6,600 | 75 | 1,950 |
| 7,000 | 80 | 2,080 |
| 7,400 | 83 | 2,158 |
| 7,800 | 88 | 2,288 |
| 8,200 | 92 | 2,392 |
| 8,600 | 96 | 2,496 |
| 9,000 | 101 | 2,626 |
| 9,500 | 105 | 2,730 |
| 10,000 | 110 | 2,860 |
| 10,500 | 115 | 2,990 |
| 11,000 | 120 | 3,120 |
| 11,500 | 126 | 3,276 |
| 12,500 | 137 | 3,562 |
| 13,500 | 148 | 3,848 |
| 14,500 | 159 | 4,134 |
| 15,500 | 167 | 4,342 |
| 16,500 | 178 | 4,628 |
| 17,500 | 188 | 4,888 |
| 18,500 | 199 | 5,174 |
| 19,500 | 206 | 5,356 |
| 20,500 | 217 | 5,642 |
| 21,500 | 227 | 5,902 |
| 22,500 | 238 | 6,188 |
| 23,500 | 249 | 6,474 |

| | | |
|---|---|---|
| 24,500 | 254 | 6,604 |
| 25,500 | 265 | 6,890 |
| 26,500 | 275 | 7,150 |
| 27,500 | 286 | 7,436 |
| 28,500 | 290 | 7,540 |
| 29,500 | 301 | 7,826 |
| 30,500 | 311 | 8,086 |
| 31,500 | 321 | 8,346 |
| 32,500 | 331 | 8,606 |
| 33,500 | 342 | 8,892 |
| 34,500 | 352 | 9,152 |
| 35,500 | 362 | 9,412 |
| 36,500 | 372 | 9,672 |
| 37,500 | 383 | 9,958 |
| 38,500 | 394 | 10,244 |
| 39,500 | 405 | 10,530 |
| 40,500 | 416 | 10,816 |
| 41,500 | 427 | 11,102 |

II, III. [Repealed.]

**(prior to July 1, 2007, see 282-A:25 above.)**

**Last Source:** 2006, eff. July 1, 2007

**282-A:26 Weekly Benefit for Partial Unemployment**

Each eligible individual who is partially unemployed in any week shall be paid a partial benefit with respect to such week. Such partial benefit shall be an amount calculated to the nearest dollar which, if added to his wages, as used in RSA 282-A:14, III, for such week, would equal his weekly benefit amount. Such partial benefit shall not be reduced because an individual received payments from a supplemental unemployment plan as defined in RSA 282-A:3-a. An individual who receives such supplemental unemployment payments who received no wages as defined in RSA 282-A:14, III shall be deemed not to be partially unemployed but to be totally unemployed.

**Last Source:** 1983, 457:3, eff. Aug. 25, 1983.

**282-A:27 Maximum Amount**

[Repealed 1985, 340:13, I, eff. Aug. 13, 1985.]

**282-A:28 Retirement Pay**

I. The maximum weekly benefit amount of any individual who is receiving retirement pay, which means in this section a government or other pension, retirement or retired pay, annuity, or any similar periodic payment based on previous work, shall be reduced by an amount equal to such retirement pay or other payment which the commissioner finds can be reasonably said to apply to such week. In the case of such a payment, not made under the Social Security Act or the Railroad Retirement Act of 1974, if the base period employer or chargeable employer under RSA 282-A:74 does not contribute to the fund from which such payments are made, this paragraph shall not apply.

II. If the employee contributed 50 percent or more to retirement pay as described in paragraph I, no portion of said payments shall be deducted from the individual's maximum weekly benefit amount. For purposes of this section, the employee's contribution shall be rounded up to the nearest percent.

**Last Source:** 1987, 243:3, eff. July 17, 1987.

**282-A:29 Adjustment of Overpaid Benefit Account by Compromise**

I. The commissioner may, with the approval of the attorney general, effect by written stipulation such settlement of any overpaid benefit account due under the provisions of this chapter as he or she may deem to be for the best interests of the state; and the payment of the sum so agreed upon shall be a full satisfaction of such overpaid benefit account.

II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling $50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.

**Last Source:** 2003, 116:17, eff. Aug. 8, 2003.

**282-A:30 State-Federal Extended Benefit Program**

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

(a) "Extended benefit period' means a period which begins with the third week after the first week for which there is a New Hampshire “on” indicator, and ends the third week after the first week for which there is a New Hampshire “off” indicator.

(b), (c) [Repealed.]

(d) There is a “New Hampshire ‘on’ indicator” for this state for a week if the commissioner determines, in accordance with the regulations of the United States

Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:

(1) Equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, and

(2) Equaled or exceeded 5 percent; or

(3) For weeks of unemployment beginning April 1, 2001:

(A) The average rate of total unemployment in New Hampshire, seasonally adjusted, as determined by the United States Secretary of Labor, for the period consisting of the most recent 3 months for which data for all states are published before the close of the week equals or exceeds 6 1/2 percent; and

(B) The average rate of total unemployment in New Hampshire, seasonally adjusted, as determined by the United States Secretary of Labor, for the 3-month period referred to in subparagraph I(d)(3)(A), equals or exceeds 110 percent of the average for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.

(C) Subparagraph I(d)(3) shall not apply if at the time of such 'on' indicator benefits are available to individuals under any federal unemployment program.

(e) There is a “New Hampshire 'off' indicator” for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that none of the options in subparagraph I(d) are met:

(1) Was less than 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years, or
(2) Was less than 5 percent.

(f) “Rate of insured unemployment”, for purposes of subparagraphs (d) and (e) means the percentage derived by dividing the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the commissioner on the basis of his reports to the United States Secretary of Labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(g) “Regular benefits” means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(h) “Extended benefits” means benefits, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this subdivision for weeks of unemployment in his eligibility period.

(i) “Eligibility period” of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(j) “Exhaustee” means an individual who, with respect to any week of unemployment in his eligibility period:

(1) (A) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. chapter 85, in his current benefit year that includes such week; provided that, for the purposes of this subparagraph, an individual shall be deemed to have received all of the regular benefits that were available to him although as a result of a pending with respect to annual earnings or employment or both that were not considered in the original determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or

(B) His benefit year having expired prior to such week, has no, or insufficient, annual earnings on the basis of which he could establish a new benefit year that would include such week; and

(2) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965, and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but, if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law, he is considered an exhaustee.

(k) “State law” means the unemployment compensation law of any state approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(l) “High unemployment period” means any period in which an extended benefit period is in effect if RSA 282-A:30; I (d) (3) is applied by substituting 8 percent for 6.5 percent.

II. Except when the result would be inconsistent with the other provisions of this section, as may be provided in the rules of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

III. An individual shall be eligible to receive extended benefits with respect to any week of unemployment in his eligibility period only if the commissioner finds that with respect to such week:

(a) He is an “exhaustee” as defined in subparagraph I (j), and

(b) He has satisfied the requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

IV. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the last maximum weekly benefit amount applicable to his annual earnings class during the applicable benefit year.

V. The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year, calculated on the benefit schedule applicable to the individual at the close of said year, shall be 13 times the individual's maximum weekly benefit amount which was payable to the individual under this chapter during the applicable benefit year or 20 times the individual's maximum weekly benefit amount if such occurs during a high unemployment period.

VI. Whenever an extended benefit period is to become effective in New Hampshire as a result of an “on” indicator, or an extended benefit period is to be terminated as a result of an “off” indicator, the commissioner shall make an appropriate announcement.

VII. Computations required by the provisions of subparagraph I (f) shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

VIII. The commissioner is hereby authorized and directed to take such action as he deems in the best interests of the state to obtain that share of the cost of those benefits paid under this section which P.L. 91-373 provides to be paid to the state by the federal government.

IX. In no event shall benefits payable under the laws of this state to any individual exceed with respect to any benefit year an amount equal to 46 times the individual's maximum weekly benefit amount.

X. Except as provided in this paragraph, payment of extended benefits shall not be made to any individual for any week if extended benefits would (but for this section) have been payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan, if an extended benefit period is not also in effect for such week in such state. This section shall not apply with respect to the first 2 weeks for which extended benefits are payable (determined without regard to this paragraph) pursuant to an interstate claim.

XI. An individual shall be ineligible for benefits under this chapter for any week of unemployment in his eligibility period,

(a) During which he fails to accept any offer of work which is within such individual's capabilities, if the gross average weekly remuneration payable to such individual for the position exceeds the sum of the individual's average weekly benefit amount for his benefit year, plus the amount (if any) of supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1954) payable to such individual for such week, and the position was offered to such individual in writing and was listed with the state employment services, and the position pays wages equally to or more than the minimum wage provided by section 6(a)(1) of the Fair Labor Standards Act of 1938, without regard to any exemption, or the applicable New Hampshire minimum wage, whichever is higher, or

(b) During which he fails to apply for any such work or other suitable work to which he has been referred by the employment office, or

(c) During which he fails to actively engage in seeking work by engaging in a systematic and sustained effort to obtain work during such week, and provides tangible evidence that he has engaged in such an effort.

(d) Except that, if the individual furnished evidence satisfactory to the commissioner that such individual's prospects for obtaining work in his customary occupation within a reasonably short period are good, the determination of whether any work is suitable work with respect to such individual shall be made in accordance with the provisions of RSA 282-A:32, I (d). No work shall be suitable under this section which does not satisfy the requirements of RSA 282-A:32, I (d)(2)(A), (B) and (C).

(e) Ineligibility under this provision shall not end until the individual has subsequently been employed during at least 4 weeks and earned 4 times his weekly extended benefit amount.

(f) The requirements of this section do not suspend or replace any other requirement of this chapter.

(g) The provisions of this paragraph shall not apply to the weeks beginning after March 6, 1993 and ending before January 1, 1995.

**Last Source:** 1999, 206:2, 3, 4, eff. April 1, 2001.

**282-A:31 Benefit Eligibility Conditions**

I. An unemployed individual shall be eligible to receive benefits with respect to any week only if the commissioner finds that:

(a) He has been classified in accordance with his experience and abilities and so registered for employment with and by the commissioner and has reported and continues thereafter to report at an employment office in accordance with such rules as the commissioner may adopt.

(b) He has made a claim for benefits in accordance with the provisions of RSA 282-A:43.

(c) He is ready, willing and able to accept and perform suitable work on all the shifts and during all the hours for which there is a market for the services he offers and that he has exposed himself to employment to the extent commensurate with the economic conditions and the efforts of a reasonably prudent man seeking work.

(d) He is available for and seeking permanent, full-time work for which he is qualified.

(e) He has disclosed whether or not he owes child support obligations that are payable through any agency of the state of New Hampshire or its political subdivisions.

(f) He has participated in reemployment services when so directed by the commissioner unless he has completed such services or has good cause for failure to participate in such services.

(g) The individual has disclosed whether or not he or she owes an uncollected overissuance of food stamp coupons as defined in section 13(c)(1) of the Food Stamp Act of 1977 as amended.

II. An unemployed individual shall not be eligible to receive benefits:

(a) Based on services in an instructional, research, or principal administrative capacity for an educational institution for any week which commences during a period between 2 successive academic years or terms (or, when an agreement provides instead for a similar period between 2 regular but not successive terms during such period) to any individual if such individual performs such services in the first of such academic years or terms and there is a contract or reasonable assurance that such

individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(b) Based on services in any other capacity for an educational institution, including services for a service organization for any educational institution for any week which commences during a period between 2 successive academic years or terms to any individual if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms; provided, however, that, if compensation is denied to any individual for any week under this paragraph and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of this paragraph.

(c) Based on services for an educational institution for any week which commences during an established and customary vacation period or holiday recess if such individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

II-a. For the purposes of paragraph II, an individual's selection of a period or percentage-time position with an educational institution, which consists of less than the number of hours of work available per year from the educational institution, or the provision of a percentage of normal and usual employee benefits to an individual during the weeks between academic years, terms or periods by the institution shall be deemed prima facie evidence of a reasonable assurance that such individual will perform services in the second academic year, term or period.

III. Subparagraph I(c) shall be waived for any week with respect to any individual who is otherwise entitled to unemployment compensation benefits and is selected by the department of employment security and enrolled in a vocational training program approved by the commissioner of the department of employment security and is as to such week in good standing in the training program, and has not failed without good cause to attend all scheduled sessions. Remuneration for services in connection with the training program paid to any such individual shall be wages for the purposes of RSA 282-A:14.

IV. Paragraphs II (b) and II(c) shall apply only to services in the employ of the state or any political subdivision thereof, to Indian tribes, and to organizations defined in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code.

V. Subparagraphs I(c) and I(d) of this section shall not apply to individuals who are seeking solely part-time work if the individual establishes that:

(a) The individual is the only available adult to care for the individual's natural, adopted, step, or foster child under the age of 16;

(b) The individual's last 6 months in employment as defined in RSA 282-A:9, except RSA 282-A:9, IV(f), or wages earned in a like manner in another state, usually consisted of 30 or fewer hours each week throughout such 6 month period;

(c) The individual is ready, willing, and able to accept and perform suitable work at least 20 hours per week for which there is a market for the services the individual offers, and that the individual has exposed himself or herself to employment to the extent commensurate with the economic conditions and the efforts of a reasonable prudent person seeking work; and

(d) There exists in the individual's labor market area sufficient suitable work during the hours or shifts to which the individual is restricted.

**Last Source:** 2005, 239:11, eff. Jan. 1, 2006.

## Disqualification for Benefits

### 282-A:32 Disqualifications for Benefits

An individual shall be disqualified for benefits:

I. Until the individual has earned in each of 5 weeks wages in employment as defined in RSA 282-A:9, except RSA 282-A:9, IV (f), or wages earned in a like manner in another state, of at least 20 percent more than such individual's weekly benefit amount, subsequent to the date:

(a) The individual left work voluntarily without good cause in accordance with rules of the commissioner. This section shall not apply and benefits shall be paid without regard thereto where:

(1) An unemployed individual, not under a disqualification, accepts employment which would not have been deemed suitable work under subparagraph (d) and terminates such employment within a period of not more than 4 consecutive weeks of employment with or without good cause;

(2) An individual terminates employment in good faith to accept better full-time employment, which is to begin within a reasonable period, and subsequently becomes unemployed from such employment due to unavailability of work before earning the requalifying wages set forth in this section. Notwithstanding any other provision of this chapter, such subsequent employer shall be deemed to be that individual's most recent employer; or

(3) The leaving of employment was necessary to protect the individual from domestic abuse, as defined in RSA 173-B:1 and in accordance with rules adopted by the commissioner, and the individual made all reasonable efforts to preserve the employment, and in addition:

(A) The individual relocated to escape the abuse; or

(B) The individual, due to changed circumstances, is able to return to the individual's employment, but the employer is unable to return the individual to the individual's job, or to comparable work, due solely to:

(i) A reduction in work force; or

(ii) Other economic conditions, and the individual did all things that a reasonably prudent person would have done to continue the employer-employee relationship or the possibility of reemployment during the period the individual was unable to work due to the domestic abuse;

(b) He was discharged for misconduct connected with his work, if so found by the commissioner;

(c) [Repealed.]

(d) He has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner.

(1) The commissioner, in determining whether or not any work is suitable for an individual, shall consider the following:

(A) The degree of risk involved to his health, safety and morals; and

(B) His physical fitness; and

(C) His prior training; and

(D) His experience; and

(E) His prospects for securing, in his labor market area, work in his customary occupation; and

(F) The distance of the available work from his residence; but such distance shall not be substantially greater than that distance to all those places to which others living in the same town or city travel for work which utilizes similar or related skills or services, and also to where he acquired his currently available annual earnings; and

(G) His prior earnings and length of unemployment, but his prior earnings shall be given more weight than his length of unemployment.

(2) Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

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

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

(D) If the individual is unable to apply for or accept work during the hours of the third shift, so-called, because he or she is the only adult available for the care of an ill or infirm elderly person who is dependent on him or her for support;

(E) If the individual is unable to apply for or accept work during the hours of a particular shift because he or she is the only adult available for the care of a natural, adopted, step, or foster child under the age of 16; or

(F) If the individual is permanently physically and/or mentally disabled, full-time work for such individual shall be deemed to be the hours and shifts the individual is physically able to work as certified by a licensed physician provided there is a market for the services the individual offers during such hours and shifts.

(3) For the purposes of section 3304(a)(8) of the Internal Revenue Code of 1954, this subsection, together with RSA 282-A:31, I(c) shall be waived.

(e) He left his self-employment or closed his business.

II. For any period for which proper and timely claims were not filed.

III. [Repealed.]

IV. For any week during which the individual resides other than in New Hampshire, another state, the District of Columbia, Puerto Rico, the Virgin Islands or a contiguous country with which the United States has an agreement with respect to unemployment compensation.

***(effective January 1, 2007, see 282-A:32 below.)***

**Last Source:** 2005, 239:13, eff. Jan.1, 2006.

**282-A:32 Disqualifications for Benefits**

In this section, "date" as used in "subsequent to the date" means the last calendar day on which the individual performed services for the employer. An individual shall be disqualified for benefits:

I. Until the individual has earned in each of 5 weeks wages in employment as defined in RSA 282-A:9, except RSA 282-A:9, IV (f), or wages earned in a like manner in another state, of at least 20 percent more than such individual's weekly benefit amount, subsequent to the date:

(a) The individual left work voluntarily without good cause in accordance with rules of the commissioner. This section shall not apply and benefits shall be paid without regard thereto where:

(1) An unemployed individual, not under a disqualification, accepts employment which would not have been deemed suitable work under subparagraph (d) and terminates such employment within a period of not more than 4 consecutive weeks of employment with or without good cause;

(2) An individual terminates employment in good faith to accept better full-time employment, which is to begin within a reasonable period, and subsequently becomes unemployed from such employment due to unavailability of work before earning the requalifying wages set forth in this section. Notwithstanding any other provision of this chapter, such subsequent employer shall be deemed to be that individual's most recent employer; or

(3) The leaving of employment was necessary to protect the individual from domestic abuse, as defined in RSA 173-B:1 and in accordance with rules adopted by the commissioner, and the individual made all reasonable efforts to preserve the employment, and in addition:

(A) The individual relocated to escape the abuse; or

(B) The individual, due to changed circumstances, is able to return to the individual's employment, but the employer is unable to return the individual to the individual's job, or to comparable work, due solely to:

(i) A reduction in work force; or

(ii) Other economic conditions, and the individual did all things that a reasonably prudent person would have done to continue the employer-employee relationship or the possibility of reemployment during the period the individual was unable to work due to the domestic abuse;

(b) He was discharged for misconduct connected with his work, if so found by the commissioner;

(c) [Repealed.]

(d) He has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commissioner or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commissioner.

(1) The commissioner, in determining whether or not any work is suitable for an individual, shall consider the following:

(A) The degree of risk involved to his health, safety and morals; and

(B) His physical fitness; and

(C) His prior training; and

(D) His experience; and

(E) His prospects for securing, in his labor market area, work in his customary occupation; and

(F) The distance of the available work from his residence; but such distance shall not be substantially greater than that distance to all those places to which others living in the same town or city travel for work which utilizes similar or related skills or services, and also to where he acquired his currently available annual earnings; and

(G) His prior earnings and length of unemployment, but his prior earnings shall be given more weight than his length of unemployment.

(2) Notwithstanding any other provision of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

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

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

(D) If the individual is unable to apply for or accept work during the hours of the third shift, so-called, because he or she is the only adult available for the care of an ill or infirm elderly person who is dependent on him or her for support;

(E) If the individual is unable to apply for or accept work during the hours of a particular shift because he or she is the only adult available for the care of a natural, adopted, step, or foster child under the age of 16; or

(F) If the individual is permanently physically and/or mentally disabled, full-time work for such individual shall be deemed to be the hours and shifts the individual is physically able to work as certified by a licensed physician provided there is a market for the services the individual offers during such hours and shifts.

(3) For the purposes of section 3304(a)(8) of the Internal Revenue Code of 1954, this subsection, together with RSA 282-A:31, I(c) shall be waived.

(e) He left his self-employment or closed his business.

II. For any period for which proper and timely claims were not filed.

III. [Repealed.]

IV. For any week during which the individual resides other than in New Hampshire, another state, the District of Columbia, Puerto Rico, the Virgin Islands or a contiguous country with which the United States has an agreement with respect to unemployment compensation.

***(prior to January 1, 2007, see 282-A:32 above.)***

**Last Source:** 2006, 130:3 eff. Jan. 1, 2007**.**

**282-A:33 Temporary Self-Employment**

No individual shall be ineligible for benefits or disqualified for benefits solely because he has engaged in temporary self-employment without intending to establish a business while otherwise unemployed if he continues to seek employment after completion of such temporary self-employment endeavor.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:34 Intoxication; Drugs**

An unemployed individual who has been discharged for intoxication or use of controlled drugs as defined in RSA 318-B:1, VI, of such degree and rate of occurrence as to seriously hamper or interfere with the individual's work, shall be disqualified for benefits. Such disqualification shall continue until a period of not less than 4 weeks nor more than 26 weeks from the date of discharge, as may be determined by the commissioner, has passed and until such individual has earned wages as provided in RSA 282-A:32, I.

**Last Source:** 1981, 416:7, eff. April 4, 1981.

**282-A:35 Felony; Dishonesty**

An unemployed individual who has been discharged for arson, sabotage, felony, or dishonesty connected with his work, shall suffer the loss of all wage credits earned prior to the date of such dismissal

***(effective January 1, 2007, see 282-A:35 below.)***

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:35 Gross Misconduct.**

An unemployed individual who has been discharged for arson, sabotage, felony, assault which causes bodily injury, criminal threatening, or dishonesty connected with his or her work, shall suffer the loss of all wage credits earned prior to the date of such dismissal

***(prior to January 1, 2007, see 282-A:35 above.)***

**Last Source:** 2006, 130:4, eff. Jan. 1, 2007

**282-A:36 Labor Dispute**

A person shall be disqualified for benefits for any week with respect to which the commissioner finds that his or her total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he or she is or was last employed; provided that this section shall not apply if it is shown to the satisfaction of the commissioner that:

I. (a) The person is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(b) The person does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute; provided that, if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purposes of this subsection, be deemed to be a separate factory, establishment, or other premises; or

II. The person has become unemployed and entitled to unemployment compensation before the commencement of the labor dispute and his connection with the employer has been totally severed, including the absence of recall rights, seniority rights and other fringe benefits and indicia of employment; or

II-a. The stoppage of work was due solely to a lockout or the failure of the employer to live up to the provision of any agreement or contract of employment entered into between the employer and his or her employees; or

III. The stoppage of work has continued for a period of 2 weeks after the termination of the labor dispute; or

IV. The person has, since becoming unemployed for the reasons set forth in the introductory paragraph worked in 5 or more weeks in employment as defined in RSA 282-A:9, except RSA 282-A:9, IV (f), or wages earned in a like manner in another state, earning in each week an amount at least equal to such person's maximum benefit rate plus 20 percent thereof, and then becomes unemployed from said employer due to a lack of work.

**Last Source:** 2003, 116:7, eff. Aug. 8, 2003.

**282-A:37 Federal Unemployment Compensation**

An individual shall be disqualified for benefits for any week or part of a week with respect to which he is seeking to receive or has received payments in the form of unemployment compensation, or payments supplementary to New Hampshire unemployment compensation, under any law of the federal government; provided, however, that there shall be no disqualification for seeking to receive or receiving unemployment compensation, or supplementary payments, under Chapter 85 of Title V of the United States Code.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:38 Another State**

An individual shall be disqualified for benefits for any week or part of a week with respect to which he is seeking to receive or has received payments in the form of unemployment compensation under an unemployment compensation law of any other state or under a similar law of the federal government, provided that seeking to receive or receiving payments under any reciprocal arrangement to which New Hampshire is a party under RSA 282-A:169-172 shall not disqualify the individual for benefits.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:39 Unavailable for Work**

An individual shall be disqualified for benefits for any week or weeks during any part of which he is not available for work outside a home, irrespective of his reason for refusing to be available for work outside a home.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:40 Disciplinary Layoff**

An individual shall be disqualified for benefits for the duration of his disciplinary layoff; provided, however, that the disciplinary layoff is for a reasonable term and based upon good cause as determined by the commissioner or his authorized representative.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:41 Aliens**

I. An individual shall be disqualified for benefits on the basis of services performed by an alien unless such an alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the Immigration and Nationality Act).

II. Any data or information required of individuals claiming benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all claimants for benefits.

III. In the case of an individual whose claim for benefits would otherwise be approved, no determination that benefits are not payable to such individual because of his alien status shall be made except upon a preponderance of the evidence.

**Last Source:** 2005, 239:1, eff. Jan 1, 2006

## Claims for Benefits

**282-A:42 Definitions**

The following terms used in this subdivision shall have the following meanings unless the context clearly requires otherwise:

I. CERTIFYING OFFICER. "Certifying officer" shall mean the commissioner or his representative authorized to make determinations on claims.

II. CLAIM. A "claim" shall mean:

(a) Initial Claim. The first filing for benefits within a benefit year or the first claim for benefits immediately following any 7-day period for which the claimant did not file

for benefits or with respect to which the claimant did not or will not receive any benefits. Such 7-day period need not be a 7-consecutive-day period.

(b) The application for either total or partial unemployment compensation benefits for any 7-consecutive-day period. Said period is to be determined in accordance with the rules of the commissioner.

III. INTERESTED PARTY. “Interested party” means the claimant, his last employing unit or employer, any employer whose account was or may be charged with benefits paid and any employing unit or employer whenever the claimant's reason for leaving their employ may be material to his claim.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:43 Filing**

Claims for benefits shall be made in accordance with such rules as the commissioner of the department of employment security may adopt.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:44 Determination Procedure**

A determination shall be a decision by the certifying officer on a claim and shall be made, except as otherwise specifically provided in this chapter, as follows:

I. A determination on an initial claim for total or partial benefits for any week shall include: the maximum duration thereof; whether or not, with the reasons therefor, the claimant is payable for such week and for consecutive weeks thereafter for which claims are filed (no other fact appearing to the contrary during such period); and identification of the employer whose account will be charged with benefits to be paid by reason of such determination. This determination shall in every case be mailed to all interested parties.

I-a. A determination on the first claim in a benefit year shall be mailed to the claimant and shall include:

(a) The annual earnings in the base period with the name of each employer reporting wages paid to the claimant, and the amount of such wages;

(b) The maximum benefits then available; and

(c) The maximum weekly benefit amount and the maximum duration of such weekly benefits.

II. A determination shall be made by a certifying officer on any claim for benefits, though not an initial claim, if, in his judgment, there appears to be an issue relative to the entitlement of the claimant to benefits. The determination shall be in the manner provided in paragraph I, and the interested parties shall be notified in the same manner.

III. Nothing in this section shall be construed to require that a determination be made with respect to a claim for any week or where the week is one of any of the consecutive weeks for which benefits are paid immediately following the week with respect to which a determination is made under paragraph I except as provided in paragraph II.

**Last Source:** 1989, 267:6, eff. July 25, 1989.

**282-A:45 Fact Finding; Employer Cooperation**

I. Except as provided in RSA 282-A:45-a, in finding the facts material to a claim, the certifying officer shall in every case in which the reason for an individual's leaving employment may be material:

(a) Send to the last employing unit or any employer who was or may be charged with benefits and any employing unit or employer whenever a claimant's reason for leaving their employ may be material to the claim a notice of the filing of a claim advising the employer or employing unit of the material information provided by the claimant and advising the employer or employing unit whether the department will initiate contact with the employer or employing unit to obtain full and complete information or whether the employer or employing unit is required to contact the department to dispute the information provided by the claimant; and

(b) [Repealed.]

(c) Send to the same employing units or employers as in subparagraph (a) an information verification and waiver form as provided in RSA 282-A:50.

II. The notice, request and waiver form provided for in paragraph I may be in one or more forms and shall be as provided for in the rules adopted by the commissioner, including such time limitations as the commissioner deems appropriate.

III. Failure on the part of the employing units or employers to respond in at least one of the methods provided in paragraph I shall, at the expiration of the period set for response, be deemed an irrevocable waiver of its right to be heard before the determination is made. Benefits charged to its account as a result of the determination shall remain so charged even though the claimant is, by reason of some later decision, held not to be entitled to such benefits.

**Last Source:** 2005, 239:2, eff. Jan. 1, 2006.

**282-A:45-a Fact Finding for Mass Layoffs**

Fact finding for mass layoffs, whether such layoff is temporary or permanent, shall be in accordance with the following:

I. An employing unit or employer shall file a mass layoff notice with the department if the employer lays off or expects to lay off 25 or more individuals:

(a) In the same calendar week;

(b) For an expected duration of 7 days or more; and

(c) For either of the following reasons:

(1) Vacation or holiday shutdown; or

(2) Company closure.

II. The mass layoff notice form required in paragraph I may be on one or more forms and shall be as provided for in the rules adopted by the commissioner, including such time limitations as the commissioner deems appropriate.

III. Failure on the part of the employing unit or employer or both to file the notice required in paragraph I shall, at the expiration of the period set for response, be deemed an irrevocable waiver of its right to be heard before the determination is made. Benefits charged to its account as a result of the determination shall remain so charged even though the claimant is, by reason of some later decision, held not to be entitled to such benefits.

1V. An employing unit or employer may be granted a waiver from filing the mass layoff notice required in paragraph I if the commissioner determines, in accordance with such rules as the commissioner shall adopt, that it is unlikely that 25 or more of the individuals laid off will file an initial claim, as defined in RSA 282-A:42, II(a), due to the expected receipt of wages, as defined in RSA 282-A:14, III. Any such waiver shall become void if in fact 25 or more of the individuals laid off claim benefits.

**Last Source:** 2005, 239:3, eff. Jan. 1, 2006.

**282-A:46 Redetermination**

I. A certifying officer may, within 60 days of any determination, for good cause reconsider the determination or any part thereof, provided there was no appeal taken from the determination, or the appeal tribunal has remanded the determination to the certifying officer under RSA 282-A:56.

II. Notwithstanding the filing of an appeal, a certifying officer may within one year reconsider that part of the determination that established the claimant's annual earnings, maximum benefit amount, or maximum weekly benefit amount. Such redetermination shall be made, and an appeal therefrom may be had, in the same manner as the original determination.

**Last Source:** 2005, 239:4, eff. Jan. 1, 2006.

**282-A:47 Referral to Appeal Tribunal**

Any claim or question involved in a determination may be referred by the certifying officer to an appeal tribunal, and such appeal tribunal shall make its decision with respect thereto in accordance with the procedure described in RSA 282-A:53-58.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:48 Appealing Determination**

Any interested party may appeal from a certifying officer's determination by filing an appeal to an appeal tribunal which must be received or, if filed by mail, postmarked within 14 calendar days after the determination was mailed to his last known address; provided that, if the commissioner finds sufficient grounds to justify or excuse a delay in filing an appeal, he may extend the time for filing the appeal.

**Last Source:** 1991, 311:5, eff. June 30, 1991.

**282-A:49 Determination Final**

If no appeal from a determination by a certifying officer is taken within the time limits in RSA 282-A:48, such determination shall thereupon become final and benefits shall be paid or denied in accordance therewith, subject to the provision in RSA 282-A:48 relative to good cause for late filing of the appeal; provided, however, that the certifying officer's determination shall continue to have effect as though no appeal had been filed with respect to all weeks of unemployment and any amount not affected by the appeal.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:50 Waiver**

A last employing unit or any employer whose account may become charged with benefits paid as a result of a determination by a certifying officer may waive, in proper form, in writing, his right

to appeal from such determination prior to the making thereof. If such written waiver in proper form is made in such case, the determination shall become final as to the issues involved when made; and benefits may be immediately paid pursuant to such determination.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:51 Opportunity to Appear

It shall be a condition precedent to the cessation of payment of benefits to any individual that he be given an opportunity to appear in person at a designated office in accordance with the commissioner's rules to be heard relative to his continued entitlement to benefits. His failure to appear within the designated period shall be deemed a waiver of such right, and he shall be bound by the determination unless he appeals as provided in RSA 282-A:48.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:52 Paying Benefits

Benefits found payable by any administrative determination or decision, or court decision, order or decree, shall be immediately paid in accordance therewith up to the week in which a subsequent appellate body renders a decision, order or decree finding that benefits were not payable or are not payable or both. If the final decision, order or decree so decides an issue that the claimant would not have received the benefits paid him by a prior decision, such amount shall be deemed overpaid. The commissioner shall recover such amount by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156, and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount against the overpayment until it is repaid in full.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## Appeals

### 282-A:53 Appeal Tribunals; Composition and Jurisdiction

Appeal from a certifying officer's determination and a decision made pursuant to RSA 282-A:164 shall be to an impartial tribunal appointed by the commissioner. Each such tribunal shall be known as an appeal tribunal, and shall consist of 3 members or one member. If the tribunal consists of 3 members, one member shall be a representative of employees, one shall be a representative of employers, and one shall be an employee of the department of employment security who shall serve as chairman of the tribunal. If the tribunal consists of one member, that member shall be an employee of the department of employment security and shall be the

chairman. No person shall participate as a member of an appeal tribunal in any case in which he is an interested party or is the employee of an interested party. The chairman shall not be disqualified in an appeal concerning an individual claiming benefits by reason of state or federal employment.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:54 Tenure**

The appointed members shall serve at the pleasure of the commissioner and shall be paid $40 for each day or any part thereof during which they perform services at the request of the commissioner. They shall be reimbursed for all expenses determined by the commissioner to be necessary to the performance of their duties.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:55 Withdrawal of Appeal**

A chairman may allow an appeal to be withdrawn by the appellant; but, in such case, the chairman shall send notice by certified mail, return receipt requested, of his allowance of the withdrawal to all interested parties at the last address of each according to the records of the department of employment security. Simultaneously with the mailing of such notice, the determination of the certifying officer from which the appeal had been taken shall become final.

**Last Source:** 1987, 409:3, eff. July 1, 1987.

**282-A:56 Procedure**

A hearing shall be conducted in such a manner as to ensure a fair and impartial hearing to the interested parties. The appeal tribunal shall hear the appeal de novo and shall not be bound by prior findings or determinations of the department of employment security although the records of said department shall be part of the evidence to be considered by the tribunal. An appeal shall be filed and presented and the hearing conducted in accordance with rules adopted by the commissioner. Such rules need not conform to common law or statutory rules of evidence or other technical rules of procedure. The place and time of a hearing shall be determined by the commissioner. In no case shall a hearing proceed unless the chairman is present. With the agreement of all the parties the appeal tribunal may, without holding a hearing, remand a determination for redetermination pursuant to RSA 282-A:46 for the purpose of correcting obvious department error.

**Last Source:** 2005, 239:5, eff. Jan. 1, 2006

**282-A:57 Records**

A full and complete record shall be kept of all proceedings in connection with an appeal, and all testimony at any hearing shall be recorded verbatim.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:58 Decision**

In every appeal, except those withdrawn, the chairman shall prepare a written decision which shall be sent by certified mail, return receipt requested, or first class mail, whichever the commissioner determines to be most appropriate, to each interested party at the last address of each according to the records of the department of employment security. The decision, except one on an appeal dismissed for lack of prosecution or defaulted for failure to attend, among other necessary things as determined by the commissioner, shall: set forth all the material findings and specific provisions of law necessary to support the conclusions; identify the interested parties and the account, whether fund or employer, to which benefits will be charged, if allowed; identify the week or period during which benefits are denied; identify the first week and subsequent period with respect to which benefits will be paid, if allowed; determine all things necessary to finally dispose of the case; and identify the members of the tribunal.

**Last Source:** 2003, 116:8, eff. Aug. 8, 2003.

**282-A:59 Appearance and Postponement**

In order to protect the rights of the interested parties, if the commissioner, in his sole judgment, finds sufficient grounds to justify or excuse an interested party from appearing at a hearing or from requesting a postponement of a hearing, he shall direct the appeal tribunal to hold a further hearing. Such further hearing shall be de novo notwithstanding that a decision may have become final.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:60 Reopening of Appeal Tribunal Decision; Procedure**

The second level of appeal shall be to the commissioner. The commissioner may, upon written request of an interested party or upon his own initiative, in any case in which a decision has been rendered, reopen the case on the basis of fraud, mistake, or newly discovered evidence. Such request shall set forth the facts or argument considered to be the basis for the reopening. Any request for reopening shall be received in his office or, if mailed, postmarked within 14 calendar days immediately following the date of the mailing of the appeal tribunal's decision provided

that, if the commissioner finds sufficient grounds to justify or excuse a delay in filing, he may extend the time for filing the appeal. The commissioner shall promptly notify in writing all interested parties of the request for reopening.

**Last Source:** 1991, 311:6, eff. June 30, 1991.

### 282-A:61 Commissioner's Determination

The commissioner shall render his determination within a reasonable period after all the facts or arguments are made available to him. The determination of the commissioner shall be sent by certified mail, return receipt requested, to each interested party at the last address of each according to the records of the department of employment security. The appeal tribunal shall, upon direction to reopen, proceed in the same manner as though an appeal in said case were being taken from a determination of a certifying officer; provided, however, that the further hearing shall be limited to the introduction of evidence or argument relative to and concerning the factors which constitute the basis or ground for the reopening unless the commissioner orders a de novo hearing.

**Last Source:** 1987, 409:6, eff. July 1, 1987.

### 282-A:62 Appellate Board

I. There shall be an appellate board consisting of 8 members, who are and continue to be residents of New Hampshire, appointed by the governor with the advice and consent of the executive council for 4-year terms and until their successors are appointed and qualified. Two of the members shall be attorneys-at-law admitted to the practice of law in the state of New Hampshire, one of whom shall be the chair, and one of whom shall be the vice chair and shall serve in the absence of the chair. These 2 members shall be the only members of the appellate board who are attorneys-at-law. Two members shall be representatives of business management familiar with unemployment compensation laws. Two members shall be representatives from organized labor familiar with unemployment compensation laws. Two members, who shall also be familiar with unemployment compensation laws, shall represent the public. The appointments shall be for 4 years. No person shall serve more than 8 consecutive years. Any vacancy shall be filled for the unexpired term. The members shall be paid $150 for each day or any part thereof during which they perform services, except that the chair and vice chair shall be paid $200 for each day or any part thereof during which they perform services. All members shall be reimbursed for all expenses determined by the commissioner to be necessary to the performance of their duties including mileage and board and room necessary for the conduct of hearings, except that no person who is a member of the appellate board and holds a part time, full time or per diem position with the executive, legislative or judicial branch shall receive the per diem allowance.

II. In the event of an increased workload the chair of the appellate board may request the governor with the advice and consent of the executive council to appoint up to 4 additional members to the board, with equal representation for business management and organized labor. These new members shall serve for one year from the date of appointment.

**Last Source:** 2000, 116:1, eff. July 7, 2000.

**282-A:63 Organization and Support**

The appellate board shall be part of the department of employment security for organizational purposes but shall operate independently of that department. All clerical personnel, facilities, space, supplies, services, and other support necessary to the functioning of the appellate board shall be determined by, provided for, and administered by, the commissioner.

**Last Source:** 2000, 116:2, eff. July 7, 2000.

**282-A:64 Jurisdiction**

I. The appellate board shall hear appeals from decisions of the appeal tribunal or final decisions of the commissioner under RSA 282-A:95. An appeal must be filed with the appellate board or, if filed by mail, postmarked within 14 calendar days of the date of mailing of:

(a) The commissioner's decision on a request for reopening or the final decision of the commissioner; or

(b) The appeal tribunal's decision on an appeal which had been remanded by the appellate board, in which case a request for reopening is not required.

II. The appellate board may allow a late appeal, if, in its opinion, good cause exists.

III. The review by the appellate board shall be confined to the record. No evidence shall be received. The appellate board shall provide all parties and the commissioner with a tape recording of the appeal tribunal; however, the appellate board chair may require a transcription of the first level hearing. In such case a copy shall be provided to all parties. The commissioner shall provide the appellate board with a copy of all other department records relating to the claim.

IV. The appellate board may decline to review any appeal which presents no substantial question within the appellate board's jurisdiction as set forth in RSA 282-A:65.

**Last Source:** 2000, 116:3, eff. July 7, 2000.

**282-A:65 Reversal, Modification or Affirmation**

The appellate board shall not substitute its judgment for that of the commissioner or appeal tribunal as to the weight of the evidence on questions of fact, or as to the prudence or desirability of the determination. The appellate board shall reverse or modify the decision or remand the case for further proceedings only if the substantial rights of the appellant had been prejudiced because the findings, inferences, conclusions, or the decision is:

I. In violation of constitutional or statutory provisions; or

II. In excess of the statutory authority of the department of employment security; or

III. Affected by reversible error of law; or

IV. Affected by fraud; or

V. Affected by the absence of newly discovered evidence, which was not available to the affected party upon reasonable search at the time of the first level hearing, in which case the appeal shall be remanded to the appeal tribunal.

Otherwise, the appellate board shall affirm the order.

**Last Source:** 1987, 409:10, eff. July 1, 1987.

**282-A:66 Quorum, Sessions, Exclusivity**

I. The appellate board, while in session, shall consist of 3 members designated by the chair. No 2 members shall be from the same category of representation. In addition, for appeals of final decisions of the commissioner under RSA 282-A:95, the members shall consist of the chair or vice-chair, one business management representative, and one labor representative. Any party aggrieved by a decision of the appeal tribunal may appeal. The parties to such appeal shall be the claimant, all interested parties as defined in this chapter, and the commissioner. The appellate board shall adopt rules of procedure pursuant to RSA 541-A. It shall not require written briefs. The appellate board shall:

(a) Render a written decision within 15 business days of the hearing; or

(b) Adopt the decision of the appeal tribunal.

II. The appellate board shall sit in Concord, or any other area designated by the chair, and shall hold sessions at least monthly for the purpose of hearing arguments, making orders, rendering

decisions and filing opinions.

III. The appellate procedures provided by this chapter shall be exclusive.

**Last Source:** 2000, 116:4, eff. July 7, 2000.

**282-A:67 Administrative Reconsideration and Judicial Review**

I. An interested party who is aggrieved by the decision of the appellate board or the commissioner, may within 20 days of the date of mailing of the board's decision request that the board reconsider its decision or that the board order a new hearing specifying in the request the grounds therefor. The appellate board shall within 30 days deny or grant the motion for reconsideration or order a new hearing.

II. An interested party who has exhausted all administrative remedies within the department and who is aggrieved by a final decision of the appeal tribunal as reversed, modified, or affirmed by the appellate board after a motion for reconsideration is granted or denied or after the decision on rehearing, may appeal that decision to the supreme court, but only if the notice of that appeal is filed with the court within 30 days after the date of mailing of the decision from which the appeal is taken and the notice of appeal is served upon the commissioner and the attorney general contemporaneously with the filing of that notice of appeal with the court. In addition, that notice of appeal shall be served upon all parties of record. The service required by this section may be in person or by certified mail, return receipt requested. The appeal shall be styled “appeal of name of the party filing the appeal regarding unemployment compensation”. Any interested party, and the state, shall have a right to participate as a party in the appellate proceedings before the court. The notice of appeal shall specifically identify each error for which review is sought. The filing of a notice of appeal shall not stay enforcement of the appeal tribunal decision.

III. Within 60 days after the service of the notice of appeal upon the commissioner, or within such further time allowed by the court, the commissioner shall transmit to the court a certified copy of the entire record of the proceeding. By stipulation of all parties to the review proceeding, the record may be shortened. If the record is shortened by stipulation, the court may subsequently require additional portions of the record certified.

IV. The review of the court shall be confined to the record. No evidence shall be received in the court. The court may require oral argument or written briefs, or both.

V. The court shall not substitute its judgment for that of the appeal tribunal as to the weight of the evidence on questions of fact. The court shall reverse or modify the decision of the appeal tribunal, or remand the case for further proceedings, as determined by the court, only if the substantial rights of the appellant had been prejudiced because the administrative findings, inferences, or conclusions are:

(a) In violation of constitutional or statutory provisions;

(b) In excess of statutory authority;

(c) Made upon unlawful procedures;

(d) Clearly erroneous in view of the substantial evidence on the whole record; or

(e) Affected by other error of law.

Otherwise, the court shall affirm the appeal tribunal's decision.

VI. For the purposes of this section the commissioner shall be an interested party.

**Last Source:** 1993, 71:2, eff. April 23, 1993.

### 282-A:68 Exclusivity

The judicial review provided by RSA 282-A:67 shall be exclusive of all other methods of judicial review of unemployment compensation decisions, including extraordinary writs, including the writ of certiorari. No unemployment compensation decision shall be questioned, invalidated, vacated, set aside, suspended, or otherwise impeached by any court or other tribunal except in accordance with the provisions of this section and RSA 282-A:67.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981; 576:7, eff. Oct. 1, 1981.

## Contributions

### 282-A:69 Payment of Contributions

I. Contributions shall accrue and become payable by each employer for each calendar year, in which he is subject to this chapter, in an amount equal to 2.7 percent, except as otherwise provided in RSA 282-A:79-90, of the wages paid or payable for employment during such calendar year, not to exceed $8,000 which have been paid to an individual in any calendar year. Such contributions shall become due and be paid by each employer to the commissioner of the department of employment security for the fund in accordance with such rules as the commissioner of the department of employment security may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ; provided that the contributions of an employer becoming subject to the law within any calendar year shall be first due and payable after such employer has satisfied the conditions with respect to becoming an employer. For the purposes of this section, the term “wages” shall include service subject to contribution under any employment security law of another state.

II. Notwithstanding this section, any organization or group of organizations, described in section 501(c)(3) and exempt under section 501(a) of the Internal Revenue Code or Indian tribe as defined in RSA 282-A:8, VIII, which becomes an employer under this act, may elect to change its status either to reimburse in the manner provided for the state in RSA 282-A:70 or to pay contributions as hereinabove provided. The change in status shall be irrevocable for 3 calendar years. Thereafter the employer may elect to change its status no later than January 1, for any year, but such new change in status shall be irrevocable for 3 calendar years. Any 2 or more of such employers or any 2 or more cities, towns, counties or other political subdivisions of this state may elect, for a period of not less than 3 years, to pool their separate accounts under such rules as may be adopted by the commissioner, including appropriate bonding and fiscal safeguard requirements, and each unit shall be jointly and severally liable for payments due.

III. In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to 1/2 cent or more in which case it shall be increased to one cent.

IV. A contribution, as defined in RSA 282-A:152, I shall not be considered due for any purpose under this chapter from an employer required to pay contributions under this chapter when the total amount due is less than one dollar.

V. The following provisions shall apply to Indian tribes electing to make payments in lieu of contributions:

(a) At the discretion of the commissioner, any Indian tribe that elects to become liable for payments in lieu of contributions shall be required within 30 days after the effective date of its election, to:

(1) Execute and file with the commissioner a surety bond approved by the commissioner; or

(2) Deposit with the commissioner money or securities on the same basis as other employers with the same election option.

(b) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions for the following tax year unless payment in full is received before the contribution rate for the next tax year is computed.

(c) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment shall have such option reinstated if, after a period of one year, all contributions have been made timely, provided no contributions, payments in lieu of contributions for benefits paid, penalties, or interest remain outstanding.

(d) Failure of the Indian tribe to make required payments, including assessments of interest and penalty, after all collection activities deemed necessary by the commissioner have been exhausted, will cause services performed for such tribe to not be treated as employment for purposes of this section.

(e) The commissioner may determine that any Indian tribe that loses coverage under subparagraph (d) may have services performed for such tribe again included as employment for purposes of RSA 282-A:9 if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(f) The commissioner shall notify the United States Internal Revenue Service and the United States Department of Labor of any termination or reinstatement of coverage made under subparagraphs (d) and (e).

(g) Notices of payment and reporting delinquency to Indian tribes shall include information that failure to make full payment within the prescribed time frame:

(1) Shall cause the Indian tribe to be liable for federal unemployment tax;

(2) Shall cause the Indian tribe to lose the option to make payments in lieu of contributions; and

(3) Could cause the Indian tribe to be excepted from the definition of employer, as provided in RSA 282-A:8, and services in the employ of the Indian tribe to be excepted from employment.

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

**Last Source:** 2003, 116:9, 16, eff. Aug. 8, 2003.

**282-A:70 Payment of Contributions by State**

The liability of this state including the state university system for benefits paid shall be as follows:

I. In lieu of contributions required of other employers subject to this chapter, the state shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits, including extended benefits, paid to claimants who during the applicable period were paid wages by this state. If a claimant during such base period was employed by this state and by other employers subject to the provisions of this chapter, the amount to be paid into the unemployment compensation fund by this state with respect to such claimant shall be the amount of benefits

received by the claimant which are in addition to such amount as the claimant was entitled to receive on the basis of the wages paid by such other employers.

II. The amount of payments required under this subdivision to be made into the fund shall be ascertained by the commissioner of the department of employment security as soon as practicable after the end of each calendar month and shall, except as provided hereafter, be paid by the commissioner of administrative services from funds appropriated therefor; provided that, if said appropriation is not sufficient to make all such payments or no appropriation is made therefor, they shall, upon warrant by the governor, be paid from the general funds of the state, out of any money not otherwise appropriated. If a claimant to whom benefits were paid was paid wages by the state during the base period from a special administrative fund provided for by law, into which moneys, in addition to, or other than from the state treasury, are placed, the payment into the unemployment compensation fund shall be made from such special administrative fund in the regular manner provided for disbursing such money.

III. The payment by the state into the unemployment compensation fund shall be made at such times and in such manner as the commissioner of the department of employment security, with the approval of the commissioner of administrative services, may determine and prescribe.

***(effective January 1, 2007, see 282-A:70 below.)***

**Last Source:** 1985, 399:3, I, eff. July 1, 1985.

**282-A:70 Payment of Contributions by State**

The liability of this state including the state university system for benefits paid shall be as follows:

I. In lieu of contributions required of other employers subject to this chapter, the state shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits, including extended benefits, paid to claimants who during the applicable period were paid wages by this state. If a claimant during such base period was employed by this state and by other employers subject to the provisions of this chapter, the amount to be paid into the unemployment compensation fund by this state with respect to such claimant shall be prorated pursuant to RSA 282-A:72.

II. The amount of payments required under this subdivision to be made into the fund shall be ascertained by the commissioner of the department of employment security as soon as practicable after the end of each calendar month and shall, except as provided hereafter, be paid by the commissioner of administrative services from funds appropriated therefor; provided that, if said appropriation is not sufficient to make all such payments or no appropriation is made therefor, they shall, upon warrant by the governor, be paid from the general funds of the state, out of any money not otherwise appropriated. If a claimant to whom benefits were paid was paid wages by the state during the base period from a special administrative fund provided for by law,

into which moneys, in addition to, or other than from the state treasury, are placed, the payment into the unemployment compensation fund shall be made from such special administrative fund in the regular manner provided for disbursing such money.

III. The payment by the state into the unemployment compensation fund shall be made at such times and in such manner as the commissioner of the department of employment security, with the approval of the commissioner of administrative services, may determine and prescribe.

***(prior to January 1, 2007, see 282-A:70 above.)***

**Last Source:** 2006, 130:5, eff. Jan. 1, 2007.

**282-A:71 Payment of Contributions by County, City, Town or Other Political Subdivisions of This State**

I. A county, city, town or other political subdivision which becomes an employer under this act shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits paid to claimants who during the applicable base period were paid wages by such county, city, town or other political subdivision. If a claimant during such base period was employed by both such county, city, town or other political subdivision and other employers subject to the provisions of this chapter, the amount to be paid into the fund by such county, city, town or other political subdivision with respect to such claimant shall be an amount equal to the amount of benefits paid to such claimant in addition to such amount as the claimant was entitled to receive on the basis of the wages paid to such claimant by such other employers. The amount of payments required under this subdivision to be made into the fund shall be ascertained by the commissioner of the department of employment security as soon as practicable after the end of each calendar month. The payments by such county, city, town or other political subdivision into the fund shall be made at such times and in such manner as the commissioner of the department of employment security may determine and prescribe. A county, city, town or other political subdivision shall maintain a record of the social security account numbers of its employees.

II. In lieu of paragraph I, such county, city, town or other political subdivision may elect to change its status to pay contributions as provided for other employers. Such change in status shall be for not less than 3 years and shall be made by August 21, 1979, or before January 1 of the applicable year. Thereafter, the political subdivision may elect to change its status no later than January 1, for any year, but such new change in status shall be irrevocable for 3 calendar years.

III. Sums appropriated by a county, city, town or other political subdivision to meet the obligations imposed by this chapter shall not be transferred or used for any other purpose, and such sums or the unused balance of such sums shall lapse at the end of each fiscal year.

***(effective January 1, 2007, see 282-A:71 below.)***

**Last Source:** 1993, 104:2, eff. July 3, 1993.

**282-A:71 Payment of Contributions by County, City, Town or Other Political Subdivisions of This State**

I. A county, city, town or other political subdivision which becomes an employer under this act shall pay into the unemployment compensation fund an amount equivalent to the amount of benefits paid to claimants who during the applicable base period were paid wages by such county, city, town or other political subdivision. If a claimant during such base period was employed by both such county, city, town or other political subdivision and other employers subject to the provisions of this chapter, the amount to be paid into the fund by such county, city, town or other political subdivision with respect to such claimant shall be prorated pursuant to RSA 282-A:72. The amount of payments required under this subdivision to be made into the fund shall be ascertained by the commissioner of the department of employment security as soon as practicable after the end of each calendar month. The payments by such county, city, town or other political subdivision into the fund shall be made at such times and in such manner as the commissioner of the department of employment security may determine and prescribe. A county, city, town or other political subdivision shall maintain a record of the social security account numbers of its employees.

II. In lieu of paragraph I, such county, city, town or other political subdivision may elect to change its status to pay contributions as provided for other employers. Such change in status shall be for not less than 3 years and shall be made by August 21, 1979, or before January 1 of the applicable year. Thereafter, the political subdivision may elect to change its status no later than January 1, for any year, but such new change in status shall be irrevocable for 3 calendar years.

III. Sums appropriated by a county, city, town or other political subdivision to meet the obligations imposed by this chapter shall not be transferred or used for any other purpose, and such sums or the unused balance of such sums shall lapse at the end of each fiscal year.

***(prior to January 1, 2007, see 282-A:71 above.)***

**Last Source:** 2006, 130:6, eff. Jan. 1, 2007

**282-A:72 Proration of Payments**

If the base period wages of an individual include wages from both the state and a town, city or other political subdivision or from the state and more than one town, city or other political subdivision, or from more than one town, city or other political subdivision, then the amount to be paid into the fund under this subdivision with respect to the benefits paid to such individuals shall be prorated among such liable employers in proportion to the wages paid to such individual by such employer during the base period.

***(effective January 1, 2007, see 282-A:72 below.)***

**Last Source:** 1989, 267:9, eff. July 25, 1989.

**282-A:72 Proration of Reimburser Charges.**

If the base period wages of an individual include wages from one or more reimbursing employers and one or more additional employers, reimburser or taxpayer, benefits paid to such individual shall be charged to any such reimbursing employer in the same proportion as the wages from such reimbursing employers bears to the total amount of all wages in the individual's base period. Any benefits not charged to a reimbursing employer shall be charged to the most recent employer or as otherwise required by RSA 282-A.

***(prior to January 1, 2007, see 282-A:72 above.)***

**Last Source:** 2006, 130:7, eff. Jan. 1, 2007.

**282-A:73 Credit for Other Funds Received**

I. The state and all other employers who have reimbursed the unemployment compensation fund for benefits paid shall be given a credit against future billing, or, in whole or in part, shall be given a refund at the discretion of the commissioner in an amount equal to the amount of such benefits which are repaid to the unemployment compensation fund from any other source.

II. The provisions of RSA 282-A:74, RSA 282-A:75 and RSA 282-A:76 shall not apply to any employer electing reimbursement under RSA 282-A:69, II, RSA 282-A:70, RSA 282-A:71, or RSA 282-A:72.

**Last Source:** 1987, 243:7, eff. July 17, 1987.

**282-A:74 Separate Accounts; Chargeable Account**

I. The commissioner shall maintain a separate account for each employer and shall credit his account with all contributions timely paid by him or on his behalf; but nothing in this chapter shall be construed to grant any employer or any individual in his service prior claims or rights to the amounts paid by him into the fund, either on his own behalf or on behalf of such individuals.

II. Benefits paid to an eligible individual shall be charged against the account of the claimant's most recent employer, including 1/2 of such benefits as are paid to an individual under RSA 282-A:30, except whenever benefits are paid and a chargeable employer under this paragraph has not been established following a determination that an individual was disqualified under RSA 282-A:32 the employer furnishing the employment described in RSA 282-A:32, I, shall be charged with all benefits paid.

***(effective January 1, 2007, see 282-A:74 below.)***

**Last Source:** 1985, 340:7, eff. Aug. 13, 1985.

**282-A:74 Separate Accounts; Chargeable Account**

I. The commissioner shall maintain a separate account for each employer and shall credit his account with all contributions timely paid by him or on his behalf; but nothing in this chapter shall be construed to grant any employer or any individual in his service prior claims or rights to the amounts paid by him into the fund, either on his own behalf or on behalf of such individuals.

II. Benefits paid to an eligible individual shall be charged against the account of the claimant's most recent employer, including 1/2 of such benefits as are paid to an individual under RSA 282-A:30, except whenever benefits are paid and a chargeable employer under this paragraph has not been established following a determination that an individual previously disqualified under RSA 282-A:32, but now eligible due to having earned wages in employment as required by RSA 282-A:32, I, the fund shall be chargeable.

***(prior to January 1, 2007, see 282-A:74 above.)***

**Last Source:** 2006, 130:8, eff. Jan. 1, 2007.

**282-A:75 Fund Chargeable**

In assigning the charges for benefits to the account of the most recent employer under this subdivision, no benefits shall be charged to the account of an individual employer but shall be charged by the commissioner against the fund where:

I. Benefits are paid and are not chargeable against any employer's account in accordance with the provisions of RSA 282-A:42 and 44-52; or

II. [Repealed.]

III. Benefits are paid to a claimant solely through error or inadvertence of the commissioner or his authorized representative as provided in RSA 282-A:165;

IV. Benefits are paid to an individual by reason of RSA 282-A:31, III, or

V. Benefits are paid to an individual by reason of RSA 282-A:32, I (a)(3).

**Last Source:** 1998, 71:2, eff. July 14, 1998.

**282-A:76 Overpayments Chargeable to Fund**

The account of the most recent employer shall immediately be relieved of charges where benefits are determined to be overpayments as a result of the application of any provision of this chapter, and such benefits shall be charged against the fund, unless the overpayment was caused by error of the employer; in such case, benefits shall be charged to the fund in an amount equal to the benefits that have been repaid from any source to the unemployment compensation fund.

**Last Source:** 1987, 243:8, eff. July 17, 1987.

**282-A:77 Monthly Notification**

At least once each month the commissioner shall notify all employers of benefits charged during the preceding month to their separate accounts by means of a duplicate or copy of each such claimant's benefit checks or in any manner determined by the commissioner.

**Last Source:** 1996, 50:2, eff. June 23, 1996.

**282-A:78 More Than One Employer Simultaneously**

The commissioner shall prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time.

***(effective January 1, 2007, see 282-A:78 below.)***

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:78 More Than One Employer Simultaneously**

The commissioner shall prescribe the manner in which benefits shall be charged against the accounts of several employers for whom an individual performed employment at the same time. "Performed employment" for purposes of this section shall include the receipt of wages or earnings found to apply to such time period pursuant to RSA 282-A:14, III(a).

***(prior to January 1, 2007, see 282-A:78 above.)***

**Last Source:** 2006, 130:9, eff. Jan. 1, 2007.

**282-A:79 Merit Rating**

The commissioner shall classify employers for each calendar year in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts, with a view to fixing such contribution rates as will reflect such experience, such rate to become effective with the fiscal year beginning July 1, 1951, and on each succeeding fiscal year beginning on July 1 thereafter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:80 Definitions**

I. "Annual payroll' shall be the total amount of taxable wages under this chapter paid for employment during a calendar year.

II. "Average annual payroll' shall be the average of the employer's actually existing annual payrolls for the 3 immediately preceding consecutive calendar years prior to January 1 of the year in which the computation applies.

**Last Source:** 1981, 416:11, eff. Aug. 22, 1981.

**282-A:81 Newly Covered Employers**

No employer shall be entitled to a rate of less than 2.7 percent unless and until as of January 1 of the year in which such rate becomes applicable there has been one calendar year immediately preceding the computation date throughout which such separate account was chargeable with benefits, except as provided in RSA 282-A:82.

**Last Source:** 1985, 340:8, eff. Aug. 13, 1985.

**282-A:82 Minimum Rate**

I. The commissioner shall compute the amount to be subtracted from every employer's contribution rate for the 4 calendar quarters during a calendar year by determining the available balance in the unemployment compensation fund on September 30 of the preceding calendar year. The amount to be subtracted from every employer's contribution rate for the 4 calendar quarters during a calendar year shall be as follows:

(a) Whenever the unemployment compensation fund equals or exceeds $225,000,000 on September 30 of the preceding calendar year, the amount to be subtracted shall be .5 percent.

(b) Whenever the unemployment compensation fund equals or exceeds $250,000,000 on September 30 of the preceding calendar year, the amount to be subtracted shall be one percent.

(c) Whenever the unemployment compensation fund equals or exceeds $275,000,000 on September 30 of the preceding calendar year, the amount to be subtracted shall be 1.5 percent.

II. The minimum contribution rate under this section shall not be less than .01 percent.
***(effective January 1, 2007, see 282-A:82 below)***

**Last Source:** 2006, 308:2, eff. July 1, 2006

**282-A:82 Minimum Rate**

I. The commissioner shall compute the amount to be subtracted from every employer's contribution rate for the 4 calendar quarters during a calendar year by determining the available balance in the unemployment compensation fund on September 30 of the preceding calendar year. The amount to be subtracted from every employer's contribution rate for the 4 calendar quarters during a calendar year shall be as follows:

(a) Whenever the unemployment compensation fund equals or exceeds $225,000,000 on September 30 of the preceding calendar year, the amount to be subtracted shall be .5 percent.

(b) Whenever the unemployment compensation fund equals or exceeds $250,000,000 on September 30 of the preceding calendar year, the amount to be subtracted shall be one percent.

(c) Whenever the unemployment compensation fund equals or exceeds $275,000,000 on September 30 of the preceding calendar year, the amount to be subtracted shall be 1.5 percent.

II. The minimum contribution rate under this section shall not be less than .10 percent.

***(prior to January 1, 2007, see 282-A:82 above.)***

**Last Source**: 2006, 308:9 eff. January 1, 2007.

**282-A:83 Business Suspended**

The time the operation of a business of an employer was suspended because of the employer's service in the armed forces during World War II, or because of the employer's service in the armed forces of the United States or any of its allies or of the United Nations after July 1, 1950, shall be considered as if the business had been actively and continuously operating during such period.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:84 Emergency Power**

Should the commissioner determine at any time that the solvency of the fund is in jeopardy and the continuation of merit rates is in danger, he shall add to every employer's contribution rate .5 percent in order to preserve the merit rate principle in this state and continue the solvency of the unemployment compensation fund. He may either concurrently or independently suspend the operation of RSA 282-A:82.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:85 Standard Rate and Qualification for Reduced Merit Rate**

I. The standard contribution rate as required by the Federal Unemployment Tax Act shall be 5.4 percent.

II. No employer shall be entitled to a reduced merit rate under RSA 282-A:87, I for any fiscal year unless, as of April 30 preceding said fiscal year, the employer has properly and duly submitted reports and contributions required and previously due under the provisions of this chapter.

III. No employer assigned an earned rate under RSA 282-A:87, II shall be assigned a rate less than the maximum in that paragraph for any fiscal year effective with the fiscal year beginning

July 1, 1995, unless as of April 30 preceding said fiscal year the employer has properly and duly submitted reports and contributions previously due under this chapter.

**Last Source:** 1995, 249:4, eff. Jan. 1, 1996.

### 282-A:86 Computation Date

The computation date shall be January 31. The total for all past years of all benefits charged as of the computation date against an employer's separate account shall be subtracted from the total of all contributions paid on an employer's own behalf and credited as of the computation date to the employer's separate account for all past years. Delinquent contributions received after January 31, 1997, shall be credited to the employer's separate account on the next computation or recomputation date. If benefits so charged exceed contributions so credited, the excess shall be computed as a percent of the employer's average annual payroll which percent shall determine the contribution rate as provided in RSA 282-A:87, II. If contributions so credited exceed benefits so charged, the excess shall be computed as a percent of the employer's average annual payroll which percent shall determine the contribution rate as provided in RSA 282-A:87, I.

**Last Source:** 1997, 211:2, eff. Jan. 1, 1998.

### 282-A:87 Contribution Rates

I. Whenever the unemployment compensation fund throughout the next preceding calendar quarter exceeded $35,000,000, said employer's contribution rate shall, after computation is made in the manner described in RSA 282-A:86, and subject to the provisions and conditions of this subdivision otherwise provided, be in the following percent:

SCHEDULE I.

Percent of Average Annual Contribution

| Pay Roll Equals or Exceeds | Rate |
|---|---|
| 1% | 2.6% |
| 2 | 2.5 |
| 3 | 2.4 |
| 4 | 2.3 |
| 5 | 2.2 |
| 6 | 2.0 |
| 7 | 1.9 |
| 8 | 1.7 |
| 9 | 1.5 |
| 10 | 1.0 |
| 11 | .7 |
| 12 | .5 |

| | |
|---|---|
| 13 | .3 |
| 14 | .2 |
| 16 | .15 |
| 19 | .1 |
| 26 | .05 |

SCHEDULE II.

Percent of Average Annual Contribution

| Pay Roll Equals or Exceeds | Rate |
|---|---|
| 1% | 2.8% |
| 2 | 2.9 |
| 3 | 3.0 |
| 4 | 3.1 |
| 5 | 3.2 |
| 6 | 3.3 |
| 7 | 3.4 |
| 8 | 3.5 |
| 9 | 3.6 |
| 10 | 3.7 |
| 11 | 3.8 |
| 12 | 3.9 |
| 15 | 4.0 |
| 18 | 4.1 |
| 21 | 4.2 |
| 23 | 4.3 |
| 26 | 4.5 |
| 29 | 4.6 |
| 31 | 4.7 |
| 33 | 4.8 |
| 35 | 5.0 |
| 36 | 5.2 |
| 37 | 5.3 |
| 38 | 5.4 |
| 40 | 5.5 |
| 46 | 5.6 |
| 50 | 5.7 |
| 60 | 5.8 |
| 70 | 5.9 |
| 80 | 6.0 |
| 100 | 6.5 |

III. [Repealed.]

IV. (a) (1) Each employer subject to payment of contributions pursuant to RSA 282-A:69, I shall have its rate reduced by 1/10 of one percent beginning in the second quarter of 1996. An administrative contribution equal to the amount of this reduction shall be paid by all such employers.

(2) Commencing July 1, 2001, after deduction of all costs incurred in the collection of the administrative contribution, 1/3 of the quarterly administrative contribution collected, not to exceed $1,000,000 annually, shall be deposited each quarter in the fund established by RSA 282-A:138-a and shall be expended only as provided by and for the purposes provided in that section. The remaining quarterly administrative contribution collected shall be deposited in the fund established by RSA 282-A:140 and shall be expended only as provided by and for the purposes provided in that section, and not for any other purpose.

(3) In the event the unemployment compensation trust fund fails to equal or exceed $275,000,000 throughout the preceding calendar quarter, the funds referred to in subparagraph IV(a)(2) shall not be deposited as provided in that section but shall be deposited in the fund established by RSA 282-A:140 and shall be expended only as provided by that section, and not for any other purpose.

(b) [Repealed.]

(c) All costs incurred in the collection of the administrative contributions shall be paid from funds derived from such contributions.

(d) The commissioner shall report to the advisory council on unemployment compensation quarterly all moneys collected and amounts expended. When, in the opinion of the commissioner with the advice and consent of the advisory council on unemployment compensation, sums collected exceed anticipated expenditures, the commissioner shall transfer such excess funds to the unemployment compensation fund established under RSA 282-A:103.

(e) [Repealed.]

(f) Each employer's separate account established under RSA 282-A:103 shall be credited with available interest earned by the unemployment compensation trust fund in an amount equal to timely administrative contributions collected pursuant to subparagraph (a).

**Last Source:** 2001, 133:3, 7, eff. July 1, 2001, 133:13, I, eff. Aug. 28, 2001.

**282-A:88 Election**

Notwithstanding any other provision of this chapter, an employer whose contribution rate is determined to be 3.5 percent or more may, on or before a computation date, elect to have his contribution rate thereafter computed on each computation date solely on the then most recent 5 calendar years' experience. Such election by an employer shall be irrevocable. Provided, that in the event of such election, no rate shall be assigned lower than 2.7 percent at any time thereafter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:89 Recomputation**

Except as otherwise provided in this subdivision, whenever through inadvertence, mistake or any other means erroneous charges or credits are found to have been made to an employer's account, the same shall be readjusted as of the date of discovery. Such readjustment shall not affect any computation or rate assigned prior to the date of discovery, but there shall be an immediate recomputation, in accordance with the applicable provisions of this subdivision, of such employer's account with notice to the employer of the result thereof. If such recomputation results in a contribution rate either higher or lower than that rate in effect on the date of discovery, such new rate shall become effective and applicable to taxable wages as of the first day of the quarter next succeeding the quarter in which the discovery is made.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:90 Ineligible for Rate Reduction**

No employer assigned a rate under RSA 282-A:87, II, shall be entitled to any such rate reductions occasioned by fund balances as are provided in RSA 282-A:79-89.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:91 Successorship; Total Acquisition**

An employing unit which acquires substantially all of the New Hampshire assets of any employer with the intent to continue said employer's organization, trade or business, excepting, in any such case, any assets retained by such employer incident to the liquidation of his obligations (whether or not such acquiring employing unit was an employing unit within the meaning of this chapter prior to such acquisition), shall within 30 days notify the commissioner thereof and shall assume, for the purpose of liability, the position of such employer with respect to such employer's separate account and contribution liability as if no change with respect to such separate account and liability had occurred and with the same effect for such purpose as if the operations of such employer had at all times been carried on by such employing unit. Such

separate account shall be transferred by the commissioner to such employing unit and, as of the date of such acquisition, shall become the separate account or part of the separate account, as the case may be, of such employing unit. The benefits thereafter chargeable to such employer on account of employment prior to the date of such acquisition shall be charged to the former employer's separate account until the fact of successorship is determined by the commissioner and thereafter shall be charged to the account of the acquiring employing unit.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:91-a Special Rules Regarding Transfers of Experience and Assignment of Rates.**

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

(a) (1) If an employer transfers its trade or business, or a portion thereof, to an employing unit or to another employer and, at the time of the transfer, there is any common ownership, management, or control of the 2 employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates of both employers shall be recalculated and made effective following the date of the transfer of trade or business in accordance with such rules as the commissioner may adopt.

(2) If, following a transfer of experience under subparagraph (1), the commissioner determines that a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, then the experience rating of the employer accounts involved shall be combined and the combined rate assigned to each employer in accordance with such rules as the commissioner may adopt.

(b) Whenever a person who is not an employer under this chapter at the time he or she acquires the trade or business, or a portion thereof, of an employer, the unemployment experience of the acquired business shall not be transferred to such person if the commissioner finds that such person acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such person shall be assigned the new employer rate under RSA 282-A:81.

(c) In determining whether there is any common ownership, management, or control of 2 employers, the commissioner shall use objective factors which may include the extent of commonality or similarity of: ownership; any familial relationships; principals or corporate officers; organizational structure; day-to-day operations; assets and liabilities; and stated business purposes. Ownership of publicly-traded mutual funds, publicly-traded stocks, and similar publicly-traded investments shall not be indicative of common ownership, management, or control.

(d) In determining whether a substantial purpose of the transfer of trade or business was to obtain a reduced liability for contributions, the commissioner shall use objective standards which may include the cost of acquiring the business to which the experience was transferred, how long such business enterprise was continued after the transfer, the extent to which such business enterprise reduced its workforce following the transfer, the size of each employer's workforce before and after the transfer, and the business activity conducted by each employer prior to, and after, the transfer.

(e) In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the commissioner shall use objective factors which may include the cost of acquiring the business, whether the person continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(f) (1) If a person knowingly violates or attempts to violate subparagraph (a), (b), or (i) or any other provision of this chapter related to determining the assignment of a contribution rate, or if a person knowingly advises another person in a way that results in a violation of such provision, the person shall be subject to the following penalties:

(A) If the person is an employer, such employer shall be assigned the highest rate assignable under this chapter for the rate year during which such violation or attempted violation occurred and the 3 rate years immediately following this rate year. However, if the person's business is already at such highest rate for any year, or if the amount of increase in the person's rate would be less than 2 percent for such year, then a penalty rate of contributions of 2 percent of taxable wages shall be imposed for such year.

(B) If the person is not an employer, such person shall be subject to a civil fine of not more than $5,000. Any such fine shall be deposited in the fund established by RSA 282-A:140. Such person shall also be jointly and severally liable with any liable employer for additional contributions and all related penalties, fees, interest, and costs owed as a result of the application of this section. Such person shall be subject to civil action for such liability in any manner provided for collection of contributions in RSA 282-A:141-156.

(2) In addition to other penalties imposed in this paragraph, any violation of this section may be prosecuted under RSA 282-A:166 or any other appropriate statute.

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

(h) For purposes of this section:

(1) “Knowingly” means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(2) “Person” means “person” as defined in section 7701(a)(1) of the Internal Revenue Code of 1986.

(3) “Trade or business” includes the employer’s workforce.

(4) “Violates” or “attempts to violate” includes, but is not limited to, intent to evade, misrepresentation, and willful nondisclosure.

(i) The reporting by an employer of its payroll under the account of another employer with which there is no common ownership, management, or control, is prohibited unless the reporting employer is an employee leasing company lawfully making such report.

(j) A management company which contracts with any employer to report wages of managed employees shall be considered, in accordance with such rules as the commissioner may adopt, to have common management or control with such employer, and with any other management company with which the employer may contract for the same purpose in the future.

II. This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

**Last Source:** 2005, 239:6, eff. Jan.1, 2006.

**282-A:92 Contribution Rate**

No rate of less than 2.7 percent shall be permitted an employing unit succeeding to the experience of another employing unit pursuant to RSA 282-A:91-93 for any period subsequent to such succession except in accordance with rules adopted by the commissioner, which rules shall be consistent with federal requirements for additional credit allowance in section 3303 of the Internal Revenue Code of 1954 and consistent with the provisions of this chapter; except that such rules may establish a computation date for any such period different from the computation date generally prescribed by this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:93 Acquisition of Segregable Unit**

I. Whenever any employing unit, whether or not an employing unit at the time, in any manner succeeds to, or has succeeded to, or acquires, or has acquired, a segregable portion of an employer's organization, trade, or business, and all of the assets of that employer devoted to that segregable portion, with the intent to continue the organization, the trade and the business of that segregable portion, it may assume for all purposes the position of such employer with respect to such employer's separate account and contribution liability to the extent such separate account and contribution liability is assignable to such segregable unit.

II. If such succeeding employing unit is at the time of acquisition an employer, it shall continue to pay contributions at the rate assigned to it until the end of the then current tax year.

III. If such succeeding employing unit is not at the time of acquisition an employer, it shall pay contributions at the rate assigned to the transferring employer until the end of the then current tax year.

IV. No transfer of a portion of any employer's separate account shall be made under RSA 282-A:91-93 except upon application of the succeeding employing unit and waiver by the transferring employer of all its rights and interest in such segregable portion of its separate account. Application in writing together with the notarized waiver shall be filed with the commissioner within 30 days from the date on which the acquisition occurs.

V. For the purpose of RSA 282-A:91-93, “segregable unit” shall mean a separately maintained, housed and conducted establishment whose activities have been physically detached from the other plants, factories or premises of the employer and for which the employer has maintained separate books of account including payrolls. A unit shall be considered segregable only for the periods during which such separation of location and books of account are maintained.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:94 Employer Liability Determination**

The commissioner of the department of employment security or his authorized representative shall make an initial determination on all questions relating to the liability of employing units or employers or both, including the amount of contributions, the rate at which contributions shall be paid and successorship. A copy of the initial determination shall be sent by certified mail, return receipt requested, or first class mail, whichever the commissioner determines to be most appropriate, to the last address, according to the records of the department, of each employing unit or employer affected thereby.

**Last Source:** 2006, 130:11 eff. July 1, 2006.

**282-A:95 Appeal**

The affected employing unit or employer or both may appeal in writing to the commissioner from the initial determination. No appeal shall be entertained by the commissioner unless received in his office or, if filed by mail, postmarked within 14 calendar days from the date on which the initial determination is mailed. If an appeal is not so filed, the initial determination shall, with the expiration of said period, become final and conclusive in all respects and for all purposes; provided that, if the commissioner finds sufficient grounds to justify or excuse delay, he may extend the time for filing the appeal.

**Last Source:** 1991, 311:10, eff. June 30, 1991.

**282-A:96 Formal Hearing**

I. A formal hearing on each such appeal shall be conducted according to the rules adopted by the commissioner, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure; and a complete record of such hearings shall be made and kept by the commissioner except that such record may be destroyed as provided in RSA 282-A:107-135. The record shall include the evidence, the commissioner's findings of fact and decision. A copy of the decision of the commissioner shall be sent by certified mail, return receipt requested, to the last address according to the records of the department, of each employing unit or employer affected thereby.

II. An employer or employing unit who is aggrieved by the decision of the commissioner may, within 20 days of the date of mailing of the commissioner's decision request that the commissioner reconsider the decision or that the commissioner order a new hearing specifying in the request the grounds therefor. Notice of the commissioner's decision on such request shall be sent as provided in paragraph I.

**Last Source:** 2000, 116:5, eff. July 7, 2000.

**282-A:97 Appeal to Appellate Board**

The commissioner's decision on said appeal shall be final and conclusive as to the liability of the employing unit or employer or both unless an appeal therefrom is filed in accordance with the provisions of RSA 282-A:64.

**Last Source:** 2000, 116:6, eff. July 7, 2000.

**282-A:98 Sole Remedy**

The procedures set forth above shall be exclusive for the determination of all questions relating to the liability of employing units or employers or both except matters determined under RSA 282-A:42-68. No questions relating to the liability of employing units or employers or both which have been determined prior to June 19, 1961, shall be reviewed hereunder.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## Period for Election and Termination of Employer's Coverage

**282-A:99 Initial Coverage; Continuation**

Any employing unit which is or becomes an employer subject to the provisions of this chapter within any calendar year shall be subject to the provisions of this chapter as of January 1 and for the whole of such calendar year except as provided in RSA 282-A:102, and shall remain an employer subject to the provisions of this chapter until coverage is terminated as provided in RSA 282-A:101, 102.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:100 Termination; Death, etc**

The commissioner may terminate an employer and permanently remove his separate account as of the time an employer has died, ceased business or removed from the state.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:101 Termination; Failure to Comply**

Except as otherwise provided in this subdivision, where the commissioner, after such investigation as he deems necessary, finds that an employer during the then last completed calendar year did not satisfy the conditions of becoming an employer as set forth in this chapter, he shall terminate such employer and permanently remove such employer's separate account as of the first day of January of the calendar year succeeding the year above described.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:102 Elective Coverage**

I. An employing unit not otherwise subject to this chapter which files with the commissioner of the department of employment security its written election to become an employer subject hereto for not less than 2 calendar years shall, with the written approval of such election by the commissioner, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval. Such an employing unit shall cease to be subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if, at least 30 days prior to such first day of January, it has filed with the commissioner of the department of employment security a written notice to that effect, or the commissioner, on his own motion, has given notice of such termination of such coverage.

II. Any employing unit for which services that do not constitute employment as defined in this chapter are performed may file with the commissioner of the department of employment security a written election that all such services performed by individuals in its employ in any or all of its places of business shall be deemed to constitute employment for all the purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the commissioner, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if, at least 30 days prior to such first day of January, such employing unit has filed with the commissioner a written notice to that effect, or the commissioner, on his own motion, has given notice of such termination of such coverage.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## Unemployment Compensation Fund

**282-A:103 Establishment and Control**

There is hereby created the unemployment compensation fund to be administered by the commissioner of the department of employment security, subject to audit by the commissioner of administrative services without liability on the part of the state beyond the amounts paid into and earned by the fund. This fund shall consist of all contributions collected under this chapter, all interest earned upon any moneys in the fund, any properties or securities acquired through use of moneys or securities belonging to the fund and all earnings of such properties or securities, and all other moneys received for the fund from any other source. All moneys in the fund shall be mingled and undivided.

**Last Source:** 1981, 399:3, I, eff. July 1, 1985

**282-A:104 Accounts and Deposit**

I. The commissioner shall designate a permanent full-time classified employee of the department to be treasurer of the fund. Such designated employee shall also be the custodian of the fund. The treasurer shall administer such fund solely in accordance with the directions of the commissioner. He shall maintain 3 separate accounts within the fund:

(a) A clearing account,

(b) An unemployment trust fund account, and

(c) A benefit account.

II. All moneys payable to the fund, upon receipt thereof by the treasurer, shall be immediately deposited in the clearing account. Refunds payable pursuant to RSA 282-A:149 may be paid from the clearing account. The clearing account shall be used for deposit and clearance of any instrument which involves payment to the unemployment compensation fund and any other fund created within or without the state treasury by this chapter; upon clearance, such amount as is found to be due such other fund shall immediately be withdrawn by check and forwarded, or electronically transferred, to the custodian of such fund for deposit. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the unemployment trust fund established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding.

III. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer in any bank or public depository in which general funds of the state may be deposited; but no public deposit insurance charge or premium shall be paid out of said fund. The treasurer shall give a bond conditioned upon the faithful performance of his duties, including those as custodian of the fund, in the amount of $300,000. Premiums for said bond shall be paid from the unemployment compensation and employment service administration fund. Said bond shall be purchased by the division of purchase and property.

**Last Source:** 1995, 249:5, eff. June 19, 1995.

**282-A:105 Withdrawals**

The commissioner shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state's account therein, as he deems necessary solely for the payment of benefits for a reasonable future period. Upon receipt thereof,

the treasurer shall deposit such moneys in the benefit account. Benefit payments shall be made solely from the benefit account. All checks drawn on either the clearing account or benefit account shall bear the signature of the commissioner or his duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commissioner of the department of employment security, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in RSA 282-A:104.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:106 Management of Funds Upon Discontinuance of Unemployment Trust Fund**

I. The provisions of RSA 282-A:103 through 105, to the extent that they relate to the unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the Secretary of the Treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals.

II. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties, or securities therein, belonging to the unemployment compensation fund of this state shall be transferred to the treasurer of the unemployment compensation fund who shall hold, invest, transfer, sell, deposit, and release such moneys, properties or securities in a manner approved by the commissioner of the department of employment security in accordance with the provisions of this chapter; provided that such moneys shall be invested in the following readily marketable classes of securities: Bonds or other interest-bearing obligations of the United States of America, or of this state or of its political subdivisions. Provided further that such investment shall at all times be so made that all the assets of the fund shall always be readily convertible into cash when needed for the payment of benefits.

III. The treasurer shall dispose of securities or other properties belonging to the unemployment compensation fund only under the direction of the commissioner of the department of employment security.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## Administrative Organization and Administration

**282-A:107 Department of Employment Security**

There shall be a department of employment security which shall include an unemployment compensation bureau, an employment service bureau, and an economic and labor market information bureau.

**Last Source:** 1989, 267:11, eff. July 25, 1989.

**282-A:108 Commissioner; Term; Removal; Salary**

I. There shall be a commissioner of the department of employment security who shall be appointed by the governor with the advice and consent of the council.

II. The commissioner shall hold office for 5 years from the date of his appointment and until his successor is appointed and qualified. Otherwise the commissioner may be removed only as provided in RSA 4:1.

III. The annual salary of the commissioner of the department of employment security shall be that prescribed by RSA 94:1-4.

**Last Source:** 1981, 576:3, eff. July 1, 1981.

**282-A:109 Deputy Commissioner**

There shall be a deputy commissioner of the department of employment security who shall act as commissioner whenever the commissioner of the department of employment security is incapacitated, absent or unable to act for any cause. The deputy commissioner shall also act as commissioner of the department of employment security until a new commissioner is duly appointed whenever there is no commissioner. During such period as the deputy commissioner acts as commissioner, his status as a classified state employee shall continue and shall in no way be altered, affected or changed.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:110 Expenses**

Subject to compliance with laws and regulations approved by the United States department of labor, the actual expenses incurred by the commissioner of the department of employment security in the work of his office shall be paid.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:111 Bonds**

The commissioner and the deputy commissioner shall each give a bond in the amount of $150,000 conditioned upon the faithful performance of his duties under this chapter. Premiums for such bonds shall be paid from the unemployment compensation and employment service administration fund and purchased by the department of administrative services, division of plant and property management.

**Last Source:** 1989, 267:12, eff. July 25, 1989.

**282-A:112 Duties and Powers of Commissioner**

I. It shall be the duty of the commissioner of the department of employment security to administer this chapter. He shall have power and authority to adopt, amend, or rescind rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as he deems necessary or suitable to that end. The commissioner shall determine his own organization and methods of procedure in accordance with the provisions of this chapter. Not later than the thirtieth day of June of each year, the commissioner shall submit to the governor a report covering the administration and operation of this chapter during the preceding calendar year and shall make such recommendations for amendments to this chapter as he deems proper. Such reports shall include a balance sheet of the moneys in the fund in which there shall be provided, if possible, a reserve against the liability in future years to pay benefits in excess of the then current contributions, which reserve shall be set up by the commissioner in accordance with accepted actuarial principles on the basis of statistics of employment, business activity, and other relevant factors for the longest possible period. Whenever the commissioner believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

II. For the purpose of establishing and maintaining free public employment offices, the commissioner of the department of employment security is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state, or with any private, non-profit organization; and, as a part of any such agreement, the commissioner may accept moneys, services, or quarters as a contribution to the employment service account.

III. [Repealed.]

IV. For the purpose of establishing and maintaining free public employment offices, the commissioner is authorized, except as provided in paragraph V, with the approval of the

governor and council, to enter into purchase or lease purchase agreements.

V. Notwithstanding any provision of the law to the contrary, the consent of the capital budget overview committee, established in RSA 17-J, shall be required for all total project agreements exceeding $50,000 for:

(a) Acquisition of land or existing buildings;

(b) New construction;

(c) An addition to an existing facility; or

(d) An improvement or repair to a facility which exceeds routine maintenance.

VI. The commissioner shall not close any district office nor reduce services or hours of operation without the prior permission of the fiscal committee.

**Last Source:** 2006, 308:8, eff. July 1, 2006.

**282-A:113 Unemployment Compensation Bureau, Employment Service Bureau and Economic and Labor Market Information Bureau**

I. There shall be in the department of employment security 3 coordinate bureaus, the employment service bureau, the unemployment compensation bureau, and an economic and labor market information bureau, each of which shall be administered by a full-time salaried administrator who shall be subject to the supervision and direction of the commissioner of the department of employment security. Each bureau shall be responsible for the discharge of its distinctive functions. Each bureau shall be a separate administrative unit with respect to personnel, budget, and duties except so far as the commissioner of the department of employment security may find such separation is impractical.

II. The commissioner of the department of employment security, through the employment service bureau, shall establish and maintain free public employment offices in such numbers and in such places as may be necessary for the proper administration of this chapter.

III. The commissioner of the department of employment security may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

**Last Source:** 1991, 311:11, eff. June 24, 1991.

**282-A:114 Publication of Rules**

The commissioner of the department of employment security shall cause to be printed in proper form for distribution to the public the text of this chapter, his rules, his annual reports to the governor and any other material he deems relevant and suitable and shall furnish the same to any person upon request.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:115 Personnel**

I. The commissioner of the department of employment security is authorized to employ all the necessary officers, accountants, clerks, agents, investigators, auditors and other persons necessary for the proper administration of this chapter and, under a classification plan, to fix the amount of their compensation according to the responsibility and difficulty of the work, quality and length of service, and other relevant factors, and to take such action as he deems necessary and appropriate to enable department personnel to participate in a plan similar to the government-wide service benefit plan.

II. Selection, retention and promotion of personnel, excepting those positions which by federal law need not be under a merit system of personnel administration, shall be on the basis of merit and shall include ability, efficiency, fitness, veterans' statutory preferences, an open competitive examination where feasible, training and experience.

III. No discrimination may be exercised against any person in recruitment, examination, appointment, training, promotion, retention, or any other personnel action, because of race, national origin, political or religious opinions or affiliations, or other non-merit factors.

IV. The commissioner shall fix the duties and powers of all department personnel and may authorize any such person to perform any of the functions of the commissioner under this chapter. The commissioner may, other statutes to the contrary notwithstanding, bond such persons and in such amounts as he, in his sole discretion, deems proper and necessary. The federal statutes and regulations, and standards promulgated by the United States office of personnel management, applicable to a merit system of personnel administration in state employment security agencies shall be applicable to the department. The commissioner, as well as any other affected state agency, is authorized to take whatever steps are necessary to comply therewith.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:116 Segregation of Special Risks**

The commissioner of the department of employment security shall investigate and report upon the degree of unemployment hazard in various industries and occupations and their cost to the unemployment fund. He shall recommend to employers in industries or occupations showing an excessive cost to the fund means for stabilizing employment. He shall also, if necessary, recommend to the legislature a higher rate of contribution for any classification of industries or occupations in which unemployment is excessive or chronic.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:117 Records and Reports; Record Keeping**

Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the commissioner may by rules prescribe. Such records shall be open to inspection and subject to be copied or reproduced by the commissioner, or his authorized representatives in this state at any reasonable time and as often as may be necessary at a place selected by the commissioner. The commissioner may, at his discretion, notify any employer of the prospective benefit rights of any individual in his employ. The commissioner may upon petition for cause authorize such records as he requires be maintained to be physically located in a state other than New Hampshire; however, when such petition is allowed, such records may, in the sole judgment of the commissioner, be examined at the department administrative office in this state or at their location outside this state. Where examination occurs outside this state, a penalty equal to all costs attendant thereupon, solely as computed by the commissioner, shall be paid by the employer to the department.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:117-a Employment Reports to Department of Employment Security; State Directory of New Hires**

I. The commissioner shall, pursuant to an agreement with the department of health and human services which shall include payment of costs of administration, maintain a state directory of new hires. Any employing unit shall report to the department for entry into the directory:

(a) The hiring of an individual who earns wages or any other form of compensation in this state;

(b) The rehiring of such individual who was permanently laid off or otherwise terminated from employment; and

(c) The contracting for services, other than casual labor, in this state with an individual, in accordance with the rules adopted by the commissioner, when reimbursement for such services is anticipated to exceed $2,500.

II. An employing unit with employees in 2 or more states, which transmits reports magnetically or electronically, may comply with this section by designating one of the states as the state to which the reports will be transmitted. Such an employing unit shall notify the United States Secretary of the Department of Health and Human Services in writing as to which state is so designated.

III. An employing unit required to report under paragraph I shall mail or transmit a copy of the individual's W-4 form to the department or send all information required in paragraph V in a format acceptable to the department by electronic or magnetic tape or by any other means mutually agreed upon.

IV. The employing unit shall submit to the department a report of an individual's hire, rehire, or contract for services within 20 days of such action or, in the case of magnetic or electronic reports, by 2 monthly transmissions not less than 12 days nor more than 16 days apart. The report shall contain:

(a) The individual's complete name, address, and social security number.

(b) The employing unit's name, address, and federal and state identification number.

V. Information reported under paragraphs III and IV shall be entered by the department in the state directory of new hires within 5 business days of receipt.

VI. The department and the department of health and human services shall conduct automated comparisons of the social security numbers reported by employing units pursuant to paragraphs III and IV and the social security numbers appearing in the records of the state case registry of child support cases pursuant to RSA 161-B:7, I. When such comparison reveals a match with respect to the social security number of an individual required to provide support under a support order, the department shall provide the department of health and human services with the name, address, and social security number of the individual to whom the social security number is assigned, and the employing unit's name, address, and federal and state identification number.

VII. Within 3 business days after the date the information is entered into the directory, the department shall furnish the information to the National Directory of New Hires.

VIII. The department of health and human services shall be authorized to use the information transmitted to it by the department of employment security, to establish paternity and establish, modify, and enforce child support obligations against a named individual and may disclose such information about such named individual to any agency under contract with the department of health and human services to carry out such purposes.

IX. The department of employment security shall furnish to the National Directory of New Hires quarterly extracts of the reports required under 42 U.S.C. 503 (a)(6) to be made to the United States Secretary of Labor concerning the wages and unemployment compensation paid to individuals, by such dates, in such format, and containing such information as the United States Secretary of Health and Human Services shall specify in regulations.

X. State agencies responsible for administering any program specified in 42 U.S.C. 1320b-7(b) shall have access to information reported by employers pursuant to this section pertaining to named individuals for purposes of verifying eligibility for the program.

XI. The department of employment security and state agencies operating workers' compensation programs shall have access to information reported by employers pursuant to this section for the purposes of administering such programs.

XII. Any individual earning wages in this state, hired or rehired by an employing unit, or entering into a contract for services with an employing unit, shall be deemed to consent to the release to, and the disclosure by, the department of the information consistent with the provisions of this section.

XIII. This section does not apply to an employee of a federal or state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that reporting pursuant to this section with respect to the employee could endanger the employee's safety or compromise an ongoing investigation or intelligence mission.

XIV. The commissioner and the commissioner of health and human services may adopt such rules as may be necessary for the efficient administration of this section pursuant to RSA 541-A.

**Last Source:** 1997, 263:26, eff. Oct. 1, 1997.

**282-A:118 Reports or Statement; Confidentiality**

The commissioner or his authorized representatives and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports or statements, with respect to persons employed by it, which either deems necessary for the effective administration of this chapter. Information thus obtained or obtained from any individual, claimant or employing unit pursuant to the administration of this chapter shall be held confidential and shall not be published or open to public inspection in any manner revealing the individual's or employing unit's identity except:

I. That an employing unit may inspect, at the convenience of the commissioner, records and reports which pertain to his separate account, and records and reports of claimants where the employing unit was the last employing unit or the employer whose separate account may be or

has been charged with benefits paid to such claimant;

II. That a claimant may inspect records and reports of an individual or employing unit which are directly connected with any claim for benefits which he may have made, including any which he has submitted in support of his claim for benefits; but he shall not be entitled to inspect the separate account or records directly connected therewith of any employing unit;

III. That public employees in the performance of their public duties may inspect records and reports of an individual, an employing unit, or a claimant where such information will aid in the performance of their public duties;

IV. That authorized federal employees granted access as provided in paragraph III shall be granted access on a case-by-case basis. In no event shall access to or copies of any database, whether written, electronic, or other, be provided to any agency, employee, or agent of the federal government except as required by federal or state law and duly authorized by the commissioner; and

V. That for the purpose of assessing governmental performance and accountability, the commissioner may provide information to the Wage Record Interchange System developed by the U.S. Department of Labor as administered by the National Association of State Workforce Agencies (NASWA) and utilized by each state's Performance Accountability and Customer Information Agency (PACIA). The use of the information shall be limited to the purposes contained in the federal Workforce Investment Act or the Wagner-Peyser Act. Information under this paragraph shall only be provided upon a finding by the commissioner that sufficient guarantees of continued confidentiality are in place.

**Last Source:** 2001, 106:1, eff. June 26, 2001.

**282-A:119 Summary, Duplication, etc.; Admissibility**

The commissioner may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof, as he may deem advisable for the effective and economical preservation of the information contained therein. Such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceeding under this chapter if the original record or records would have been admissible therein.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:120 Destruction of Records**

The commissioner may by rules order the destruction, after reasonable periods, of any and all records, reports, transcripts or reproductions thereof, or other papers kept pursuant to the administration of the unemployment compensation law, which are not considered by him as necessary to the administration of this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:121 Penalty**

Any employee of the department of employment security, member of an appeal tribunal, or any individual, corporation, association, partnership or other type of organization, who lawfully obtains or sees records, reports or information obtained in the administration of this chapter who violates any provision of this subdivision shall be guilty of a misdemeanor.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:122 No Liability**

No action for slander or libel, either criminal or civil, shall be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:123 Records Unavailable for Legal Process**

No records of any type in any form whether copies, compilations or reproductions pertaining to any individual or employing unit obtained in the course of or growing out of the administration of this chapter, or oral testimony relative thereto, as to either a specific person or in general shall be available for use in any proceeding, administrative or judicial; except that a necessary party to a proceeding directly and primarily concerned with workmen's compensation or an employer-employee relationship may by the use of valid judicial process obtain such records as directly relate to the necessary parties to the proceeding, and otherwise as is provided by this chapter. In matters unrelated to those enumerated previously, such records and oral testimony shall be available for use in any proceeding, administrative or judicial, where the state is a necessary party. No oral or written policy statements, opinions, advice, instructions or information of the department as to a specific person or in general shall be available for use in any proceeding, administrative or judicial through any means, and any process which attempts to obtain such shall be null and void.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:124 Oaths and Witnesses**

In the discharge of the duties imposed by this chapter, the commissioner of the department of employment security, the chairman of an appeal tribunal, and any duly authorized representative of either of them shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:125 Protection Against Self-Incrimination**

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commissioner of the department of employment security, the chairman of an appeal tribunal, or any duly authorized representative of either of them, or a court of this state, or in obedience to the subpoena of any of them in any cause or proceeding before the commissioner, or an appeal tribunal, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:126 Subpoenas; Witness's and Sheriff's Fees**

I. In the case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commissioner of the department of employment security, the chairman of an appeal tribunal, or any duly authorized representative of either of them, shall have jurisdiction to issue to such person an order requiring such person to appear before the commissioner, the chairman of an appeal tribunal or any duly authorized representative of either of them, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

II. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if it is in his power so to do, in obedience to a subpoena of the commissioner, the chairman of an appeal tribunal, or any duly authorized representative of either of them, shall be guilty of a misdemeanor. Each day such violation continues shall be deemed to be a separate offense.

III. A witness subpoenaed pursuant to this chapter shall be allowed fees at the rate established for a witness in the superior court. A sheriff shall be allowed the customary fees for service and travel. Such fees shall be deemed a part of the expenses of administering this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:127 State-Federal Cooperation**

I. In the administration of this chapter, the commissioner of the department of employment security shall cooperate to the fullest extent consistent with the provisions of this chapter, with the United States Department of Labor, and is authorized and directed to take such action, through the adoption of appropriate rules, the adoption of administrative methods and standards, as may be necessary to secure to this state and its citizens all advantages available under the provisions of the Social Security Act, under the provisions of section 3302 of the Federal Unemployment Tax Act and under the provisions of the Wagner-Peyser Act approved June 6, 1933, as amended; shall make such reports in such form and containing such information as the United States Department of Labor may from time to time require, and shall comply with such provisions as the United States Department of Labor may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with regulations prescribed by the United States Department of Labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in the administration of this chapter.

II. Upon request therefor, the commissioner of the department of employment security shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

III. The commissioner may make the state's records relating to the administration of this chapter available to the railroad retirement board and may furnish the railroad retirement board, at the expense of such board, such copies thereof as the railroad retirement board deems necessary for its purposes. The commissioner may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:128 Advisory Council**

There is hereby created within the unemployment compensation bureau an advisory council on unemployment compensation, hereinafter called the advisory council. The advisory council shall consist of 9 members to be appointed, with the exception of the legislative members, by the governor with the consent and advice of the governor's council. Three of the appointees of this advisory council shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employers; 3 shall be persons who, because of their vocations, employment or affiliations, shall be classed as representing the point of view of employees; one shall be a senator from the insurance committee appointed by the senate president; one shall be a representative from the labor, industrial and rehabilitative services committee appointed by the speaker of the house; the remaining appointee, who shall be designated as chairman, shall be a person whose training and experience qualify him to deal with the problems of unemployment compensation. Such advisory council shall meet no later than 45 days after each calendar quarter and aid the commissioner in formulating policies and discussing problems related to the administration of this chapter and in assuring impartiality and freedom from political influence in the solution of such problems. Advisory council meetings shall provide opportunity for public comment.

**Last Source:** 2002, 122:1, eff. July 7, 2002.

**282-A:129 Term of Office**

The term of office of each nonlegislative member of the advisory council shall be 3 years and until his successor is appointed and qualified. The term of office of each legislative member shall be coterminous with the legislative term. In the event of a vacancy in the membership of said council, the appointment shall be made in the manner provided in RSA 282-A:128 and for the unexpired term.

**Last Source:** 1995, 275:2, eff. June 20, 1995.

**282-A:130 Compensation**

Each nonlegislative member of the advisory council shall be paid a fee of $40 per day for each day of actual attendance at called meetings of the advisory council and shall also be reimbursed for necessary travel and other necessary expenses. Legislative members shall receive mileage at the legislative rate for each day of actual attendance at called meetings.

**Last Source:** 1995, 275:3, eff. June 20, 1995.

**282-A:131 Unable to Attend**

In the event that a member of the advisory council is unable to attend any called meeting, the commissioner may appoint a substitute who shall for such meeting assume in all respects the position of the absent member.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:132 Cooperation**

It shall be the duty of the city and town clerks to cooperate with the employment service bureau in the reception and forwarding of applications from those seeking employment and those desiring employees. Such clerks shall receive such compensation from the department of employment security as the commissioner of said department determines appropriate, and to the extent he finds that funds are available, and may receive additional compensation therefor according to the direction of the respective cities and towns.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:133 Removal from Records of Amounts Due**

Upon a written determination by the commissioner of the department of employment security with the approval of the attorney general that the best interests of the state would be served by taking no further action to collect any sum or sums due under the provisions of this chapter, the same may be removed from the books and records of the department by said commissioner.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:134 Claimant Assistance**

There shall be in the department, assigned to the commissioner's office, a full-time, classified employee with the title of claim representative. He shall be qualified as a certifying officer and possess such other requisite skills, knowledge and abilities as appropriate. His duties shall include advice to claimants relative to presentation of their best case to a certifying officer for purpose of redetermination, and the presentation of, or assistance therein, a claimant's case before an appeal tribunal including request for reopening. There shall also be in the department, but not members of the state classified service, part-time assistant claim representatives who shall be knowledgeable about unemployment compensation, shall be appointed by and serve at the pleasure of the commissioner, receive $40 for each day or any part thereof that they perform services at the request of the commissioner or his authorized representative, and, when necessary to the performance of their duties as determined by the commissioner, shall be reimbursed for

mileage and meals as are state employees generally. The assistant claim representative shall assist the claim representative and shall work under his general supervision to the extent deemed appropriate by the commissioner. Neither appointment under RSA 282-A:53-58 and RSA 282-A:128-131 nor receipt of retirement or pension payments from the state shall bar appointment and remuneration as an assistant claim representative. No claimant shall be a beneficiary of this provision, except for preliminary evaluation, unless the commissioner or the claim representative finds the case to be one about which reasonable men may disagree.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:135 Custody of Department of Employment Security Buildings

All buildings and land connected therewith which are used by the department of employment security shall be in the custody of the commissioner of said department. He shall be responsible for the care, maintenance, alterations and repair connected with such buildings and land to the extent of such federal moneys as are granted to said department for the specific purpose, or, in his sole judgment, from the fund provided at RSA 282-A:140. The provisions of RSA 228 shall not apply to such buildings and land.

**Last Source:** 1991, 311:12, eff. June 24, 1991.

### 282-A:136 House Counsel for the Department of Employment Security

I. There shall be a general counsel and counsel in the department of employment security appointed by the commissioner. The general counsel and counsel shall be licensed to practice law in New Hampshire. The general counsel shall have been engaged in the practice of law for not less than 5 years, and the counsel not less than 3 years. The general counsel and counsel shall hold office during good behavior, and may be removed only in accordance with RSA 4:1. The general counsel and counsel shall be compensated in accordance with the provisions of RSA 94:1-a.

II. Subject to the supervision of the attorney general as to matters of law, the general counsel and counsel shall be responsible to the commissioner, and shall perform such duties as the commissioner may from time to time assign. Appearances of general counsel and counsel shall be limited to administrative proceedings, except as otherwise provided by RSA 282-A:137.

**Last Source:** 1989, 267:15, eff. July 25, 1989.

### 282-A:137 Representation in Court

I. The attorney general, upon his own initiative or upon the request of the commissioner, may enforce the provisions of this chapter, or any rules adopted under this chapter, by any appropriate

proceeding, criminal or civil, legal or equitable, in any court.

II. All criminal actions for violation of any provision of this chapter, or rule adopted pursuant to this chapter, shall be prosecuted by the attorney general of the state or, at his request and under his direction, by counsel for the department of employment security in any county in which the employer has or had a place of business or the violator resides.

III. Subject to the approval and supervision of the attorney general as to matters of law, the general counsel and counsel of the department may appear in any court in civil proceedings for the collection of taxes and recovery of overpaid benefits. Upon request of the commissioner and approval of the attorney general, the general counsel and counsel may appear in any proceeding where such appearance is deemed by the attorney general to be in the best interest of the state.

**Last Source:** 1989, 267:16, eff. July 25, 1989.

## The Unemployment Compensation and Employment Service Administration Fund

### 282-A:138 Special Fund

I. There is hereby created in the state treasury a special fund to be known as the unemployment compensation and employment service administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the commissioner of the department of employment security for expenditure in accordance with the provisions of this chapter and shall not lapse at any time nor be transferred to any other fund.

II. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in RSA 282-A:107 through 282-A:135 shall be expended solely for the purposes and in the amounts found necessary by the United States Department of Labor for the proper and efficient administration of this chapter. The fund shall consist of all moneys appropriated by this state; all moneys received from the United States of America, or any agency thereof; and all moneys received from any other source for such purpose. The fund shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the unemployment compensation and employment service administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this chapter. Such moneys shall be secured by the depositary by collateral in the full amount of the funds on deposit. Such security shall consist of (a) United States government obligations, direct or guaranteed and (b) direct obligations of the state of New Hampshire. Such collateral security

shall be pledged at not to exceed the face value of the obligation and shall be kept separate and distinct from any collateral security pledged to secure other funds of the state.

III. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the unemployment compensation and employment service administration fund provided for under this chapter. Such liability on the official bond shall be effective May 10, 1941, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the unemployment compensation and employment service administration fund shall be deposited in said fund.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:138-a Training Fund**

I. There is hereby created in the state treasury a special fund to be known as the training fund. Commencing January 1, 2002, the moneys in this fund may be used, solely as determined by the commissioner of the department of employment security in accordance with rules and guidelines adopted by the commissioner, for funding training under the job training program for economic growth, established under RSA 188-F:49-56. Rulemaking authority relative to administration of the grant award process shall remain with the commissioner of regional community-technical colleges pursuant to RSA 188-F:52, II (a).

II. The commissioner of employment security shall act as the fiscal agent for moneys deposited in the training fund. All costs incurred by the commissioner acting as fiscal agent of the training fund shall be paid from such fund.

III. Any interest earned on the moneys in this fund shall be deposited in the fund established by RSA 282-A:140 and shall be expended only as provided by that section, and not for any other purpose.

IV. Any moneys paid into the training fund during a calendar year, which are either not obligated by June 30 of the following year or spent by June 30 of the year thereafter, shall lapse and be deposited into the fund established by RSA 282-A:140 and shall be expended only as provided by that section and not for any other purpose.

**Last Source:** 2001, 133:8, eff. July 1, 2001.

**282-A:139 Reimbursement of Fund**

If any moneys received after June 30, 1941, from the social security administration or its successor, the United States Department of Labor, under Title III of the Social Security Act, or any unencumbered balances in the unemployment compensation administration fund as of that

date, or any moneys granted after that date to this state pursuant to the provisions of the Wagner-Peyser Act are found by the social security administration or its successor, the United States Department of Labor, because of any action or contingency, to have been lost or expended for purposes other than, or in amounts in excess of, those found necessary by the social security administration or its successor, the United States Department of Labor, for the proper administration of this chapter, it is the policy of this state that such moneys shall be replaced by moneys in the contingent fund established by RSA 282-A:140 or by moneys appropriated for such purpose from the general funds of this state to the unemployment compensation administration fund for expenditure as provided in RSA 282-A:138. Upon receipt of notice of such a finding by the social security administration or its successor, the United States Department of Labor, and in the event that there are insufficient funds in the contingent fund, as provided in RSA 282-A:140, the commissioner of the department of employment security shall promptly report the amount required for such replacement to the governor; and the governor shall at the earliest opportunity submit to the legislature a request for the appropriation of such amount. This section shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:140 Contingent Fund**

I. There is hereby created in the state treasury a special fund to be known as the contingent fund. All interest, fines, late-filing fees and penalties collected under the provisions of this chapter after May 11, 1949, shall be paid into this fund. The moneys in this fund may, solely as determined by the commissioner, be used for the following purposes:

(a) As a revolving fund to cover expenditures (necessary and proper under the law) for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds if and when received;

(b) [Repealed.]

(c) For rents; equipment; supplies; motor vehicles and their maintenance; fees; costs of administration as specifically provided in this chapter; salaries; per diem and expense payments; and training and education, whether institutional, departmental or conference-type, of assistant claim representatives, appeal tribunal and advisory council members and full and part-time department employees and department officers, including attendance at and hosting conferences and meetings sponsored or participated in by the United States department of labor and also in the Interstate Conference of Employment Security Agencies.

II. The moneys in this fund may be used for any other purpose which upon request of the commissioner is found by the governor and council to be in furtherance of the administration of

this chapter. Moneys, as determined by the commissioner, in this fund shall not be expended or available for expenditure in any manner which would permit their substitution for (or a corresponding reduction in) federal funds which would, in the absence of said moneys, be available to finance expenditures for the administration of this chapter. This fund shall be used by the commissioner for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants (or other funds) received for or in the unemployment compensation and employment service administration fund on or after May 11, 1949. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the Social Security Act, as amended, which, because of any action or contingency, have been lost or expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of this chapter.

III. The moneys in this fund shall be continuously available to the commissioner for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund except as herein provided. In the event that a refund of interest, a fine, a late-filing fee or penalty is found necessary, and such interest, fine, late-filing fee or penalty has been deposited in the contingent fund, such refund shall be made from the contingent fund. This shall be administered and disbursed in the same manner and under the same conditions as other special funds of the state treasury.

**Last Source:** 2001, 133:6, II, eff. June 29, 2001.

**282-A:140-a Money Credited Under Section 903 of the Social Security Act**

I. Money credited to the account of this state in the unemployment trust fund by the Secretary of the Treasury of the United States of America pursuant to section 903 of the Social Security Act may not be requisitioned from this state's account or used except for the payment of benefits and for the payment of expenses incurred for the administration of this state's unemployment compensation law and public employment offices. Such money may be requisitioned pursuant to RSA 282-A:105 for the payment of benefits. Such money may also be requisitioned and used for the payment of expenses incurred for the administration of this state's unemployment compensation law and public employment offices but only pursuant to a specific appropriation by the legislature and only if the expenses are incurred and the money is requisitioned after the date of enactment of an appropriation law which specifies the purpose for which such money is appropriated and the amount appropriated therefor. Such appropriation is subject to the following conditions:

(a) The period within which such money may be obligated is limited to a period ending not more than 2 years after the date of the enactment of the appropriation law except that this restriction does not apply to the special Reed Act distribution under section 903(d) of the Social Security Act; and

(b) The amount which may be obligated is limited to an amount which does not exceed the amount by which, the aggregate of the amounts transferred to the account of this state pursuant to section 903 of the Social Security Act exceeds the aggregate of the amounts used by this state pursuant to this act and charged against the amounts transferred to the account of this state.

II. For purposes of subparagraph I (b), the amounts obligated under an appropriation for the above-described administrative purposes shall be charged against transferred amounts at the exact time the obligation is entered into.

III. The appropriation, obligation, and expenditure or other disposition of money appropriated under this section shall be accounted for in accordance with standards established by the United States Secretary of Labor.

IV. Money appropriated as provided herein for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition, shall be deposited in the fund established in RSA 282-A:140 from which such payments shall be made. Money so deposited shall, until expended, remain a part of the unemployment fund and, if it will not be immediately expended, shall be returned promptly to the account of this state in the unemployment trust fund.

V. Notwithstanding paragraph I, moneys credited with respect to federal fiscal years 1999, 2000, and 2001, shall be used by the commissioner with the consent and acceptance of governor and council or budget legislation of allocated funds solely for the administration of the unemployment compensation program and are not subject to appropriation by the legislature. The Reed Act distribution under section 903(c) of the Social Security Act, transferred to the state in October 1998 with respect to the federal fiscal year 1998, shall be used solely for the administration of this state's unemployment compensation law. The special Reed Act distribution under section 903(d) of the Social Security Act transferred to the state on March 13, 2002 may be used for all purposes set forth in paragraph I.

**Last Source**: 2003, 239:1, eff. July 8, 2003.

**282-A:140-b Appropriation of Federal Funds; Department of Employment Security**.

There is hereby appropriated out of federal funds made available to this state under section 903(d) of the Social Security Act, 42 U.S.C. section 1103(d), as amended, transferred to the state on March 13, 2002, the sum of $11,900,000, or so much thereof as may be necessary, to be used, under the direction of the New Hampshire department of employment security for the purpose of developing and implementing a new automated unemployment compensation benefit system, including the upgrade or replacement of critical interfaces. Critical interfaces include but are not limited to interactive voice response, job matching, imaging, and web-enabled claim and appeal systems. Expenditures may include providing funds for hardware, software, equipment, staffing,

technology maintenance, enhancements, and other purposes that are in accordance with any uses authorized by the United States Congress, now or in the future. Such funds shall exclusively be used for expenses authorized under section 903(d) of the Social Security Act, 42 U.S.C. section 1103(d), as amended.

**Last Source:** 2005, 195:1 eff. July 1, 2005.

## Collection of Contributions

### 282-A:141 Interest on Past-Due Contributions

Contributions unpaid on the date on which they are due and payable, as prescribed by the commissioner of the department of employment security in a rule, shall bear interest at the rate of one percent per month or part thereof until payment plus accrued interest is received by the commissioner. Interest collected pursuant to this paragraph shall be paid into the contingent fund provided in RSA 282-A:140.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:142 Late-Filing Fee; Filing Extensions

Commencing with reports due beginning with the third calendar quarter of 2001:

I. If any employer subject to payment of contributions as provided in RSA 282-A:69, I, fails to file any required report on the date on which it is due, as prescribed by the commissioner of the department of employment security in a rule, the employer shall pay a fee for such failure equal to 10 percent of the contributions due thereon but not less than $25 for each such failure.

II. If any employer electing to reimburse the fund as provided in RSA 282-A:69, II fails to file any required report on the date on which it is due, as prescribed by the commissioner of the department of employment security in a rule, the employer shall pay a fee for such failure equal to .001 of the gross wages paid during the quarter covered by such report but not less than $25 for each such failure.

III. The state, county, city, town, or other political subdivision that elects to reimburse the fund pursuant to RSA 282-A:70 and RSA 282-A:71, I shall pay a fee of $25 for each failure to file any report on the date on which it is due as prescribed by the commissioner of the department of employment security in a rule.

IV. Upon timely application and payment of a fee of $50, the time for filing any such report may be extended 30 days. All fees shall be paid into the contingent fund provided in RSA 282-A:140.

V. All filing fees may be collected in any manner provided for the collection of contributions in this subdivision or in RSA 282-A:161-168 or by RSA 80.

**Last Source:** 2001, 133:4, eff. July 1, 2001.

**282-A:143 Property Lien**

If any employer required to pay contributions under this chapter neglects or refuses to pay contributions after demand, the amount, together with all penalties, fees, and interest and any costs that may accrue becomes a lien in favor of the state upon all property and rights to property whether real or personal, belonging to the employer. The lien arises at the time demand is made by the commissioner and continues until the liability for the sum, with interest and costs, is satisfied. Certificates of release of such lien shall be issued on the satisfaction of the lien. For the purposes of RSA 282-A:141-155, "employer" in the case of corporations or limited liability companies includes the president, treasurer, members, or any other person in a managerial capacity of said corporation or limited liability company. No lien against real property under this section shall be effective until it is recorded at the registry of deeds for the county in which the real property lies. Liens against personal property shall be filed in the office of the secretary of state. Fees for recording and filing such liens and any certificates of release thereof shall be in accordance with RSA 478:17-g.

**Last Source:** 2001, 102:30, eff. July 1, 2001.

**282-A:144 Injunction**

Any employer or employing unit refusing or failing to make and file required reports or to pay any contributions, interest or penalties when due under the provisions of this chapter, after 10 days' written notice sent by the commissioner or his authorized representative to the employer's or employing unit's last known address by registered mail, may be enjoined from operating any business in the state while in violation of the provisions of this chapter upon the complaint of the commissioner of the department of employment security in the superior court of the county in which the employer or employing unit has or had a place of business within the state, and any temporary injunction enjoining the continuance of such business may be granted without notice. Such injunction may enjoin any employer or employing unit from operating his or its business until such reports or contributions (including interest and penalties) or both shall have been made and filed or paid. The provisions of this section shall be deemed as cumulative and in addition to any other provisions of this chapter relating to the collection of contributions by the commissioner.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:145 Time Limitation**

No action may be maintained under this chapter unless commenced within 6 years of the time the cause arose or 2 years after the department is put on notice that the cause exists, whichever is later.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:146 Collection, Distraint**

If, after due notice, any employer shall fail to make any payment of contributions or interest thereon, the amount due, with interest thereon pursuant to RSA 282-A:141, shall be collectible by any means provided by law for the collection of any tax due to the state of New Hampshire or to any subdivision thereof, including any means provided by RSA 80:2. Tax warrants referred to in said chapter may be signed by either the commissioner of the department of employment security or the duly authorized counsel for such department.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:147 Priorities Under Legal Dissolution or Distributions**

In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, or any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than $250 to each claimant, earned within 6 months of the commencement of the proceeding. In the event of any employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or hereafter due shall be entitled to such priority as is provided in section 64(b) of that act, U.S.C., Title 11, section 104(b), as amended.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:148 Adjustment of Contribution by Compromise**

I. The commissioner of the department of employment security may, with the approval of the attorney general, effect by written stipulation such settlement of the contribution or interest due under the provisions of this chapter as he or she may deem to be for the best interests of the state, and the payment of the sum so agreed upon shall be a full satisfaction of such contribution and interest.

II. Payment by a debtor of interest, penalties, fees, and legal costs due under the provisions of this chapter totaling $50 or less may be waived by the commissioner of the department of employment security as he or she may deem to be for the best interests of the state.

**Last Source:** 2003, 116:18, eff. Aug. 8, 2003.

**282-A:149 Adjustments and Refunds**

If not later than 4 years from the last day of the period with respect to which a payment of any contributions or interest thereon was made, or one year from the date on which such payment was made, whichever shall be the later, an employing unit or employer who has paid such contribution or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commissioner shall determine that such contributions or interest or any portion thereof was erroneously collected, the commissioner shall allow such employing unit or employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him; or, if such adjustment cannot be made, the commissioner shall refund said amount, without interest, from the fund, unless such payments are to be refunded from the contingent fund as provided in RSA 282-A:140. The commissioner, on his own initiative, may, in any case, for like cause and within the same period, allow either adjustment or refund, as he in his discretion may deem to be for the best interests of the state. Nothing in this chapter or in any part thereof shall be construed to authorize any refund or credit of monies due and payable under the law and rules in effect at the time such monies were paid. It being further provided that the amount to be refunded or adjusted shall be reduced by the amount of unemployment compensation benefits which would not have been paid except for the erroneously reported employment and wages.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:150 Jeopardy Assessment**

I. If the commissioner believes that the collection of contributions will be jeopardized by delay, he shall immediately assess on the basis of whatever information he may have such contributions together with all interest and penalties, whether or not the time prescribed by RSA 282-A:69 through 98 and this subdivision or by the rules adopted by the commissioner for making return and paying such contributions has expired. Such contributions, interest and penalties shall thereupon become immediately due and payable; and immediate notice and demand, either in person or in writing, shall be made by the commissioner or his duly authorized representatives for the payment thereof. Upon failure or refusal to pay immediately such contributions, interest and penalties, collection thereof by any means provided in this subdivision shall be lawful without regard to the period prescribed in RSA 282-A:151 or by the rules of the commissioner and proceedings may also be instituted under RSA 282-A:161-168 for such failure or refusal.

II. The collection of the whole or any part of the amount of such assessment may be stayed by filing with the commissioner a bond in such amount as is equal to the amount to which the stay is desired and with such sureties as the commissioner deems necessary conditioned on payment of the amount collection of which is stayed, at the time at which, but for this section, such amount would be due.

III. An assessment under this section shall not finally fix the amount of such contributions, interest and penalties. Where the amount due is subsequently discovered to be greater than that assessed, the balance shall be collected by any means provided in this subdivision. If the amount due is subsequently discovered to be less than that assessed, it shall be adjusted in the manner provided by RSA 282-A:149.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:151 Failure of Employer to File Report of Contributions Due**

I. If an employer shall fail to file a report for the purpose of determining the amount of contributions due under this chapter, or if such report when filed shall be incorrect or insufficient and the employer shall fail to file a correct or sufficient report within 20 days after the commissioner of the department of employment security shall have required the same by written notice, the commissioner shall determine the amount of contribution due, with interest thereon pursuant to RSA 282-A:141, from such employer on the basis of such information as he may be able to obtain; and he shall give written notice of such determination to the employer. Such determination shall finally fix the amount of contribution unless the employer shall initiate an appeal in the manner provided in RSA 282-A:94-98. The determination of the commissioner shall be deemed to be prima facie correct, and the burden of proving error therein shall be upon the employer. Except for good cause shown, no ground of error shall be considered unless set forth in the petition of appeal.

II. If on appeal the determination of the commissioner shall be confirmed, or the amount of the contribution originally determined by the commissioner shall be increased, the cost of such proceedings, as in civil actions, shall be assessed against the employer. No costs shall be assessed against the state on such appeal.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:152 Collection of State Contributions**

I. Whenever used in this subdivision, unless the context shall otherwise require, or unless otherwise specifically provided, the word “contribution” shall include not only the principal of any contribution but also all interest, penalties, fees and other charges added thereto by law; and the term “serving officer” shall include any sheriff, deputy sheriff, constable or other officer authorized to serve any civil process. Delivery of written notice by an authorized representative

of the commissioner shall be deemed proper service of process.

II. Upon the failure of any person to pay any contribution due to the state within 30 days from its due date, the commissioner of the department of employment security or his duly authorized representative charged by law with its collection shall add thereto such penalty or interest or both as shall be prescribed by law. The attorney general may collect any such contribution by a civil action, or the commissioner or his duly authorized representative charged by law with the collection of such contribution may make out and sign a warrant directed to any serving officer for distraint upon the goods, realty or body of such person. Each serving officer so receiving a warrant shall make return to the party making out such warrant within a period of 30 days from its receipt by him. To each warrant placed in the hands of any serving officer shall be attached an itemized bill, certified by the party making out such warrant to be a true and correct statement of the total amount of contribution due from such person. Any serving officer deputed to serve a warrant drawn under the provisions of this law shall, so far as such warrant is concerned, have, mutatis mutandis, all the powers vested in tax collectors and sheriffs under the provisions of RSA 80; shall proceed pursuant to the terms of one or more of said statutes; shall make return to the party making out such warrant within 10 days of the completion of service and shall collect from such person, in addition to the amount shown on such warrant, his fees and charges, which shall be those authorized by statute for serving officers, as in all other civil actions.

**Last Source:** 2003, 116:10, eff. Aug. 8, 2003.

**282-A:153 Secretary of State Their Agent for Receipt of Service**

I. Any nonresident employing unit who acquires the status of an employer under the provisions of this chapter or any resident employing unit who, after having acquired the status of an employer under the provisions of this chapter, removes himself from the state shall be deemed to have appointed the secretary of state or his successor in office to be his true and lawful agent upon whom may be served all lawful processes in any action or proceeding against him under the provisions of this chapter; and such acquirement shall be a signification of his agreement that any such process against him which is so served shall be of the same legal force and validity as if served on him personally.

II. Service of such process shall be made by leaving a copy of the process in the hands of the secretary of state or in his office, and such service shall be sufficient service upon said employing unit; provided, that notice of such service and a copy of the process are forthwith sent by registered mail by the plaintiff to the defendant, and the defendant's return receipt and the plaintiff's affidavit of compliance therewith are appended to the writ and entered therewith. The secretary of state shall keep a record of all such processes, which shall show the date and hour of service.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:154 Continuance of Action

The court in which the action is pending may order such continuances as may be necessary to afford the defendant reasonable opportunity to defend the action.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:155 Interstate Collections

The courts of this state shall entertain actions in the name of the commissioner to collect benefits, contributions or interest thereon for which liability has accrued under the employment security law of any other state or of the federal government. The commissioner shall have the authority to collect any such debt by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156.

**Last Source:** 2003, 116:11, eff. Aug. 8, 2003.

### 282-A:156 Delinquent Payments

In addition to any other remedies under this subdivision, if the commissioner finds that any county, city, town or other political subdivision has become delinquent with respect to payments due under this chapter and following the commissioner's written request for such payment, has for 60 days thereafter refused or neglected to pay the amount due, the commissioner shall notify the commissioner of administrative services of such delinquency and the total amount due. The commissioner of administrative services shall authorize the transfer of such amount to the department of employment security from any funds which would otherwise be due from the state to such county, city, town or other political subdivision.

**Last Source:** 1985, 399:3, I, eff. July 1, 1985.

## Protection of Rights and Benefits

### 282-A:157 Waiver of Rights Void

Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void. Any agreement by an individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this chapter from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required

from him, or require or accept any waiver of any right hereunder by any individual in his employ. Any employer or officer or agent of an employer who violates any provision of this section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person. Provided that this section shall not apply to agreements, waivers or releases entered into pursuant to reciprocal arrangements made under RSA 282-A:169-172.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:158 Limitation of Fees

No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the commissioner of the department of employment security, or by his representative or by any court or by any officer thereof. Any individual claiming benefits before the commissioner or his representative may be represented by counsel or other duly authorized agent; but no such counsel or agent shall either charge or receive for such services more than an amount approved by the commissioner. Any person who violates any provision of this section shall be guilty of a misdemeanor.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

### 282-A:159 Assignment or Attachment of Benefits; Child Support Obligations; Overissuance of Food Stamp Coupons; Income Tax Withholding

I. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void. Such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt or taxes. Benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this section shall be void except for child support obligations and food stamp overissuances as provided in RSA 282-A:31 and this section and, if the individual so elects, withholding of federal income tax under rules adopted by the commissioner.

II. The commissioner is authorized to pay a portion or all of the unemployment compensation otherwise payable to a claimant to any agency of the state or its political subdivisions which enforces child support obligations. The amount so paid shall be deemed to be paid to the claimant. No such payment shall be made hereunder unless the New Hampshire department of health and human services or another New Hampshire governmental agency:

(a) Submits to the commissioner of the department of employment security the claimant's authorization for such child support, or the order of any court or administrative

agency of competent jurisdiction for such child support, equal to or exceeding the child support requested; and

(b) Pays monthly, in advance, to the department of employment security administration costs as determined by the commissioner.

III. The commissioner may, if it is in the best interest of the state, enter into agreements to pay to a state or the federal government a portion or all of the unemployment compensation otherwise payable to a claimant if unemployment compensation benefits have been found overpaid under such state or federal unemployment compensation law.

IV. (a) The commissioner is authorized to adopt rules under RSA 541-A and enter into an agreement with the department of health and human services to pay a portion or all of the unemployment compensation payable to an individual consistent with section 303(d)(1) and (2) of the Social Security Act and section 13(b)(1) of the Food Stamp Act of 1977, to notify the department of health and human services that an individual with an overissuance of food stamp coupons has applied for unemployment compensation, and to withhold and deduct unemployment compensation otherwise payable in amounts consistent with the federal law and this paragraph. Amounts so withheld shall be deemed to have been paid to the claimant.

(b) No such deduction or payment shall be made under this paragraph unless the department of health and human services:

(1) Submits to the department of employment security an appropriate decision of an administrative agency or a court supporting the overissuance.

(2) Pays monthly, in advance, the department of employment security's administrative costs as provided for in the agreement.

**Last Source:** 1998, 98:4, eff. July 1, 1998.

**282-A:160 Prohibition Against Discrimination**

No person shall discriminate in any way against another person because of his appearance or intended appearance as a witness or party, or for giving or furnishing information in connection with any proceeding under this chapter or an appeal therefrom. Any person who violates any provision of this section shall be subject to the penalties provided in RSA 282-A:161-168.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

# Penalties

## 282-A:161 Generally

Whoever willfully makes a false statement or representation or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this chapter, either for one's self, or for any other person, shall be guilty of:

I. A class A felony if the amount of the additional benefit received as a result of the misrepresentation is $1,000 or more.

II. A class B felony if the amount of the additional benefit received as a result of the misrepresentation exceeds $500 but is less than $1,000.

III. A class A misdemeanor in all other cases.

**Last Source:** 1996, 50:3, eff. Jan. 1, 1997.

## 282-A:162 Out-of-State or Federal Benefits

Any individual who wilfully makes a false statement or representation or knowingly fails to disclose a material fact before a representative of the department of employment security of the state of New Hampshire to obtain benefits under the laws of any other state or the federal government shall be subject to the same provisions of this chapter as if he were claiming benefits under this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## 282-A:163 Disqualification

Any individual who is convicted under RSA 282-A:161 shall be deemed disqualified from receiving benefits for one year from the date of such conviction. All benefits received for any week or weeks directly affected by such false statement or representation or failure to disclose a material fact shall be deemed overpaid, and restitution shall be ordered by the court in all such cases in an amount equal to such overpayment.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:164 Restitution**

Whoever wilfully makes a false statement or representation or knowingly fails to disclose a material fact, whether before a representative of the department of employment security of the state of New Hampshire or in another state before a representative of the unemployment compensation agency of that state which is acting in the capacity of agent for the state of New Hampshire, to obtain or increase any benefit or other payment under this chapter, or under the laws of any other state or the federal government, either for himself, or for any other person, may, in the discretion of the commissioner or his authorized representative, be determined to be disqualified for benefits for each week directly affected by the false statement or representation or failure to disclose a material fact. All benefits received for each week of such disqualification shall be deemed overpaid, and restitution in an amount equal to such overpayment shall be ordered by the commissioner or his authorized representative. In addition to such disqualification, he shall be deemed ineligible to receive benefits for not less than 4 nor more than 52 consecutive weeks, beginning with the week in which the decision is made, as determined by the commissioner or his authorized representative. For each week of determined ineligibility, an amount equal to the individual's maximum weekly benefit rate during such week shall be deducted from the maximum benefits available to him during the benefit year in which such week falls; but no change shall be made in his weekly benefit amount because of this deduction. Any proceeding or action taken under this section shall be in lieu of and not in addition to any proceeding or action taken under RSA 282-A:161.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:165 Overpayments**

I. Any person who has received any benefits under this chapter while any conditions for the receipt of benefits imposed by this chapter were not fulfilled or while he was disqualified from receiving benefits shall be liable to repay to the commissioner such benefits all of which shall be considered to be overpayments unless such benefits were received by him solely through error or inadvertence of the commissioner or his authorized representative as defined by the rules of the commissioner. No such overpayment shall exist unless a determination has been made by a certifying officer setting forth the facts causing the creation of the overpayment and notice of such determination has been sent to the claimant who may appeal in the manner set forth in RSA 282-A:42-68. Such determination shall be made within 2 years of the weeks affected thereby.

II. The commissioner shall collect any overpayment created under this chapter by civil action in any manner provided for the collection of contributions in RSA 282-A:141-156 and shall withhold, in whole or in part as determined by the commissioner, any future benefits payable to the individual and shall credit such amount withheld against the overpayment until it is repaid in full.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:166 Falsity by Employer**

I. Any employing unit, officer, or employee of a corporation, or member or employee of a partnership or limited liability company, who as such officer, employee, or member is under a duty to perform and:

(a) Who knowingly makes a false statement or representation; or

(b) Who knowingly fails to disclose a material fact to avoid becoming or remaining subject hereto or to avoid or prevent or reduce any contribution or other payment required of such employing unit under this chapter, or to deny or reduce payments of benefits to any individual; or

(c) Who fails or refuses to make any such contribution or other payment having in possession or control funds to do so allowing said funds to be expended for any other purpose except payment to trade creditors or payment of wages to employees other than corporate officers or relatives other than for necessaries; or

(d) Who fails or refuses to furnish any reports required hereunder; or

(e) Who fails or refuses to testify or to permit inspection of records or to produce records as required hereunder; or

(f) Who makes, permits or requires any deduction from wages to pay all or any portion of the contributions required from employers; or

(g) Who attempts to induce any individual to waive any right under RSA 282-A; or

(h) Who fails or refuses to file a mass layoff notice under RSA 282-A:45-a, I; or

(i) Who violates or attempts to violate RSA 282-A:91-a shall be guilty of an offense as provided in paragraph II; or

(j) Who fails or refuses to furnish a report which includes every individual who performed services for employment for the time period applicable to such report.

II. Violations of paragraph I are:

(a) Class A felony if the amount of contributions or benefits involved is $1,000 or more.

(b) Class B felony if the amount of contributions or benefits involved exceeds $500 but is less than $1,000.

(c) Class A misdemeanor in all other cases.

III. The court in all such cases shall order such payment to be made or report to be completed and may suspend part of its sentence on condition of said performance.

**Last Source:** 2006, 129:1 eff. July 1, 2006.

**282-A:166-a Penalties for Failure or Refusal to Make Contributions or Reports**

In the discretion of the commissioner or an authorized representative, violations of RSA 282-A:166, I(c) and (d) may subject the person to a penalty of not less than $100 or more than the amount of the contributions then or subsequently determined by the commissioner to be due. For violations of RSA 282-A:166, I(h) a penalty of not less than $100 nor more than $500 for each day of failure or refusal to file. For violations of RSA 282-A:166, I(j) a penalty of up to $25 for each such individual not reported may be imposed for each calendar day such violation continues. For violations of all other subparagraphs of RSA 282-A:166, I, a penalty of not less than $100 nor more than $500 may be imposed. All penalties imposed under this section shall be in addition to late filing fees and interest charges due under other sections of this chapter. Any proceeding or action taken against a person under this section shall be in lieu of and not in addition to any proceeding or action taken under RSA 282-A:166. Persons found subject to this section may appeal in the manner set forth in RSA 282-A:95-98.

**Last Source:** 2006, 129:2, eff. July 1, 2006.

**282-A:167 General Penalty**

Any violator of any provision of this chapter, or of any order or rule thereunder, for which a penalty is neither prescribed above nor provided by any other applicable statute, shall be guilty of a misdemeanor; and each such violation shall constitute a separate and distinct offense.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:168 Recovery for Another State**

On request of an agency of another state which administers an employment security law and which has found, in accordance with the provisions of such law, that an individual is liable to repay benefits received under such law, the commissioner may collect from such individual the

amount of such benefits, to be refunded to such agency; and such amounts may be collected by civil action in the name of the commissioner acting as agent for such agency.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## Reciprocal Arrangements

### 282-A:169 Reciprocal Arrangements

The commissioner of the department of employment security is hereby authorized to enter into reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

I. Services performed by an individual for a single employing unit for which services are customarily performed by such individual in more than one state shall be deemed to be services performed entirely within any one of the states:

(a) In which any part of such individual's service is performed, or

(b) In which such individual has his residence, or

(c) In which the employing unit maintains a place of business, provided there is in effect, as to such services, an election by an employing unit with the acquiescence of such individual, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which services performed by such individual for such employing unit are deemed to be performed entirely within such state.

II. Potential rights to benefits under this chapter may constitute the basis for the payment of benefits by another state or the federal government, and potential rights to benefits accumulated under the law of another state or the federal government may constitute the basis for the payment of benefits by this state. Such benefits shall be paid under such provisions of this chapter or under the provisions of the law of such other state or the federal government, or under such combination of the provisions of both laws, as may be agreed upon and which will be fair and reasonable as to all affected interests. No such arrangement shall be entered into unless it contains:

(a) Provision for reimbursement to the fund for such benefits as are paid on the basis of wages and service subject to the law of another state or the federal government, and

(b) Provision for reimbursement from the fund for such benefits as are paid by another state or the federal government on the basis of wages and service subject to this chapter. Reimbursements paid from the fund pursuant to this paragraph shall be

deemed to be benefits for the purposes of this chapter.

III. Wages or services, upon the basis of which an individual is entitled or may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this chapter; and wages for insured work, on the basis of which an individual is entitled or may become entitled to benefits under this chapter, shall be deemed to be wages or services on the basis of which unemployment compensation is payable under such law of another state or of the federal government; but no such arrangement shall be entered into unless it contains:

(a) Provisions for reimbursements to the fund for such of the benefits paid under this chapter upon the basis of such wages or services, and

(b) Provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the commissioner of the department of employment security finds will be fair and reasonable as to all affected interests.

IV. Contributions due under this chapter with respect to wages for insured work shall for the purposes of RSA 282-A:141-156 be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions as the commissioner of the department of employment security finds will be fair and reasonable as to all affected interests.

V. The department of employment security may administer, at no cost to this state, as an agent of the United States of America, employment security and related programs authorized by the Congress of the United States and, pursuant thereto, may receive and disburse federally granted moneys. All the power and authority otherwise granted in this chapter to the commissioner shall equally apply under this provision. The commissioner may create outside the state treasury such special funds, the moneys in which shall not lapse at any time or be transferred to any other fund, except as permitted by federal law, as he determines necessary to carry out the purposes of this provision. Moneys granted by the federal government for payment of department personnel salaries and expenses, supplies, equipment and rent and such other expenses as are approved by the federal agency to carry out any agreement shall be deposited in the unemployment compensation and employment service administration fund provided by this chapter. The treasurer, as provided in RSA 282-A:103-106, shall be the treasurer of such fund as is created hereunder, and it shall be safeguarded in such manner as may be required by federal law. The cost of any bond required by any federal agency shall be paid from the unemployment compensation and employment service administration fund created by this chapter.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:170 Reimbursement**

Reimbursements paid from the fund pursuant to any reciprocal arrangements authorized by the provisions of this chapter shall be deemed to be benefits for the purposes of this chapter; except that no charge shall be made to an employer's account under RSA 282-A:69-98:

I. In excess, for any week or weeks, of the benefits which would have been payable but for this section; or

II. In excess of the maximum benefits payable under RSA 282-A:24-41; or

III. When no benefits would have been payable to an individual, but for this subdivision, because of the lack of wages for insured work necessary to qualify for benefits. In the event that no charge is to be made to an employer's account such as hereinabove provided, such reimbursements shall be charged against the fund. The commissioner of the department of employment security is authorized to make to other state or federal agencies, and to receive from such other state or federal agencies, reimbursements from or to the fund in accordance with arrangements entered into pursuant to RSA 282-A:169.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:171 New Findings**

If, after entering into an arrangement under RSA 282-A:169, II or III, the commissioner of the department of employment security finds that the unemployment compensation law of any state or of the federal government participating in such arrangement has been changed in a material respect, the commissioner shall make a new finding as to whether such arrangement shall be continued with such state or states or with the federal government.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:172 Combining Employment**

The commissioner shall participate in any arrangements for the payment of unemployment compensation on the basis of combining an individual's wages and employment covered under this chapter with his wages and employment covered under the unemployment compensation laws of other states or of the United States of America or of both:

I. Which are approved by the United States Secretary of Labor in consultation with the state unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of unemployment compensation in such situations, and

II. Which include provisions for

(a) Applying the base period of a single state law to a claim involving the combining of an individual's wages and employment covered under 2 or more state unemployment compensation laws or a federal unemployment compensation law, and

(b) Avoiding duplicate use of wages and employment by reason of such combining.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

## Miscellaneous

### 282-A:173 Suspension and Termination

If at any time the governor shall find:

I. That the provisions of this chapter requiring the payment of contributions and benefits have been held invalid under the constitution of this state by the supreme court of this state or under the United States Constitution by the Supreme Court of the United States in such manner that any person or concern required to pay contributions under this chapter might secure a similar decision, or

II. That the tax imposed by the Federal Unemployment Tax Act, as amended, or any other federal tax against which contributions under this chapter may be credited, has been amended or repealed by Congress or has been held unconstitutional by the Supreme Court of the United States with the result that no portion of the contributions required by this chapter may be credited against such federal tax, the governor shall publicly so proclaim; and, upon the date of such proclamation, the provisions of this chapter requiring the payment of contributions and benefits shall be suspended. The commissioner of the department of employment security shall thereupon requisition from the unemployment trust fund all moneys therein standing to its credit and shall direct the state treasurer to deposit such moneys, together with any other moneys, in the fund, as a special fund in any bank or public depositories in this state in which general funds of the state may be deposited, and to hold such moneys for such disposition as the legislature may prescribe.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981

### 282-A:174 Reservation of Right to Amend or Repeal

The legislature reserves the right to amend or repeal all or any part of this chapter at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the

rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981

**282-A:175 Federal Minimum Standards**

In the event that the Congress of the United States should pass any legislation establishing certain minimum standards directing the states to make such changes in their various laws as may be necessary to bring them into conformity with such minimum standards, the commissioner of the department of employment security, or his duly authorized representative, is hereby authorized to make such revision as may be necessary to cause the provisions of this chapter to conform with such minimum standards. If any of the provisions of this section or the application thereof to any persons or circumstances are held invalid, the remainder of this chapter in the application of this section to other persons or circumstances shall not be affected thereby.

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:176 Rules and Rulemaking**

I. All rulemaking power provided in this chapter shall be exercised in accordance with the provisions of RSA 541-A. All rules adopted by the authority of this chapter shall be adopted pursuant to RSA 541-A.

II. The terms “require,” “prescribe,” “determine,” “establish,” and “set” when referring to an action taken by the department of employment security to set a requirement binding on the public shall mean to “adopt a rule pursuant to RSA 541-A.”

**Last Source:** 1981, 408:3, eff. Oct. 1, 1981.

**282-A:177 Administration**

The provisions of RSA 282-A:103-106, relative to the unemployment compensation fund, and of RSA 282-A:138-140, relative to the unemployment compensation and employment service administration fund, to the contrary notwithstanding, the commissioner of the department of employment security is authorized to requisition and receive from this state's account in the unemployment trust fund in the treasury of the United States, in the manner permitted by federal law, such moneys standing to its credit in said fund as are permitted by federal law to be used for expenses of administering the provisions of this chapter and to expend such moneys for such purpose. The state treasurer shall be the custodian of the amounts of money so requisitioned and received. He shall administer such fund in accordance with the directions of the commissioner of

the department of employment security and such rules as the commissioner may adopt not inconsistent with federal law. The commissioner may enter into contracts and educational agreements with and for the employees of the department of employment security under such terms and conditions, which are consistent with federal requirements, as he deems advisable.

**Last Source:** 1981, 416:13, eff. Aug. 22, 1981.

**282-A:178 Agreement Authorized**

I. The department of employment security, through its commissioner, is hereby authorized to enter into an agreement, effective April 3, 1975, with the secretary of labor of the United States to become an agent of the United States in order to carry out the provisions of Chapter 2 of Title II of the Trade Act of 1974, as amended (P.L. 93-618, as amended), and to perform such acts and do all those things necessary to fully carry out such agreement.

I-a. The department of employment security, through its commissioner, is hereby authorized to enter into an agreement, effective November 4, 2002, with the Secretary of Labor of the United States to become an agent of the United States in order to carry out the provisions of the Trade Adjustment Assistance Reform Act of 2002, as amended, (P.L. 107-210, as amended), and to perform such acts and do all those things necessary to fully carry out such agreement.

II. (a) Solely for the purposes of carrying out the agreement authorized in paragraphs I and I-a, and notwithstanding other provisions of this chapter to the contrary, the provisions of this section permit:

(1) The payment of unemployment compensation benefits:

(A) To an individual undergoing a training or retraining program under said federal law,

(B) To an individual who voluntarily leaves employment which is not suitable as specially defined in said Trade Act to enter training which has been approved under the Trade Act prior to said leaving.

(2) An individual to receive unemployment compensation benefits though supplemented by a trade readjustment allowance or other assistance under the Trade Act.

(3) The use of moneys in the contingent fund provided by RSA 282-A:140 for payment to the United States of America where it has been found that there was gross negligence, fraud or failure to take appropriate recovery action by New Hampshire under the terms of the agreement.

(b) An individual whose benefit year ends during an extended benefit period shall have his potential maximum extended benefit amount reduced by any trade readjustment allowances received during said benefit year.

III. All costs of the Trade Act program, including benefits, training, counseling, attorney fees, or any other costs, shall be paid only out of federal funds made available to the state for that purpose. In administering the Trade Readjustment Act program, the state of New Hampshire shall be considered as acting solely as agent of the United States and shall incur no liability.

IV. The provisions of paragraph II shall be considered to be part of every grant, benefit, order or other document issued by any authority dealing with the Trade Act program as if fully set forth verbatim in such grant, benefit, order or other document.

**Last Source:** 2003, 116:12-14, eff. Aug. 8, 2003.

**282-A:179 Exemption**

The provisions of RSA 541-A:31-36 shall not apply to proceedings conducted in accordance with RSA 282-A:42-46.

**Last Source:** 1994, 412:30, eff. Aug. 9, 1994.

**282-A:180 Collateral Estoppel**

Decisions rendered under this chapter shall not be admissible in any court or in administrative or other proceedings, not under or pursuant to this chapter, for the purpose of barring such court or proceeding from making independent findings of fact and rulings of law under the doctrine of collateral estoppel.

**Last Source:** 1989, 267:17, eff. July 25, 1989.

## RECIPROCAL ARRANGEMENTS RELATIVE TO CLAIM FOR BENEFITS

New Hampshire participates with other states in a specific program to the benefit of claimants. The program is generally known as: "Interstate Benefit Payment Plan."

### Interstate Benefit Payment Plan

All states participate in the Plan, which permits individuals who live in any given state to file claims through the Employment Security Agency of that state against the state wherein they have benefit entitlement. The claims are filed with state and sent to the state which is to pay the benefits, where the determination as to whether or not benefits can be paid is made and from whence the payments subsequently issue. If an individual has benefit entitlement in more than one state, the agreement permits him to elect to file against the state of his choice, which is normally the state in which he has the greatest benefit entitlement. The agreement does not permit the individual to change his mind after he makes his election. The agreement does not permit, except by special arrangement between two states, an individual who immediately before becoming unemployed customarily commuted from his residence in the agent state to his work in the liable state, to file a claim in the agent state. These individuals are called commuters, and normally are required to file in the liable state.

Where an appeal follows from a determination involving claims filed pursuant to the agreement, the claimant may appear for hearing in the liable state or a hearing will be arranged for him by the proper hearing body in the agent state. The record is then transferred to the liable state, where another hearing is normally held and a determination made.

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Department of Employment Security
32 South Main Street
Concord, NH 03301-4857
(603) 228-4065

## CHAPTER Emp 100 ORGANIZATIONAL RULES

### PART Emp 101 **DEFINITIONS**

Emp 101.01 "Break in service" means any period of one calendar week or more during which an individual who previously performed services, either as an employee or under a contract for services for an employing unit, performs no services.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5139, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6565-A, eff 9-2-97; ss and moved by #6659, eff 12-23-97 (see Emp 101.09)

Emp 101.02 "Casual labor" means services not in the course of the employing unit's trade or business which do not promote or advance the employing unit's trade or business and which are occasional, incidental or irregular.

Source. #2555, eff 12-23-83, EXPIRED: 12-23-89

New. #5134, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6565-A, eff 9-2-97; ss and moved by *#6659*, eff 12-23-97

Emp 101.03 "Contract for services" means any agreement for the providing of labor for the benefit of another. The term includes oral, written, formal and informal agreements.

Source. #2555, eff 12-23-83; rpld by #4350, eff 12-28-87

New. *#6659*, eff 12-23-97

Emp 101.04 "Date of hire" means the first day an individual performs services for wages as defined in RSA 282-A:15, I, or for any other form of compensation, or pursuant to a contract for services.

Source. #3154, eff 12-20-85, EXPIRED: 12-20-91

New. *#6659*, eff 12-23-97

Emp 101.05 "Employing unit" means "employing unit" as defined in RSA 282-A:7, I. The term includes employer, labor organization, limited liability company and governmental entity.

Source. *#6659*, eff 12-23-97

Emp 101.06 - RESERVED

Source. #6659, eff 12-23-97 (from Emp 101.02); rpld by *#7245*, eff 4-30-00

Emp 101.07 "Multistate employing unit" means an employing unit which has employees or individuals which contract for services, or both, in 2 or more states.

Source. *#6659*, eff 12-23-97

Emp 101.08 "Services" means the performance of labor for the benefit of another.

Source. *#6659*, eff 12-23-97

Emp 101.09 "Week" means the 7 consecutive calendar days beginning at 12:01 A.M. Sunday and ending at 12:00 midnight on the next succeeding Saturday, unless otherwise specifically defined in RSA 282-A.

Source. *#6659*, eff 12-23-97 (from Emp 101.01)

Emp 101.10 "Work state" means that state in which an individual is expected to perform a plurality of the individual's services.

Source. *#6659*, eff 12-23-97

## CHAPTER Emp 200 COMPLAINTS AND HEARING PROCEDURES

### PART Emp 201 APPEAL FROM DETERMINATION OF EMPLOYER LIABILITY

Emp 201.01 Form and Content. The written appeal of an employing unit or employer who claims to be aggrieved by a determination made under RSA 282-A:94, shall set forth in detail the specific facts which constitute the basis of its case and/or argument as to the law.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.02 Notice of Hearing. A hearing shall be scheduled promptly, and notice thereof shall state the date, time and place of hearing and be sent by first class mail to the affected persons at their last address according to the department records. A copy of the appeal shall be sent to all persons affected except the appellant.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.03 Evidence, Testimony and Records. Testimony shall be taken under oath or affirmation and a verbatim record of the proceedings shall be made. Such records, reports, summaries and compilations of the department as are material shall constitute part of the evidence in the case upon introduction by department personnel.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.04 Examination of Department Records. Such records, reports, summaries and compilations of the department as may be material shall be made available for examination by the parties at 32 South Main Street, Concord, New Hampshire. Parties desiring to examine said records shall, prior to the hearing, file a notice requesting said examination and the commissioner shall set a time when said records shall be available.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.05 Examination of Parties and Witnesses. All parties shall have the right to testify, to present witnesses and to examine and cross-examine other parties and witnesses and department personnel with regard to the department records, reports, and summaries and compilations.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.06 Scope of Hearing. In the interest of prompt administration of justice and without prejudice to the substantive rights of any party, any issue material to the appeal may be heard and decided though not specifically indicated as a ground for appeal or in the notice of hearing. Cases shall be consolidated by the commissioner for hearing and decision which arise from common transactions or facts or are controlled by the same principles of law and the appeal will be simplified or shortened and where there will be no prejudice to the substantive rights of any party.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.07 Adjournment, Postponement and Continuance. Adjournment, postponement and continuance shall be directed, granted or ordered for good cause shown, which shall include prejudice due to the inability of counsel or a critical witness to attend unless such inability is due to action or inaction on the part of the party. Notice of adjournment, postponement or continuance shall be by first class mail to all parties at their last address according to the department records.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.08 Failure to Request Continuance or Postponement, or to Appear. Failure except for good cause such as accident or illness, to appear at any scheduled hearing, or to request a postponement or continuance of the hearing in advance thereof, shall be deemed to be a withdrawal of the appeal or waiver of right to be heard, as the case may be, and the appeal shall be closed, dismissed or a decision rendered.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5140, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 201.09 Decision. The commissioner's decision shall be rendered promptly after the case is submitted, and shall contain a statement of the issues, the findings of fact, the conclusions, and the reasons therefor.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

PART Emp 202 **APPEAL TRIBUNAL**

Emp 202.01 Appeal to and Hearing by Appeal Tribunal

(a) An appeal to an appeal tribunal from a certifying officer's determination shall be in writing and filed in any office of the department within 14 calendar days from the date of mailing of said determination. The commissioner shall extend the time for filing pursuant to RSA 282-A:48 if he finds sufficient grounds which shall include illness, accident, the death of a family member, or similar problem beyond the control of the claimant, to justify or excuse a delay in filing.

(b) Notice of an appeal shall immediately be sent by first class mail to the other interested parties, and an appeal tribunal chairman shall by first class mail send notice of the time and place of hearing to all interested parties. The notice shall advise parties that they may be represented by an attorney or other authorized representative of their choosing and that free or low cost assistance may be available.

(c) The appeal shall be heard at the earliest possible date, but not earlier than the eighth calendar day after notice of the hearing has been sent by first class mail to the interested parties unless the commissioner finds:

(1) The interested parties have either:

a. Agreed in writing to less than 8 calendar days of notice; or

b. Agreed on the record while under oath to less than 8 calendar days of notice;

(2) The holding of an earlier hearing is not likely to result in the absence of witnesses or evidence which would otherwise be available;

(3) The holding of an earlier hearing will serve justice and efficiency; and

(4) The holding of an earlier hearing will not adversely affect the appeal tribunal's ability to efficiently manage the docket.

(d) The interested parties shall be present and ready with all witnesses and evidence, and shall be prepared to dispose of all issues relating to entitlement to benefits, at the scheduled place and time.

(e) To the extent possible the appeal shall set forth the grounds upon which it is claimed that the certifying officer's determination is incorrect. However, any issue relevant to claims shall be considered at the hearing, except where the jurisdiction of the appeal tribunal is limited upon further hearing when reopening is ordered by the commissioner.

(f) All department records used at the hearing shall be produced and identified at the hearing by the chairman, reviewed by the tribunal and may be examined by the parties. Records, other than department records, shall be admitted only when in the judgment of the chairman such are duly authenticated.

(g) The chairman of an appeal tribunal shall determine all questions as to the admissibility of evidence. All members of the tribunal may examine a witness. The chairman shall swear all witnesses or obtain their affirmation. The chairman shall determine the procedure and shall**,** for no longer than 30 days except with the approval of the commissioner, continue, adjourn or postpone a hearing.

(h) A hearing shall be continued, adjourned or postponed for up to 30 days by the chairman or longer than 30 days with the approval of the commissioner if the chairman or**,** if necessary**,** the commissioner find that continuance, adjournment or postponement are required for:

(1) A prehearing conference;

(2) Proper notice to an interested party;

(3) Obtaining the presence of a witness;

(4) Avoiding fraud or mistake;

(5) Providing due process; or

(6) Similar reasons.

(i) If a party wishes to submit evidence after the close of a hearing, the party shall submit a request to the appeal tribunal with notice to the other parties. The tribunal shall give notice of the request to the other parties of their right to object to the taking of the evidence and to refute the evidence. Where further hearing is ordered, notice of place and time shall be as in (b) above.

(j) The tribunal shall grant a request for the submission of evidence after the close of the hearing if it finds that acceptance of the evidence would:

(1) Avoid fraud or mistake;

(2) Provide due process;

(3) Result in the submission of evidence which is newly discovered and which was not available to the affected party upon reasonable search at the time of the hearing; or

(4) Similar reasons.

(k) A chairman shall determine after examination whether to accept sworn or affirmed stipulations of the interested parties as to all the facts in a case or in addition or in lieu thereof, to require oral sworn or affirmed testimony. Request for permission to file stipulation shall be made to the chairman not less than 3 calendar days prior to the scheduled hearing**,** otherwise the hearing will proceed as scheduled.

(l) A chairman shall deny access to a hearing or to the use and benefits of an appeal tribunal to an individual, interested parties excepted, for conduct which constitutes:

(1) Fraud;

(2) Neglect of duty;

(3) Disorderly, unruly or willfully contemptuous conduct at a hearing;

(4) Intentional or repeated failure to observe the New Hampshire unemployment compensation law; or

(5) The acceptance of fees in excess of those allowed by the commissioner.

(m) Where action as provided in Emp 202.01(l) is limited to one appeal, such shall be given orally by the chairman, but where the action taken affects more than one appeal such shall be in writing and sent by first class mail to the individual affected.

(n) Where a claim or question involved therein is referred to an appeal tribunal as provided in RSA 282-A:47 such shall be treated as an appeal case, to the extent applicable, under this rule.

(o) Except where a chairman sits alone the decision of the appeal tribunal upon an appeal shall be determined by a majority vote. However, the minority may file a written dissent setting forth the reasons therefor.

(p) Any party may be represented by counsel or other representative, but such person appearing on behalf of a party, except for a claims representative providing assistance pursuant to RSA 282-A:134, shall first file a letter announcing the fact of representation at the earliest date practical and shall send a copy of such letter to all parties. Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained. No fee shall be charged for representing an individual seeking benefits without prior approval pursuant to RSA 282-A:158 and Emp 204.

(q) The appeal tribunal chairperson, upon motion, or upon his or her own initiative, shall if justified by the facts, complexity of issues, the presence of one or more of the items listed at Emp 202.01(r), or similar factors, direct all interested parties to attend one or more prehearing conference to aid in the disposition of the proceeding.

(r) There may be considered at a prehearing conference:

(1) Opportunities and procedures for settlement if appropriate;

(2) Opportunities and procedures for simplification and limitation of the issues;

(3) Possible amendments to the pleadings;

(4) Possible admissions of fact and of documents to avoid unnecessary proof;

(5) Possible limitations on the number of witnesses;

(6) Possible changes to the standard procedures which would otherwise govern the proceeding;

(7) The distribution of written testimony, if any, and exhibits to the parties;

(8) Possible consolidation of the examination of witnesses by the parties; and

(9) Any other matters which might contribute to the prompt and orderly conduct of the proceeding.

(s) The appeal tribunal shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record. Matters decided at a prehearing conference shall be reflected in an appropriate order.

(t) Subpoenas for the attendance of witnesses or the production of evidence shall be issued pursuant to RSA 282-A:124 upon a showing that:

(1) The testimony or evidence is necessary, relevant and non-repetitive; and

(2) The witness or evidence cannot be voluntarily obtained.

(u) Whenever it shall appear to the appeal tribunal, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues, the appeal tribunal shall, as fairness and efficiency permit, consolidate those proceedings for hearing, or decision, or both.

(v) Testimony in interstate appeals by parties located out of state shall be by telephone or video conference unless otherwise ordered due to the request of the party or parties located out of state, the presence in the state of all parties or similar reasons. If the party or parties located out of state will be testifying by telephone, testimony by parties located within the state may give testimony either by telephone, video conference or in person.

(w) Testimony in intrastate appeals shall generally be in person or by video conference. A video conference shall allow parties to view and hear witnesses as testimony is being presented and to cross-examine.

(x) Testimony in intrastate appeals shall be by telephone only if:

(1) All parties have been given opportunity to object;

(2) No party has objected;

(3) There is not a question of credibility for which there is no direct evidence other than the demeanor of one or more witnesses; and

(4) Presence at an in-person or video conference hearing would be difficult for one or more parties due to:

a. Illness or disability;

b. Prohibitive distance;

c. Lack of transportation; or

d. Similar reasons.

(y) Ability to submit testimony by telephone or by video conference shall be contingent on availability of the necessary services and equipment.

(z) Whenever it is clear to the appeal tribunal that a certifying officer's determination was issued without notice to all interested parties or all issues were not addressed and such issues cannot be adequately or efficiently initially resolved in the context of the appeal tribunal hearing, the appeal tribunal shall vacate all or part of the certifying officer decision and remand those portions to the certifying officer's unit for further action or decision.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; ss by #2930, eff 12-21-84; amd by #3154, eff 12-2-85; ss by #5141, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES:
9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

PART Emp 203 **APPELLATE DIVISION; ORGANIZATION AND APPLICABILITY OF RULES - EXPIRED AND RESERVED**

PART Emp 204 **APPROVAL OF FEES**

Emp 204.01 Scope of Rules. These rules shall govern all petitions for approval of fees pursuant to RSA 282-A:158.

Source. #5137, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

Emp 204.02 Written Petitions.

(a) Any individual claiming benefits may be represented by counsel or other duly authorized agent. No such counsel or agent shall either charge or receive for such services more than an amount approved by the commissioner or his designee following the filing of a written petition requesting such approval.

(b) The written petition shall:

(1) Identify the claimant and the proceedings for which services were rendered;

(2) Contain an itemized statement of such services rendered, including the dates and time spent performing said services; and

(3) State the results achieved for the claimant.

(c) The written petition may be accompanied by a written memorandum in support of the requested fees, including any offers of proof the petitioner wishes the commissioner or his designee to consider.

(d) A copy of the petition and any memorandum by the petitioner shall be sent to the claimant by the petitioner. The petition shall include a statement that the claimant has 14 calendar days to file an objection. The petition shall contain a certification that a copy of the petition and memorandum if any, were sent to the claimant and that the claimant was advised in writing on the petition that the claimant had 14 calendar days to file an objection.

(e) The claimant may, within 14 calendar days of the date of mailing, file an objection to the petition with the commissioner. The objection shall specify the portions of the requested fees that the claimant disputes and shall specify the reasons for the claimant's objection. The objection may be accompanied by a written memorandum. A copy of the objection and any memorandum shall be sent to the counsel or agent who filed the petition. The objection and any memorandum shall certify that such copies were sent.

Source. #5137, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

Emp 204.03 Approval of Fees.

(a) Upon receipt of an objection to a petition, or following expiration of the 14-day period for objecting, the commissioner or his designee shall approve a fee in a reasonable amount.

(b) A fee shall be considered reasonable if the following are true:

(1) The time and labor required are commensurate with the fee;

(2) The complexity of the case, the novelty and difficulty of the questions involved, and the skill requisite to perform the services properly are proportionate with the fee;

(3) The amount of benefits involved and the results obtained justify the fee;

(4) If the employer was represented by an attorney, it made the case more difficult for the claimant or representation by an attorney necessary or desirable;

(5) The terms of the claimant's attorney's fee agreement, if any, are consistent with the fee; and

(6) If an unsuccessful appeal to the appeal tribunal was initiated by the claimant, the fee is not for an appeal which was without merit based on statutory and case law unless evidence shows that the appeal was against the advice of the counsel or agent.

(c) Nothing in this rule shall prevent the commissioner or his designee from scheduling a hearing upon the petition should he determine that additional information is necessary for him to render a decision.

Source. #5137, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

Emp 204.04 Reconsideration.

(a) Within 14 calendar days after the mailing of the decision on the petition for approval of fees, either party, except a party who failed to object to the original petition, may file a written request for reconsideration, stating specifically the reasons therefor. A decision shall be presumed mailed on the date of the decision. A request shall be presumed filed when received by the department in any of its offices. The deadline for filing shall be extended to the next business day if the filing deadline falls on a federal or state-recognized holiday or on a weekend.

(b) Any party seeking reconsideration may also file a written request for a hearing, stating specifically why a hearing is necessary, what evidence would be submitted, and why written statements or offers of proof are inadequate.

(c) Either party may, within 14 calendar days of the date of filing, file an objection to any request for reconsideration or hearing.

(d) A copy of any requests or objections filed shall be sent to the other party. All requests and objections shall contain a statement of compliance herewith.

(e) Upon receipt of an objection, or following expiration of the 14-day period for objecting, the commissioner or his designee shall:

(1) Schedule a hearing upon such issues or questions of fact as are needed to render a determination on whether the decision is affected by fraud, mistake of law, mistake of fact, or newly discovered evidence;

(2) Reconsider the original decision based upon the written reconsideration request and any objection thereto if such indicate the decision is affected by fraud, mistake of law, mistake of fact, or newly discovered evidence; or

(3) Deny the request for reconsideration.

Source. #5137, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

Emp 204.05 Hearings.

(a) All evidentiary hearings under Emp 204 shall be held in accordance with Emp 201.02 - 201.08.

(b) The commissioner or his designee shall, in the notice of hearing, specify issues and/or questions of fact to be considered at the hearing if such is necessary to place parties on notice, avoid

surprise or assure preparation of evidence or presence of witnesses. In such case, the scope of the hearing shall be limited to the issues and/or questions stated in the notice of hearing.

Source. #5137, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

Emp 204.06 Decision. If there is an objection to a petition or a petition is not otherwise approved, the commissioner or his designee shall identify the information relied upon in his decision and shall make written findings in support of his decision. Except as provided in Emp 204.04, the decision of the commissioner or his designee shall be final.

Source. #5137, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

Emp 204.07 Suspension of Rules.

(a) The commissioner or his designee shall suspend the requirements or provisions of any of Emp 204 if:

(1) Such waiver would not violate the right of all parties in a contested case to have an opportunity for an adjudicative proceeding, or all parties waive such right; and

(2) The commissioner or his designee determine that such waiver will expedite the rendering of a decision and that the rule to be waived is not necessary to provide the information needed to render a decision.

(b) In the event of a suspension of rules, the reasons for the same shall be provided to the parties in writing if an aggrieved party so requests within 14 days.

Source. #5137, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

PART Emp 205 **PETITIONS**

Emp 205.01 Petition for Adoption, Amendment or Repeal of Rules.

(a) Under the provisions of RSA 541-A:4, submission of a petition to adopt a rule, or to amend or repeal an existing rule, shall be made in writing to the commissioner, and contain the following information:

(1) The full name and address of the petitioner;

(2) The purpose of the petition such as adoption, amendment or repeal of a rule together with a detailed statement outlining the petitioner's request;

(3) Reference to the statute or statutes upon which the petition for adoption, amendment or repeal of a rule is requested;

(4) A statement whether, to the best of the petitioner's knowledge, the issue which is the subject of the petition is:

a. The subject of an administrative appeal or pending in litigation; or

b. The subject of a decision which has become final.

(b) The commissioner shall, within 30 days after receipt of a petition under this rule, either deny the petition in writing, stating therein his reason for denial, or shall initiate rulemaking proceedings.

(c) Reasons for denial shall include:

(1) The adoption, amendment or repeal of the rule would conflict with a statute;

(2) The adoption, amendment or repeal of the rule would conflict with public policy;

(3) The adoption, amendment or repeal of the rule would change a long-term effect on the regulated public more appropriately changed by the legislature; or

(4) The adoption, amendment or repeal of the rule is deemed inappropriate for similar reasons.

Source. #6565-B, eff 9-2-97 (formerly Emp 102.01), EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 205.02 Petition for Declaratory Ruling.

(a) Under the provisions of RSA 541-A:16, I(d), submission of a petition for a declaratory ruling, as defined at RSA 541-A:1,V, shall be in writing to the commissioner and contain the following:

(1) A complete statement of the facts relating to the issues;

(2) The full names and addresses and, if applicable, social security numbers and department of employment security employer numbers, of all parties;

(3) True copies of all contracts, deeds, agreements, instruments and other documents involved in the issues;

(4) Reference to the statute or statutes relating to the subject of the petition for declaratory ruling;

(5) A statement whether, to the best of the petitioner's knowledge the issues which are the subject of the petition are:

a. The subject of an administrative appeal, or pending in litigation;

b. The subject of a decision which has become final;

c. As regards to a prior time period, the subject of an administrative appeal, pending in litigation or the subject of a decision which has become final; and

d. Whether there are, have been, or will be similarly-situated individuals, partnerships or corporations and if known, who they are.

(b) A petition for declaratory ruling and any factual information submitted therewith shall be accompanied by a declaration in the following form:

"I declare that I have examined this petition, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the requested declaratory ruling are true, correct, and complete."

Source. #6565-B, eff 9-2-97 (formerly Emp 102.02), EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 205.03 Disposition of Petitions For Declaratory Rulings.

(a) Within 45 days after a petition for declaratory ruling has been received in the office of the commissioner the commissioner or his authorized representative shall determine whether additional information or representations are needed from the petitioner and shall request the additional information or representations.

(b) The commissioner or his authorized representative shall entertain briefs or conduct a hearing or both if he determines that additional information is necessary for him to render a decision.

(c) Declaratory rulings shall be issued within 90 days of the date of the receipt of the petitioner's request or within 60 days of the receipt of needed additional information or representations, the receipt of briefs or of any hearing held, whichever is later.

(d) A petition shall be dismissed if its subject matter is described at Emp 205.02(a)(5)a., b. or c. or if because of the nature of the subject matter or the failure of any petitioner to submit additional information, representations, requested briefs or to appear at any hearing, the department is unable to rule.

Source. #6565-B, eff 9-2-97 (formerly Emp 102.03), EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 205.04 Effect of Declaratory Ruling.

(a) No other individual, partnership, limited liability company or corporation shall rely on a declaratory ruling issued to a petitioner.

(b) A declaratory ruling issued with respect to a particular set of facts represents a holding of the department as to the particular set of facts and as to the petitioner only.

(c) As a declaratory ruling is non-adjudicative, the petitioner shall not rely that any future adjudicative ruling will be consistent if in the context of the adjudicative proceeding any new evidence, facts or arguments are presented.

Source. #6565-B, eff 9-2-97 (formerly Emp 102.04), EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

Emp 205.05 Filing and Publication of Declaratory Rulings. After deletion of the name of the petitioner, declaratory rulings shall be made available to the public and filed with the director of legislative services pursuant to RSA 541-A:16, II. To the extent that the identity of the petitioner can be discerned from the declaratory ruling, the petitioner shall be deemed to have waived confidentiality by the filing of the petition for declaratory ruling.

Source. #6565-B, eff 9-2-97 (formerly Emp 102.05) EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. *#8626-A eff 5-6-06*

PART Emp 206 **RECORDS**

Emp 206.01 Destruction of Records. Any and all records, reports, transcripts, or reproductions thereof, or other papers or electronically stored information submitted to or prepared by the New Hampshire department of employment security, which are no longer necessary to the proper and efficient administration of the law, shall be destroyed upon order of the commissioner in writing. Whenever any such records, reports, transcripts, or reproductions thereof, or other papers or electronically stored information described above contain some information which it is necessary to preserve for the proper and efficient administration of the law, such information shall be transcribed, copied, microfilmed, electronically stored or similarly retained and preserved prior to the destruction of the records containing such information.

Source. #6566, eff 9-2-97 (formerly Emp 401.01), EXPIRED: 9-2-05

New. #8469, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8626-B, eff 5-6-06

PART Emp 207 **PRACTICE AND PROCEDURE**

Emp 207.01 Purpose. The purpose of this section is to supplement to the extent applicable, the rules of the department and the procedures established under RSA 282-A relating to conduct of hearings.

Source. #7246, eff 4-30-00

Emp 207.02 Application. The rules in this part shall apply to adjudicative proceedings conducted under RSA 282-A only to the extent not addressed in RSA 282-A and in other rules of the department.

Source. #7246, eff 4-30-00

Emp 207.03 "Party" means "Interested Party" as defined at RSA 282-A:42, III.

Source. #7246, eff 4-30-00

Emp 207.04 Presiding Officer; Appointment; Authority.

(a) All hearings shall be conducted for the department by a natural person appointed or authorized to serve as a presiding officer.

(b) A presiding officer shall as necessary:

(1) Regulate and control the course of a hearing;

(2) Facilitate an informal resolution of an appeal;

(3) Administer oaths and affirmations;

(4) Issue subpoenas to compel the attendance of witnesses at hearings or the production of documents;

(5) Receive relevant evidence at hearings and exclude irrelevant, immaterial or unduly repetitious evidence;

(6) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the presiding officer's own motion;

(7) Question any person who testifies;

(8) Cause a complete record of any hearing to be made, pursuant to RSA 282-A:57 and 282-A:96;

(9) Take any other action consistent with applicable statutes, rules and case law necessary to conduct the hearing and complete the record in a fair and timely manner; and

(10) Allow brief opening and closing arguments where they will assist in summarizing factual or legal issues or narrowing issues.

Source. #7246, eff 4-30-00

Emp 207.05 Withdrawal of Presiding Officer or Department Official.

(a) Upon his or her own initiative or upon the motion of any party, a presiding officer or department official shall, for good cause withdraw from any hearing.

(b) Good cause shall exist if a presiding officer or department official:

(1) Has a direct interest in the outcome of a proceeding, including, but not limited to, a financial or family relationship, including spouse or a relative by blood, marriage or adoption, including parent, child, grandparent, sibling, grandchild, great grandparent, uncle, aunt, nephew, niece, great grandchild, great great grandparent, great uncle, great aunt, first cousin, grand nephew, grand niece and great great grandchild, with any party; or

(2) Has made statements or engaged in behavior which objectively demonstrates that he or she has prejudged the facts of a case; or

(3) Personally believes that he or she cannot fairly judge the facts of a case.

(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.

Source. #7246, eff 4-30-00

Emp 207.06 Waiver or Suspension of Rules by Presiding Officer. The presiding officer, upon his or her own initiative or upon the motion of any party, shall suspend or waive any requirement or limitation imposed by this chapter upon reasonable notice to affected persons when the proposed waiver or suspension appears to be lawful, and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the department than would adherence to a particular rule or procedure.

Source. #7246, eff 4-30-00

Emp 207.07 Date of Issuance or Filing. All written documents governed by these rules shall be rebuttably presumed to have been issued on the date noted on the document and to have been filed with the department on the actual date of receipt by the department, as evidenced by a date stamp placed on the document by the department in the normal course of business.

Source. #7246, eff 4-30-00

Emp 207.08 Format of Documents.

(a) All correspondence, pleadings, motions or other documents filed under these rules shall:

(1) Include the title and docket number of the proceeding, if known;

(2) Be typewritten or clearly printed on durable paper 8 ½ by 11 inches in size; and

(3) Be signed by the party or proponent of the document, or, if the party appears by a representative, by the representative.

(b) A party or representative's signature on a document filed with the department shall constitute certification that:

(1) The signer has read the document;

(2) The signer is authorized to file it;

(3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and

(4) The document has not been filed for purposes of delay.

Source. #7246, eff 4-30-00

Emp 207.09 Delivery of Documents.

(a) All notices, orders, decisions or other documents issued by the presiding officer or the department shall be delivered to all parties to the proceeding.

(b) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mail, addressed to the last address given to the department by the party.

(c) When a party appears by a representative, delivery of a document to the party's representative at the address stated on the appearance filed by the representative shall constitute delivery to the party.

Source. #7246, eff 4-30-00

Emp 207.10 Computation of Time.

(a) Unless otherwise specified, all time periods shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

Source. #7246, eff 4-30-00

Emp 207.11 Motions; Objections.

(a) Motions shall be in written form and filed with the presiding officer, unless made in response to a matter asserted for the first time at a hearing or on the basis of information which was not received in time to prepare a written motion.

(b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the presiding officer finds that the motion requires additional information in order to be fully and fairly considered, the presiding officer shall direct the moving party to submit the motion in writing, with supporting information.

(c) Objections to written motions shall be filed within 10 days of the date of the motion;

(d) Failure by an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.

(e) The presiding officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion.

Source. #7246, eff 4-30-00

Emp 207.12 Commencement of Hearing. A hearing shall be commenced by an order of the department giving notice to the parties.

Source. #7246, eff 4-30-00

Emp 207.13 Docket Numbers. A docket number shall be assigned to each matter to be heard which shall appear on the notice of hearing and all subsequent orders or decisions of the department.

Source. #7246, eff 4-30-00

Emp 207.14 Notice of Hearing.

(a) A notice of a hearing issued by the department shall contain the following:

(1) A statement of the time, place and nature of any hearing;

(2) A statement of the legal authority under which a hearing is to be held;

(3) A reference to the appellant's statement of appeal and its date of filing;

(4) In benefit appeals, an excerpt from the appellant's written appeal which indicates the appellant's disagreement with the determination appealed; and

(5) A statement that each party has the right to have an attorney represent them at their own expense and that free or low cost assistance may be available.

Source. #7246, eff 4-30-00

Emp 207.15 Appearances and Representation.

(a) A party or the party's representative, except for a claims representative providing assistance pursuant to RSA 282-A:134, shall file an appearance that includes the following information:

(1) A brief identification of the matter;

(2) A statement as to whether or not the representative is an attorney and if so, whether the attorney is licensed to practice in New Hampshire; and

(3) The party or representative's daytime address and telephone number.

Source. #7246, eff 4-30-00

Emp 207.16 Prehearing Conference. Any party may request, or the presiding officer shall schedule on his or her own initiative, a prehearing conference in accordance with RSA 541-A:31, V to consider:

(a) Offers of settlement except where settlement would violate RSA 282-A:157;

(b) Simplification of the issues;

(c) Stipulations or admissions as to issues of fact or proof by consent of the parties;

(d) Limitations on the number of witnesses;

(e) Changes to standard procedures desired during the hearing by consent of the parties;

(f) Consolidation of examination of witnesses; or

(g) Any other matters which aid in the disposition of the proceeding.

Source. #7246, eff 4-30-00

Emp 207.17 Role of Department Staff in Enforcement or Disciplinary Hearings. Department staff shall have the same role in any enforcement or disciplinary hearing as in any other proceeding, including, as necessary, investigator, witness, claimant representative, department representative, presiding officer, non-presiding officer and clerk.

Source. #7246, eff 4-30-00

Emp 207.18 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as a witness or a party, a person who initiates an adjudicative proceeding by complaining to the department about the conduct of a person who becomes a party shall have no role in any enforcement or disciplinary hearing.

Source. #7246, eff 4-30-00

Emp 207.19 Intervention. A non-party shall not intervene in a matter pending before the department.

Source. #7246, eff 4-30-00

Emp 207.20 Postponements and Continuances.

(a) Any party to a hearing may make an oral or written motion that a hearing be postponed or continued to a later date or time.

(b) If a postponement or continuance is requested by a party to the hearing, it shall be granted if the presiding officer determines that good cause has been demonstrated. Good cause shall include the unavailability of parties, witnesses or attorneys necessary to conduct the hearing, or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly, unless such unavailability is due to action or inaction on the part of the party.

(c) If the later date, time and place are known at the time of the hearing that is being postponed, the date, time and place shall be stated on the record. If the later date, time and place are not known at the

time of the hearing that is being postponed, the presiding officer shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as practicable.

Source. #7246, eff 4-30-00

Emp 207.21 Failure to Attend Hearing.

(a) If any party to whom notice has been given in accordance with Emp 207.13 fails to attend a hearing, the presiding officer shall either:

(1) Dismiss the case, if the party with the burden of proof was also the appellant and fails to appear;

(2) Hear the testimony and receive the evidence offered by a party, if that party has the burden of proof in the case; or

(3) Hear the testimony and receive the evidence offered by a party if a fair record can be developed based on the available evidence and the witnesses present or if the rights of any party present would be violated by failure to proceed.

Source. #7246, eff 4-30-00

Emp 207.22 Voluntary Production of Information.

(a) Each party shall attempt in good faith to make complete and timely response to requests for the voluntary production of information or documents relevant to the hearing.

(b) When a dispute between parties arises concerning to a request for the voluntary production of information or documents, any party may file a motion to compel the production of the requested information under Emp 207.23.

Source. #7246, eff 4-30-00

Emp 207.23 Motions to Compel Production of Information.

(a) Any party may make a motion requesting that the presiding officer order the parties to comply with information requests. The motion shall be filed as soon as the need for the information is discovered and either:

(1) No later than the close of the hearing; or

(2) If pursuant to or in furtherance of Emp 207.31, no later than the issuance of the decision on the merits.

(b) The moving party's motion shall:

(1) Set forth in detail those factors which it believes justify its request for information; and

(2) List with specificity the information it is seeking to discover.

(c) When a party has demonstrated that such requests for information are necessary for a full and fair presentation of the evidence at the hearing, the presiding officer shall grant the motion.

Source. #7246, eff 4-30-00

Emp 207.24 Pre-Hearing Disclosure of Witnesses and Exhibits. Pre-hearing disclosure of witnesses and exhibits shall be ordered when necessary for a full and fair presentation of the evidence at the hearing.

Source. #7246, eff 4-30-00

Emp 207.25 Record of the Hearing.

(a) The department shall record the hearing by tape recording or other method that will provide a verbatim record.

(b) Copies of tape recordings and transcriptions of hearings shall be provided pursuant to RSA 282-A:64, III, and shall be subject to the confidentiality provisions of RSA 282-A:117 through RSA 282-A:123.

Source. #7246, eff 4-30-00

Emp 207.26 Standard and Burden of Proof. The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

Source. #7246, eff 4-30-00

Emp 207.27 Testimony; Order of Proceeding.

(a) Any person offering testimony, evidence or arguments shall state for the record his or her name, and role in the proceeding. If the person is representing another person, the person being represented shall also be identified.

(b) Testimony shall be offered in the following order:

(1) The party or parties bearing the burden of proof and such witnesses as the party may call; and

(2) The party or parties opposing the party who bears the overall burden of proof and such witnesses as the party may call.

Source. #7246, eff 4-30-00

Emp 207.28 Evidence.

(a) Receipt of evidence shall be governed by the provisions of RSA 541-A:33.

(b) All documents, materials and objects offered as exhibits shall be admitted into evidence unless excluded by the presiding officer as irrelevant, immaterial, unduly repetitious, legally privileged or any other basis required by law.

(c) All objections to the admissibility of evidence shall be stated as early as possible in the hearing, but not later than the time when the evidence is offered.

(d) Transcripts of testimony and documents or other materials, admitted into evidence shall not be public records pursuant to RSA 91-A:5 and 6 and RSA 282-A:117 through 123.

(e) All department records used at the hearing shall be produced and identified on the record by the presiding officer.

Source. #7246, eff 4-30-00

Emp 207.29 Proposed Findings of Fact and Conclusions of Law.

(a) Proposed findings of fact and conclusions of law shall not be submitted.

(b) In lieu of proposed findings of fact and conclusions of law, parties may submit written arguments and summaries.

Source. #7246, eff 4-30-00

Emp 207.30 Closing the Record.

(a) After the conclusion of the hearing, the record shall be closed and no other evidence shall be received into the record, except as allowed by paragraphs (b) of this section and Emp 207.31.

(b) Before the conclusion of the hearing, a party may request that the record be left open to allow the filing of specified evidence not available at the hearing. If the other parties to the hearing have no objection and the presiding officer determines that such evidence is necessary to a full consideration of the issues raised at the hearing, the presiding officer shall keep the record open for the period of time necessary for the party to file the evidence and to provide the opposing party the opportunity to review the evidence and offer rebuttal.

Source. #7246, eff 4-30-00

Emp 207.31 Reopening the Record. At any time prior to the issuance of the decision on the merits, the presiding officer, on the presiding officer's own initiative or on the motion of any party, shall reopen the record to receive relevant, material and non-duplicative testimony, evidence or arguments not previously received, and to provide the opposing party the opportunity to review the evidence and offer rebuttal, if the presiding officer determines that such testimony, evidence or arguments are necessary to a full and fair consideration of the issues to be decided.

Source. #7246, eff 4-30-00

Emp 207.32 Decisions.

(a) The department official shall not participate in making a decision unless he or she personally heard the testimony in the case, unless the matter's disposition does not depend on the credibility of any witness and the record provides a reasonable basis for evaluating the testimony.

(b) The department shall keep a decision on file in its records for at least 3 years following the date of the final decision or the date of the decision on any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40 or a different retention period is established pursuant to RSA 282-A:120.

Source. #7246, eff 4-30-00

Emp 207.33 Filing and Content of Motion for Rehearing.

(a) A motion for rehearing shall be filed within 14 days of the date of the department decision or order.

(b) A motion for rehearing shall:

(1) Identify each error of fact, error of reasoning, or error of law which the moving party wishes to have reconsidered;

(2) Describe how each error causes the department's decision to be unlawful, unjust or unreasonable, or illegal in respect to jurisdiction, authority or observance of the law, an abuse of discretion or arbitrary unreasonable or capricious;

(3) State concisely the factual findings, reasoning or legal conclusion proposed by the moving party; and

(4) Include any argument or memorandum of law the moving party wishes to file.

Source. #7246, eff 4-30-00

Emp 207.34 Standard for Granting Motion for Rehearing. A motion for rehearing in a case subject to appeal under RSA 282-A shall be granted if it meets the requirements of RSA 282-A:60 or 67, as applicable.

Source. #7246, eff 4-30-00

## CHAPTER Emp 300 EMPLOYER REQUIREMENTS

### PART Emp 301 **PAYMENTS IN KIND**

Emp 301.01 Reasonable Value for Payments in Kind.

(a) Whenever board, lodging, or any other payment in kind is considered as payment for services in addition to or in lieu of, rather than a deduction from, money payments, the employing unit shall use the cash values established in this section in computing the total wages payable to such worker unless other cash values have been determined by the commissioner pursuant to Emp 301.01(e).

(b) Where a cash value for board and lodging or both furnished a worker is agreed upon in any contract of hire, the amount so agreed upon shall, if more than the rates prescribed herein, be deemed the value of such board or lodging unless other cash values have been determined by the commissioner pursuant to Emp 301.01(e).

(c) Until and unless in a given case a rate for board or lodging is determined by the commissioner, the rate for board or lodging furnished in addition to or in lieu of money wages, shall be deemed to have not less than the following values:

(1) Full board and room weekly $98.00;

(2) Full board and room per day $14.00;

(3) Meals per week $63.00;

(4) Meals per meal $3.00;

(5) Lodging per week $35.00; and

(6) Lodging per day $5.00.

(d) The reasonable value of rent for a house or apartment shall be the value of such accommodations to the worker.

(e) If the commissioner determines based on economic information that the reasonable cash value of a payment in kind in a particular case is other than the amount agreed to in the contract of hire or as deemed in Emp 301.01(c) the commissioner shall issue a determination pursuant to RSA 282-A:94. Such determination shall be appealable pursuant to RSA 282-A:95.

Source. #2234, eff 1-1-83, EXPIRED: 1-1-89

New. #5142, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625, eff 5-6-06

Emp 301.02 Payments in Kind for the Convenience of the Employer.

(a) Payments in kind for meals or lodging shall be considered remuneration for personal services unless:

(1) The meals:

a. Are furnished on the business premises of the employer for the convenience of the employer;

b. Are furnished without charge for substantial non-compensatory business reasons; and

c. Are not furnished for the purpose of additional compensation.

(2) The lodging:

a. Is furnished on the business premises of the employer for the convenience of the employer;

b. Is furnished without charge for substantial non-compensatory business reasons; and

c. Is not furnished for the purpose of additional compensation.

(b) Substantial non-compensatory business reasons shall include:

(1) To have employees on call;

(2) To have employees with restricted meal periods; and

(3) Because adequate eating or lodging facilities are not otherwise available.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5142, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625, eff 5-6-06

Emp 301.03 Tips and Gratuities.

(a) Tips and gratuities reported to the employer in writing shall be wages under RSA 282-A for all purposes, including, but not limited to:

(1) Annual earnings;

(2) Wage reports for "partial" benefits;

(3) The calculation of wages for contributions both as to the amount of contributions due on each report and the maximum amount of wages subject to contributions.

(b) Tips and gratuities shall be included in every employer's separate account and shall be used to compute the employer's average payroll in merit rate calculations.

(c) Claimants shall report, when filing a claim for unemployment compensation, the amount of tips and gratuities received.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5142, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625, eff 5-6-06

## PART Emp 302 **RECORDS AND REPORTS**

Emp 302.01 Notice of Employment.

(a) Every employing unit, as defined in RSA 282-A:7 shall file with the department of employment security a fully and properly executed "Employer Status Report":

(1) Within 30 days of furnishing any employment;

(2) Within 30 days of becoming an employer as defined in RSA 282-A:8;

(3) Within 30 days of any and all changes in its status or any other information required to be furnished in said “Employer Status Report”; and

(4) As often as required by the department for the purpose of clarifying inconsistent or out-of-date information.

(b) Employing units shall supply on "Employer Status Report" the following information:

(1) Full business name and telephone number;

(2) Federal identification number;

(3) Address of principal place of business in New Hampshire and if none, in another state;

(4) Mailing address if different than subparagraph (3) above;

(5) For each establishment or operation maintained in New Hampshire the:

a. Principal activity;

b. Principal product, processes or services; and

c. Location of each unit;

(6) Type of business entity;

(7) If a corporation, the:

a. Full corporate name;

b. Date of incorporation;

c. State of incorporation; and

d. Name and address of New Hampshire registered agent;

(8) If the business is a non-profit organization and a copy of its letter of exemption if the business is a non-profit organization;

(9) The date on which employment was first furnished in New Hampshire;

(10) The date on which it ceased to furnish employment in New Hampshire, if any, and the reason for cessation;

(11) If it will be subject to the Federal Unemployment Tax Act in the current year;

(12) If it furnished employment in New Hampshire in preceding years during which it was subject to the Federal Unemployment Tax Act and if so which years;

(13) If it acquired the organization, trade, business or any of the New Hampshire assets of any other employing unit or employer and if so:

a. The name and address of prior owner;

b. The date acquired;

c. The percentage of assets acquired;

d. If any business assets were not acquired and what they were; and

e. If the prior owner will remain in business in New Hampshire and if so, to what extent, in what capacity; and using what assets;

(14) Its gross payroll for each quarter of the current and 2 prior calendar years;

(15) If it expects to have a gross payroll of at least $1,500 in the current calendar quarter;

(16) By week, the number of workers to whom it furnished employment in New Hampshire in the current and all preceding calendar years;

(17) If it also engaged any self-employed individuals, subcontractors or consultants and if so, for each, their:

a. Name;

b. Trade; and

c. Address;

(18) If it had or expects to have a $1,000 quarterly payroll for domestic services and if so the earliest quarter and year this has occurred or will occur;

(19) If the report was prepared by other than a sole proprietor the preparer's:

a. Name;

b. Firm name;

c. Date;

d. Signature;

e. Address;

f. Telephone number; and

g. Affirmation of accuracy under penalty of law; and

(20) A list of the owner, all partners, authorized corporate officers and authorized members of limited liability companies including the:

a. Date signed;

b. Affirmation of accuracy under penalty of law;

c. Typed or printed name of each individual;

d. Social security number of each individual;

e. Resident address of each individual;

f. Title of each individual; and

g. Signature of each individual.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5143, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625, eff 5-6-06

Emp 302.02 Quarterly Reports.

(a) Every employer on or before the date contributions are due shall complete and file an "Employer Tax and Wage Report" supplied by the department of employment security at any of its offices or in an electronic format compatible with the department's technology.

(b) Every employer who has furnished no employment during the applicable reporting period shall submit an "Employer Tax and Wage Report" indicating no employment has been furnished during such period.

(c) Upon application, the commissioner shall, where no employment is to be furnished, waive for a period of not more than 12 months the requirement of filing an "Employer Tax and Wage Report" and in the case of an employer who furnishes only seasonal employment shall waive such requirement during the usual and ordinary season where no employment is furnished.

(d) Every employer with 250 or more employees and every person or organization which, as agent, reports wages on a total of 250 or more employees on behalf of one or more subject employers, shall file that portion of the quarterly "Employer Tax and Wage Reports" which contains the name, social security number, and gross wages of each individual in employment on magnetic tapes or diskettes. The magnetic tapes or diskettes shall contain an electronic signature identifying the individual responsible for the accuracy of the report.

(e) The commissioner or his authorized representative shall waive the requirement in (d) upon a showing of lack of automation, economic hardship, or similar reasons. Any request for such waiver shall be submitted in writing specifying the reason for the request. An appeal from a determination on a request for exemption shall be pursuant to RSA 282-A:95, 96, 97, and 67.

(f) Employers shall supply on an "Employer Tax and Wage Report" the following information:

(1) State employer account number;

(2) Federal employer identification number;

(3) The calendar quarter for which the report is being filed;

(4) The due date of the report;

(5) The employer's business location address;

(6) Whether there have been any business changes;

(7) The specific nature of any business changes including:

a. Change of business location;

b. Change of mailing address;

c. Change of form of business;

d. Date employer out of business;

e. Date employer ceased New Hampshire employment;

f. Date business sold; and

g. Name and address of purchaser of business;

(8) The signature and information required by Emp 302.04 of the person providing the information concerning the specific nature of any business change;

(9) The number of workers in the pay period including the 12th of the month for each of the 3 months in the calendar quarter;

(10) The total wages paid in the quarter;

(11) The wages paid during the quarter per worker during the calendar year in excess of the amount subject to taxation;

(12) The net taxable wages;

(13) The employer's tax rate for the calendar quarter;

(14) The tax due for the calendar quarter;

(15) The amount of interest due if payment is delinquent;

(16) The amount of the late-filing fee if the report is delinquent;

(17) The net amount to be paid including any previous balance if such previous balance has been provided on the form by the department;

(18) The information and signatures required by Emp 302.04;

(19) For each employee during the calendar quarter the employee's:

a. Name;

b. Social security number; and

c. Gross wages; and

(20) The total wages for each page providing the information required at subparagraph (19) above.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84; amd by #4159, eff 11-5-86; amd by #4350, eff 12-28-87; amd by #4539, eff 12-9-88; ss by #5143, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566,
eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625, eff 5-6-06

Emp 302.03 Payment Vouchers.

(a) When necessary to determine the accuracy of an individual's reported earnings or hours worked during a week for which benefits have been claimed, the department shall send a “Payment Voucher” form to an employing unit.

(b) The department shall provide the following information on a “Payment Voucher” form:

(1) The name and social security account number of the individual;

(2) The week or weeks for which information is needed; and

(3) The date of mailing of the form.

(c) The employing unit shall supply on a "Payment Voucher" form the following information:

(1) The amount of gross wages paid or payable to the individual for each week for which information is requested;

(2) Whether the individual failed to perform all available work;

(3) The number of hours worked by the individual for each calendar week for which information is requested; and

(4) The individual's social security number if the records of the employing unit indicate a different social security number of the individual than the number supplied by the department on the form.

(d) Gross wages shall include:

(1) Wages for services;

(2) Vacation pay;

(3) Severance pay;

(4) Bonus payments;

(5) Holiday pay;

(6) Supplemental unemployment benefits;

(7) Wages in lieu of notice;

(8) Periodic payments of any nature; and

(9) Similar payments.

(e) The employing unit shall return the information to the department at the address designated on the form within 10 calendar days from the date of mailing by the department of the "Payment Voucher" form.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5143, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97; ss by #7247, eff 4-30-00; ss by #7619, eff 12-30-01; ss by #8558, INTERIM, eff 1-31-06, EXPIRES: 7-30-06; ss by #8675, eff 7-8-06

Emp 302.04 Signature Required.

(a) All reports and all information verification and waiver forms required by RSA 282-A:45 and Emp 302.08 submitted by or on behalf of an employer or employing unit shall:

(1) Be signed by:

a. The employer or employing unit, one or more general partners, one or more members of a limited liability company or a duly authorized employee; or

b. An agent authorized pursuant to Emp 302.10;

(2) State the name and title of the individual signing; and

(3) State the date of execution.

(b) If prepared by an individual other than the individual signing pursuant to (a)(1) above, shall:

(1) Be signed by the preparer;

(2) State the preparer's telephone number; and

(3) State the business address of the preparer.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5143, eff 5-6-91; ss by #6412, eff 1-1-97; ss by #7248, eff 4-30-00

Emp 302.05 Records to be Kept by Each Employing Unit and Each Employer.

(a) Each employing unit having employment performed for it shall establish and maintain, with respect to each worker engaged in such employment, the following records:

(1) The period covered by the payroll;

(2) For each worker:

a. The worker's name;

b. The date on which the worker was hired, rehired, or returned to work after lay-off, and the date when the worker was separated from employment;

c. For each calendar week in which the worker performed any service in employment, the number of hours the worker was employed;

d. The worker's wages earned in each pay period, showing separately:

1. Money wages;

2. Cash value of all other remuneration received from the worker's employer; and

3. Any special payments for services other than those rendered exclusively in a given pay period, such as bonuses, gifts, prizes, separation allowance, accrued leave, vacation, sickness allowance, payments in lieu of notice, showing separately:

(i) Money payments;

(ii) Other remuneration; and

(iii) The nature of such payments and the period during which such payments were made;

e. Amount and date of such wage payment; and

f. The worker's social security number; and

(3) For each place of employment, the number of workers in covered employment.

(b) In addition to all other records required to be established, maintained and preserved by any other rule or by statute, every employing unit having "included service" and "excluded service" as described in RSA 282-A:9(V) shall establish, maintain and preserve for each worker engaged in the performance of such services the following records:

(1) The number of hours in each pay period during which the worker was engaged in "included service"; and

(2) The number of hours in each pay period during which the worker was engaged in "excluded service".

(c) Each employer shall keep the employer's payroll records in such form that it shall be possible from an inspection thereof to determine with respect to each worker in the employer's employ who may be eligible for partial benefits the following:

(1) Wages earned, by weeks;

(2) Whether any week was in fact a week of less than full-time work; and

(3) Time lost, if any, by each such worker, due to reasons other than lack of work.

(d) The records listed in Emp 302.05(a), (b) and (c) shall be preserved for a period of not less than 6 years after the calendar year in which the remuneration for the services was paid, or, if not paid, was due.

(e) If the commissioner finds that the customary records kept by the employer are sufficient to determine readily all of the requirements of this regulation, the employer shall not be required to change the employer's method of record keeping or to keep any additional records.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5143, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRES: 4-30-06; ss by #8549, INTERIM, eff 1-26-05, EXPIRES: 7-25-06; ss by #8674, eff 7-8-06

Emp 302.06 Penalty. - EXPIRED

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5143, eff 5-6-91; EXPIRED: 5-6-97

Emp 302.07 Force and Effect of Instructions on Forms. - EXPIRED

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

Emp 302.08 Notice of Claim, Information Verification and Waiver Form and Determination on Claim.

(a) The certifying officer shall provide the following information on the notice of claim and information verification and waiver form required under RSA 282-A:45 of the unemployment compensation law:

(1) The name and social security account number of the claimant;

(2) Whether the claim is for total or partial unemployment, and the week-ending date;

(3) The claimant's reported dates of employment and reason for separation with the employer or employing unit;

(4) Whether the claimant has advised the department of the receipt or expectation to receive any of the following payments upon his or her separation from employment with the employer or employing unit, to include:

a. Severance pay;

b. Vacation pay;

c. Holiday pay;

d. Bonus pay;

e. Sick; or

f. Other; and

(5) The date of mailing of the form.

(b) The form on which the certifying officer's determination on claim is made shall comply with the requirements of RSA 282-A:44.

(c) Whenever required by RSA 282-A:45, a notice of claim and information verification and waiver form shall be mailed by the certifying officer to the employer or employing unit for whom the claimant last performed services.

(d) Whenever the cause of the claimant's unemployment, as reported by the claimant, is other than lack of work:

(1) The department shall contact the employer or employing unit, by telephone, fax, email or other appropriate means, as determined by the commissioner, to obtain information regarding the discontinuance of services unless:

a. The claimant has certified the earning of sufficient wage credits to remove any disqualification pursuant to RSA 282-A:32, I; and

b. Any benefits paid to the claimant will be charged to the separate account of the employing unit which provided such wage credits;

(2) The employer or employing unit shall within 48 hours of the date and time it is contacted by the department, provide full and complete information, by telephone, fax, e-mail or other appropriate means, as determined by the commissioner.

(3) In determining what means are appropriate for the department to contact the employer or employing unit, and for the employer or employing unit to use to respond to the department, the commissioner shall consider:

a. The costs of the department;

b. The technological and personnel limitations of the department; and

c. The affect of the means on the length of time in obtaining a response.

(e) Whenever the cause of the claimant's unemployment, as reported by the claimant, is due to lack of work, the employer or employing unit shall notify the department, by mail, fax or telephone at the address, fax or telephone numbers designated by the department on the form if:

(1) The actual cause is other than lack of work;

(2) The dates of employment, as reported by the claimant, are incorrect; or

(3) The claimant provided false information regarding the receipt or expected receipt of any of the separation payments listed in Emp 302.08(a)(4).

(f) The employer or employing unit notifying the department pursuant to (e) above shall assure receipt by the department of the information within 10 calendar days from the date of mailing by the department of the information verification and waiver form.

(g) Failure of the employer or employing unit or employer's authorized agent designated pursuant to Emp 302.10 to respond appropriately shall be deemed an irrevocable waiver of its right to be heard before the determination is made. Benefits charged to its account as a result of the determination shall remain so charged even though the claimant is held not to be entitled to unemployment compensation by reason of a later decision.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5243, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97; ss by #7249,
eff 4-30-00; amd by #8001, eff 12-14-03

Emp 302.09 Mailing Address.

(a) All mailings by the department to an employer or employing unit shall be to the mailing address listed on the "Employer Status Report" unless the employer or employing unit designates in writing:

(1) For each New Hampshire place of employment, one mailing address for the mailing of forms, decisions and other materials which relate to entitlement to unemployment compensation benefits, including but not limited to:

a. Notices to appear;

b. Requests for information;

c. Determinations on claim;

d. Notices of benefit charges;

e. Appeal tribunal decisions; and

f. Appellate board decisions.

(2) One mailing address for the mailing of forms, decisions and other materials which relate to employer status, records, reports, payment of contributions, and reimbursement in lieu of contributions including but not limited to:

a. Status reports;

b. Quarterly reports;

c. Determinations of liability; and

d. Assessments; and

(3) A properly authorized agent to receive materials as may be designated in (a)(1) and/or (a)(2).

(b) The commissioner shall waive the limitation of one mailing address each for (a)(1) and/or (a)(2) above upon a showing of good cause. Good cause shall include hardship, business necessity or similar problem. A request for such waiver shall be submitted in writing specifying the reason for the request. The method for appealing from a determination on a request for waiver shall be the same as appeals from determinations issues pursuant to RSA 282-A:94.

(c) "Hardship" for purposes of Emp 302.09 (b) means unusual difficulty, expense, effort and similar distress.

(d) "Business necessity" for purposes of Emp 302.09(b) means an urgent business requirement, need, obligation and similar compulsion.

Source. #4540, eff 12-9-88, EXPIRED: 12-9-94

New. #5972, eff 2-1-95, EXPIRED: 2-1-03

New. #8156, eff 9-5-04

Emp 302.10 Authorized Agents.

(a) A request for designation of an authorized agent shall be in writing and signed by the employer or employing unit, one or more general partners or a duly authorized employee stating the title or position of the employee.

(b) An authorized agent acting on behalf of an employer or employing unit shall comply with the rules and statutory obligations to which its principal is subject.

(c) The commissioner shall deny approval or revoke approval of a request for designation of an authorized agent for violations of (b) above. Only the employer or employing unit, may appeal a denial or revocation. Any appeal shall be in writing and shall be pursuant to Emp 201 and RSA 282-A:95, 96, 97 and 67.

(d) Any authorized agent which represents 250 or more employers may enter into a memorandum of understanding with the commissioner which allows that agent to maintain written records of the designation as authorized agent on its premises subject to audit within 5 business days of written notice by the commissioner.

(e) Any authorized agent which represents 250 or more employers may enter into a memorandum of understanding with the commissioner which allows that agent to file the complete "Employer Tax and Wage Reports" required at Emp 302.02 on magnetic tape or diskettes.

(f) An authorized agent responsible for receiving and responding to inquiries from the department on behalf of one or more employers shall utilize the means determined by the commissioner under Emp 302.08(d)(3).

(g) The commissioner or his authorized representative shall waive the requirement in (f) upon a showing of lack of automation, economic hardship, or similar reasons. Any request for such waiver shall be submitted in writing specifying the reason for the request. An appeal from a determination on a request for exemption shall be pursuant to RSA 282-A:95, 96, 97, and 67.

(h) A designation of an authorized agent shall not prevent the department from obtaining information directly from an employer or employing unit when determined necessary by the commissioner.

(i) The commissioner shall determine it necessary to obtain information directly from an employer which has designated an authorized agent if the commissioner finds:

(1) Such direct communication would result in a more prompt or accurate determination on a claim for benefits;

(2) The information provided by the authorized agent is incomplete, inaccurate, not timely or not communicated by the means determined by the commissioner;

(3) The authorized agent is uncooperative in providing information to the department; or

(4) Similar reasons.

Source. #4541, eff 12-9-88, EXPIRED: 12-9-94

New. #5973, eff 2-1-95; ss by #8001, eff 12-14-03

Emp 302.11 Filing Requirements. Any report required to be filed shall be considered properly filed if it:

(a) Is timely filed;

(b) Contains all required information; and

(c) Includes all required signatures.

Source. #6413, eff 1-1-97, EXPIRED: 1-1-05

New. #8471, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8627, eff 6-6-06

Emp 302.12 Request for Wage Information.

(a) The department shall send a "Request for Wage Information" form to an employer whenever it determines that:

(1) An individual has filed a claim;

(2) There is reason to believe that the individual earned wages from the employer during the individual's base period or alternate base period which are:

a. Inaccurately reported;

b. Unreported due to failure to report timely; or

c. Unreported because the quarterly report for the most recent completed calendar quarter is not yet due; and

(3) The information is necessary for the commissioner to determine whether the individual has earnings during the individual's base period or alternate base period to qualify for benefits under RSA 282-A:25.

(b) The department shall provide the following information on a "Request for Wage Information" form:

(1) The name and social security account number of the individual;

(2) The time period for which information is needed; and

(3) The date of mailing of the form.

(c) The employer shall supply on a "Request for Wage Information" form the following information:

(1) The gross wages for employment paid or payable to the individual for each of the calendar quarters during the time period listed pursuant to (b)(2) above;

(2) The signature, title and telephone number of the person completing the form; and

(3) The social security number of the individual if the records of the employer indicate a different social security number of the individual than the number supplied on the form by the department.

(d) The employer shall return the information to the department at the address designated on the form within 10 calendar days from the date of mailing by the department of the "Request for Wage Information" form.

Source. #7469, INTERIM, eff 4-1-01, EXPIRED: 9-28-01

New. #7619, eff 12-30-01

Emp 302.13 Mass Layoffs.

(a) An employing unit or employer shall be required to report pursuant to RSA 282-A:45-a if the employing unit or employer lays off or expects to lay off 25 or more individuals:

(1) In the same calendar week;

(2) For an expected duration of 7 calendar days or more; and

(3) Due to:

a. A vacation shutdown;

b. Holiday shutdown; or

c. Company closure.

(b) An employing unit or employer required to report pursuant to RSA 282-A:45-a shall report to the department the following information:

(1) The employing unit's or employer's full business name, including DBA, and the telephone number the employing unit or employer wishes the department to use for additional layoff information;

(2) The employing unit's or employer's New Hampshire employer account number;

(3) The physical location, or if more than one, locations where:

a. Each individual performs services;

b. If an individual's services are not generally performed in the same location, the individual's base of operations; or

c. If the individual's services are not generally performed in the same location and the individual does not have a base of operations, then the place from which the individual's services are directed and controlled;

(4) The mailing address, or if more than one, addresses of each location provided in subparagraph (3) above;

(5) The reason for the layoff;

(6) The calendar week in which the layoff has occurred or is expected to occur;

(7) The total number of individuals laid off or expected to be laid off;

(8) For each individual laid off:

a. The individual's first and last name;

b. The individual's social security number;

c. The last day on which the individual performed services;

d. Whether the employing unit or employer expects the layoff to be permanent or temporary;

e. If the layoff is expected to be temporary, the anticipated reemployment date; and

f. The amount of any payments made or expected to be made for wages as defined at RSA 282-A:14,III for, during and after the calendar week in which the individual last performed services.

(c) Wages reportable pursuant to (a)(8)f. above shall include but are not limited to, gross wages for work performed and any vacation, bonus, longevity, stay, retention, attendance, holiday, or similar payments.

(d) The department of employment security shall prepare a form, known as a "Mass Layoff Notice", which shall be appropriate for use by employing units and employers to report the information required to be reported pursuant to Emp 302.13(b).

(e) The employing unit or employer shall report either on:

(1) A "Mass Layoff Notice" form as described at Emp 302.13(d); or

(2) A format requested by the employing unit or employer which the department has determined to:

a. Contain all legally required information;

b. Have a sequence of information which allows efficient data entry; and

c. Be clear and legible.

(f) An employing unit or employer which has a mass layoff shall file a "Mass Layoff Notice" or other format allowed under Emp 302.13(e):

(1) Not later than 3 business days following the end of the calendar week in which a reportable mass layoff occurs if the mass layoff is due to a company closure; or

(2) Not later than 7 business days following the end of the calendar week in which a reportable mass layoff occurs if the mass layoff is due to a vacation shutdown or a holiday shutdown.

(g) The department shall make inquiry of an employing unit or employer whether a reportable mass layoff is expected if the commissioner finds the inquiry is necessary due to:

(1) The employing unit or employer having had a reportable mass layoff within the prior 12 calendar months;

(2) The department has received information that a reportable mass layoff may occur; or

(3) Similar reasons.

(h) Upon inquiry by the department pursuant to Emp 302.13(h) an employing unit or employer shall advise the department within 7 business days whether it anticipates having a reportable mass layoff within the 12 month period following the department's inquiry.

(i) An employing unit or employer responding to a department inquiry request under Emp 302.13(h) which does anticipate having a reportable mass layoff shall file a "Mass Layoff Notice" form or other format allowed under Emp 302.13(e) containing the information required at Emp 302.13 (b)(1), (2), (6) and (7) within 7 business days of the department's inquiry.

(j) The commissioner shall waive the requirement that an employing unit or employer report pursuant to RSA 282-A:45-a if the commissioner determines, either on the commissioner's own motion or in response to a request for waiver, that it is unlikely that 25 or more of the individuals laid off will file an initial claim due to the expected receipt of wages.

(k) An employing unit or employer shall request waiver of the requirement that it report pursuant to RSA 282-A:45-a not later than 14 days prior to the week in which the reportable mass layoff is expected to occur.

(l) A request for waiver of the requirement that an employing unit or employer report pursuant to RSA 282-A:45-a shall be in writing, shall give all reasons the employing unit or employer wishes considered and shall:

(1) Be signed by:

a. The employing unit or employer, one or more general partners, one or more members of a limited liability company or a duly authorized employee; or

b. An agent authorized pursuant to Emp 302.10;

(2) State the name and title of the individual signing;

(3) State the telephone number of the individual signing; and

(4) State the date of execution.

(m) Any waiver granted under Emp 302.13(h) shall become void upon notice from the commissioner that 25 or more of the individuals laid off have in fact filed a claim for benefits. In that case, an employing unit or employer previously granted a waiver shall file a complete "Mass Layoff Notice" form or other format allowed under Emp 302.13(e) within 2 business days of such notice.

(n) An employing unit or employer which has fully reported an individual under RSA 282-A:45-a and Emp 302.13 shall not be required to report such individual under RSA 282-A:45 and Emp 302.08.

(o) An employing unit or employer not required to report pursuant to RSA 282-A:45-a may voluntarily do so.

(p) An employing unit or employer shall not report an individual pursuant to RSA 282-A:45-a if there is any reason for the individual's separation from employment other than:

(1) A vacation shutdown;

(2) Holiday shutdown; or

(3) Company closure.

Source. #8558, INTERIM, eff 1-31-06, EXPIRES: 7-30-06; ss by #8675, eff 7-8-06

Emp 302.14 Part-time Work Information

(a) The department shall send a "Part-time Work Information" form to an employer whenever it determines that:

(1) RSA 282-A:31, V may apply to the claim of an individual who is only available for part-time work; and

(2) The information is necessary for the commissioner to determine whether the individual's work history during the 26 week period described in Emp 501.15(c) meets the requirements of Emp 501.15(d)

(b) The department shall provide the following information on a "Part-time Work Information" form:

(1) The name and social security account number of the individual;

(2) The time period for which the information is needed;

(3) The proper fax number, telephone number and mailing address for response; and

(4) The date of mailing of the form.

(c) The employer shall supply on a "Part-time Work Information" form the following information:

(1) The number of hours the individual worked during each calendar week during the time period for which the information is needed;

(2) The individual's social security account number, if the records of the employer indicate a different social security number of the individual than the number supplied by the department on the form; and

(3) The signature, title and telephone number of the person completing the form.

(d) The employer, if able, shall file the "Part-time Work Information" form with the department by faxing it to the fax number designated on the form within 4 business days from the date of mailing by the department of the "Part-time Work Information" form.

(e) An employer which due to the employer's limitations is unable to file the "Part-time Work Information" form by faxing it shall, if able, file by providing the information on the form to the department by telephone to the telephone number designated on the form within 4 business days from the date of mailing by the department of the "Part-time Work Information" form.

(f) An employer which due to the employer's limitations is unable to file the "Part-time Work Information" form by faxing it or by providing the information on the form to the department by telephone shall file by having the "Part-time Work Information" form mailed or delivered to the department to the mailing address designated on the form.

(g) An employer filing the "Part-time Work Information" form by mail or delivery pursuant to Emp 302.014(f) shall mail or deliver the form timely.

(h) A "Part-time Work Information" form filed pursuant to Emp 302.014(f) shall be deemed filed timely as follows:

(1) In the event filing is by mail, such filing shall be made timely if postmarked not later than midnight of the department's 4th business day immediately succeeding the date of mailing by the department of the "Part-time Work Information" form;

(2) In the event an employer, in filing by mail, makes use of an envelope postmarked by a postage meter, so-called, filing shall be timely if received by the department within the department's 4 business days immediately succeeding the date by which filing would have been timely pursuant to Emp 302.14(h)(1) if postmarked; or

(3) If the employer files by delivering or having delivered the "Part-time Work Information" form, filing shall be timely if received by the department within the department's 4 business days immediately succeeding the date by which filing would have been timely pursuant to Emp 302.14(h)(1) if postmarked.

Source. #8558, INTERIM, eff 1-31-06, EXPIRES: 7-30-06; ss by #8675, eff 7-8-06

## PART Emp 303 **CONTRIBUTIONS AND DEBTS**

### Emp 303.01 Contributions Due and Payable.

(a) Contributions of every employer on wages paid during a calendar quarter shall be due and paid to the department of employment security on or before the last day of the month following the calendar quarter during which said wages are paid.

(b) If the department of employment security determines that the collection of contributions or filing of reports will be jeopardized by allowing the employer to file quarterly, it shall require that the "Employer Tax and Wage Report" and all contributions due thereon be filed and paid on or before the last day of the month following the month during which wages are paid by any employer:

(1) Whose past record indicates such employer has failed to submit reports or contributions when due; or

(2) Which is likely to submit reports or contributions late in the future due to:

a. Economic inability;

b. Recalcitrance; or

c. Similar reasons.

(c) Whenever an employer ceases to do business the "Employer Tax and Wage Report" and contributions with respect to all wages for employment paid or payable since the employer's last reporting period shall become due and be paid on or before the last day of the month following the month in which the cessation of business occurred.

(d) The first contribution payment of any employing unit shall become due, and be paid on or before the last day of the month next following the calendar quarter in which such employing unit becomes an employer. The first contribution payments of any employing unit which becomes a subject employer pursuant to RSA 282-A:102 shall include contributions for all wages for employment paid on and after the subject date and up to and including all pay periods ending within the calendar quarter in which the subject date falls.

(e) In the event payment is made in person, such payment shall be made timely if presented during the department's business hours on or before the first department business day succeeding the due date.

(f) In the event payment is by mail, such payment shall be made timely if postmarked not later than midnight of the first day of the month next succeeding the due date, provided however that if said first day of the month falls on a Sunday or a legal holiday, payments shall be made timely if postmarked not later than midnight of the next succeeding business day of the post office at which said payment was mailed. In the event an employer, in forwarding the payment by mail, makes use of an envelope postmarked by a postage meter, so-called, payment shall be made timely if the payment is received by the department within the department's 4 business days next succeeding the due date.

(g) If the employer uses a private delivery service to forward payment, such payment shall be timely if received by the department within 2 business days immediately succeeding the due date.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5144, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625, eff 5-6-06

Emp 303.02 Reimbursing Employers.

(a) Reimbursing employers shall make payment of reimbursement in lieu of contributions by the last day of the month following the month in which demand for payment is mailed. A reimbursing employer who elects to pay contributions shall continue to be liable for reimbursement of all benefits paid which are based on wages paid by the employer prior to the effective date of the employer's election to pay contributions. The separate account maintained pursuant to RSA 282-A:74, of such employer shall not be charged with such benefits. A reimbursing employer which appeals a determination of the department and prevails or otherwise succeeds on appeal shall be liable for reimbursement of all benefits not withstanding any overpayment created except for that portion of the overpayment which has been recovered from the claimant. A reimbursing employer shall be credited with sums otherwise collected for benefits paid pursuant to RSA 282-A:73.

(b) Whenever benefits are paid to a claimant based on wages from both a reimbursing employer and an employer paying contributions, the amount of benefits, if any, the claimant is entitled to receive on the basis of wages paid to such claimant by the contributing employer shall be determined and charged to an employer's separate account in accordance with RSA 282-A:74, 75. The amount of benefits the claimant is entitled to receive including the wages paid to such claimant by reimbursing employers shall then be determined. All amounts which are in addition to the amount which would have been paid had there been no wages from a reimbursing employer shall be billed to the reimbursing employer pursuant to RSA 282-A:71.

(c) Whenever there are wages in the base period from more than one reimbursing employer, additional benefits paid because of those wages shall be prorated among such reimbursing employers in the same proportion as each reimbursing employer's wages bears to the total amount of wages from all reimbursing employers pursuant to RSA 282-A:72.

(d) Whenever there is a payment by reason of "partial unemployment" pursuant to RSA 282-A:14, calculation of charges and billings shall be in the same manner as provided in (a), (b) and (c) above.

(e) Decisions shall clearly set forth the calculation of benefit charges and the dollar amount to be billed or charged to each employer's separate account pursuant to RSA 282-A:44.

(f) In cases of 2 or more concurrent employers, reimbursing employers shall be billed in accordance with this rule and not Emp 303.04.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; amd by #2555, eff 12-23-83; amd by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5138, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625, eff 5-6-06

Emp 303.03 Group Accounts. Any employer entitled to make payments by reimbursement may upon application to the commissioner have his account grouped with any other employer who is entitled to make payment by reimbursement. Thereafter the group of 2 or more such employers shall be treated by the department of employment security as one employer for contributions or reimbursement as the group may elect. The department shall keep one separate account as provided by RSA 282-A:74. Such grouping, however, shall not relieve the individual members of the group from their joint and several liabilities for all charges to the group account. The group shall identify by name and address the office and individual to be held responsible for all reports, contributions, reimbursements and notices to and from the department.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5144, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 303.04 Charging for Benefits in Cases of Two or More Concurrent Employers. Charging of benefits in cases of 2 or more concurrent employers shall be as follows:

(a) Where a claimant works concurrently for 2 or more employers either full-time or part-time, and the claimant becomes unemployed within the same benefit week from such employers, all benefits paid shall be charged as prescribed in RSA 282-A:74 through RSA 282-A:78, except that the charges for such benefits shall be divided equally among such employers.

(b) Where a claimant works concurrently for 2 or more employers and becomes unemployed from one or within the same week from more than one, but one or more of the concurrent employers continues to furnish the claimant substantially the same amount of work, benefits shall be charged as prescribed in RSA 282-A:74 through RSA 282-A:78 as follows:

(1) The charges for such benefits shall be divided equally among the employers if more than one; and

(2) The account of that employer or those employers who continue to furnish the claimant substantially the same amount of employment shall not be charged with benefits paid during such period of continued employment as long as the claimant is receiving benefits based on annual earnings, in whole or in part, from the former concurrent employers.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5144, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 303.05 Computation Date and Tax Rate in Event of Successorship.

Source. #2234, eff 1-1-83; amd by #2490, eff 10-1-83; ss by #2930, eff 12-21-84; ss by #4160, eff 11-5-86, EXPIRED: 11-5-92

New. #5813, eff 4-22-94, EXPIRED: 4-22-02

Emp 303.06 Chargeable Employer if No Most Recent Employer.

Source. #3154, eff 12-2-85; ss by #4350, eff 12-28-87, EXPIRED: 12-28-93

Emp 303.07 Temporary Unemployment Compensation Crisis Assessment.

Source. #4161, eff 11-5-86, EXPIRED: 11-5-92

Emp 303.08 Reestablishment of Rights to a Reduced Merit Rate.

Source. #4162, eff 11-5-86, EXPIRED: 11-5-92

New. #5814, eff 4-22-94, EXPIRED: 4-22-02

Emp 303.09 Adverse Rating Cost.

Source. #4520, eff 10-31-88, EXPIRED: 10-31-94

Emp 303.10 Most Recent Employer. The definition of "Most Recent Employer" at RSA 282-A:12 shall be applied without regard to the reason for the individual's failure to receive unemployment compensation during the weeks in question.

Source. #7245, eff 4-30-00

PART Emp 304 **NOTICES**

Emp 304.01 Posting Notices. Each employer shall post and maintain in a conspicuous place in each of the employer's establishments notices in such form and design as supplied by the commissioner directing workers who are totally or partially unemployed to register and make claim for benefits with the New Hampshire department of employment security. Each employer shall direct any worker to contact the New Hampshire department of employment security when the worker makes inquiry.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5145, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

## PART Emp 305 **EMPLOYER ELECTIONS**

Emp 305.01 Employer Elections to Cover Multi-State Workers.

(a) This section shall govern the New Hampshire department of employment security in its administrative cooperation with other states subscribing, pursuant to RSA 282-A:169-171, to the interstate reciprocal coverage arrangement, hereinafter referred to as "the arrangement."

(b) As used in this section, unless the context clearly indicates otherwise:

(1) "Agency" means any officer, board, commission or other authority charged with the administration of the unemployment compensation law of a participating jurisdiction;

(2) "Interested agency" means the agency of an interested jurisdiction; and

(3) "Interested jurisdiction" means any participating jurisdiction to which an election submitted under the rule is sent for its approval;

(4) "Jurisdiction" means any state of the United States, the District of Columbia, or, with respect to the federal government, the coverage of any federal unemployment compensation law;

(5) "Participating jurisdiction" means a jurisdiction whose administrative agency has subscribed to the arrangement and whose adherence thereto has not terminated;

(6) "Services customarily performed by an individual in more than one jurisdiction" means work rendered in more than one jurisdiction during a reasonable period, if the nature of the services gives reasonable assurance that they will continue to be performed in more than one jurisdiction or if such services are required or expected to be performed in more than one jurisdiction under the election.

(c) Submission and approval of coverage elections under the arrangement shall be as follows:

(1) Any employing unit may file an election on a form supplied by the department, to cover under the law of a single participating jurisdiction all of the services performed for him by any individual who customarily works for him in more than one participating jurisdiction;

(2) Such an election may be filed, with respect to an individual, with any participating jurisdiction in which:

a. Any part of the individual's services is performed;

b. The individual has his residence; or

c. The employing unit maintains a place of business to which the individual's services bear a reasonable relation;

(3) The employing unit shall obtain the initial approval or disapproval of the election by the agency of the elected jurisdiction;

(4) If such agency approves the election, the employing unit shall forward a copy thereof to the agency of each other participating jurisdiction specified thereon, under whose unemployment compensation law the individual or individuals in question might, in the

absence of such election, be covered. The employing unit shall obtain the approval or disapproval of the election by each such interested agency, as promptly as practicable, and shall notify the agency of the elected jurisdiction accordingly;

(5) In case its law so requires, any such interested agency may, before taking such action, require from the electing employing unit evidence that the affected employees have been notified of, and have acquiesced in the election;

(6) If the agency of the elected jurisdiction, or the agency of any interested jurisdiction, disapproves the election, the disapproving agency shall notify the elected jurisdiction and the electing employing unit of its action and of its reasons therefor;

(7) Such an election shall take effect as to the elected jurisdiction only if approved by its agency and by one or more interested agencies;

(8) An election thus approved shall take effect, as to any interested agency, only if it is approved by such agency; and

(9) In case any such election is approved only in part, or is disapproved by some of such agencies, the electing employing unit may withdraw its election within ten days after being notified of such action.

(d) Effective period of elections shall be as follows:

(1) An election duly approved under this rule shall become effective at the beginning of the calendar quarter in which the election was submitted, unless the election, as approved, specifies the beginning of a different calendar quarter. If the electing unit requests an earlier effective date than the beginning of the calendar quarter in which the election is submitted, such earlier date shall be approved solely as to those interested jurisdictions in which the employer had no liability to pay contributions for the earlier period in question;

(2) The application of an election to any individual under this rule shall terminate, if the agency of the elected jurisdiction finds that the nature of the services customarily performed by the individual for the electing unit has changed, so that they are no longer customarily performed in more than one participating jurisdiction;

(3) Such termination shall be effective as of the close of the calendar quarter in which notice of such finding is mailed to all parties affected;

(4) Except as provided in sub-paragraphs (2) and (3), each election approved hereunder shall remain in effect through the close of the calendar year in which it is submitted, and thereafter until the close of the calendar quarter in which the electing unit gives written notice of its termination to all affected agencies; and

(5) Whenever an election under this rule ceases to apply to any individual, under sub-paragraphs (2), (3) or (4), the electing unit shall notify the affected individual accordingly.

(e) Reports and notices by the electing unit shall be as follows:

(1) The electing unit shall promptly notify each individual affected by its approved election and shall furnish the elected agency a copy of such notice;

(2) Whenever an individual covered by an election under this rule is separated from the individual's employment, the electing unit shall again notify the individual, immediately, as to the jurisdiction under whose unemployment compensation law the individual's services have been covered. If at the time of termination the individual is not located in the elected jurisdiction, the electing unit shall notify the individual as to the procedure for filing interstate claims; and

(3) The electing unit shall immediately report to the elected jurisdiction any change which occurs in the conditions of employment pertinent to its election, such as cases where an individual's services for the employer cease to be customarily performed in more than one participating jurisdiction or where a change in the work assigned to an individual requires the individual to perform services in a new participating jurisdiction.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5146, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

## PART Emp 306 **EMPLOYEE LEASING**

Emp 306.01 Scope of the Rule.

(a) Nothing in Emp 306 shall exempt a client or an employee rendering services to a client pursuant to an employee leasing arrangement with an employee leasing company, from any other state, local or federal license, registration or certification requirements.

(b) Under Emp 306, no liability shall attach to an employee leasing company for the general debts or obligations of a client except for the payment of contributions and filing of reports as required in Emp 306.05 with respect to leased employees only.

(c) Nothing in Emp 306 shall be construed to require or allow the employee leasing company to file reports or any contributions with regard to services exempt under RSA 282-A:9, II, III or IV or for individuals who are proprietors or partners of the client.

(d) Nothing in Emp 306 shall be construed to allow companies to move employees or the wages of employees between companies which own, or directly or indirectly control, each other.

(e) Nothing in Emp 306 shall be construed to prevent the application of RSA 282-A:91 or RSA 282-A:93 to the acquisition or merger of companies.

Source. #5815, eff 4-22-94; ss by INTERIM #5919, eff 11-5-94, EXPIRED: 3-5-95

New. #6142, eff 12-20-95; ss by #8002, INTERIM, eff 12-20-03, EXPIRES: 6-17-04; ss by #8089, eff 5-27-04

Emp 306.02 Definitions.

(a) "Client company" means a person who enters into an employee leasing arrangement and is assigned employees by the employee leasing company. Client includes a "recipient" as defined in Section 414(n) of the Internal Revenue Code of 1986.

(b) "Employee" means an individual in employment as defined in RSA 282-A:9.

(c) "Employee leasing company" means any person:

(1) Who is:

a. Engaged in providing the services of employees pursuant to one or more employee leasing arrangements or any other arrangement; or

b. Otherwise regularly providing services of a nature customarily understood to be employer responsibilities including, but not limited to, the provision of health insurance plans, workers compensation or retirement or other benefit plans in the name of an entity other than the company on site where the employees provide services; and

(2) Who meets the requirements of RSA 277-B:9.

(d) "Employee leasing arrangement" means an arrangement, under written contract or otherwise, whereby:

(1) An employee leasing company assigns an individual to perform services for a client company;

(2) The arrangement is intended to be, or is, on-going rather than temporary in nature; and

(3) Employer responsibilities including, but not limited to, the provision of health insurance plans, workers compensation or retirement or other benefit plans in the name of an entity other than the company on site where the employees provide services, are carried out by an employee leasing company which meets the standards of RSA 277-B:9 or are shared by the employee leasing company and the client company.

(e) "Temporary employees" means individuals assigned through another employer either to support or to supplement the existing work force in special situations such as employee absences, temporary skill shortages, seasonal workloads, and special assignments and projects with the expectation that the individual's position will be terminated upon the completion of the task or function.

Source. #5815, eff 4-22-94; ss by INTERIM #5919, eff 11-5-94, EXPIRED: 3-5-95

New. #6142, eff 12-20-95; ss by #8002, INTERIM, eff 12-20-03, EXPIRES: 6-17-04; ss by #8089, eff 5-27-04

Emp 306.03 Common Paymaster Arrangements.

(a) For the purposes of Emp 306, an employee leasing arrangement shall not include common paymaster arrangements wherein an employer shares employees with a commonly owned company within the meaning of Section 414(b) and (c) of the Internal Revenue Code of 1986, and which does not hold itself out as an employee leasing company.

(b) A company shall not be considered to hold itself out as an employee leasing company unless its primary business purpose is providing leased employees to client companies which are unrelated.

(c) Companies shall not be considered unrelated if:

(1) Either company is owned in whole, or in part, by the other;

(2) The companies are owned in whole, or in part, directly, or indirectly, by entities with one or more of the same investors, directors, or persons with policy-making roles;

(3) One of the companies directly or indirectly controls the other;

(4) The companies are directly or indirectly controlled by the same entity or related entities; or

(5) There are similar financial interests, ownership or control between or among the companies.

(d) An ownership interest of less than 5 percent shall be disregarded in applying paragraph (c).

Source. #5815, eff 4-22-94; ss by INTERIM #5919, eff 11-5-94, EXPIRED: 3-5-95

New. #6142, eff 12-20-95; ss by #8002, INTERIM, eff 12-20-03, EXPIRES: 6-17-04; ss by #8089, eff 5-27-04

Emp 306.04 Notification.

(a) Employee leasing companies shall notify the department in writing when they enter or terminate employee leasing arrangements with any New Hampshire client not later than 10 days of such event.

(b) The notice required by (a) above shall include for each client company:

(1) The name;

(2) Physical address;

(3) Job sites if more than one;

(4) Industry; and

(5) Primary product or service.

Source. #5815, eff 4-22-94; ss by INTERIM #5919, eff 11-5-94, EXPIRED: 3-5-95

New. #6142, eff 12-20-95; ss by #8002, INTERIM, eff 12-20-03, EXPIRES: 6-17-04; ss by #8089, eff 5-27-04

Emp 306.05 Reporting and Payment Requirements.

(a) The employee leasing company shall file reports and pay contributions under the employee leasing company's state account number pursuant to RSA 282-A:74 at the rate assigned pursuant to RSA 282-A:87.

(b) Benefits paid to individuals shall be charged to the employee leasing company's separate account under the provisions of RSA 282-A:74.

(c) Whenever an employee leasing company or a client company files the notice and request for information form required by RSA 282-A:45 and Emp 302.08, the client company's name to which the leased employee was assigned shall be provided.

(d) In addition to records and reports and other requirements of Emp 302, the employee leasing company shall furnish to the department quarterly for the purposes of labor market information:

(1) The total number of employees by month, for the pay period that includes the 12th of the month, for each client and each client location; and

(2) Total quarterly wages for all leased employees by client and each client location.

(e) In addition to the requirement of Emp 303 as required by RSA 277-B:9, V, contributions shall be due and paid by the close of the fourth business day following the week the wages are paid or become payable.

(f) The requirements of (e) above shall be deemed to have been met if:

(1) The funds are transferred within the time limit set forth in RSA 277-B or in (e) above to a third party;

(2) The funds are held in a trust in privity of contract with the commissioner solely for the benefit of the state; and

(3) The funds are paid over by said third party quarterly pursuant to the provisions of Emp 303.01.

Source. #5815, eff 4-22-94; ss by INTERIM #5919, eff 11-5-94, EXPIRED: 3-5-95

New. #6142, eff 12-20-95; ss by #8002, INTERIM, eff 12-20-03, EXPIRES: 6-17-04; ss by #8089, eff 5-27-04

PART Emp 307 **NEW HIRE**

Emp 307.01 Purpose of the Rule. The purpose of Part Emp 307 is to clarify the requirements for compliance with RSA 282-A:117-a.

Source. #6585, INTERIM, eff 10-1-97, EXPIRES: 1-29-98; ss by #6660, eff 12-23-97, EXPIRES: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-06

New. #8676, eff 7-8-06

Emp 307.02 Reporting Required.

(a) Every employing unit shall report:

(1) The hiring of an individual who earns wages or any other form of compensation in New Hampshire;

(2) The rehiring of an individual described in (1) above who:

a. Was permanently laid off;

b. Terminated from employment;

c. Had a break in service of more than 26 consecutive weeks;

d. Had a break in service due to a seasonal layoff of more than 10 consecutive weeks if as of the commencement of the break in service the rehiring employer was under an order to withhold child support from the individual's wages; or

e. Was required to complete an Employee's Withholding Allowance Certificate, commonly known as a W-4, due to a previous work separation; and

(3) The contracting with an individual, or the recontracting with an individual following a break in service of more than 26 consecutive weeks, pursuant to one or more contracts for services, other than casual labor, when reimbursement for such services is:

a. Anticipated to exceed $2,500; or

b. In excess of $2,500, during a calendar year, even if not previously anticipated to exceed $2,500.

(b) Notwithstanding Emp 307.02(a)(3) above, a contract may be reported only once even if there is a break in service of more than 26 consecutive weeks if:

(1) The contract is in writing;

(2) The break in service is during the term of the contract; and

(3) The break in service is in accordance with the provisions of the contract.

(c) The report shall contain:

(1) For a hired or rehired individual, the individual's complete name, home address, and social security number;

(2) For an individual with whom the employing unit has contracted, the individual's complete name, home or business address, and social security number; and

(3) The employing unit's name, address, federal identification number and New Hampshire department of employment security account number, if any.

(d) The employing unit shall file the report:

(1) Not later than 20 days after:

a. The date of hire; or

b. The date on which the contracting with an individual not previously reported becomes reportable due to remuneration exceeding $2,500 pursuant to Emp 307.02(a)(3)b.; or

(2) In the case of a multistate employer reporting pursuant to Emp 307.03(c) or an employer transmitting reports magnetically or electronically:

a. By 2 monthly transmissions not less than 12 days nor more than 16 days apart; or

b. Every 14 days.

(e) The employing unit shall provide the report either on:

(1) An "Employee's Withholding Allowance Certificate," if reporting a hired or rehired individual;

(2) A "Request for Taxpayer Identification Number and Certification", commonly known as a W-9, if reporting an individual with whom the employing unit has contracted;

(3) A "New Hire Reporting Form" as described at Emp 307.02(i); or

(4) A format requested by the employing unit which the department has determined to:

a. Contain all legally required information;

b. Have a sequence of information which allows efficient data entry; and

c. Be clear and legible.

(f) In addition to the information required at Emp 307.02(c), the employing unit may also report:

(1) The individual's date of hire;

(2) The individual's date of birth;

(3) The individual's work state; and

(4) Whether the individual is considered to be an employee or independent contractor.

(g) Employing units may report contracts for services whether or not reimbursement is anticipated to exceed $2,500.

(h) Employing units in determining whether they are required to report pursuant to Emp 307.02(a)(3) above, shall exclude remuneration for items such as goods or materials if:

(1) The cost of the goods or materials is contracted as a separate expense;

(2) The cost of the goods or materials is not inflated over market value; and

(3) Remuneration billed for goods or materials was not in fact for services.

(i) The department of employment security shall prepare a form, known as a "New Hire Reporting Form", which shall be appropriate for use by employing units to report the information required to be reported pursuant to Emp 307.02(c) and voluntarily reportable pursuant to Emp 307.02(f).

Source. #6585, INTERIM, eff 10-1-97, EXPIRES: 1-29-98;
ss and moved by #6660, eff 12-23-97 (from Emp 307.03), EXPIRES: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-06

New. #8676, eff 7-8-06

Emp 307.03 Multistate Employing Units.

(a) A multistate employing unit which transmits reports magnetically or electronically may designate one of the states in which the employing unit has employees or contracts for services as the state to which reports will be transmitted.

(b) A multistate employing unit choosing to designate pursuant to (a) above shall notify the United States Secretary of the Department of Health and Human Services in writing as to which state is so designated.

(c) A multistate employing unit which chooses to designate New Hampshire pursuant to (a) above may file reports other than magnetically or electronically if:

(1) During the period reported, which shall not be less than 12 days pursuant to Emp 307.02(d)(2)a., the employer is required to report the hiring, rehiring, and/or contracting with no more than 15 individuals;

(2) The employing unit:

a. Reports more than 15 individuals in not more than 2 reports within a calendar year; and

b. Has no report which exceeds 25 individuals; or

(3) During the period reported, which shall not be less than 12 days pursuant to Emp 307.02(d)(2)a., the employer is required to report the hiring, rehiring, and/or contracting with more than 15 individuals and the commissioner determines that the employer has good cause for failing to report magnetically or electronically.

(d) For purposes of Emp 307.03(c)(3), good cause shall include:

(1) An unexpected failure of the employer's capacity to provide an electronic or magnetic report; or

(2) An inability to report electronically or magnetically due to a fire, flood, earthquake or similar occurrence.

Source. #6585, INTERIM, eff 10-1-97, EXPIRES: 1-29-98; ss and moved by #6660, eff 12-23-97 (from Emp 307.04), EXPIRES: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-05

New. #8676, eff 7-8-06

Emp 307.04 Timely Reporting.

(a) Reports shall be considered timely filed if:

(1) Transmitted electronically not later than midnight of the business day next following the due date;

(2) Postmarked first class mail not later than midnight of the business day next following the due date;

(3) Received within 4 business days next following the due date if mailed making use of an envelope postmarked by a postage meter;

(4) Received within 2 business days immediately following the due date if sent by private delivery service; or

(5) Received during business hours on or before the business day next following the due date if delivered by the employing unit.

Source. #6585, INTERIM, eff 10-1-97, EXPIRES: 1-29-98; ss and moved by #6660, eff 12-23-97 (formerly Emp 307.05), EXPIRES: 12-23-05; ss by #8522, INTERIM, eff 12-23-05, EXPIRED: 6-21-06

New. #8676, eff 7-8-06

## CHAPTER Emp 400 ADMINISTRATION

PART Emp 401 - RESERVED

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5147, eff 5-6-91; EXPIRED: 5-6-97

PART Emp 402 **PAYMENTS**

Emp 402.01 Form, Dishonored and Application.

(a) Contributions and other debts due the department shall be due and paid in the currency of the United States, by United States Postal money order, or by check drawn on a bank located in the United States. Any cost of exchange or clearance of any check used for the payment of contributions shall be charged against the employer's account and collected from such employer.

(b) Pursuant to RSA 6:11-a, for every check, draft or money order tendered to the department of employment security for any purpose which is returned as uncollectable, there shall be added, in addition to all protest, bank fees or other charges, a fee of $25 or 5 percent of the face amount of the check, whichever is the greater.

(c) Fees and charges shall be waived if the commissioner finds that the fees and charges:

(1) Would result in hardship if collected;

(2) Were the result of premature submission by the department of a post-dated check;

(3) Remain due on an account on which the principal balance has been paid and collection would not be cost effective; or

(4) Should be waived for other good cause.

(d) All payments received on an outstanding debt, or credits due the debtors, shall be credited to that portion of the debt which has been outstanding for the longest time including interest, fees, cost and other charges added thereto by law.

Source. #2234, eff 1-1-83; amd by #2444, eff 8-10-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5148, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 402.02 Interest on Overpayments.

(a) Interest shall accrue on overpaid unemployment compensation benefits as provided in RSA 282-A:165, II, and RSA 282-A:141, except those that are repaid in full within 60 days of the date the determination becomes final or which are to be repaid pursuant to an approved payment schedule.

(b) Approval of a payment schedule shall be granted, noted in the party's file and remain in force if:

(1) A court has made an order for periodic payments; or

(2) The payment schedule is consistent with:

a. The amount of the overpayment; and

b. The party's current ability to pay.

(c) In the event that repayment is not made as required in paragraph (a), interest shall accrue beginning the first day of the month following the date of mailing of the final determination.

Source. #4163, eff 11-5-86; ss by #5148, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 402.03 Contributions Due and Payable.

(a) Except as provided in Emp 402.03(b), contributions of every employer on wages paid during a calendar quarter shall be due and paid to the department of employment security on or before the last day of the month following the calendar quarter during which said wages are paid.

(b) The department of employment security shall make demand for payment of reimbursement contributions at least quarterly during the calendar year. Reimbursing employers shall make payment of reimbursement contributions on the last day of the month following the month in which demand for payment is made. A reimbursing employer who elects to change the employer's method of contributions will continue to be liable for reimbursement of all benefits paid which are based on wages paid by the employer prior to the effective date of such election. The "separate account" of such employer shall not be charged with such benefits.

Source. #4521, eff 10-31-88; ss by #5148, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

## PART Emp 403 **SETTLEMENT OF CONFORMITY ISSUES**

Emp 403.01 Coverage of Government Units and "Non-Profit" Organizations.

(a) For the purposes of RSA 282-A:8, II an "employing unit subject for either the current or preceding calendar year to the tax levied by the Federal Unemployment Tax Act as amended" shall include an employing unit which has in its employ individuals performing services that are required by 26 U.S.C. 3304(a)(6)(A) to be covered by RSA 282-A as a condition for certification of this state's law by the secretary of labor. Benefits on the basis of such services shall be payable in the same amount, on the same terms, and subject to the same conditions as benefits are payable on the basis of other service subject to the state's law.

(b) With respect to services described in 26 U.S.C. 3306(c)(7) in the employ of the state, any political subdivision thereof, or any governmental instrumentality, and with respect to services described

in 26 U.S.C. 3306(c)(8) in the employ of a non-profit organization which is a religious, charitable, educational or other organization, the exclusions from the definition of "employment" contained in RSA 282-A:9, IV(a) to (r) shall apply only to the extent that such exclusions are consistent with and no broader than the exceptions to the definition of "employment" contained in 26 U.S.C. 3306(c)(1) through (6) and (9) through (18). To the extent that the enumerated exclusions of RSA Chapter 282-A:9, IV are consistent with the enumerated exceptions of 26 U.S.C. 3306 are broader in scope than the enumerated exceptions of 26 U.S.C. 3306(c), they shall be construed so as to conform to the 26 U.S.C. 3306(c) exceptions.

(c) The exclusion from the definition of "wages" contained in RSA 282-A:15, II(a) shall not apply with respect to services described in Emp 403.01(a).

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90
New. #5149, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05
New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06
New. #8625, eff. 4-28-06

Emp 403.02 - RESERVED

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84; moved by #4521, eff 10-31-88 (see Emp 402.03)

Emp 403.03 Restricting the Effect of RSA 282-A:16 to Professional Athletes. The provisions of RSA 282-A:16 relative to the denial of annual earnings for services in training for, preparation for, and participation in athletic or sports events shall apply to athletes only.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5149, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-05

New. #8625 eff 5-6-06

Emp 403.04 Defining the "Between Times" Denial of Compensation. - REPEALED

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84; rpld by #4522, eff 10-31-88

Emp 403.05 Exemption Not to Apply. - REPEALED

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84; rpld by #4523, eff 10-31-88

Emp 403.06 Successive Benefit Year Earnings Requirement.

(a) An individual who has established a benefit year pursuant to RSA 282-A:4 shall not be eligible to receive benefits in the individual's next benefit year unless:

(1) The individual has earned at least $700 of wages during or subsequent to the established benefit year; and

(2) The wages were earned:

a. In employment as defined in RSA 282-A:9;

b. For services in a state other than New Hampshire which if such services had been performed in New Hampshire would have been employment as defined in RSA 282-A:9; or

c. For services as described at RSA 282-A:9, IV(f).

Source. #7664, INTERIM, eff 3-31-02, EXPIRES: 9-27-02; ss by #7764, eff 9-27-02

PART Emp 404 **TRAINING FUND**

Emp 404.01 Purpose. The purpose of this part is to establish the procedures for administering the training fund established at RSA 282-A:138-a.

Source. #7765, eff 9-27-02

Emp 404.02 Applicability. The rules in this part shall apply to the transfers, expenditures, deductions, costs, lapses, calculations, deadlines and all other matters related to the authority of the commissioner of the department of employment security concerning the training fund established by RSA 282-A:138-a.

Source. #7765, eff 9-27-02

Emp 404.03 "Commissioner" means the commissioner of the department of employment security.

Source. #7765, eff 9-27-02

Emp 404.04 "Funding source year" means the calendar year in which the funds in question were deposited by the commissioner into the training fund established by RSA 282-A:138-a.

Source. #7765, eff 9-27-02

Emp 404.05 Report.

(a) The commissioner shall provide the commissioner of the department of regional community-technical colleges (RCTC) with a monthly report on the training fund.

(b) The monthly report shall be provided no later than the forty-fifth calendar day following the end of the calendar month for which the report is provided.

(c) The monthly report shall include:

(1) For the most recently completed calendar quarter, the commissioner's best estimate of collection and grant administration costs which reduce training fund moneys;

(2) For the most recently completed calendar quarter, the commissioner's best estimate of funds available for obligation or expenditure;

(3) Any known revisions to previous estimates of collection and grant administration costs which reduce training fund moneys;

(4) The balances then available for either obligation or expenditure; and

(5) The deadlines by which any balance shall be either obligated or expended to avoid lapsing.

Source. #7765, eff 9-27-02

Emp 404.06 Reobligation. Any moneys which are obligated within the time limit provided at RSA 282-A:138-a, IV may be reobligated on or before the deadline for obligation in that paragraph. Reobligation shall not extend the deadline for expenditures.

Source. #7765, eff 9-27-02

Emp 404.07 Invoices.

(a) The commissioner shall only accept invoices from the commissioner of RCTC on a monthly basis no later than the fifteenth calendar day of each month for moneys expended during the prior calendar month.

(b) To be accepted an invoice shall include the following:

(1) A chronological invoice number;

(2) An invoice date;

(3) The grant number or numbers to which the invoice relates;

(4) The dollar amount expended related to each grant number;

(5) The beginning and ending dates of the period being invoiced;

(6) The name of each grantee;

(7) The name of the training entity for each grant; and

(8) The amount, not to exceed 10 percent of the total invoice, for administrative costs incurred.

(c) No invoice shall be accepted from anyone but the commissioner of RCTC.

(d) The commissioner shall pay accepted invoices as promptly as possible through the state payment process.

Source. #7765, eff 9-27-02

Emp 404.08 Expenditure. Moneys shall be considered expended during the calendar month for which the commissioner was invoiced pursuant to Emp 404.07.

Source. #7765, eff 9-27-02

Emp 404.09 Obligations.

(a) The commissioner of RCTC shall provide the commissioner with a monthly report of moneys obligated.

(b) The monthly report shall be provided no later than the fifteenth calendar day following the end of the calendar month for which the report is provided.

(c) The monthly report shall include:

(1) The date of the report;

(2) The beginning and ending dates of the report;

(3) A listing of all grant obligations listed in numerical order by grant number; and

(4) For each grant number the:

a. Training entity;

b. Dollar amount of the grant;

c. Amount of the grant expended;

d. Amount, if any, previously obligated but no longer obligated; and

e. Obligated balance of the grant.

Source. #7765, eff 9-27-02

Emp 404.10 Grant Numbers. Grant numbers shall include the 4 digit numerical year designation that identifies the funding source year. In the event a grant includes funding from more than one funding source year, each funding source year shall be included.

Source. #7765, eff 9-27-02

Emp 404.11 Training Fund Deposits. The commissioner shall, no later than the forty-fifth calendar day following the end of each calendar quarter:

(a) Calculate the amount of the administrative contribution collected during the calendar quarter;

(b) Calculate the best estimate of costs expended during the calendar quarter incurred in the collection of the administrative contribution;

(c) Calculate the amount of the administrative contribution collected during the calendar quarter less the best estimate of costs expended during the calendar quarter incurred in the collection of the administrative contribution;

(d) Adjust the net amount based on any revisions to the cost expended in the collection of the administrative contribution for any quarter; and

(e) Deposit one-third of the adjusted net amount, not to exceed $1,000,000.00 annually, into the fund established by RSA 282-A:138-a.

Source. #7765, eff 9-27-02

## CHAPTER Emp 500 CLAIMANT REQUIREMENTS

### PART Emp 501 REGISTRATION FOR WORK AND FILING OF CLAIMS

Emp 501.01 Method of Registration for Work. An individual may register for work under New Hampshire unemployment compensation law:

(a) In person at a New Hampshire department of employment security office;

(b) Subject to the approval of a state other than New Hampshire where the individual resides, at an office in said state designated for the purpose of such registration; or

(c) By use of the internet at www.nhes.state.nh.us.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5150, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97; ss by #7250,
eff 4-30-00; ss by #7993, eff 11-26-03

Emp 501.02 Registration for Work.

(a) No benefits shall be paid for a week of unemployment unless the individual has on file in that week an active registration for work.

(b) The filing of an initial claim pursuant to Emp 501.03 shall be sufficient registration for work for an individual who:

(1) Has filed claims for no more than 2 weeks of benefits following the filing of an initial claim; or

(2) Is not required to report for employment services pursuant to Emp 501.11 and is exempted from searching for work pursuant to Emp 501.12.

(c) No individual shall be considered to have on file an active registration for work for a week after the second week for which benefits have been claimed following the filing of an initial claim unless during such week the individual is registered on the New Hampshire department of employment security job match system at www.nhes.state.us if such individual:

(1) Resides in New Hampshire; or

(2) Resides outside of New Hampshire but within 25 miles of a New Hampshire Employment Security office.

(d) Individuals who meet all of the requirements at Emp 501.02(b) shall be exempt from the registration requirement (c), above.

(e) Individuals required by (c) above to register on the New Hampshire department of employment security job match system shall supply the following information:

(1) The individual's name;

(2) The individual's birthday;

(3) The individual's social security number;

(4) The individual's zip code;

(5) The individual's address;

(6) A summary of the individual's job qualifications;

(7) Whether the individual is employed:

(8) Whether the individual is currently in school;

(9) The highest level of education attained by the individual;

(10) The minimum and maximum number of hours the individual prefers to work in a week;

(11) The geographical areas where the individual is willing to work;

(12) The type of work the individual is seeking;

(13) The individual's job skills; and

(14) The individual's work history.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5150, eff 5-6-91; ss by #5974, eff 2-1-95; ss by #7251, eff 4-30-00; ss by #7993, eff 11-26-03

Emp 501.03 Time and Place for Filing Initial Claims.

(a) No initial claim for benefits shall be allowed with respect to any week unless it has been filed within the time limits in this section.

(b) An initial claim for unemployment compensation shall be filed immediately upon becoming unemployed, but not later than the latest of:

(1) The last day of such week of unemployment the department is open for business;

(2) The third day after the claimant became unemployed, disregarding all days the department office is not open for business;

(3) That day previously assigned the claimant to file a continued claim in person;

(4) The first day on which the itinerant office nearest the claimant's residence is serviced after the beginning of such week of unemployment, if the claimant files at said place; or

(5) Such time as the filing requirements of the agent state require, if the claimant files in an agent state.

(c) The commissioner shall, based on staff and technological resources and the ability of the department to process claims, specifically determine the place and method by which initial claims for unemployment may be filed.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84; ss by #4350, eff 12-28-87, EXPIRED: 12-28-87

New. #5884, Interim, eff 8-28-94, EXPIRED: 12-26-94

New. #5975, eff 2-1-95; amd by #6307, eff 9-1-96; ss by #7252, eff 4-30-00

Emp 501.04 Time and Place for Filing Continued Claims.

(a) The commissioner shall, based on staff and technological resources and the ability of the department to process claims, specifically direct each claimant as to the day or days on which, and the method by which, a claim for benefits for continued periods of unemployment shall be filed.

(b) A claim directed to be filed by telephone shall be timely whenever:

(1) It is filed within 7 calendar days of the date of the last day of the latest week claimed; and

(2) It is not for more than 2 weeks, which are consecutive.

(c) A claim directed to be filed by telephone may be filed by mail and shall be timely if:

(1) It is filed within the time limits of paragraph (d) below; and

(2) The claimant was prevented from filing by telephone due to a breakdown of the telephone filing system or a breakdown or failure of the telephone system not caused by the claimant.

(d) A claim directed to be filed by mail, shall be timely if:

(1) It is postmarked within 7 calendar days of the latest week claimed;

(2) It is postmarked after 12:00 midnight on Saturday of the week claimed, and;

(3) It is not for more than 2 weeks, which are consecutive.

(e) A claim directed to be filed in person shall be timely if it is filed on the date and time assigned by the department.

(f) The time period within which a claim, whether directed to be filed by telephone, by mail or in person, will be considered timely, shall be adjusted as follows:

(1) A claimant who by advance request had the claimant's filing date set ahead or back one business day and files on the adjusted date, where filing on the claimant's scheduled date is prevented due to the necessity of attending a job interview scheduled by a prospective employer shall be timely;

(2) If a claimant is prevented from filing within the applicable time period at Emp 501.04(b), (c), (d) or (e) due to the claimant's own illness or injury, but files on the next business day after the end of the illness the claim shall be timely except that, if the illness lasts more than 7 days the time period for filing shall not be adjusted unless the claimant provides a medical report within 7 days of the end of the illness;

(3) If a claimant is prevented by an Act of God or the operation of law from filing within the applicable time period at Emp 501.04(b), (c), (d) or (e) the claim shall be timely if the claimant files on the next business day following the time period during which the claimant was prevented from filing;

(4) If a claimant is prevented from filing within the applicable time period at Emp 501.04(b), (c), (d) or (e) due to the death of a spouse or the claimant's or the claimant's spouse's father, mother, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, great grandmother, great grandfather, great grandson, great granddaughter, aunt, uncle, niece, nephew, great niece, great nephew, first cousin, or step family members of the same relationship, but did file within 5 days of the date of death the claim shall be timely. If the fifth day falls on a Saturday or Sunday, filing on the department's next business day shall be timely; and

(5) For good cause, which shall include circumstances similar to those found at Emp 501.04(f)(1), (2), (3) and (4), the applicable time period at Emp 501.04(b), (c), (d) or (e) shall be extended to the next business day after which a claimant was no longer prevented from filing.

(g) "Act of God" for purposes of Emp 501.04(f)(3) means lightning, earthquake, floods and similar events.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5150, eff 5-6-90; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97; ss by #7253,
eff 4-30-00; amd by #7993, eff 11-26-03; ss by #8157, eff 9-5-04

Emp 501.05 Filing a Claim After Starting Work.

(a) If a claimant directed to file in person, starts work and is prevented from filing a claim in person on the date and time previously assigned by the department, the claim shall be considered timely if the claimant files a claim in person within 7 calendar days of the last day of the latest week claimed, or files a claim by mail in accordance with Emp 501.04(d).

(b) If a claimant starts work and had been previously directed to file claims by mail, the claim shall be considered timely if filed in accordance with the provisions of Emp 501.04(d), or if the claimant files in person within 7 calendar days of the last day of the latest week claimed.

(c) If a claimant starts work and had been previously directed to file claims by telephone, the claim shall be considered timely if filed in accordance with the provisions of Emp 501.04(b) or Emp 501.04(c).

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84; ss by #3154, eff 12-2-85; ss by #5150, eff 5-6-91; ss by #6308,
eff 9-1-96; ss by #7254, eff 4-30-00

Emp 501.06 Effective Date of Claim. The effective date of a claim filed as required under this rule shall be the first day of the week applicable to such claim

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5150, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 501.07 Bi-Weekly Filing. When a claimant who is assigned by the department to file consecutive claims every 2 weeks fails to file a timely claim, the benefits shall be denied for the first of such weeks. If the claim is filed not more than 14 calendar days of the ending date of the latest week claimed, the filing shall be timely for the second of such weeks.

Source. #3154, eff 12-2-85, EXPIRED: 12-2-91

New. #5816, eff 4-22-94, EXPIRED: 4-22-00

New. #8158, eff 9-5-04

Emp 501.08 Reemployment Services.

(a) The commissioner shall, based on staff resources, direct a claimant to report at a set time and date to the most convenient office of the department or of an agency designated by the department, in order to participate in reemployment services. Such direction shall occur if the commissioner determines that the claimant has been identified as likely to be unemployed long-term.

(b) Failure to report or participate as directed for reemployment services shall result in disqualification for benefits for the week in which such failure occurs. Disqualification shall not occur if the commissioner determines, based on information provided by the claimant within 14 days of the date on which the claimant was scheduled to report, that the claimant had good cause for failing to report.

(c) For purposes of (b) above, good cause shall include:

(1) Illness, accident, the death of a family member, or similar problem beyond the control of the claimant;

(2) The claimant having previously accepted similar employment services; or

(3) A change in circumstances which renders the claimant as no longer being likely to be unemployed long-term.

Source. #5976, eff 2-1-95; ss by #7620, eff 12-30-01

Emp 501.09 Wage Voucher.

Source. #7255, eff 4-30-00; rpld by #7620, eff 12-30-01

Emp 501.10 Wages During Week Claimed.

(a) A claimant who files a claim for a week during which the claimant performed services for which payment has been received or for which payment is owed shall, when filing such claim, provide any of the following information requested by the department:

(1) The amount of such paid or payable gross wages;

(2) The name and address of the employing unit from which such paid or payable gross wages were earned;

(3) Whether the claimant performed all the work available; and

(4) The reason, if any, for failing to perform all available work.

(b) A claimant who files a claim for a week during which the claimant performed no services, but during which or for which the claimant received vacation pay, severance pay, bonus pay, holiday pay, supplemental employment benefits, wages in lieu of notice, periodic payment of any nature, or similar payment, shall, when filing such claim, provide any of the following information requested by the department:

(1) The gross amount of such payment;

(2) The name and address of the employing unit from which such payment was received; and

(3) The nature of and the reasons for the payment.

(c) The department shall request information pursuant to this section when necessary to determine:

(1) An individual's earnings during a week for which benefits have been claimed; or

(2) The reasons for an individual working less than full time during a week for which benefits have been claimed.

Source. #7620, eff 12-30-01

Emp 501.11 Employment Services.

(a) The commissioner shall require a claimant to report for employment services if the commissioner determines that it is necessary to:

(1) Verify the individual's efforts to obtain employment;

(2) Determine if the individual is likely to be unemployed long term;

(3) Provide the individual with services which may assist the individual in becoming employed; or

(4) Similar purposes.

(b) Claimants who report for employment services shall provide upon request of the commissioner complete information of all efforts to obtain employment made by the claimant:

(1) During all weeks claimed since the individual's initial claim if he individual has not previously reported for employment services; or

(2) During all weeks claimed since the individual's last scheduled appointment for employment services to which the individual reported, if the individual has previously reported for employment services.

(c) A claimant previously employed full time who has obtained reasonable assurance from a former employer that the claimant's layoff will not exceed 4 weeks shall not be scheduled for employment services unless such employer shall fail to provide full time employment to the claimant within 4 weeks.

(d) A claimant laid off from full time work with a seasonal employer shall not be scheduled for employment services if:

(1) The claimant was in the prior year recalled from a seasonal layoff from the same employer;

(2) The employer has provided the claimant with reasonable assurance of recall within 16 weeks of the claimant's last date of employment with the employer;

(3) There are no personal restrictions which would prevent the claimant from being able to immediately accept employment from the employer if such were offered;

(4) The date by which recall was expected has not occurred without the claimant becoming re-employed full time;

(5) The commissioner determines that employment services are not likely to reduce the claimant's period of unemployment; and

(6) The seasonal employer is the claimant's "most recent employer" pursuant to RSA 282-A:12.

(e) A claimant exempt from reporting for employment services pursuant to Emp 501.11(c) and (d) shall not be required to provide the commissioner with documentation of efforts to obtain employment for any week during such exemption.

(f) For purposes of (c) and (d)(2) above, "reasonable assurance" shall mean that it is more likely than not that employment shall commence within the required time frame.

(g) Factors to be considered by the commissioner in determining whether employment is more likely than not shall include but not be limited to information which is available concerning:

(1) The existence of a contract;

(2) A written or oral communication from the employer stating that the claimant will be provided an opportunity to perform services;

(3) Whether the time frame within which the employment is to be provided is determined;

(4) Whether the offer of employment is contingent;

(5) The employer's industry;

(6) The seasonal nature of the offered employment;

(7) The employer's financial strength; and

(8) The employer's past performance in providing offered employment.

Source. #7620, eff 12-30-01

Emp 501.12 Work Search.

(a) Unless exempted under RSA 282-A:31, III, Emp 501.11 or Emp 501.12(c), no benefits shall be paid to any individual for a week of unemployment unless the individual is searching for suitable work.

(b) Suitability of work shall be determined utilizing the criteria listed at RSA 282-A:32, I(d)(1) and the limitations listed at RSA 282-A:32, I(d)(2).

(c) The commissioner shall waive the requirement that a claimant must be actively seeking work if the commissioner finds that based on the economic conditions, seeking suitable work is not likely to decrease the length of the claimant's unemployment.

(d) In making a determination pursuant to (c), above the commissioner shall consider whether:

(1) The claimant is involved in a mass temporary layoff;

(2) The claimant is partially employed;

(3) The claimant is involved in a strike, lockout or other labor dispute;

(4) The claimant is likely to find work through a union hiring hall;

(5) The claimant has been laid off from work due to a lack of work and has reasonable assurance of recall to work with that same employer within:

a. Four weeks if the employer is not a seasonal employer; or

b. Sixteen weeks if the employer is a seasonal employer; and

(6) The claimant has accepted a confirmable offer of permanent full time new employment with reasonable assurance of it commencing within 4 weeks.

(e) For purposes of (d)(6) above, "reasonable assurance" shall mean that it is more likely than not that employment shall commence within the required time frame.

(f) Factors to be considered by the commissioner in determining whether employment is more likely than not shall include but not be limited to information which is available concerning:

(1) The existence of a contract;

(2) A written or oral communication from the employer stating that the claimant will be provided an opportunity to perform services;

(3) Whether the time frame within which the employment is to be provided is determined;

(4) Whether the offer of employment is contingent;

(5) The employer's industry;

(6) The seasonal nature of the offered employment;

(7) The employer's financial strength; and

(8) The employer's past performance in providing offered employment.

Source. #7620, eff 12-30-01

Emp 501.13 Claims Filed Over the Internet.

(a) An individual may file a claim over the internet at www.nhes.state.nh.us.

(b) Initial claims filed over the Internet shall be timely when filed in accordance with Emp 501.03 except that a claim may be filed on the web based application any day of the week at any time of day.

(c) Continued claims filed over the Internet shall be timely if:

(1) It is electronically transmitted within 7 calendar days of the ending date of the latest week claimed; and

(2) It is electronically stamped after 12:00 midnight on Saturday of the latest week claimed; and

(3) It is not for more than 2 consecutive weeks; or

(4) It is within the time period within which a continued claim filed over the Internet shall be adjusted as permitted in Emp 501.04(f) and it is not for more than 2 consecutive weeks.

(d) Individuals filing an initial claim shall supply the following information:

(1) Their name;

(2) Their address;

(3) Their race;

(4) Their gender;

(5) Whether the individual is a United States citizen;

(6) If the individual is not a United States citizen, the individual's alien card number;

(7) Their highest education level attained;

(8) Whether the individual is available for full time work on all shifts customary to the individual's occupation;

(9) Whether there is any reason why the individual would not be able to accept permanent full-time work;

(10) Whether the individual will be called back to work by the individual's previous employer and if so, the individual's return to work date;

(11) Whether the individual is a union member who normally finds work through the individual's union hiring hall;

(12) Whether the individual has in the last 18 months been or currently is, a sole proprietor, a partner, an officer or director of a corporation or a member of a limited liability company;

(13) Whether the individual is currently working on a commission basis;

(14) Whether the individual is planning on entering school, training or the armed services;

(15) Whether the individual has refused any offer of work since becoming unemployed;

(16) Whether the individual has been injured on the job and collected worker's compensation payments in the last 18 months;

(17) Whether the individual is currently receiving or is currently an applicant for worker's compensation, railroad unemployment insurance, sickness or disability payments, social security disability or retirement benefits, vocational rehabilitation assistance under a federal law, or a pension, retirement or annuity from an employer or government;

(18) Whether the individual has received or expects to receive monies other than regular wages for hours worked;

(19) Whether the individual has worked for a relative or relative's business in the last 18 months;

(20) Whether the individual owes child support;

(21) Whether the individual owes repayment of an over issuance of food stamp benefits;

(22) Whether the individual worked in a state other than New Hampshire in the last 18 months;

(23) Whether the individual was employed by a federal agency during the last 18 months;

(24) Whether the individual served in the active military during the last 18 months;

(25) Whether the individual worked for an employer which provides services to a school or school system during the last 18 months;

(26) Whether the individual intends to look for work in New Hampshire;

(27) The individual's social security number;

(28) The individual's date of birth;

(29) The individual's employment history during the last 18 months including employment start and end dates, reasons for separation and whether the work was full or part time; and

(30) The user identification and password the individual wishes to use.

(e) Individual's filing a claim for a week of benefits shall supply the following Information:

(1) Whether the individual has a previously unreported change of address;

(2) The ending date of the week for which the individual wishes to file;

(3) Whether the individual worked or performed any services, including self-employment, during the week claimed;

(4) The number of employers the individual worked for during the week claimed;

(5) The individual's gross earnings during the week claimed;

(6) The number of employers the gross earnings are from;

(7) Whether the individual received any monies other than wages for hours actually worked, not previously reported to the department;

(8) Whether the individual refused any work during the week claimed;

(9) Whether the individual was able to work and available for work during the week claimed;

(10) Whether the individual has started a school program not previously reported to the department;

(11) If a person other than the individual answered the questions on behalf of the individual, the name of the person;

(12) If the claim is filed late, the individual's reason for filing late;

(13) Any limitations in the individual's ability and availability to work on all shifts or without restrictions; and

(14) The individual's user identification and password.

Source. #7993, eff 11-26-03

Emp 501.14 Failure to Report for Employment Services.

(a) An individual who fails to report for employment services pursuant to Emp 501.11(a) or to provide all information requested pursuant to Emp 501.11(b) shall be deemed to not have reported as required by RSA 282-A:31, I(a) for the week in which such failure occurs and for each week thereafter in which such failure continues unless:

(1) Within 14 days of the date or which such failure occurred, the individual provides the commissioner with information concerning the reasons for such failure; and

(2) The commissioner determines the individual had good cause for such failure.

(b) For purposes of (a) above, good cause shall include:

(1) Illness, accident, death of a family member, or similar problem beyond the control of the claimant;

(2) Communicating to the department prior to failure to report a reason which would have prevented a reasonably prudent person from reporting for employment services; or

(3) A confirmable offer to the individual at the time such failure occurred, of permanent full time employment with reasonable assurance of it commencing within 4 weeks.

Source. #7993, eff 11-26-03

Emp 501.15 Part-time Availability and Shift Availability.

(a) For purposes of RSA 282-A:31, V(a) and RSA 282-A:32,I(d)(2)(D) and (E), "adult" means those persons who have attained the age of 18 years.

(b) For purposes of RSA 282-A:31,V(a) and RSA 282-A:32,I(d)(2)(E), a child shall not be considered to be under the age of 16 during the week the child attains the age of 16 years.

(c) For purposes of RSA 282-A:31,V(b) "the individual's last 6 months in employment" means the last week during which the individual performed services in employment as described in RSA 282-A:31,V(b) and the 25 weeks immediately preceding such week.

(d) For purposes of RSA 282-A:31,V(b) "usually consisted of 30 or fewer hours each week" means the individual's services in employment as described in RSA 282-A:31,V(b) consisted of 30 or fewer hours during each of not less than 14 weeks during the 26 week period described in Emp 501.15(c).

(e) For purposes of RSA 282-A:31,V(b) "throughout such 6 month period" means the individual performed services in employment as described in RSA 282-A:31,V(b) during not less than 20 weeks during the 26 week period described in Emp 501.15(c);

(f) The individual shall provide the department with the date of birth of the individual's youngest, natural, adopted, step or foster child for which the individual is the only adult available for the care of such child.

(g) An individual whose availability is limited due to the fact that the individual is the only adult available to care for a natural, adopted, step or foster child shall:

(1) Advise the department such limitation exists;

(2) Specify the total number of hours the individual is able to work during a week;

(3) Specify the days of the week and time periods during each day when the individual is able to work.

(h) An individual who is only seeking part-time work shall report the number of hours the individual worked during each week for which the individual files a claim for benefits.

(i) An individual who is not available for full-time work and who is seeking the application of RSA 282-A:31, V to the individual's claim shall provide the department with the individual's usual work schedule for the weeks the individual performed services during the 26 week period described in Emp 501.15(c).

Source. #8550, INTERIM, eff 1-26-06, EXPIRES: 7-25-06; ss by #8677, eff 7-8-06

## PART Emp 502 **UNEMPLOYMENT COMPENSATION PAYMENTS**

### Emp 502.01 Where and How Payments Made.

(a) Benefits paid to an eligible individual shall be deemed to be paid through an employment office where any or all of the steps relating to the determination of a claimant's eligibility for benefits are made by or at an employment office.

(b) Payment shall be made by mailing a check to the claimant's last address as reported to the department of employment security.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5151, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 502.02 Benefits Due Deceased Claimants.

(a) Upon the death of any claimant for benefits, and in the event it is determined by the commissioner that benefits have accrued and are due and payable to such claimant and remain wholly or partially unpaid at the time of such claimant's death, or in the event there has been issued and unpaid one or more benefit checks, such checks for such benefits shall, upon application therefor, be paid to the duly qualified administrator or executor of the estate of the deceased claimant.

(b) In the event that because of insufficient assets to justify the expense of formal administration no administrator or executor is appointed to administer the estate of the deceased such benefits shall be paid in the following order:

(1) If such deceased shall be survived by a spouse the amount of the benefits shall be paid to such spouse;

(2) If no spouse survives such deceased, and the deceased is survived by an unemancipated minor child or children, then the amount of such benefit or benefits shall be paid:

a. To the guardian or guardians of such minor child or children for the benefit of such child or children;

b. To any person or institution who or which the commissioner finds shall have the obligation of providing support and maintenance for such minor child or children; or

c. To any person who the commissioner finds has furnished necessaries to such child or children of the value equaling or exceeding the amount of such benefit or benefits;

(3) If such deceased is not survived by a spouse or unemancipated minor child then the amount of any benefit or benefits due such deceased shall be paid to the deceased claimant's heir or heirs-at-law as prescribed by and in the order delineated in RSA 561, as amended; and

(4) If such deceased is not survived by a spouse or unemancipated minor child, or any heir or heirs-at-law such as described in (3) above, then the amount of any benefit or benefits due such deceased shall be paid to any governmental agency which the commissioner finds shall have borne the burial expense of such deceased claimant.

(c) Payment referenced in (b)(4) above shall be the lesser of:

(1) The amount of the accrued benefits; or

(2) The burial expense borne by such governmental agency.

(d) Applications for payment of such benefit or benefits shall, in all cases, be made in writing within 3 months after the death of the deceased, provided that the commissioner, upon a showing that failure to file timely was due to accident, mistake or misfortune and not through neglect shall extend the time for filing such application.

(e) The claim for benefits, if made by an individual other than executor or administrator, shall be supported by an affidavit by such individual making such claim, setting forth his relationship to the deceased in the order listed above, and shall be further supported by an official certificate of the death of the deceased. In the event that the claim for benefits is made by governmental agency, such claim shall be supported by an affidavit of a duly appointed representative of such agency, stating further the amount

which such agency has paid for the burial of such claimant and for which it is not to be reimbursed from any other source, together with the required official certificate of death.

(f) All benefit checks issued directly to the deceased shall be returned to the commissioner for cancellation, or where such checks cannot be obtained by the person requesting payment of benefits due the deceased, such failure shall be explained before any funds shall be paid in lieu thereof.

(g) Payment in accordance with this rule shall be deemed payment within the meaning of RSA 282-A:24, and shall fully discharge the commissioner of his obligation in respect to such benefit or benefits. In the event no claim is made for benefits due a deceased claimant within the time limit specified above or any extension thereof, the benefit or benefits in question shall be considered to remain and be a part of the fund.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5151, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 502.03 Error and Inadvertence. "Error and inadvertence" for the purposes of RSA 282-A:165 of the New Hampshire unemployment compensation law shall exist where:

(a) An individual is paid benefits which should not have been paid by reason of the authorized representative of the commissioner either having had and failed to use or having failed to attempt to obtain that information which such authorized representative had reason to know existed, which was necessary to make a correct decision;

(b) An individual is paid benefits based in whole or in part on annual earnings incorrectly assigned to the individual; except the amount of benefits determined in whole or in part upon annual earnings listed as being wages paid by an employer for whom the claimant performed no services within the affected base year;

(c) An individual is paid benefits after the individual has exhausted the maximum benefits available to the individual;

(d) An individual is paid benefits with respect to any week for which the individual has been previously determined to be disqualified or ineligible; or

(e) An individual is paid benefits where such benefits were paid due to an authorized representative of the commissioner incorrectly computing wages under RSA 282-A:32, and such representative at the time had the information necessary for a correct computation.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5152, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 502.04 Basis for Computation of Annual Earnings. The basis for computation of annual earnings for an individual shall be such reports of wages as are required under RSA 282-A from employers. In the event such reports are not filed or are incomplete, the department shall determine annual earnings based on other credible information.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5151, eff 5-6-91; ss by #6504, INTERIM, eff 5-5-97, EXPIRES: 9-2-97; ss by #6566, eff 9-2-97, EXPIRED: 9-2-05

New. #8470, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8625 eff 5-6-06

Emp 502.05 Deduction and Withholding From Benefits.

(a) An individual filing such individual's first initial claim in a benefit year shall, at the time of filing such claim, be subject to the following and shall be advised that:

(1) Unemployment compensation is subject to federal, state and local income tax;

(2) Requirements exist pertaining to estimated tax payments;

(3) The individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal Internal Revenue Code;

(4) The calculation of the tax to be deducted and withheld shall be based on the amount payable to the individual prior to any withholding for any overpayments of any unemployment compensation or deductions for child support obligations;

(5) The individual may change a previously elected withholding status once during a benefit year; and

(6) Elections shall:

a. Be in writing;

b. Include the individual's:

1. Name;

2. Social security number; and

3. Home address;

c. State whether or not the individual requests that federal income tax be deducted; and

d. Be signed by the individual.

(b) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal, state or local taxing authority as a payment of income tax.

(c) The commissioner shall follow all procedures specified by the United States Department of Labor and the federal Internal Revenue Service pertaining to the deducting and withholding of income tax.

(d) Amounts shall be deducted and withheld in the following order:

(1) Withholding for any overpayments of unemployment compensation;

(2) Deductions for child support obligations; and

(3) Federal income tax withholding.

(e) Any deduction or withholding shall be limited to the funds available resulting from the application of Emp 502.05(d).

(f) Amounts to be deducted or withheld shall be rounded to the nearest whole dollar by:

(1) Dropping amounts under 50 cents to the next lower dollar; and

(2) Increasing amounts from 50 cents to 99 cents to the next higher dollar.

Source. #6414, eff 1-1-97, EXPIRED: 1-1-05

New. #8471, INTERIM, eff 11-1-05, EXPIRES: 4-30-06

New. #8627, eff 6-6-06

Emp 502.06 Earnings From Self-Employment.

(a) For purposes of RSA 282-A:14, III(a), "earnings from self-employment" means every form of remuneration for personal services, paid or payable, directly or indirectly to the individual or to the individual's business.

(b) An individual shall be considered self-employed if the individual would, upon terminating his or her current activities, be considered under Emp 503.03(a) to have been previously self-employed or to have had a business.

(c) If an individual's remuneration for personal services is earned from the sale of goods, the cost of sold goods to the individual shall be deducted to determine earnings from self-employment.

(d) Cost of sold goods shall only include:

(1) The cost, paid or payable, of the goods to the individual;

(2) The costs to the individual for delivery of the goods to the individual;

(3) If the goods were delivered directly to the individual's customer rather than first being delivered to the individual, the cost to the individual for delivery of the goods to the customer; and

(4) The cost to the individual for personal services of others if:

a. The cost is not inflated over market value;

b. The services were actually performed; and

c. A reasonably prudent person would have incurred the cost of the personal services.

(e) Cost of such goods shall not include:

(1) Cost of inventory;

(2) Office expenses;

(3) Depreciation;

(4) Advertising;

(5) Repayment of a loan;

(6) Transportation, personal services or delivery costs other than those listed in Emp 502.06(d); and

(7) Any other business expense which:

a. Increases the book value of the business;

b. Anticipates the decrease in value of an asset due to obsolescence or use;

c. Benefits the business over an indefinite period of time; or

d. Is not attributable to a particular sale.

(f) Earnings from self-employment shall be deemed to have been received by the individual in such week or weeks in which the individual performed the services which entitle the individual to such earnings.

Source. #7993, eff 11-26-03

Emp 502.07 Application of Wages.

(a) For purposes of RSA 282-A:14, III(a) "sums of whatever type or nature" shall include a stay bonus, retention bonus, longevity pay and similar payments.

(b) Wages as defined at RSA 282-A:14, III(a) shall, when paid in a lump sum to an individual or payable in a lump sum but for the individual's election otherwise, be prorated following the individual's last date of employment with the employer, based on the individual's usual weekly pay, not including overtime.

(c) "Plan" as used in RSA 282-A:14, III(a) shall:

(1) Include plans intended to benefit individuals upon retirement; and

(2) Not include plans intended to benefit only individuals who:

a. Volunteer to separate from employment by a certain date; or

b. Do not voluntarily separate from employment prior to a certain date.

(d) For purposes of RSA 282-A:14, III(a), a plan shall be deemed to have vested in an individual before the date of separation if:

(1) The individual had a present right or title in the plan; and

(2) The individual's right to payments under the plan were not dependent on an uncertain future event.

(e) If the commissioner finds the proration of wages pursuant to Emp 502.07(b) would prevent or terminate the eligibility of an individual for the Health Coverage tax Credit under the Trade Act of 2002 (P.L. 107-210) the commissioner shall adjust the proration of wages pursuant to Emp 502.07(b) to the minimum extent necessary to allow an individual to become eligible for or maintain eligibility for the Health Coverage Tax Credit under the Trade Act of 2002 (P.L. 107-210).

Source. #7993, eff 11-26-03, amd by #8629, EMERGENCY, eff 5-10-06, EXPIRES: 11-6-06

## PART Emp 503 **TERMINATION OF EMPLOYMENT**

### Emp 503.01 Voluntary Quit Without Good Cause.

(a) An individual shall be considered to have left the individual's work voluntarily without good cause if of the individual's own choice or volition the individual terminates the employee-employer relationship for a reason which is not attributable to the employer.

(b) The reason for an individual becoming unemployed shall be deemed attributable to the employer if:

(1) The individual was seeking to return for work with the employer immediately following a period:

a. Throughout which the individual was unable to work due to illness, pregnancy, or accidental injury, which illness, pregnancy, or accidental injury required hospitalization, or similar professional medical treatment; or

b. During which period the individual was out of work on a leave of absence;

(2) The employer is unable to return the individual to the individual's job or to comparable work due solely to:

a. A reduction in force involving such work, or

b. Other economic conditions;

(3) In the case of an individual's illness, pregnancy, or accidental injury a licensed physician has certified that the individual is fully recovered and the individual is in fact fully recovered;

(4) The individual exercised all the individual's rights, or did all those things which a reasonable prudent person would have done, to continue the employee-employer relationship or the possibility of re-employment, for and during the period the individual was so unable to work; and

(5) The individual was not able to work for a period not greater than one year.

(c) Leave of absence as used in this section means agreement by the employer to continue the employee-employer relationship or to return the individual to work when the individual is able to so return to the individual's usual work in accordance with the requirements of the employer.

(d) Whenever an individual becomes unemployed by reason of the application of any type of seniority rules created by or accepted by the employer, such unemployment shall be deemed attributable to the employer.

Source. #2234, eff 1-1-83; ss by #2930, eff 12-21-84, EXPIRED: 12-21-90

New. #5153, eff 5-6-91; ss by #6415, eff 1-1-97, EXPIRED: 1-1-05

New. #8471, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8627, eff 5-6-06

Emp 503.02 Voluntary Leaving of Incidental Employment.

(a) For purposes of this section, "incidental employment" means employment held concurrently with an individual's permanent, full-time employment.

(b) An individual shall not be disqualified under RSA 282-A:32, I(a) for leaving incidental employment which he already held prior to his becoming unemployed from his full-time position if the leaving was not from an employer whose "separate account" under RSA 282-A:74 is or becomes chargeable, and either:

(1) The leaving, if after the end of the full-time employment, was prior to the individual's working at the incidental employment for more than 4 consecutive weeks following the end of the full-time employment, and either:

a. The incidental employment was not suitable work as defined at RSA 282-A:32, I(d)(1); or

b. The incidental employment became unsuitable work as defined at RSA 282-A:32, I(d)(1) as a result of:

1. The end of the full-time employment; or

2. Changes in circumstances made by the individual which a reasonably prudent person would have made because of the end of the full-time employment; or

(2) The leaving, if from suitable work as defined in RSA 282-A:32, I(d)(1); and prior to the end of the full-time employment, was without knowledge or belief that a layoff from the full-time employment was likely; or

(3) The leaving was:

a. From suitable work as defined in RSA 282-A:32, I(d)(1); and

b. Prior to the end of the full-time employment, and either:

1. Without knowledge or belief that a layoff from the full-time work was likely; or

2. Reasonably prudent under the circumstances.

c. "Reasonably prudent" for purposes of Emp 503.02(b) means:

1. Careful investigation of the facts;

2. Consideration of the circumstances;

3. Rational judgment of possible consequences; and

4. The exercise of due care.

Source. #4350, eff 12-28-87, EXPIRED: 12-28-93

New. #5977, eff 2-1-95, EXPIRED: 2-1-03

New. #8158, eff 9-5-04

Emp 503.03 Leaving of Self-Employment or Closing Business.

(a) For purposes of RSA 282-A:32, I(e), an individual shall be considered to have been previously self-employed or to have had a business if, as to an entity or activity 3 or more of the following are true:

(1) The individual was a sole proprietor, partner, officer or director, both in name and in fact;

(2) The individual had an investment or was a stockholder;

(3) The individual formed the entity or became involved in the activity in order to create profits, which for purposes of this subparagraph shall include wages, capital gains, dividends, salaries, commissions, bonuses, board, rent, housing, payment in kind, insurance, disability plans, retirement and similar advantages, and benefits;

(4) The individual controlled or had the right to control the business;

(5) The individual had a spouse, parent, child, brother, sister or step family member of the same relationship who was either an officer, manager, director, investor, stockholder or partner, who controlled or who had the express or implied right to control the business, and said family member either acceded to the decisions of the individual or delegated rights or authority to the individual; or

(6) The individual performed services not required to be done by an officer or director.

(b) For purposes of RSA 282-A:32, I(e):

(1) An individual shall be deemed to have left the individual's self-employment or closed the individual's business without regard to whether or not the individual's reasons were personal, business, economic, legal or initiated by another party such as a bank, landlord, or creditor even if such party utilized legal process such as eviction, foreclosure, attachment, cutting off credit lines or involuntary bankruptcy;

(2) An individual who did not affirmatively dissent from a decision by partners, stockholders, directors and/or officers causing the individual to leave the individual's self-employment or close the individual's business shall be deemed to have left the individual's self-employment or closed the individual's business, even if the decision was a joint decision or a decision in which the individual would have been outvoted had the individual dissented;

(3) An individual shall not be deemed to have left the individual's self-employment or closed the individual's business if the leaving or closing was directly caused by an act of God which would have prevented a reasonably prudent person making all reasonable efforts to continue the individual's self-employment or business from doing so; and

(4) An individual shall not be deemed to have left the individual's self-employment or closed the individual's business if the leaving or closing was directly caused by operation of law which would have prevented a reasonably prudent person making all reasonably prudent efforts to continue the individual's self-employment or business from doing so.

(c) For purposes of (b)(4) above, "operation of law" means that:

(1) There is:

a. A new law;

b. A new application of existing law; or

c. A change in the law;

(2) The new law, new application or change causes an effect on:

a. The individual; or

b. The individual's:

1. Self-employment; or

2. Business;

(3) The effect is without the act or cooperation of the individual; and

(4) The effect is conducive to the individual either:

a. Leaving the individual's self-employment; or

b. Closing the individual's business.

(d) For purposes of (b)(4) above, "operation of law" does not include:

(1) Eviction, foreclosure, attachment, involuntary bankruptcy or other legal process; or

(2) Cutting off credit lines, acceleration of a note, refusal to renew a lease or other termination or nonextension of a business or contractual right.

(e) For purposes of RSA 282-A:32, I(e), an individual shall not be considered to have been previously self-employed or to have had a business if the individual engaged in temporary self-employment under the conditions set forth in RSA 282-A:33.

Source. #5978, eff 2-1-95; ss by #6416, eff 1-1-97, EXPIRED: 1-1-05

New. #8471, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8627, eff 5-6-06

Emp 503.04 Self-Employment.

Source. #5979, eff 2-1-95, EXPIRED: 2-1-03

Emp 503.05 End of School Year.

(a) For purposes of RSA 282-A:31, II, an individual shall be considered to be employed through June 30 in any year in which:

(1) The individual was employed:

a. By a school district;

b. Pursuant to a contract which expires on June 30 in such year; and

(2) The individual has not prior to completion of all obligations under such contract:

a. Resigned;

b. Been suspended without pay; or

c. Been dismissed.

(b) The provisions of (a) above shall apply even if such individual has:

(1) Performed all services required under such contract; and

(2) Been paid all wages payable under such contract.

Source. #6417, eff 1-1-97, EXPIRED: 1-1-05

New. #8471, INTERIM, eff 11-1-05, EXPIRED: 4-30-06

New. #8627, eff 5-6-06

Emp 503.06 Leaving Employment Necessary Due to Domestic Abuse.

(a) The purpose of Emp 503.06 is to implement RSA 282-A:32, I(a)(3).

(b) "Domestic abuse" means "abuse" as defined in RSA 173-B:1, I, as contained in appendix A, by a family or household member or a former sexual or intimate partner.

(c) "Family or household member" means "family or household member" as defined in RSA 173-B:1, II as contained in appendix A.

(d) "Intimate partner" means "intimate partner" as defined in RSA 173-B:1, IV as contained in appendix A.

(e) The fact of domestic abuse shall be established by a preponderance of the evidence.

(f) The filing of a civil or criminal complaint against or the criminal conviction of the alleged abuser shall not be required as a prerequisite in order to establish the fact of domestic abuse.

(g) Each determination under this section shall be decided on its own merits taking into consideration the specific facts and circumstances of the claimant, the employment, and the abuse involved.

(h) Upon an affirmative determination of the fact of domestic abuse, the leaving of employment shall be considered necessary to protect the individual from domestic abuse if the commissioner determines a reasonably prudent person under the circumstances would have left the employment. Factors to be considered by the commissioner shall include but not be limited to whether:

(1) The abuse itself interfered with the individual's ability to work, travel, or prepare for work;

(2) The individual needed to hide from the abuser at a shelter or elsewhere in order to be safe;

(3) The individual left the labor market area to escape the abuse;

(4) The abuse occurred at the individual's place of employment;

(5) The individual was at risk of abuse at the worksite or while commuting to and from the worksite;

(6) The abuser or the abuser's relatives or friends were co-workers of the individual or otherwise present at the worksite;

(7) The abuse occurred as a consequence of the individual going to work; and

(8) In order to give the employer the opportunity to preserve the employee-employer relationship by ameliorating the conditions within the control of the employer that place the individual in danger, the individual informed the employer within a reasonable time of the fact of the abuse.

(i) The individual shall be considered to have made all reasonable efforts to preserve the employment if the individual:

(1) Informed the individual's employer within a reasonable time of the fact of the domestic abuse;

(2) Did all those things which a reasonably prudent person would have done to continue the employee-employer relationship or the possibility of reemployment;

(3) Filed a civil or criminal complaint against the alleged abuser, but this shall not be required if a reasonably prudent person under the circumstances would have considered the filing likely to be:

a. Ineffective; or

b. Conducive to continued, additional or increased abuse; and

(4) Requested reemployment with the employer upon return to the labor market area after having left or upon a change in circumstances which would allow reemployment.

Source. #6833, INTERIM, eff 8-25-98, EXPIRES: 12-23-98; ss by #6868, eff 10-17-98

Emp 503.07 Leaving Employment for Better Available Work.

(a) For purposes of RSA 282-A:32, I(a)(2), "good faith" means circumstances under which a reasonably prudent individual would decide to leave the individual's present employment for better full-time employment.

(b) For purposes of RSA 282-A:32, I(a)(2), "better full-time employment" includes, but is not limited to, the following:

(1) An increase in wages;

(2) An increase in benefits, including health care benefits, vacation, retirement, child-care;

(3) The hours of work accommodate an individual's lifestyle, but the work is full-time within the industry; or

(4) Other conditions of work which are more favorable to the individual than the employment the individual is leaving including but not limited to:

a. The new employment requires significantly less travel to and from work; or

b. The new employment offers more job security.

(c) For purposes of RSA 282-A:32, I(a)(2), the employee shall prove unavailability for work by a preponderance of the evidence.

(d) For purposes of RSA 282-A:32, I(a)(2), unavailability of work shall be limited to the following:

(1) Lack of work including, but not limited to, no work available, lack of funding, company reorganization, job restructuring or business downturn;

(2) Retraction by the new employer of a bona-fide offer of work for reasons not attributable to the individual after the individual has notified the current employer of the termination and has accepted the new offer of work; or

(3) Termination of the employment relationship for reasons attributable to the employer. Inability to perform the duties of the new work, for purposes of RSA 282-A:32(a)(2) only, shall be presumed attributable to the individual unless the individual introduces evidence to rebut the presumption.

Source. #7993, eff 11-26-03

## PART Emp 504 **SELECTION AND TRAINING PROCEDURES**

Emp 504.01 Approved Training.

(a) The purpose of this section shall be to establish selection procedures under RSA 282-A:31, III.

(b) A request to receive unemployment compensation benefits while in approved vocational training shall be considered for approval by the commissioner or his authorized representative only if the claimant's request is:

(1) Communicated to the commissioner at any office of the New Hampshire department of employment security; and

(3) Either:

a. Made prior to the beginning of the training course; or

b. If the claimant is attending training prior to filing a claim for benefits, the request shall be made no later than the date a claim for a week of benefits is filed.

(c) Approval shall be granted only if the commissioner finds the following:

(1) That the training is approved by the New Hampshire department of education;

(2) That the program of instruction relates to an occupation or skill for which there are, or are expected to be, reasonable employment opportunities in the individual's labor market area or in New Hampshire;

(3) That employment opportunities for which the individual is fitted by past training and experience do not exist or have substantially diminished in the individual’s labor market due to business or economic conditions in the area, or because of conditions peculiar to the individual, such as age or handicap, to the extent that in the judgment of the commissioner that individual will experience an extended period of unemployment and dependence upon the unemployment compensation program;

(4) That the applicant for training meets the criteria as to the aptitude, abilities, and education level necessary to satisfactorily enter and complete the training program; and

(5) That the training is an organized program offering a course or a sequence of courses designed to prepare an individual for gainful employment requiring other than a baccalaureate or higher degree.

(d) An applicant so selected and enrolled in a vocational training program which substantially impairs the applicant's ability to meet the requirements of RSA 282-A:31, I(c) shall not be required to meet the requirements of RSA 282-A:31, I(c) for any week during which the applicant:

(1) Is otherwise entitled to unemployment compensation benefits;

(2) Is in good standing in the training program; and

(3) Has not failed for personal reasons to attend all scheduled training sessions.

(e) The exemption to the requirements of RSA 282-A:31, I(c) stated in (d) above shall apply to a participant during regularly scheduled vacation periods or periods between terms. Benefits paid for weeks in these periods shall be charged as stated in paragraph (f) below except that such exemption and such charging provisions shall not apply to periods longer than 2 consecutive weeks.

(f) Unemployment compensation paid a trainee by reason of employment with a reimbursing employer shall be billed in accordance with Emp 303.02. Unemployment compensation paid a trainee based on all other employment shall be charged in accordance with RSA 282-A:75.

(g) Determination on requests for training, made under this rule, shall be in writing and may be reconsidered or appealed pursuant to RSA 282-A:46 through RSA 282-A:68.

(h) An individual participating in approved training who is not exempted from the provisions of RSA 282-A:31(c) because the scheduled vacation or between terms period exceeded 2 consecutive weeks who accepts unsuitable work as defined in RSA 282-A:32, I(d), shall not be disqualified for leaving that work to resume the course of training.

(i) The employer whose work is left by the individual referred to in (h) above shall not become the most recent employer by reason of having provided work during the scheduled vacation or between terms period.

Source. #2760, eff 6-15-84; #4164, eff 11-5-86, EXPIRED: 11-5-92

New. #5980, eff 2-1-95; ss by #7620, eff 12-30-01

PART Emp 505 **ADDITIONAL BENEFITS - EXPIRED**

**APPENDIX**

| RULE | STATUTE |
|---|---|
| | |
| Emp 201 | RSA 282-A:96 |
| | RSA 541-A:16, I(b)(2) and 30-a |
| Emp 202.01 | RSA 282-A:56 |
| | RSA 541-A:16, I(b)(2) and 30-a |
| Emp 204 | RSA 282-A:158 |
| Emp 205.01 | RSA 541-A:4 and 16, I(c) |
| Emp 205.02 - 205.04 | RSA 541-A:16, I(d) |
| Emp 205.05 | RSA 541-A:16, II |
| Emp 206 | RSA 282-A:119 and 120 |
| Emp 207 | RSA 541-A:30-a; 541-A:16, I; 282-A:56 and 282-A:96 |
| Emp 207.03 | RSA 282-A:42, III |
| Emp 207.05 | RSA 541-A:30-a, III(k) |
| Emp 207.06 | RSA 541-A:30-a, III(j) |
| Emp 207.07 - 207.09 | RSA 541-A:30-a, III(a) |
| Emp 207.10 | RSA 541-A:30-a, III(f) |
| Emp 207.11 - 207.22-24 | RSA 541-A:30-a, III(e) |
| Emp 207.14 | RSA 541-A:31, III |
| Emp 207.15 | RSA 541-A:30-a, III(b) |
| Emp 207.16 | RSA 541-A:31,V |
| Emp 207.17 - 207.18 | RSA 541-A:30-a, III(g) |
| Emp 207.19 | RSA 541-A:32 |
| Emp 207.25 | RSA 541-A:31,VII; 282-A:64, III and 282-A:117-123 |
| Emp 207.26 | RSA 541-A:30-a, III(d)(e) |
| Emp 207.27 - 207.28 | RSA 541-A:33 |
| Emp 207.29 | RSA 541-A:35 |
| Emp 207.30 | RSA 541-A:30-a, III(I) |
| Emp 207.31 | RSA 541-A:30-a, III(j) |
| Emp 207.32 | RSA 541-A:30-a, III(c) |
| Emp 207.33 - 207.34 | RSA 282-A:60,67 |
| | |
| Emp 301.01 - 301.03 | RSA 282-A:14; 15, I; 16 |
| Emp 302.01 | RSA 282-A:8; 9, III; 9, IV; 91; 96; 117; 117-a, III; 118 |
| Specific provisions implementing specific statutes or regulations are listed below. | |
| Emp 302.01(b)(8) | RSA 282-A:9, IV(p)(t)<br>RSA 282-A:69,II |
| Emp 302.01(b)(13) | RSA 282-A:91 |
| Emp 302.01(b)(15) | RSA 282-A:8, I |
| Emp 302.01(b)(18) | RSA 282-A:9, IV(b) |

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|---|---|
| Emp 302.01(b)(20) | RSA 282-A:45, 117; 117-a, III; 118<br>42 USC 503(f)<br>42 USC 1320b-7(a)(1),(a)(2), (a)(3), (b)(3)<br>20 CFR 603.2; 20 CFR 603.20 |
| Emp 302.02 | RSA 282-A:69, 70; 7; 117; 117-a, 118 |
| Specific provisions implementing specific statutes or regulations are listed below. | |
| Emp 302.02(f)(10) | RSA 282-A:69, 86 |
| Emp 302.02(f)(19) | RSA 282-A:117; 117-a, III, 118<br>42 USC 503(f)<br>42 USC 1320b-7(a)(a),(a)(s),(a)(3),(b)(3)<br>20 CFR 603.2<br>20 CFR 603.20 |
| Emp 302.03 | RSA 282-A:14<br>RSA 282-A:14, I<br>RSA 282-A:31, I(c)(d)<br>RSA 282-A:31, V(b)<br>RSA 282-A:117<br>RSA 282-A:118<br>42 USC 503(f)<br>42 USC 1320b-7(a)(1),(a)(2), (a)(3), (b)(3)<br>20 CFR 603.2<br>20 CFR 603.20 |
| Emp 302.05 | RSA 282-A:14<br>RSA 282-A:15, I<br>RSA 282-A:16<br>RSA 282-A:31, V(b)<br>RSA 282-A:117<br>RSA 282-A:117-a, III<br>RSA 282-A:118<br>RSA 161-B:11 |
| Emp 302.05(a) | RSA 161-B:11<br>RSA 282-A:14<br>RSA 282-A:16<br>RSA 282-A:31, V(b)<br>RSA 282-A:117<br>RSA 282-A:117-a, III<br>RSA 282-A:118<br>42 USC 503(f)<br>42 USC 1320b-7(a)(1), (a)(2), (a)(3) and (b)(3)<br>20 CFR 603.2<br>20 CFR 603.20 |
| Emp 302.05(a)(2) | RSA 282-A:14; 16; 117; 117-a, III; 118<br>42 USC 503(f)<br>42 USC 1320b-7(a)(1), (a)(2), (a)(3),(b)(3)<br>20 CFR 603.2<br>20 CFR 603.20 |
| Emp 302.05(b) | RSA 282-A:9, III |

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| | RSA 282-A:9, IV<br>RSA 282-A:9, V |
| Emp 302.05(c) | RSA 282-A:31, I(c)(d) |
| Emp 302.05(d) | RSA 282-A:145 |
| Emp 302.11 | RSA 282-A;69, I and II<br>RSA 282-A:118 |
| Emp 302.13 | RSA 282-A:14, I<br>RSA 282-A:45-a<br>RSA 282-A:117<br>RSA 282-A:118<br>RSA 262-B:11<br>42 USC 503(f)<br>42 USC 1320b-7(a)(1),(a)(2), (a)(3), (b)(3)<br>20 CFR 603.2<br>20 CFR 603.20 |
| Emp 303.01 | RSA 282-A:69, I |
| Specific provisions implementing specific statutes or regulations are listed below. | |
| Emp 303.01(d) | RSA 282-A:102 |
| Emp 303.02 | RSA 282-A:69, II; 70; 71 |
| Specific provisions implementing specific statutes or regulations are listed below. | |
| Emp 303.02(a) | RSA 282-A:69, II; 71, II |
| Emp 303.02(b) | RSA 282-A:71, 74, 75 |
| Emp 303.02(c) | RSA 282-A:72 |
| Emp 303.02(e) | RSA 282-A:44 |
| Emp 303.03 | RSA 282-A:74 |
| Emp 303.04 | RSA 282-A:78 |
| | |
| Emp 303.14 | RSA 282-A:14<br>RSA 282-A:14, I<br>RSA 282-A:31, V<br>RSA 282-A:31, V(b)<br>RSA 282-A:117<br>RSA 282-A:118<br>RSA 161-B:11<br>42 USC 503(f)<br>42 USC 1320b-7(a)(1),(a)(2), (a)(3), (b)(3)<br>20 CFR 603.2<br>20 CFR 603.20 |
| Emp 304.01 | RSA 282-A:157; 166, I(g) |
| | |
| Emp 305.01 | RSA 282-A:169-171 |
| | |
| Emp 307.01 | RSA 282-A:117-a |
| Emp 307.02(a) | RSA 282-A:117-a, I |
| Emp 307.02(b) | RSA 282-A:117-a, I |

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| Emp 307.02(c) | RSA 282-A:117-a, IV |
| Emp 307.02(d) | RSA 282-A:117-a, IV |
| Emp 307.02(e) | RSA 282-A:117-a, IV |
| Emp 307.02(f) | RSA 282-A:117-a, IV |
| Emp 307.02(g) | RSA 282-A:117-a, IV |
| Emp 307.02(h) | RSA 282-A:117-a, I (c) |
| Emp 307.02(i) | RSA 282-A:117-a, IV |
| Emp 307.03(a) | RSA 282-A:117-a, II |
| Emp 307.03(b) | RSA 282-A:117-a, II |
| Emp 307.03(c) | RSA 282-A:117-a, III |
| Emp 307.03(d) | RSA 282-A:117-a, III |
| Emp 307.04 | RSA 282-A:117-a, IV |
| | |
| Emp 402.01 | RSA 282-A:69-71; RSA 6:11-a |
| Emp 402.02 | RSA 282-A:141 and 165, II |
| Emp 402.03 | RSA 282-A:69-71 |
| | |
| Emp 403.01 and 403.03 | RSA 282-A:8, II; 9, IV; 16; 175<br>26 USC 3304(a)(6)(A) and (a)(13)<br>26 USC 3306(c )(7)(8) |
| | |
| Emp 501.06 | RSA 282-A:43 |
| | |
| Emp 501.15(a) | RSA 282-A:31, V(a)<br>RSA 282-A:32, I(d)(2)(E) |
| Emp 501.15(b) | RSA 282-A:31, V(a)<br>RSA 282-A:32, I(d)(2)(E) |
| Emp 501.15(c) | RSA 282-A:31, V(b) |
| Emp 501.15(d) | RSA 282-A:31, V(b) |
| Emp 501.15(e) | RSA 282-A:31, V(b) |
| Emp 501.15(f) | RSA 282-A:31, V(a)<br>RSA 282-A:32, I(d)(2)(E) |
| Emp 501.15(g) | RSA 282-A:31, V(c)<br>RSA 282-A:32, I(d) |
| Emp 501.15(h) | RSA 282-A:14, I(b) |
| Emp 501.15(i) | RSA 282-A:31, V(b) |
| Emp 501.15(a) | RSA 282-A:31, V(a)<br>RSA 282-A:32, I(d)(2)(E) |
| | |
| Emp 502.01 | RSA 282-A:24 |
| Emp 502.02 | RSA 282-A:24 |
| Emp 502.03 | RSA 282-A:165 |
| Emp 502.04 | RSA 282-A:16 |
| Emp 502.05 | RSA 282-A:159<br>26 USC 3304 (a) (18)<br>42 USC 1320b-7(a)(1), (a)(2), (a)(3) and (b)(3)<br>20 CFR 603.3 |

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|---|---|
| Emp 502.07(e) | RSA 282-A:114, III(a)<br>RSA 282-A:178<br>26 USC 35<br>20 CFR 617.11(a)(i)(iv) |
| | |
| Emp 503.01 | RSA 282-A:32, I(a) |
| Emp 503.03 | RSA 282-A:32, I(e) |
| Emp 503.05 | RSA 282-A:31, II |

APPENDIX A--Emp 503.06

**§** 173-B:1 Definitions. - In this chapter:

I. "Abuse" means the commission or attempted commission of one or more of the following acts by a family or household member or current or former sexual or intimate partner and where such conduct constitutes a credible threat to the plaintiff's safety:

(a) Assault or reckless conduct as defined in RSA 631:1 through RSA 631:3.

(b) Criminal threatening as defined in RSA 631:4.

(c) Sexual assault as defined in RSA 632-A:2 through RSA 632-A:5.

(d) Interference with freedom as defined in RSA 633:1 through RSA 633:3-a.

(e) Destruction of property as defined in RSA 634:1 and RSA 634:2.

(f) Unauthorized entry as defined in RSA 635:1 and RSA 635:2.

(g) Harassment as defined in RSA 644:4.

II. "Applicant" means any private, town, city, or regional agency or organization applying for funds under RSA 173-B:16.

III. “Commissioner” means the commissioner of the department of health and human services.

IV. "Contact" means any action to communicate with another either directly or indirectly, including, but not limited to, using any form of electronic communication, leaving items, or causing another to communicate in such fashion.

V. "Coordinator" means the agency or organization appointed by the commissioner to administer the domestic violence grant program.

VI. “Cross orders for relief” means separate orders granted to parties in a domestic violence situation where each of the parties has filed a petition pursuant to this chapter on allegations arising from the same incident or incidents of domestic violence.

VII. “Deadly weapon” means “deadly weapon” as defined in RSA 625:11, V.

VIII. “Department” means the department of health and human services.

IX. “Domestic violence” means abuse as defined in RSA 173-B:1, I.

X. “Family or household member” means:

(a) Spouses, ex-spouses, persons cohabiting with each other, and persons who cohabited with each other but who no longer share the residence.

(b) Parents and other persons related by consanguinity or affinity, other than minor children who reside with the defendant.

XI. “Firearm” means any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by force of gunpowder.

XII. “Foreign protective order” means an order enforceable under RSA 173-B:13.

XIII. “Fund” means the special fund for domestic violence programs established by RSA 173-A:15.

XIV. “Grantee” means any private, town, city, or regional agency or organization receiving funds under RSA 173-B:16.

XV. “Intimate partners” means persons currently or formerly involved in a romantic relationship, whether or not such relationship was ever sexually consummated.

XVI. “Mutual order for relief” means an order restraining both parties from abusing the other originating from a petition filed by one of the parties and arising from the same incident or incidents of domestic violence.

XVII. “Program” means services or facilities provided to domestic violence victims.

APPENDIX B--Emp 503.06

**§173-B:13 Orders Enforceable.**

I. Any protective order issued under this chapter shall be effective throughout the state.

II. Any protective order issued by any other state, tribal, or territorial court related to domestic or family violence, including an ex parte order, shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the law of the state, tribe, or territory, and the person against whom the order was made was given reasonable notice and opportunity to be heard. There shall be a presumption of validity where an order appears facially valid.

III. Any valid protective order, as defined in paragraph II, shall be accorded full faith and credit throughout the state.

IV. A person entitled to protection under a foreign protective order, as defined in paragraph II, may file such order in any district or superior court by filing with the court a certified copy of the order. Such person shall swear under oath in an affidavit to the best of such person’s knowledge that the order is presently in effect as written. Such filing shall be without fee or cost. The clerk of the district or superior court shall forward such order to the state police who shall enter such order in the state database. Such filing shall not be a precondition to arrest or enforcement of a foreign order.

V. A peace officer may rely upon a copy of any protective order issued under this chapter, or under RSA 458, or upon a copy of a foreign protective order, as defined in this section, which has been provided to the peace officer by any source.

VI. Law enforcement personnel may rely on the statement of the person protected by the order that the order remains in effect as written.

VII. A mutual protective order issued by any other state, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection relating to domestic or family violence shall be accorded full faith and credit only if:

(a) A cross or counter petition, complaint, or other written pleading was filed seeking such protection order; and

(b) The court made specific findings of domestic or family violence by both parties and that each party was entitled to such order.

**§ 173-B:15 Fund for Domestic Violence Grant Program.** A special fund for domestic violence programs is established. The sole purpose of the fund shall be to provide revenues for the domestic violence program established in RSA 173-B:16, and shall not be available for any other purpose. The state treasurer shall deposit all fees received by the department under RSA 457:29 in the fund. All moneys deposited in the fund shall be continually appropriated for the purposes of the domestic violence grant program and shall not lapse.

**§ 173-B:16 Grant Program Established.** A grant program is established within the department for the allocation of grant money to New Hampshire programs which provide aid and assistance to victims of domestic violence. The grant program shall be funded by the fund established under RSA 173-B:15.

**§ 625:11, V**

V. "Deadly weapon" means any firearm, knife or other substance or thing which, in the manner it is used, intended to be used, or threatened to be used, is known to be capable of producing death or serious bodily injury.

**§ 631:1 First Degree Assault**.

I. A person is guilty of a class A felony if he:

(a) Purposely causes serious bodily injury to another; or

(b) Purposely or knowingly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or

(c) Purposely or knowingly causes injury to another resulting in miscarriage or stillbirth; or

(d) Knowingly or recklessly causes serious bodily injury to a person under 13 years of age.

II. In this section:

(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus; and

(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

**§ 631:2 Second Degree Assault**.

I. A person is guilty of a class B felony if he:

(a) Knowingly or recklessly causes serious bodily injury to another; or

(b) Recklessly causes bodily injury to another by means of a deadly weapon, except that if the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g; or

(c) Recklessly causes bodily injury to another under circumstances manifesting extreme indifference to the value of human life; or

(d) Purposely or knowingly causes bodily injury to a child under 13 years of age; or

(e) Recklessly or negligently causes injury to another resulting in miscarriage or stillbirth.

II. In this section:

(a) "Miscarriage" means the interruption of the normal development of the fetus other than by a live birth and not an induced abortion, resulting in the complete expulsion or extraction of a fetus; and

(b) "Stillbirth" means the death of a fetus prior to complete expulsion or extraction and not an induced abortion.

**§ 631:2-a Simple Assault**.

I. A person is guilty of simple assault if he:

(a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another; or

(b) Recklessly causes bodily injury to another; or

(c) Negligently causes bodily injury to another by means of a deadly weapon.

II. Simple assault is a misdemeanor unless committed in a fight entered into by mutual consent, in which case it is a violation.

**§ 631:3 Reckless Conduct**.

I. A person is guilty of reckless conduct if he recklessly engages in conduct which places or may place another in danger of serious bodily injury.

II. Reckless conduct is a class B felony if the person uses a deadly weapon as defined in RSA 625:11, V. All other reckless conduct is a misdemeanor.

**§ 631:4 Criminal Threatening**.

I. A person is guilty of criminal threatening when:

(a) By physical conduct, the person purposely places or attempts to place another in fear of imminent bodily injury or physical contact; or

(b) The person places any object or graffiti on the property of another with a purpose to coerce or terrorize any person; or

(c) The person threatens to commit any crime against the property of another with a purpose to coerce or terrorize any person; or

(d) The person threatens to commit any crime against the person of another with a purpose to terrorize any person; or

(e) The person threatens to commit any crime of violence with a purpose to cause evacuation of a building, place of assembly, facility of public transportation or otherwise to cause serious public inconvenience, or in reckless disregard of causing such fear, terror or inconvenience.

(1) II (a) Criminal threatening is a class B felony if the person:

(1) Violates the provisions of subparagraph I(e); or

(2) Uses a deadly weapon as defined in RSA 625:11, V in the violation of the provisions of subparagraph I(a), I(b), I(c), or I(d).

(b) All other criminal threatening is a misdemeanor.

III. As used in this section, "property" has the same meaning as in RSA 637:2, I; "property of another" has the same meaning as in RSA 637:2, IV.

**§ 632-A:2 Aggravated Felonious Sexual Assault**.

I. A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.

(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.

(g) When the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship:

(1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; or

(2) Uses this position as such provider to coerce the victim to submit.

(h) When, except as between legally married spouses, the victim is mentally defective and the actor knows or has reason to know that the victim is mentally defective.

(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.

(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:

(1) the actor is a member of the same household as the victim; or

(2) the actor is related by blood or affinity to the victim.

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

( l ) When the victim is less than 13 years of age.

(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution or juvenile detention facility; or

(2) When a probation or parole officer has supervisory authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the above circumstances in subparagraph (n) shall not be considered a defense.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

**§ 632-A:3 Felonious Sexual Assault**. - A person is guilty of a class B felony if he:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual penetration with a person other than his legal spouse who is 13 years of age or older and under 16 years of age; or

III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

IV. Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:

(a) When the actor has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution or juvenile detention facility; or

(b) When a probation or parole officer has supervisory authority over the victim while the victim is on parole or probation or under juvenile probation.

**§ 632-A:4 Sexual Assault**. - A person is guilty of a misdemeanor if he subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.

**§ 632-A:5 Spouse as Victim; Evidence of Husband and Wife.** An actor commits a crime under this chapter even though the victim is the actor’s legal spouse. Laws attaching a privilege against the

disclosure of communications between husband and wife are inapplicable to proceedings under this chapter.

**§ 633:1 Kidnapping**.

I. A person is guilty of kidnapping if he knowingly confines another under his control with a purpose to:

(a) Hold him for ransom or as a hostage; or

(b) Avoid apprehension by a law enforcement official; or

(c) Terrorize him or some other person; or

(d) Commit an offense against him.

II. Kidnapping is a class A felony unless the actor voluntarily releases the victim without serious bodily injury and in a safe place prior to trial, in which case it is a class B felony.

**§ 633:2 Criminal Restraint**.

I. A person is guilty of a class B felony if he knowingly confines another unlawfully in circumstances exposing him to risk of serious bodily injury.

II. The meaning of "confines another unlawfully", as used in this section and RSA 633:3, includes but is not limited to confinement accomplished by force, threat or deception or, in the case of a person who is under the age of 16 or incompetent, if it is accomplished without the consent of his parent or guardian.

**§ 633:3 False Imprisonment**. - A person is guilty of a misdemeanor if he knowingly confines another unlawfully, as defined in RSA 633:2, so as to interfere substantially with his physical movement.

**§ 633:3-a Stalking.**

I. As used in this section:

(a) “Intimidates” means to engage in a course of conduct directed at a specific person with the purpose of inflicting substantial emotional distress and which results in substantial emotional distress in the victim.

(b) “Course of conduct” means a pattern of conduct composed of acts on more than one occasion over a period of time, however short, evidencing a continuity of purpose. “Course of conduct” shall not mean any constitutionally protected activity.

(c) “Explicit or implicit threat” means an act made with the intent to cause the person who is the target of the act to reasonably fear for his safety or which would cause a reasonable person to fear for his safety. The threat must be to cause death or bodily injury to a person.

(d) “Stalk” means any of the following:

(1) To follow another person from place to place on more than one occasion for no legitimate purpose with the intent to place such person in fear for his personal safety; or

(2) To appear on more than one occasion for no legitimate purpose in proximity to the residence, place of employment, or other place where another person is found with the intent to place such person in fear for his personal safety; or

(3) To follow another person from place to place on more than one occasion for no legitimate purpose under circumstances that would cause a reasonable person to fear for his personal safety; or

(4) To appear on more than one occasion for no legitimate purpose in proximity to the residence, place of employment, or other place where another person is found under circumstances that would cause a reasonable person to fear for his personal safety; or

(5) After being served with, or otherwise provided notice of, a protective order pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section, or an order that prohibits the person from having contact with specific individuals pursuant to RSA 597:2, on a single occasion and in violation of the provisions of such order to:

(A) Follow another person from place to place; or

(B) Appear in proximity to any other place described in the protective order or bail order.

II. A person is guilty of stalking if such person:

(a) Purposely or knowingly stalks another as defined in RSA 633:3-a, I (d)(1) or (2);

(b) Purposely, knowingly or recklessly stalks another as defined in RSA 633:3-a, I (d)(3), (4) or (5); or

(c) Purposely or knowingly intimidates another and makes an explicit or implicit threat against another.

III. For purposes of this section, a person who engages in acts which would constitute stalking after having been advised by a law enforcement officer as defined in RSA 630:1, II that the person's acts were in violation of this chapter, or a person who has been served with a protective order issued pursuant to paragraph III-a of this section, shall be presumed to have acted knowingly.

III-a. A person who has been the victim of stalking as defined in this section may seek relief by filing a petition in the district court or the superior court in the county or district where the plaintiff or defendant resides. Upon a showing of stalking by a preponderance of the evidence, the court shall grant such relief as is necessary to bring about a cessation of stalking. The types of relief that may be granted, the procedures and burdens of proof to be applied in such proceedings, the methods of notice, service, and enforcement of such orders, and the penalties for violation thereof shall be the same as those set forth in RSA 173-B.

IV. In any complaint, information, or indictment brought for the enforcement of any provision of this statute, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein and the burden of proof of any exception, excuse, proviso, or exemption shall be upon the defendant.

V. Any law enforcement officer may arrest, without a warrant, any person that the officer has probable cause to believe has violated the provisions of this section when the offense occurred within 6 hours, regardless of whether the crime occurred in the presence of the officer. A law enforcement officer shall arrest a person when he has probable cause to believe a violation of the provisions of this section has occurred within the last 6 hours when the offense involves a violation of a protective order issued pursuant to RSA 173-B, RSA 458:16, or paragraph III-a of this section.

VI. (a) Any person convicted of a violation of this section and who has one or more prior stalking convictions in this state or another state when the second or subsequent offense occurs within 7 years following the date of the first or prior offense shall be guilty of a class B felony.

(b) In all other cases, any person who is convicted of a violation of this section shall be guilty of a class A misdemeanor.

VII. If any provision or application of this section or the application thereof to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provisions or applications, and to this end the provisions of this section are severable.

**§ 634:1 Arson**.

I. A person is guilty of arson if he knowingly starts a fire or causes an explosion which unlawfully damages the property of another.

II. Arson is a class A felony if the property damaged is:

(a) An occupied structure and the actor knew it was an occupied structure; or

(b) An historic structure.

III. Arson is a class B felony if:

(a) The property is either that of another or the actor's property, and the fire was started or the explosion caused for the purpose of collecting insurance on such property; or

(b) The actor purposely starts a fire or causes an explosion on anyone's property and thereby recklessly places another in danger of death or serious bodily injury, or places an occupied structure of another in danger of damage; or

(c) The property damaged is real estate; or

(d) The pecuniary loss caused is in excess of $1,000.

IV. All other arson is a misdemeanor.

V. As used in this section:

(a) "Occupied structure" has the same meaning as in RSA 635:1, III, and includes structures appurtenant to occupied structures and seasonal dwellings whether vacant or occupied;

(b) "Property" has the same meaning as in RSA 637:2, I;

(c) "Property of another" has the same meaning as in RSA 637:2, IV.

(d) "Historic structure" means any structure listed, or determined by the department of cultural resources to be eligible for listing, in the National Register of Historic Places, or designated as historic under state or local law.

**§ 634:2 Criminal Mischief**.

I. A person is guilty of criminal mischief who, having no right to do so nor any reasonable basis for belief of having such a right, purposely or recklessly damages property of another.

II. Criminal mischief is a class B felony if the actor purposely causes or attempts to cause:

(a) Pecuniary loss in excess of $1,000; or

(b) A substantial interruption or impairment of public communication, transportation, supply of water, gas or power or other public service; or

(c) Discharge of a firearm at an occupied structure, as defined in RSA 635:1, III.

(d) Damage to private or public property, real or personal, when the actor knows that the property has historical, cultural, or sentimental value that cannot be restored by repair or replacement.

II-a. Criminal mischief is a class A misdemeanor if the actor purposely causes or attempts to cause pecuniary loss in excess of $100 and not more than $1,000.

III. All other criminal mischief is a misdemeanor.

IV. As used in this section, "property" has the same meaning as in RSA 637:2, I; "property of another" has the same meaning as in RSA 637:2, IV.

V. For purposes of determining pecuniary loss under subparagraph II(a), amounts involved in acts committed pursuant to one scheme or course of conduct participated in by the actor may be aggregated in determining the grade of the offense.

VI. Any person who is found guilty of criminal mischief under paragraph III of this section because he has vandalized, defaced, or destroyed any part of the "Old Man of the Mountain" shall, notwithstanding RSA 651:2, be fined $1,000 and shall also make restitution to the state for any damage he has caused.

VII. If the court determines that a motor vehicle was used to abet the commission of the act constituting criminal mischief, the court may suspend, for a period not to exceed 90 days, the driver's license of a person who is convicted of criminal mischief, or the driver's licenses of persons who are convicted of criminal mischief.

**§ 635:1 Burglary**.

I. A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied section thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to prosecution for burglary that the building or structure was abandoned.

II. Burglary is a class B felony unless it is perpetrated in the dwelling of another at night, or if, in the commission of the offense, attempt at commission or in flight immediately after attempt or commission, the

actor is armed with a deadly weapon or explosives or he purposely, knowingly or recklessly inflicts bodily injury on anyone; in which case it is a class A felony; except that if the person is armed with a deadly weapon and the deadly weapon is a firearm, he shall be sentenced in accordance with RSA 651:2, II-g.

III. "Occupied structure" shall mean any structure, vehicle, boat or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present. "Night" shall mean the period between 30 minutes past sunset and 30 minutes before sunrise.

IV. A person may not be convicted both for burglary and for the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense, unless the additional offense constitutes a class A felony.

V. A person is guilty of a misdemeanor if he makes or mends, or begins to make or mend, or knowingly has in his possession, an engine, machine, tool, or implement adapted and designed for cutting through, forcing or breaking open a building, room, vault, safe, or other depository, in order to steal therefrom money or other property, or to commit any other crime, knowing the same to be adapted and designed for the purpose aforesaid, with intent to use or employ or allow the same to be used or employed for such purpose.

**§ 635:2 Criminal Trespass**.

I. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place.

II. Criminal trespass is a misdemeanor if:

(a) The trespass takes place in an occupied structure as defined in RSA 635:1, III; or

(b) The person knowingly enters or remains:

(1) In any secured premises;

(2) In any place in defiance of an order to leave or not to enter which was personally communicated to him by the owner or other authorized person; or

(3) In any place in defiance of any court order restraining him from entering such place so long as he has been properly notified of such order.

III. All other criminal trespass is a violation.

IV. As used in this section, "secured premises" means any place which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

**§ 644:4 Harassment**.

I. A person is guilty of a misdemeanor, and subject to prosecution in the jurisdiction where the communication originated or was received, if such person:

(a) Makes a telephone call, whether or not a conversation ensues, with a purpose to annoy or alarm another; or

(b) Makes repeated communications at extremely inconvenient hours or in offensively coarse language with a purpose to annoy or alarm another; or

(c) Insults, taunts, or challenges another in a manner likely to provoke a violent or disorderly response; or

(d) Knowingly communicates any matter of a character tending to incite murder, assault, or arson; or

(e) With the purpose to annoy or alarm another, communicates any matter containing any threat to kidnap any person or to commit a violation of RSA 633:4; or a threat to the life or safety of another; or

(f) With the purpose to annoy or alarm another, having been previously notified that the recipient does not desire further communication, communicates with such person, when the communication is not for a lawful purpose or constitutionally protected.

II. As used in paragraph I, "communicates" means to impart a message by any method of transmission, including but not limited to telephoning or personally delivering or sending or having delivered any information or material by written or printed note or letter, package, mail, courier service or electronic transmission, including electronic transmissions generated or communicated via a computer. For purposes of this section, ”computer” means a programmable, electronic device capable of accepting and processing data.

III. In any complaint or information brought for the enforcement of RSA 644:4, I(f), it shall not be necessary for the state to negate any exception, excuse, proviso, or exemption contained therein and the burden of proof of any exception, excuse, proviso, or exemption shall be upon the defendant.

END APPENDIX

# INDEX

This index is provided for the convenience of the user. It is not a part of RSA 282-A or the Rules and Regulations. Please also check the separate Index for the law. Appendices A and B to Emp 503.06 are not included in the Index.

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